



AGENDA
CITY COUNCIL MEETING
7651 E. Central Park Ave, Bel Aire, KS
August 01, 2023 7:00 PM



I. CALL TO ORDER: Mayor Jim Benage

II. ROLL CALL

Greg Davied ____ Tyler Dehn ____ Emily Hamburg ____
Justin Smith ____ John Welch ____

III. OPENING PRAYER: Dr. Rob Lindsted

IV. PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG

V. DETERMINE AGENDA ADDITIONS

VI. CONSENT AGENDA

A. **Minutes of the July 18, 2023 City Council meeting.**

Action: Motion to (approve / table / deny) the Consent Agenda as (listed / amended) and authorize the Mayor to sign.

Motion _____ Second _____ Vote _____

VII. DISCUSSION AND APPROVAL OF APPROPRIATIONS ORDINANCE

A. **Consideration of Appropriations Ordinance 23-14 in the amount of \$965,099.86.**

Action: Motion to (approve / deny / table) Appropriations Ordinance 23-14.

Motion _____ Second _____ Vote _____

VIII. CITY REQUESTED APPEARANCES

A. David Floyd - Special Recognition

IX. CITIZEN CONCERNS: *If you wish to speak, please fill out a "Request to Speak" card at the podium and give it to the City Clerk before the meeting begins. When you are called on by the Mayor, please go to the podium, speak into the microphone, and state your name and address*

before giving your comments. Please limit your comments to 3 minutes in the interest of time. If more time is needed, you may request an extension from the Mayor.

X. REPORTS

- A. Council Member Reports**
- B. Mayor's Report**
- C. City Attorney Report**
- D. City Manager Report**

XI. ORDINANCES, RESOLUTIONS AND FINAL ACTIONS

A. Consideration of An Ordinance Approving The Recommendation Of The Bel Aire Planning Commission Changing The Zoning District Classification Of Certain Lands Located In The City Of Bel Aire, Kansas Under The Authority Granted By The Zoning Regulations Of The City (Zoning Case ZON-23-01).

Action: Motion to (adopt the findings and factors and recommendation of the Planning Commission on Case No. ZON-23-01 and to approve Ordinance No. 704 changing the zoning classification from the existing classification that was in effect to M-1 Industrial PUD) / (override the Planning Commission's recommendation, disapprove Case No. ZON-23-01) / (revise the findings and factors and recommendation of the Planning Commission on Case No. ZON-23-01; to revise the conditions attached to the effectuating ordinance as follows _____; and to approve the revised Ordinance as No. 704 changing the zoning classification to M-1 Industrial PUD) / (to return the recommendation to the Planning Commission on Case No. ZON-23-01 for further consideration at its next regular meeting based on _____) and authorize the Mayor to sign any related documents.

Motion _____ Second _____ Roll Call Vote:

Greg Davied _____ Tyler Dehn _____ Emily Hamburg _____

Justin Smith _____ John Welch _____ Mayor Jim Benage _____

B. Consideration of acquiring Right-of-Way from Leonal W. Kilgore Revocable Trust for the 53rd Street Reconstruction Project, sidewalk, storm sewer pipes and drainage ditches.

Action: Motion to (approve / deny / table) the receipt of right-of-way from the Leonal W. Kilgore Revocable Trust for the 53rd Street Reconstruction Project, sidewalk, storm sewer pipes and drainage ditches and authorize the Mayor to sign.

Motion _____ Second _____ Vote _____

C. Consideration of appointing three (3) voting delegates to the League of Kansas Municipalities 2023 Annual Business Meeting and Convention of Voting Delegates.

Action: Motion to (appoint / deny / table) Ty Lasher, Jim Benage, and Emily Hamburg as Bel Aire Voting Delegates to the 2023 League of Kansas Municipalities Annual Business Meeting.

Motion _____ Second _____ Vote _____

D. Consideration of appointing three (3) alternate voting delegates to the League of Kansas Municipalities 2023 Annual Business Meeting and Convention of Voting Delegates.

Action: Motion to (appoint / deny / table) _____, _____ and _____ as Bel Aire Alternate Voting Delegates to the 2023 League of Kansas Municipalities Annual Business Meeting.

Motion _____ Second _____ Vote _____

E. Consideration of accepting the dedication of streets and other public ways, service and utility easements and land dedicated for public use as shown on the Final Plat of Sunflower Commerce Park 3rd Addition (SD-23-04).

Action: Motion to (accept / deny / table) the dedications within the Final Plat for Sunflower Commerce Park 3rd Addition (SD-23-04) and authorize all required signatures.

Motion _____ Second _____ Roll Call Vote:

Greg Davied _____ Tyler Dehn _____ Emily Hamburg _____

Justin Smith _____ John Welch _____ Jim Benage _____

XII. EXECUTIVE SESSION

Action: Motion to go into executive session for the sole purpose of discussion the subject of: (_____), pursuant to the KSA 75-4319 exception for: (_____). Invite the City Manager and the City Attorney. The meeting will be for a period of (__) minutes, and the open meeting will resume in City Council Chambers at (_____) PM.

Motion _____ Second _____ Vote _____

XIII. DISCUSSION AND FUTURE ISSUES

A. Workshop – August 8th at 6:30 p.m.?

XIV. ADJOURNMENT

Action: Motion to adjourn.

Motion _____ Second _____ Vote _____

Additional Attachments

- A. Approved Minutes of Boards/ Committees
- B. Draft Minutes Gravel Roads Task Force 7-10-2023
- C. Draft Minutes From Planning Commission Meeting 7/13/23
- D. Manager's Report - August 1, 2023

Notice

It is possible that sometime between 6:30 and 7:00 PM immediately prior to this meeting, during breaks, and directly after the meeting, a majority of the Governing Body may be present in the Council Chambers or the lobby of City Hall. No one is excluded from these areas during these times. Video of this meeting can be streamed on YouTube and at www.belaireks.gov. Please make sure all cell phones and other electronics are turned off and put away.



MINUTES
CITY COUNCIL MEETING
 7651 E. Central Park Ave, Bel Aire, KS
 July 18, 2023 7:00 PM



I. CALL TO ORDER: Mayor Jim Benage called the meeting to order at 7:00 p.m.

II. ROLL CALL

Present were Councilmembers Greg Davied, Justin Smith, and John Welch. Councilmember Emily Hamburg participated via videoconference. Councilmember Tyler Dehn was absent.

Also present were City Manager Ty Lasher, City Attorney Maria Schrock, City Engineer Anne Stephens, and City Clerk Melissa Krehbiel.

III. OPENING PRAYER: Gary Green provided the opening prayer.

IV. PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG

Mayor Benage led the pledge of allegiance.

V. DETERMINE AGENDA ADDITIONS

A. Consideration of adding Item C, Purchase of an Autosampler, to Final Actions.

MOTION: Councilmember Welch moved to approve the addition of Item C, purchase of an autosampler, to Final Actions. Councilmember Smith seconded the motion. ***Motion carried 4-0.***

VI. CONSENT AGENDA

A. Minutes of the July 11, 2023 City Council meeting.

B. Accept Petitions for Drainage, Paving, Sanitary Sewer, and Water Distribution System Improvements to serve Sunflower Commerce Park Third Addition.

C. Accept Resolutions Determining The Advisability Of The Making Of Certain Internal Improvements In The City Of Bel Aire, Kansas; Making Certain Findings With Respect Thereto; And Authorizing And Providing For The Making Of The Improvements In Accordance With Such Findings (Paving, Sanitary Sewer, Storm Drainage and Water Improvements / Sunflower Commerce Park Third Addition).

- D. Confirm the Mayor's reappointment of Bill Moss to Seat 5 on the Utility Advisory Committee. The term will expire on August 1, 2026.**

MOTION: Councilmember Smith moved to approve the Consent Agenda and authorize the Mayor to sign. Councilmember Davied seconded the motion. ***Motion carried 4-0.***

VII. DISCUSSION AND APPROVAL OF APPROPRIATIONS ORDINANCE

- A. Consideration of Appropriations Ordinance No 23-13 in the amount of \$688,088.03.**

MOTION: Councilmember Davied moved to accept Appropriations Ordinance No 23-13. Councilmember Smith seconded the motion. ***Motion carried 4-0.***

VIII. CITY REQUESTED APPEARANCES

- A. Woodlawn Construction Update - Pat Herman, Garver**

Pat Herman, Garver, gave an update on construction progress and stood for questions from the Council.

IX. CITIZEN CONCERNS: No one spoke.

X. REPORTS

- A. Council Member Reports:** No reports were given.

B. Mayor's Report

- Mayor Benage briefly reported on a conference he attended at WSU regarding mental health and substance abuse, and the most recent meetings of the Bel Aire Utility Advisory Committee and the Sedgwick County Fire District 1 Steering Council.
- Mayor Benage also attended a press conference on July 14th regarding new direct flight service from Wichita to the Washington D.C. area.
- He briefly reported on a meeting he attended on July 12th with the Superintendent of USD 259.
- Mayor Benage encouraged residents to continue supporting businesses on Woodlawn during the construction project.

C. City Attorney Report

City Attorney Maria Schrock reported that she recently met with City Attorneys from two neighboring cities. She has also reviewed contracts and worked on in-house projects with City staff.

D. City Manager Report

City Manager Ty Lasher reported that City staff is looking into short-term solutions for the potholes on 53rd Street between Oliver and Woodlawn, such as reducing the speed limit

and making temporary repairs. Staff will bring suggestions for long-term solutions to the City Council in the coming months.

XI. ORDINANCES, RESOLUTIONS AND FINAL ACTIONS

A. Consideration of an Agreement Between City Of Bel Aire And TranSystems Corporation For Professional Services (Integra Site Access Transportation Plan).

Brett Letkowski, Senior Vice President of TranSystems, stood for questions from the City Council.

MOTION: Councilmember Smith moved to accept the Agreement Between City Of Bel Aire And TranSystems Corporation For Professional Services as presented. Councilmember Welch seconded the motion. ***Motion carried 4-0.***

B. Consideration of an Agreement for Professional Services with Short Elliott Hendrickson (SEH) for Engineering Design services for the water, sanitary sewer, storm sewer and paving improvements to serve the first phase of Sunflower Commerce Park 3rd in the amount of \$261,200.

Jake Vasa, P.E. represented Short Elliot Hendrickson and stood for questions from the City Council. City Engineer Anne Stephens also answered questions from the Council. City Attorney Maria Schrock reviewed recent changes requested by City staff which were incorporated into the proposed agreement.

MOTION: Councilmember Davied moved to approve an Agreement for Professional Services with Short Elliott Hendrickson (SEH) for Engineering Design services for the water, sanitary sewer, storm sewer and paving improvements to serve the first phase of Sunflower Commerce Park 3rd in the amount of \$261,200 and authorize the Mayor to sign. Councilmember Smith seconded the motion. ***Motion carried 4-0.***

C. Consideration of purchasing a wastewater autosampler.

City Engineer Anne Stephens stood for questions from the Council.

MOTION: Councilmember Smith moved to accept the quote from Haynes Equipment Co in the amount of \$10,855.00 for the 5800 Refrigerated Sampler w/ Heater and appurtenances and authorize the Mayor to sign all related documents. Councilmember Welch seconded the motion. ***Motion carried 4-0.***

XII. EXECUTIVE SESSION

A. Executive Session

MOTION: Councilmember Welch moved to go into executive session for the sole purpose of discussing the subject of Attorney Client consultation about preliminary contract negotiations pursuant to the KSA 75-4319 exception for: Attorney Client Privilege. Invite the City Manager, City Attorney and City Engineer. The meeting will be for a period of 25 minutes and the open meeting will resume in the City Council Chambers at 8:10 PM. Councilmember Smith seconded the motion. ***Motion carried 4-0.***

The Council then held an executive session. At 8:11 p.m. Mayor Benage called the meeting back to order in open session and stated that no binding action had been taken.

XIII. DISCUSSION AND FUTURE ISSUES: There was no discussion.

XIV. ADJOURNMENT

At 8:12 p.m., Councilmember Hamburg left the meeting early due to a lost video connection.

MOTION: At 8:12 p.m., Councilmember Davied moved to adjourn. Councilmember Welch seconded the motion. ***Motion carried 3-0.***

CITY OF BEL AIRE		
AP ORD 23-14		
Vendor and Payroll Checks 07/12-07/24/23		
AFLAC	EMPLOYEE MONTHLY PREMIUM	\$ 854.44
ALYX POWELL	REFUND POOL RENTAL-WEATHER	\$ 90.00
AMAZON	OFFICE/PD SUPPLIES/EQUIP	\$ 887.38
ATTEBERRY, DARRELL	FBI NAA CONF 2023 PER DIEM	\$ 898.15
BADGER DAYLIGHTING CORP	53RD:WOODLWAN-OLIVER DESIGN	\$ 4,568.45
BANK OF NEW YORK	541071:07/23 O&M /DEBT SVC	\$ 206,370.62
BARDAVON HEALTH INNOVATIO	PRE-EMPLOYMENT SCREENING	\$ 180.00
BEALL & MITCHELL, LLC	07/23 JUDGE TERRY BEALL	\$ 1,237.98
BEL AIRE LIONS CLUB	LASHER, HENRY, TERHUNE DUES	\$ 360.00
CARROT-TOP INDUSTRIES, IN	FLAGS CITY HALL	\$ 1,451.41
CENTRAL KEY AND SAFE CO	WATER METER LOCKS	\$ 302.28
CHISHOLM CREEK UTILITY AU	07/23 CCUA CONTINGENCY	\$ 5,820.00
COX COMMUNICATION:WATER T	I.T.BACKUP:WATER TOWER	\$ 154.95
COX COMMUNICATIONS:CH	INTERNET/PHONE SVC	\$ 859.50
COX COMMUNICATIONS:PBWRKS	INTERNET/PHONE SVC	\$ 288.54
COX COMMUNICATIONS:REC	INTERNET/PHONE SVC	\$ 194.64
CULLIGAN OF WICHITA	WATER SERVICE	\$ 51.70
DELTA DENTAL PLAN OF KANS	08/23 MONTHLY PREMIUM	\$ 2,786.12
ELITE LANDSCAPING	CONTRACT MOWING	\$ 375.00
EMPOWER RETIREMENT 457	EMP VLNTRY 457	\$ 562.00
ERIKA EDWARDS	REFUND 1 HR POOL RENTAL-WEATHER	\$ 80.00
EVERGY - STREET LIGHTS	ELEC SVC:STREET LIGHTING	\$ 7,440.94
EXPERT AUTO CENTER	2007 FORD F550 REPAIR	\$ 58.47
FEDEX	SHIPPING	\$ 11.45
FICA/FEDERAL W/H	FED/FICA TAX	\$ 28,767.44
FIRESTONE	PD FLEET MAINTENANCE	\$ 3,362.83
FIRST STUDENT INC	DAY CAMP TRIPS-TRANSPORTATION	\$ 581.05
FOP LEGAL DEFENSE PLAN	PD OFFICERS COVERAGE	\$ 504.00
FREMAR CORPORATION	CULVERT RIP RAP 17.91 TN	\$ 742.51
GALLS, LLC	STAFF SHIRTS	\$ 121.93
GARY MCNETT	REFUND POOL RENTAL-WEATHER	\$ 120.00
HAWKS INTER-STATE PESTMAS	07/23:PEST CONTROL:REC & CH	\$ 174.52
KS DEPT H/E:WA/SEWER LOAN	2790:WATER LOAN DEBT SVC PYT 2	\$ 25,857.25
KS DEPT REV:WITHHOLDING T	STATE TAX	\$ 4,891.59
KS DEPT REVENUE:SALES TAX	06/23 SALES TAX	\$ 1,485.21
KS DEPT REVENUE:TAXATION	WATER FEES	\$ 3,990.27
KS PUBLIC EMPL RETIRE SYS	KPERS	\$ 17,156.63
KUCE LEO TRAINING	PD TRAINING:GREENWOOD	\$ 125.00
LASHER, TY	HATS-STAFF/VOLUNT.;ICMA FLIGHT	\$ 922.23
LEASE FINANCE PARTNERS	36822QT:07/23:PD COPIER	\$ 141.38
LKM	BENAGE,HAMBURG, LASHER LKM CONF	\$ 1,384.30
MARTIN PRINGLE	LEGAL UB CUSTOMER BANKRUPTCY	\$ 214.00
MCCOSKEY, CRAIG A	CONTRACT MOWING	\$ 400.00

MCDONALD TINKER PA	INTERM CITY ATTY/CCUA LEGAL	\$ 3,582.50
MERIDIAN ANALYTICAL LABS	STORMWATER SAMPLE ANALYSIS	\$ 568.00
NOWAK CONSTRUCTION CO INC	CEDAR PASS WATER/SWD	\$ 494,755.20
PITNEY BOWES PURCHASE POW	MONTHLY POSTAGE	\$ 500.00
POSTMASTER	07/23 POSTAGE:UTILITY BILLS; LATE NOTIC	\$ 1,211.67
QUILL CORP	OFFICE SUPPLIES/EQUIP	\$ 1,273.03
SEWING & EMBROIDERY WORKS	STAFF SHIRTS/COATS EMROIDERY	\$ 115.00
SIERRA SPOHN	REFUND POOL RENTAL-WEATHER	\$ 160.00
SIMPLE CLEAN	08/23 JANITORIAL SVC:CH, PW, REC	\$ 2,824.60
SYDNEY MARTENS	RESTITUTION PYT 4	\$ 50.00
TCS TRAFFIC CONTROL SERV	PW 2023 3500 LIGHT PACKAGE	\$ 5,370.05
UNDERGROUND VAULTS & STOR	DOCUMENT SHREDDING	\$ 10.00
USA BLUE BOOK	SEWER:WEIGHTED FLOAT	\$ 457.71
UTILITY MAINTENANCE CONTR	WATER SVC INSTALLS	\$ 30,800.00
WASTE CONNECTIONS, INC-PW	REC CENTER PORT A POT	\$ 85.00
WAV SERVICES INC	AUG-JAN COUNCIL VIDEO RETAIN	\$ 3,840.00
WEX BANK	FLEET FUEL	\$ 3,471.88
WILLIAMS JANITORIAL SUPPL	JANITORIAL SUPPLIES	\$ 90.00
PAYROLL CHECKS	PAYROLL CHECKS ON 07/19/2023	\$ 88,272.52
	CLAIMS TOTAL	\$ 965,099.86

[Signature]
JUL 25 2023

STAFF REPORT

DATE: 07/27/2023

TO: Bel Aire City Council

FROM: Jay Cook

RE: Agenda

STAFF COMMUNICATION

Section XI, Item A.

FOR MEETING OF	8/1/2023
CITY COUNCIL	
INFORMATION ONLY	

SUMMARY:

ZON-23-01. Proposed re-zoning approximately 63+ acres zoned Agricultural District (AG) to Planned Unit Development - Industrial District (M-1). The current use is farm ground.

General location:

- Southeast corner of Hwy 254 and Rock Rd. (Location Map included)

Applicant/Agent:

- Property Owner: Webb254, LLC, Steve Barrett (Managing Member)
- Agent: Phil Meyer, Baughman Company, PA

Background Information:

- A zone change has been requested from the Agricultural District (AG) to the Planned Unit Development – Industrial District (M-1)
- The Planned Unit Development - Industrial District (M-1) is intended to encourage innovation in commercial and industrial development, through designs allowing for a more efficient use of land, incorporation of new technologies in urban land development, and incorporation of a greater variety and flexibility in type, design, and layout of structures.
- Use Regulations. No building, structure, land, or premises shall be used, and no building or structure shall hereafter be erected, constructed, reconstructed, moved or altered except in conformance with those uses provided for below.
 - Permitted uses: The following uses shall be permitted by right in the Planned Unit Development - Industrial District (M-1), subject to all applicable development and performance standards:
 - Commercial office and retail uses pursuant to a Planned Unit Development.
 - Manufacturing and industrial uses pursuant to a Planned Unit Development.
- The subject property is currently undeveloped. The agent of the applicant stated that the platting and PUD process was the next step assuming the zoning change was approved.
- A zoning exhibit, identifying the zoning designations of surrounding properties is attached for reference.
- The Planning Commission held the required public hearing for the zone change request on July 13, 2023.

- Prior to the public hearing, staff was contacted by 3 individuals were in support of the zoning change. Staff was also given a written communication from a member of the Heritage Hills Subdivision titled “Alternative Proposed Findings of Fact for 7/13/23 Planning Commission Meeting” that spoke in contrast to the findings of fact provided by staff.
- During the public hearing, several individuals spoke both in favor and in opposition to the zoning change.
 - Those in favor, spoke to the history of the property, the opportunity to bring jobs into Bel Aire, and to encourage the growth of the City from a residential community to a full-service community with diverse city services.
 - Those opposed to the zoning change, spoke with concerns of traffic, property values, zoning without a buffer, noise pollution, and the underdevelopment of Rock Rd. as it exists currently.
- Following the public hearing, the Planning Commission considered several factors and adopted the Staff’s recommended findings, added some of its own and voted unanimously to recommend that the City Council approve the requested zone change.

Legal Considerations:

- All conditions precedent to the Council's consideration of this requested zone change have been satisfied, including notification of surrounding properties in accordance with State law.
- Rezoning a specific tract of land is a quasi-judicial proceeding and disclosure of *ex parte* communications is recommended.
- A protest petition was filed with the City Clerk within the Statutory 14-day protest period following the public hearing which changes the voting threshold of the Council for approval, and Staff has found the petition to be sufficient to require a 75% approval requirement for the City Council.
- In accordance with State Law and Bel Aire City Code, the Council may take one of the following actions when considering adoption of the requested zone change (with the protest petition filed).
 - Adopt the recommendation of the Planning Commission and approve the zone change by a three-fourths vote (5 votes).
 - Override the recommendation of the Planning Commission by two-thirds majority vote (4 votes) and disapprove the zone change. IF this option is selected, the City Council must adopt findings of fact in support of the motion.
 - Return the recommendation to the Planning Commission with a statement specifying the basis for the Council’s failure to approve or disapprove (4 votes).

The following are the rezoning factors the Planning Commission considered, a brief explanation of each factor, and staff's opinion on findings for each factor. For each factor, the additional findings of the Planning Commission are indicated in **red**.

1. **CHARACTER OF THE NEIGHBORHOOD:** *(Factual description of the application area and surrounding property as to land usage, density, intensity, general condition, etc.)*
 - a. The subject property is on the north edge of the current City limits and development area.
 - b. The subject property is the last piece of four lots between Rock and Webb Rd, which other three (3) parcels have already been zoned M-1 for commercial/industrial purposes.
 - c. Currently, the neighborhood is characterized by agricultural, institutional, commercial, industrial, mixed-use, and residential multi-family but is a good prospect for large mixed-use due to its peripheral location in the City limits.
 - d. The subject property is a logical placement for an Industrial PUD due to its proximity to a major highway (Hwy 254) and the arterial Rock Rd.
 - e. Property is AG but has always been intended for M-1 since its acquisition.
 - f. Understanding the degrees of difference in zoning, U.S. 254 and neighboring M-1 zoning needs to be taken into account.
 - g. This factor marginally favors rezoning even when acknowledging the low density housing to the west.
2. **ZONING AND USES OF PROPERTIES NEARBY:** *(Factual description of surrounding property as to existing zoning and land uses.)*

Direction/Area	Zoning Classification(s)	Land Use(s)
North/Sedgwick County	Agriculture County zoning	Farming/Ranch Use
South/Bel Aire	C-1 "Neighborhood commercial, office and retail, R-3 "Single-family residential" R-5 "Garden and patio homes, townhouses and condominiums"	Apartments, office, condos, Northeast Magnet School
East/Bel Aire	M-1 "Planned Unit Development – Industrial"	Vacant
West Northwest/Kechi	R-1 "Single-family residential", C-3 "Heavy commercial", I-1 "Industrial"	Single-family, Northpoint Centre Commercial, KDOT

3. **SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED:** *(How is the property currently zoned and what uses are allowed on the property? Are there uses suitable given surrounding zoning and site criteria? Are the current allowed uses the only ones that might be appropriate for the property?)*
 - a. The property is currently zoned Agricultural District (AG) which is intended to maintain and enhance agricultural operations and preserve agricultural lands utilized for crop production or the raising of livestock.
 - b. The "holding zone" for newly annexed land in the City is Agricultural and this parcel has been given that zoning classification since annexation.

- c. While the subject property continues to be suitable for AG zoning, the development through a PUD or other zoning classification would provide development opportunities and growth opportunities for the city.
 - d. In the Jobs Focus Scenario of Bel Aire growth delineated in the Master Growth Plan adopted by the City, the area between Rock and Webb along Hwy 254 was planned with the potential for large-scale mixed use or commercial.
 - e. The subject property is proximate to existing development, has suitable topography for development, and is located in an area where infrastructure and services are available to be extended to support development.
 - f. The subject property is a logical placement for an Industrial PUD due to its proximity to a major highway (Hwy 254) and the arterial Rock Rd.
 - g. Given the history of the City's purchase, it was always expected and known this will be commercial property.
 - h. This factor strongly favors rezoning and should be weighted heavily.
4. **EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY:** *[Can the uses allowed in the requested district by good neighbors to existing development? **This is a subjective question.** The focus should be on facts, not fears, and should be based on issues that zoning can address (e.g., allowed uses, minimum lot sizes, height, setbacks, traffic, etc.)*
- a. The proposed planned development is located along the Hwy 254 corridor where such uses are likely and beneficial. Site development standards such as screening and landscaping requirements will mitigate detrimental effects from planned development on nearby residential or other uses, both required or proposed.
 - b. Traffic generation will be likely with the zoning change, but studies and engineering are currently underway along Hwy 254, Rock Rd., and Webb Rd. to mitigate negative impact of added traffic to surrounding developments and to ensure the safest, most effective route to any other development.
 - c. The Planned Unit Development - Industrial District (M-1) requires a screening and buffering plan per the Zoning Regulations that will benefit properties west and south of the subject property. The PUD also gives staff the opportunity to review plats and plans before any building commences to ensure other properties are not negatively affected by the development.
 - d. This factor strongly favors the zoning change. Traffic concerns can be addressed in the PUD process.
5. **LENGTH OF TIME THE SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED:** *(Factual information, but its importance may be somewhat subjective. A property may be vacant because the current zoning is unsuitable, but there may be other reasons not related to zoning. Some examples might be a glut of available property of the same zoning district, financing problems, land speculation, fragmented ownership, lack of available public services, or other development problems.)*
- a. The property is currently vacant and has been so since annexed in 2003.
 - b. Strongly favors rezoning. AG was a "placeholder" in this case, although this should not be weighted as heavy as other factors in this case.

6. RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY, AND WELFARE BY DESTRUCTION OF VALUE OF THE APPLICANT'S PROPERTY AS COMPARED TO THE HARDSHIP ON OTHER INDIVIDUAL LANDOWNERS: *(The protection of public health, safety, and welfare is the primary basis for zoning. The relationship between the property owner's right to use and obtain value from their property and the City's responsibility to its citizens should be weighed.)*

- a. The proposed rezoning to a PUD will be developed in accordance with the City's development standards that will mitigate any potential hazards to the public health, safety, and welfare.
- b. If successfully developed into an industrial project, the City will gain a significant number of local, high-paying jobs which will attract additional residents and promote surrounding development of other commercial, retail, and residential development. The result is potentially a material increase in the tax base, city services, and quality of life in the City.
- c. Staff cannot anticipate the effects on property values. If developed, surrounding property values may increase significantly from the economic activity. Decrease of property values for residential property immediately adjacent to an industrial site is also possible.
- d. If the zone change is disapproved, the value of the applicant's property will presumably be diminished because the PUD request will not be allowed.
- e. This factor strongly favors the change and is very important to the future of the City.

7. CONFORMANCE WITH THE COMPREHENSIVE PLAN: *(Does the request agree with the adopted plan recommendations? If not, is the plan out-of-date or are there mitigating circumstances which speak to the nonconformity?)*

- a. While the Comprehensive Development plan is somewhat dated (not reflecting surrounding property subsequently zoned M-1 PUD), the vision map adopted by the Governing Body in 2014 nonetheless has the subject property as a potential commercial zone with surrounding mixed use. Increasing the intensity level of the subject property to M-1 PUD would not be unreasonable or create burden for other possible development trends of the City.
- b. The following are aspects of the Comprehensive Development plan that support the zoning change.
- c. Goal 1: Land should be developed within the corporate boundaries which continue the high quality of life for the citizens of Bel Aire and to produce efficient and effective delivery of public services to the growing community.
 Objective 1: Encourage congruent land uses that are compatible and developed in a lowest-impact method to adjacent properties.
 Recommendation b. Focus higher-impact developments on the peripheral of the city.
- d. Goal 4: The City must support economic development and diversification to ensure a stable and healthy financial growing community supports the development through the subsequent objectives:
 Objective 2: Maximize revenue generated from developments which will provide the most return for the investment and land use.
 Recommendation b. Ensure location of development is planned in an orderly process (a PUD would ensure this type of development)

Recommendation c. Ensure zoning and building policies reflect progression of development.

Objective 3: Move from sole residential community to a full-service community with diverse city services. The inclusion of possible large-scale development would encourage the development of other services (i.e., desirable businesses to follow).

e. This favors approval, although commercial (set forth in the Plan) is not exactly industrial. The concerns in degree change can be addressed with PUD.

8. **PROPERTY OWNER OPINIONS:** *The opinions of other property owners may be considered as one element of a decision in regard to the amendment associated with a single property, however, a decision either in support of or against any such rezoning may not be based upon a plebiscite of the neighbors.*

a. An initial public hearing held prematurely on May 11, 2023 produced some public opinion (mostly residences west of Rock Road) opposed to the rezoning. Cited concerns included traffic, safety, lighting and property values. Subsequently, a protest petition from some property owners was filed on May 24, 2023 which addresses some of the factors differently than staff. The Planning Commission has been provided a copy of this petition.

b. While residential property owners on the west side of Rock Road have offered opposition, staff believes most concerns can be properly addressed in the Planned Unit Development and Site Plan review.

c. This factor is marginal and could lean either way. The residential property owner's opinion is recognized to be mostly opposed, but concerns are outweighed by other factors.

9. **RECOMMENDATION OF PROFESSIONAL STAFF:** *[Should be based on the evidence presented, the factors, adopted plans and policies, and other technical reports (e.g., Capital Improvement Programs, facility master plans, etc.) which speak to the topic and staff's best professional judgement.]*

a. Based on the preceding findings, staff recommends approval of the zone change request.

b. Professional staff has a history of doing the right thing as the development stage occurs with PUD and other planning.

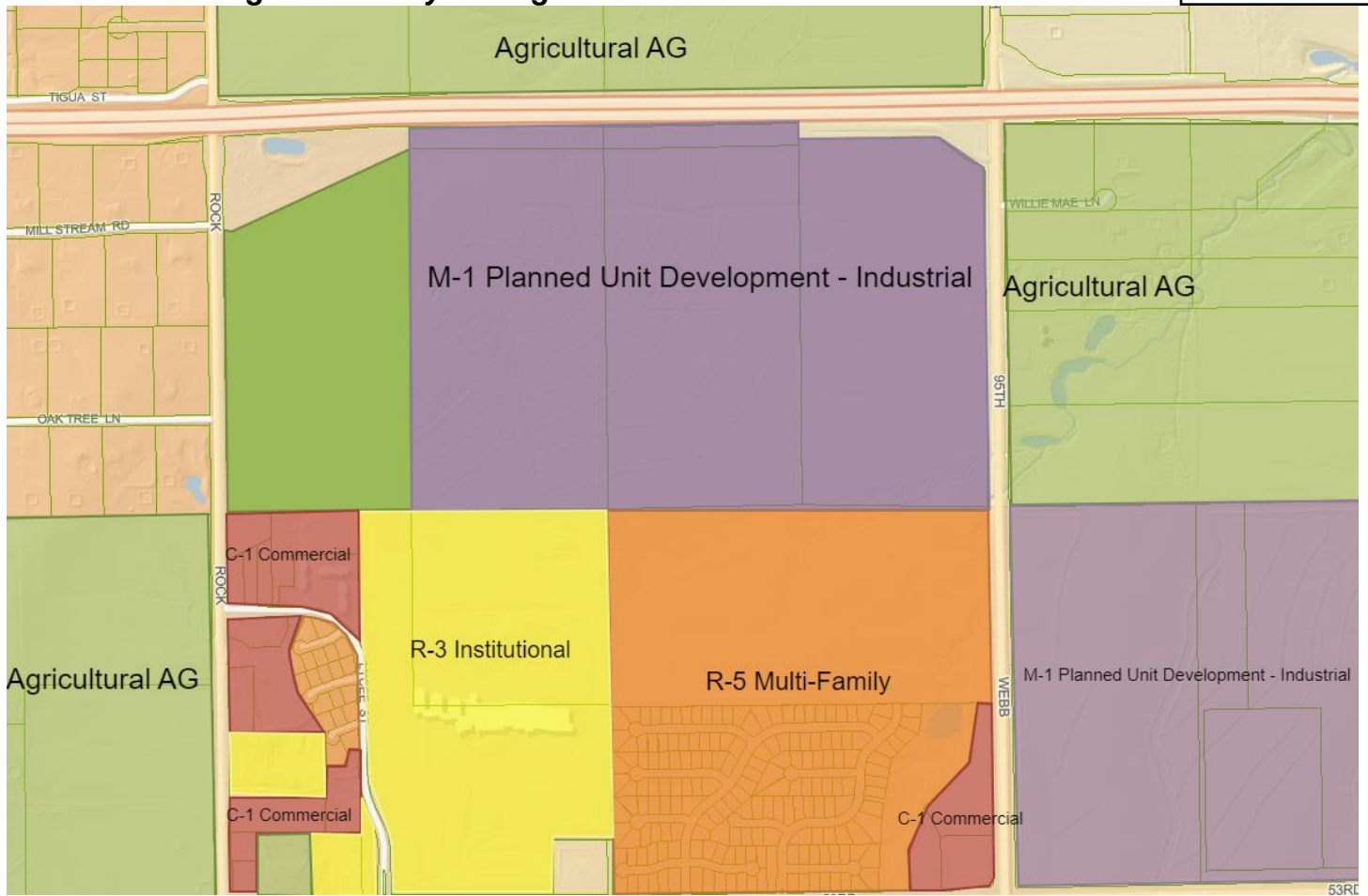
c. The Infrastructure concern (particularly traffic) is marginal but still favors zone change.

Recommended Motion:

- Adopt an ordinance changing the zoning of the subject property from Agricultural District (AG) to Planned Unit Development - Industrial District (M-1) based on the Planning Commission's findings of fact.

Included

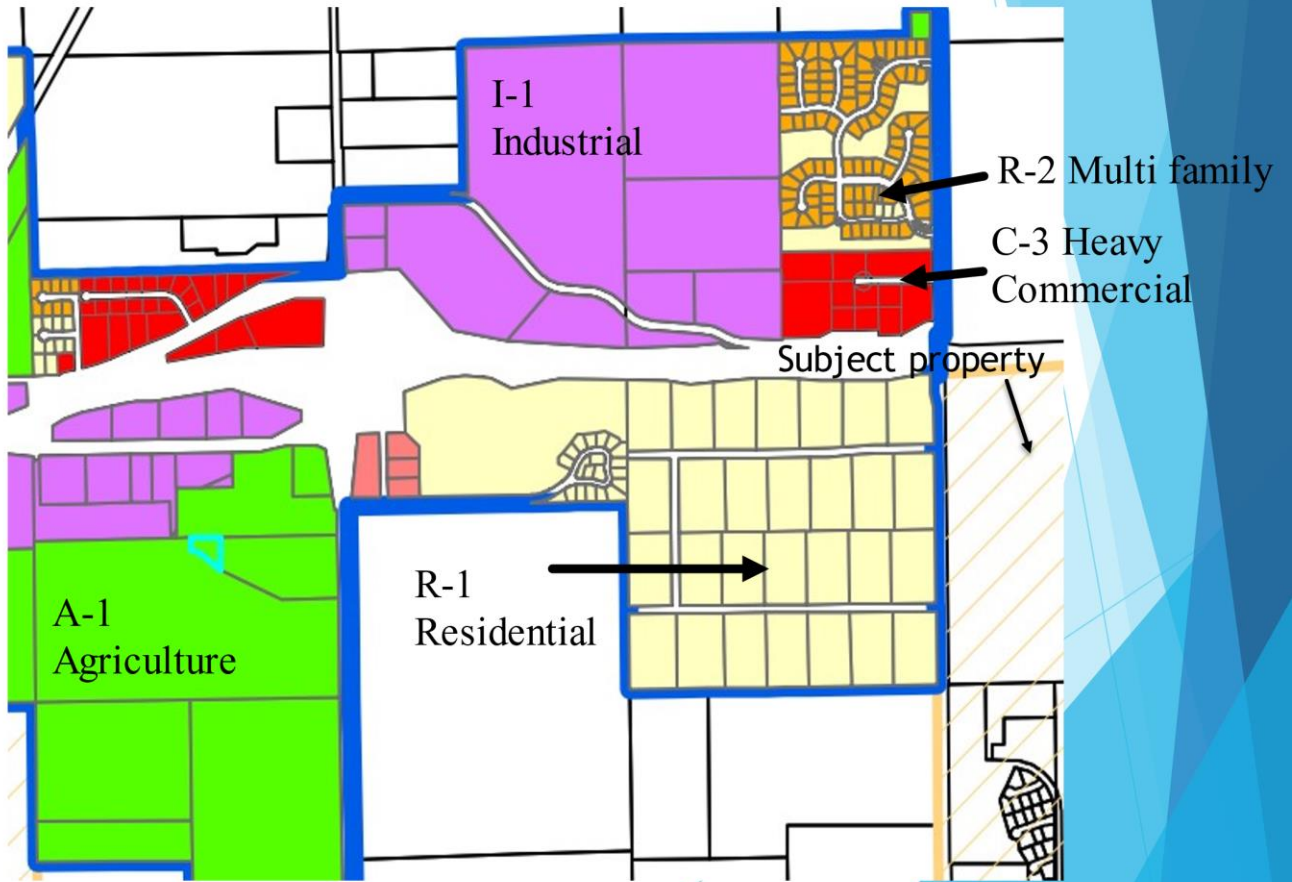
- Zoning exhibit, identifying the surrounding properties in Bel Aire, Sedgwick County, and Kechi





Kechi Zoning

*Expanding
THE EDGE*



(Published in *The Ark Valley News* on August 10, 2023)

ORDINANCE NO. _____

AN ORDINANCE APPROVING THE RECOMMENDATION OF THE BEL AIRE PLANNING COMMISSION CHANGING THE ZONING DISTRICT CLASSIFICATION OF CERTAIN LANDS LOCATED IN THE CITY OF BEL AIRE, KANSAS UNDER THE AUTHORITY GRANTED BY THE ZONING REGULATIONS OF THE CITY.

WHEREAS, the Governing Body of the City of Bel Aire, Kansas (the "City") has received a recommendation from the Bel Aire Planning Commission on Case No. ZON-23-01; and

WHEREAS, the Governing Body finds proper notice was given and a public hearing was held on Case No. ZON-23-01 on July 13, 2023, all as provided by law and under authority and subject to the provisions of the Zoning Regulations of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BEL AIRE, KANSAS:

SECTION 1. The Governing Body supports the recommendation of the Bel Aire Planning Commission and approves the rezoning of the tract of land from AGRICULTURAL ZONING (AG) TO PLANNED UNIT DEVELOPMENT - INDUSTRIAL (M-1) ZONING USES.

Legal Description

That part of the West Half (W/2) of the Northwest Quarter (NW/4) of Sec. 17, Township 26 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, EXCEPT that part described as beginning at the Northwest Corner of said Northwest Quarter; thence South along the West line of said Northwest Quarter, 731.00 feet; thence East, parallel with the North line of said Northwest Quarter, 120.00 feet; thence Northeasterly to a point on the East line of said West Half, said point being 175.00 feet South of the Northeast Corner of said West Half; thence North along said East line, 175.00 feet to said Northeast corner; thence West along said North line to the place of beginning, AND EXCEPT the West 50.00 feet; ALSO EXCEPT that portion of said West Half Commencing at the Southwest corner of said Northwest Quarter; THENCE N89°27'14"E, coincident with the south line of said Northwest Quarter, a distance of 60 feet for a Point of Beginning; THENCE N00°43'51"W, coincident with the East Right-of-Way of Rock Road as described in document titled "Easement for Right-of-Way" recorded in the office of the Sedgwick County Register of Deeds as DOC.#/FLM-PG: 29201718, a distance of 1035.76 feet; THENCE N89°27'14"E, parallel with the south line of said Northwest Quarter, a distance of 1261.88 feet, to the east line of said West Half; THENCE

S00°43'13"E, coincident with the east line of said West Half, a distance of 1035.75 feet, to the south line of said Northwest Quarter; THENCE S89°27'14"W, coincident with the south line of said Northwest Quarter, a distance of 1261.69 feet, to the point of beginning. Subject to any road rights of way of record.

AND

That portion of the West Half of the Northwest Quarter of Section 17, Township 26 South, Range 2 East of the Sixth Principal Meridian, Sedgwick County, Kansas; more particularly described as Commencing at the Southwest corner of said Northwest Quarter; THENCE N89°27'14"E, coincident with the south line of said Northwest Quarter, a distance of 60 feet for a Point of Beginning; THENCE N00°43'51"W, coincident with the East Right-of-Way of Rock Road as described in document titled "Easement for Right-of-Way" recorded in the office of the Sedgwick County recorded in the office of the Sedgwick County Register of Deeds as DOC.#/FLM-PG: 29201718, a distance of 1035.76 feet; THENCE N89°27'14"E, parallel with the south line of said Northwest Quarter, a distance of 1261.88 feet, to the east line of said West Half; THENCE S0°43'13"E, coincident with the east line of said West Half, a distance of 1035.75 feet, to the south line of said Northwest Quarter; THENCE S88°27'14"W, coincident with the south line of said Northwest Quarter, a distance of 1261.69 feet, to the point of beginning. Subject to any road rights of way of record.

Section 2. Upon the taking effect of this Ordinance, the above zoning change shall be entered and shown on the Official Zoning Map(s) as previously adopted by reference and said map is hereby reincorporated as a part of the Zoning Regulations as amended.

Section 3. This Ordinance shall take effect and be in full force from and after its adoption by the Governing Body of the City, approval by the Mayor and publication once in the official newspaper of the City.

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PASSED AND APPROVED by the Governing Body of the City of Bel Aire, Kansas
this 1st day of August, 2023.

CITY OF BEL AIRE, KANSAS

[seal]

Jim Benage, Mayor

ATTEST:

Melissa Krehbiel, City Clerk

FILED

JUL 24 2023

City Clerk

Petition Protesting 7/13 Planning Commission Recommendation

As explained below, the decision of the Planning Commission to recommend approval of ZON-23-01 was so wide of the mark that its unreasonableness lies outside the realm of fair debate.

Character of the Neighborhood.

- Jay Cook, Director of Planning and Development conceded at the July 13, 2023 (7/13) hearing that major highways like K254 serve as boundaries for zoning decisions. At the May 11, 2023 and July 13, 2023 hearing, Commissioner Jordan specifically and candidly pointed out that the M-1 zoning to the east of the property is not “character” because nothing has been built on it yet, and because zoning is specifically considered in Golden Factor 2. No commissioners voiced disagreement with this characterization by Commissioner Jordan.
- Thus defined, the “character of the neighborhood” is predominantly agricultural and residential, with one high school, one medical office, and some multi-family housing thrown in. In fact, zero percent of the neighborhood that interacts via a common road (i.e., N. Rock Rd) is zoned M-1. This is the case from the northern and southern border of Bel Aire, KS on N. Rock Rd.
- Bel Aire Zoning Ordinance 18.7.1 recognizes that Rural Residential Districts are appropriate “where a neighborhood character of single-family dwellings on large lots has been established,” and the Agricultural (AG) district “is intended to maintain and enhance agricultural operations and preserve agricultural lands utilized for crop production or the raising of livestock.” Those neighborhood characters are simply not compatible with an M-1 District. In fact, they are at nearly opposite ends of the density spectrum, as Bel Aire has consistently recognized - including Commissioner Jordan’s statements at the 7/13 hearing. None of the other commissioners expressed disagreement with Commissioner Jordan’s comments.
- Properties to the northwest of the subject property are not part of the Bel Aire Planning Area, as recognized by the 2014 Comprehensive Plan: “The

"Bel Aire Planning Area" as delineated for this Plan includes the City and ONLY properties to the North and East of the current developed land in the City limits of Bel Aire as illustrated in the "Vision" Future Land Use Map."

- This factor clearly weighs in favor of denying the application for rezoning.

Zoning and Uses of Properties Nearby

- The City's presentation included properties that are north of 254 and west of Rock Road, and thus not "nearby." Jay Cook, Director of Planning and Development, conceded at the 7/13/2023 hearing that major highways like K254 serve as boundaries when making zoning decisions. The presentation also focused on property that has been "zoned" M-1" but never "used" as M-1 on the east and part of another neighborhood that interacts on a common road (N. Webb Rd) that is more mixed use zoning and more consistent with M-1 zoning standards. In addition, the M-1 rezoning of the property that *is adjacent east and* nearby the subject property is entitled to little weight because it is very recent (April of 2022), and the approval of that zoning change was based in part on four factors that do not exist for the current proposed rezoning.
1. First, as noted in the April 15, 2022 Bel Aire Staff Report, when the Commission applied the Golden Factors, it was apparently with the understanding that traffic would come from Webb Road - already a four-lane road, and that "intersection plans [were] in the works with KDOT" for a "a proposed interchange at K-254 and Webb Road." No similar plans have been identified as "in the works" for an interchange at K-254 and Rock Road. Also, Webb Road is already a four-lane road with shoulders on both sides. Rock is a two-lane road with no shoulders.
 2. Second, the April 15, Bel Aire Staff Report indicated that "the requested M-1 zoning is about as far away from rural residential as one can get." That is not the case for the current proposed rezoning, which is "about as close to rural residential as one can get." The Staff Report did say that "you can't expect that this area will stay rural forever -especially with it being this close to a city and with the intersection plans in the works with KDOT" - but it was obviously referring to plans for the intersection at 254 and Webb, not the intersection at 254 and Rock.

3. Third, the approval of the zoning change was apparently based in part on the recommendation in the Staff Report that, through the PUD process, the “Planning Commission will have the opportunity to ensure that a buffer is created between the residential area to the west and the school to the south.” In other words, a property that is “generally located about ¼ mile east of Rock Road” would require a buffer between it and the rural residential district that is east of Rock Road, and the high school that is south of the annexed property. It would be illogical and irrational to suggest a buffer in 2022 between M1 and Rural Residential properties that are separated by a quarter mile, but then use that zoning change the very next year to justify rezoning to M-1 the property that is immediately adjacent to the Rural Residential properties.

4. Lastly, the 2022 Staff Report points out that “No interested parties, other than the agent for the applicant showed up to speak either for or against the proposed rezoning.” that is certainly not the case here, where there is significant opposition to the proposed rezoning. [April 2022 Minutes.pdf](#)

- The proposed zoning change would be contrary to Goal 1, Objective 1 of the 2014 Comprehensive Plan: “Encourage congruent land uses that are compatible and developed in a lowest-impact method to adjacent properties.”

This factor weighs in favor of denying the requested zoning changes - the existing uses favor denial, and the adjacent M-1 zoning was approved in 2022 based on the premise that the site would use 254 and Webb for access, and that the property rezoned in 2022 would include a buffer to the Rural Residential property, and that the property that is currently requesting rezoning would also act as a buffer between M-1 and Rural Residential.

Suitability of the Subject Property for the Uses to Which it Has Been Restricted

- The Staff Report recognizes that the land is zoned as AG, which “is intended to maintain and enhance agricultural operations and preserve agricultural lands utilized for crop production or the raising of livestock.” (Emphasis added). The Staff Report doesn’t say anything about why the property is no longer “suitable” for that use, and there is no explanation of why the land is unsuitable for “raising of livestock.” In fact, Mr. Cook conceded at the hearing that the subject property *is suitable* for agricultural use. Mr. Cook

argued that AG is not the *most suitable* use for the subject property - but both the Zoning Regulation and the *Golden* case refer to “suitability” - not “most suitable.”

- The Staff Report claims that “The holding zone” for newly annexed land in the city is Agricultural.” But Zoning Regulation 18.6.3. says: “All land which is hereafter annexed into the City shall be zoned AG – Agricultural until such classification shall have been changed by an amendment to the zoning regulations as provided by this Code. A written agreement with the landowner prior to such annexation to designate a specific zoning district designation other than AG may be approved as part of the Annexation process.” The Staff Report does not mention any such written agreement. Also, if newly annexed land starts as AG, the rezoning still must meet all the requirements of the Zoning Regulations. In other words, starting as AG in annexation does improve the justification for changing the zoning classification - contrary to the City’s argument at the hearing.
- Also, land that is annexed does not automatically fall into a “holding zone.” Instead, under 18.7.0, “Agricultural District may serve as a “holding zone” for land where future urban expansion is possible, but not yet appropriate due to the unavailability of urban level facilities and services. (Emphasis added). The Staff Report says nothing about the unavailability of urban level facilities and services when Bel Aire annexed and zoned the land in May of 2003. No evidence was presented at the hearing that “urban level facilities and services” were not available when the property was annexed in 2000. In fact, Mr. Cook’s statement at the hearing that those facilities “may not” have been available in 2000 is a tacit admission that those facilities *may have been* available in 2000.
- To summarize, it does not appear that this land really is a “holding zone”, and even if it were, that would not help satisfy this “suitability” factor.
- The subject property was used by Bel Aire for agricultural purposes from the time Bel Aire bought the land in 2003, until it sold the land in 2023. Nothing in the Staff Report suggests that Bel Aire had a written agreement with the prior owner that designated the land as something other than an Agricultural District. The City has never designated the land as a “holding zone” or as temporary commercial or industrial special uses. There was no evidence of unavailability of urban level facilities and services when Bel Aire annexed and zoned the land in May of 2003. There is nothing about the subject property that makes it “unsuitable for the uses to which it has been currently restricted” - i.e., Agricultural.

This factor weighs in favor of denying the application for rezoning.

Extent to Which Removal of the Restrictions Will Detrimentally Affect Nearby Property

- Mr. Cook conceded at the hearing that the city does not know whether the zoning changes will increase the value of neighboring properties, or decrease those values. Statements from Dr. Donnis McPhaul cited from research and expert knowledge indicate that additional noise and traffic would decrease those values, and the city offered no evidence to rebut that research.
- On 7/13, Mr. Cook conceded at the hearing that the zoning change will bring additional traffic, and the applicant asked Matt Cortez to address that concern. Mr. Cortez indicated that he has been actively working with KDOT and explained that KDOT's current plans are to eliminate the K254-Rock interchange but conceded that the timetable for that is uncertain. Nobody from KDOT spoke at the hearing, but a KDOT representative has told neighbors that the K254-Rock flyover will not be completed in time to alleviate traffic that the zoning change will cause. There is evidence from current Bel Aire/KDOT road construction projects on N. Woodlawn that progress is very slow and highly disruptive to the neighborhood. This presentation was a tacit admission by Staff that "we don't know yet what the traffic impact will be on nearby properties, but we are hoping for something good from some unnamed "studies and engineering." If the City Council is placing *any* reliance on this paragraph, it should table the vote on the rezoning until it can review the "studies and engineering" that might mitigate the increased traffic.
- The Bel Aire Master Plan states: specifically, the first sentence of the "Basic Land Use Concepts" provides that: "The activities of higher intensity land uses tend to negatively impact lower intensity uses. For example, a manufacturing plant typically has a fairly high level of activity, which may produce noise and traffic that affect nearby homes." Similarly, the 2016 Bel Aire Master Growth Plan requires "Maximiz[ing] compatibility between land uses to preserve community character" by "allowing adjacent land uses to be separated by no more than one intensity level." The difference in intensity

levels between the proposed M-1 rezoning and all of adjacent properties would be greater than one.

- It is undisputed that the zoning change, without any mitigation, will increase traffic on Rock Road, and drastically increase the risk of accidents at 254 and Rock Road. The Commission lacks the necessary facts to quantify or even estimate this detrimental effect until it receives results from any studies and engineering that might currently be underway along Hwy 254, Rock Rd., and Webb Rd. to mitigate negative impact of added traffic.
- Other potential detrimental effects to nearby properties include: light pollution, environmental pollution, water usage, obtrusive utility lines, encroachment on property by widening Rock Road, noise, and hours of operation. The commission lacks the necessary facts to quantify or even estimate these detrimental effects until it receives results from any studies and engineering that might currently be underway.

This factor weighs in favor of denying the application for rezoning.

Length of Time the Subject Property Has Remained Vacant as Zoned

- On 7/13, Mr. Cook's presentation to the Planning Commission treated the subject property as "vacant." But land that is being used for agricultural is not "vacant" - it is agricultural. And "not purchased" does not mean "vacant."
- *Golden v. City of Overland Park*, 224 Kan. 591 (Kan. 1978) created the eponymous Golden Factors, and that case makes it clear that the question for this factor is whether the subject property remained vacant because the applicant for the zoning change "was unable to make any economically feasible use of his property under the existing zoning." *Id.* at 599. In that case, the applicant presented evidence that a glut in the market for office space made it impossible for him to make any economically feasible use of his property under the then-existing zoning that limited the land use to commercial office buildings.
- In the current rezoning application, no facts have been presented to show that the current or former land owners have been unable to use the land for "raising livestock" or the other permitted uses under the existing AG zoning. Instead, the subject property has been used for "raising livestock" during the entire time that Bel Aire owned property, and the current owner has

presented no evidence to show that they would be unable to make any economically feasible use of the property under the existing Ag zoning. Unlike in *Golden*, there has been no showing that there is a glut on the market for agricultural land. It is not enough for the property owner to show that they could make *more* money if the rezoning is approved.

This factor weighs in favor of denying the application for rezoning.

Relative Gain to the Public Health, Safety, and Welfare by Destruction of Value of the Applicant's Property as Compared to the Hardship on Other Individual Landowners [sic].

- This factor focuses on the “gains” achieved by denying the zoning change, compared to the hardship upon the owner that applies for the zoning change. The Staff Report and the City’s presentation to the Planning Commission pulls this factor from 18.5.2.E.10, which is apparently pulled from page 598 of *Golden v. City of Overland Park*, 224 Kan. 591 (Kan. 1978). But both the Staff Report and the 7/13 presentation to the Commission incorrectly inserted the word “other” before the words “Individual Landowner.” The Kansas Supreme Court described this factor in *Golden* this way: “the relative gain to the public health, safety, and welfare by the destruction of the value of plaintiff’s property as compared to the hardship imposed upon the individual landowner.” (Emphasis added).
- The City’s replacement of “the” with “other” in the Staff Report confuses the meaning of this factor. As written by the Kansas Supreme Court, this factor is intended to compare the gain to public health, safety and welfare that would be achieved by denying the request, with the hardship that denial would impose on the “individual landowner” that requested the zoning change. This is how the Kansas Court of Appeals interpreted this factor at pages 1272 and 1276 of *R.H. Gump Revocable Trust v. City of Wichita*, 131 P.3d 1268 (Kan. Ct. App. 2006).
- The “facts” included in the Staff Report and at the 7/13 hearing do not address either the gain that denial would bring to public health, safety, and

welfare, nor the hardship that denial would cause the owner of the subject property.

- Denial of the proposed zoning change would benefit the public health, safety, and welfare because it would avoid a drastic increase of traffic through the dangerous intersection of 254 and Rock Road and would avoid the additional drain on resources and potential environmental hazards that a large industrial site might create - as compared to the current agricultural uses.
- At the 7/13 hearing, the Planning Commission speculated that the Planned Unit Development (PUD) might mitigate these risks. But neither the property owner nor the city provided any details or explanation of how a PUD could mitigate risks that are inherent in adjacent land uses with dramatically different density levels. It is inappropriate to speculate at this point about what might be in the PUD.
- Turning now from the “gains” that denial would bring to the “hardship” that denial would bring, the landowner has not presented any facts to show that denial of the proposed zoning change would impose any undue hardship on them. It is not a “hardship” when all that the property owner can argue is that they could make *more* money if the rezoning is approved. This is especially true here, where the property owner bought the land with full knowledge that it is adjacent to agricultural land and a rural residential district. Any “hardship” in this case is self-inflicted.

This factor weighs in favor of denying the application for rezoning.

Conformance With the Comprehensive Plan

- The Bel Aire Comprehensive Plan does not show ANY of the subject property as M-1. Instead, the greatest density for the subject property is a portion of it that is shown as commercial.
- The Staff Report and the Staff’s presentation at the hearing pointed out that the Comprehensive Plan supports maximizing revenue for the City and using the periphery for industrial and commercial, but neither the report or the presentation informed the Commission about parts of the Comprehensive Plan and Master Plan support denial of the proposed zoning change.
- 18.5.2.E.12 refers to the “master plan” - not the Comprehensive Plan. The proposed rezoning does not conform with the adopted or recognized master

plan being utilized by the city. Instead, the proposed rezoning violates fundamental protections in the Bel Aire Master Plan, which are protections that are intended to protect nearby properties from detrimental effects.

- The Master Plan states that “higher intensity land uses tend to negatively impact lower intensity uses.” It is the most undisputed concern for Golden Factor 6. That is, the proposed rezoning of M-1 (Level 6) is in fact the highest density re-zoning change (Figure 3.5: Bel Aire Master Plan) than the current AG zoned land use of the subject property (Level 1) and the Rural Residential land use (e.g. Level 2) that is immediately adjacent to the west. Adjacent to the south include the multi-family housing that is to the south and the high school that is to the south, and to the southwest, the more agricultural land. Thus, according to the City’s own Master Plan, approving the zoning change will negatively affect nearby properties. There is nothing stated in the Master Plan that a PUD will prevent a negative impact.
- The Bel Aire Master Growth Plan requires avoiding this detrimental impact by: “[allowing adjacent land uses to be separated by no more than one intensity level.” The Plan does not provide an exception to this requirement where there is PUD. The intensity levels between the proposed M-1 district and the adjacent properties in every direction are separated by more than one intensity level.
- The first sentence of the “Basic Land Use Concepts” provides:

“Land uses are planned and regulated according to intensity, which describes the level of activity and density of a use, along with the associated impacts. The activities of higher intensity land uses tend to negatively impact lower intensity uses. For example, a manufacturing plant typically has a fairly high level of activity, which may produce noise and traffic that affect nearby homes.”
- This is exactly the situation created by the proposed zoning change. The proposed change is from agricultural - the lowest density - to industry/manufacturing - second in density only to Utility/Infrastructure. And it is directly adjacent to Rural Residential density and Agricultural density.
- A comparison of 18.7.0 (AG) to 18.7.13 (M-1) shows that virtually none of the Permitted Uses or Accessory Uses that rezoning to M-1 would allow are allowed under the AG District. So, virtually all of the AG restrictions would be “removed.”

- 18.1.3 explains that the purpose of the zoning regulations is “To establish a variety of zoning district classifications according to the use of land and buildings with varying intensities of uses and standards whose interrelationships of boundary zones form a compatible pattern of land uses and buffer areas which enhance the value of each zone.” If the zoning change were approved, there would be no buffer zone between Rural Residential and the incompatible M-1 uses that are proposed by the requested zoning change. The applicant has presented no facts to show that the proposed zoning change would “enhance the value of each zone” - especially the adjacent Agricultural and Rural Residential zones. Nor has the applicant presented evidence that the proposed rezoning would “enhance the value of” the high school, the apartment complex, the medical office, or the agricultural land on the west side of N. Rock Rd.
- Section 18.1.5 provides that “Where any nonconformity with the Comprehensive Plan or other planning policy may be perceived, the provisions of these regulations shall control.”
- Objective 1 for Goal 1 strives to: “Encourage congruent land uses that are compatible and developed in a lowest-impact method to adjacent properties.” The proposed M1 zoning would not be compatible with the adjacent agricultural or rural residential uses.
- Objective 2 for Goal 4 includes: “Avoid development that would create a negative impact on the quality of residential life.” The proposed zoning change would be counter to this objective.

This factor weighs in overwhelming favor of denying the application for rezoning.

Property Owner Opinions

- The protest petition filed on May 24 includes opinions of other property owners that are opposed to the proposed rezoning. Property owners spoke against rezoning at both the May 11 and July 13 hearings.
- Although three Bel Aire residents spoke in favor of the rezoning, they offered no explanation for how the rezoning would impact their properties - only that they favored the rezoning because it would benefit Bel Aire as a whole.
- Those opinions may help the City with the Golden Factor that addresses public welfare, but they have no bearing on the Golden Factor that addresses property owner opinions, because their statements had no logical connection

to their status *as a property owner*. Similarly, the emails that Mr. Cook read to the commission add nothing to this Golden Factor because the authors were not available to answer any questions, and their comments were written from the perspective of a Bel Aire resident, and not a property owner.

- Some of these Bel Aire residents stated, without citing any supporting evidence, that Bel Aire's intention since it bought the subject property in 2020 was always to convert it to industrial property. But Rural Residential (including Heritage Hill) and Agricultural uses were here *before* 2020. In other words, "we were here first"! If Bel Aire truly bought the subject property with the intention of converting it to industrial uses, then it shouldn't have bought the property in the first place, and it would have avoided its current predicament: A rezoning that would violate fundamental precepts of zoning and of its own master plans.

This factor weighs in favor of denying the application for rezoning.

Recommendation of Professional Staff

Because the staff recommendation is based on a misinterpretation or misapplication of the Golden Factors and 18.5.2.E, the staff recommendation is entitled to little weight. But comments at the hearing suggest that at least one commissioner - Commissioner Roths - made their decision based *entirely* on the staff recommendation.

This abdication of the commission's quasi-judicial function was made worse by the extremely late delivery to the commission of the Alternative Proposed Findings of Fact for 7/13/23 Planning Commission Meeting, which staff delivered to the commission a few short minutes before the commission approved the zoning change - leaving no time for the commission to even review, much less independently consider facts and factors that weigh in favor of denying the zoning change. Instead, the commission heard a one-sided presentation in favor of the zoning change, and recommended the zoning change without meaningful access to key facts and factors that favor denial of the zoning change.

1. PRINT YOUR ADDRESS HERE: 7625 E Oak Tree

PRINT YOUR NAME HERE: Lon Dunham

SIGN YOUR NAME HERE: Lon Dunham

2. PRINT YOUR ADDRESS HERE: Louis Ryan Hendricks
 PRINT YOUR NAME HERE: 7620 E. Oaktree Lane
 SIGN YOUR NAME HERE: J. Ryan Hendricks
3. PRINT YOUR ADDRESS HERE: MERLIN MARSHALL
 PRINT YOUR NAME HERE: _____
 SIGN YOUR NAME HERE: Martin Marshall
4. PRINT YOUR ADDRESS HERE: 7730 E. OAK TREE LN
 PRINT YOUR NAME HERE: _____
 SIGN YOUR NAME HERE: _____
5. PRINT YOUR ADDRESS HERE: 7901 E. Oaktree Ln
 PRINT YOUR NAME HERE: Donnis McPhaul
 SIGN YOUR NAME HERE: Donnis McPhaul
6. PRINT YOUR ADDRESS HERE: 7900 E Oak Tree Ln
 PRINT YOUR NAME HERE: Jessica Conkling
 SIGN YOUR NAME HERE: Jessica
7. PRINT YOUR ADDRESS HERE: 7735 E OAK TREE LN
 PRINT YOUR NAME HERE: ANNE KUCKELMAN Dean Kuckelman
 SIGN YOUR NAME HERE: Anne Kuckelman Dean Kuckelman
8. PRINT YOUR ADDRESS HERE: 7900 E. MILL STREAM
 PRINT YOUR NAME HERE: LARRY WEIS
 SIGN YOUR NAME HERE: Larry Weis

9. PRINT YOUR ADDRESS HERE: CHUC HOANG
 PRINT YOUR NAME HERE: 7620 E. MILL STREAM RD, KEECHI
 SIGN YOUR NAME HERE: C. Huong Hoang
10. PRINT YOUR ADDRESS HERE: 7735 E MILL STREM RD
 PRINT YOUR NAME HERE: CARA SHERWICK
 SIGN YOUR NAME HERE: Cara Sherick
11. PRINT YOUR ADDRESS HERE: 7901 MILL STREET ANN ARBOR
 PRINT YOUR NAME HERE: STEVE MC CORMY
 SIGN YOUR NAME HERE: Steve McCormy
12. PRINT YOUR ADDRESS HERE: 7730 E. Mill Stream Rd
 PRINT YOUR NAME HERE: Gary Hawley
 SIGN YOUR NAME HERE: Gary Hawley
13. PRINT YOUR ADDRESS HERE: 7625 E. Millstream Rd.
 PRINT YOUR NAME HERE: Cathy Frack
 SIGN YOUR NAME HERE: Cathy Frack
14. PRINT YOUR ADDRESS HERE: Travis Solomon
 PRINT YOUR NAME HERE: 7525 E Millstream Rd
 SIGN YOUR NAME HERE: Travis Solomon
15. PRINT YOUR ADDRESS HERE: 7420 E Oak Tree
 PRINT YOUR NAME HERE: Brian Boeding
 SIGN YOUR NAME HERE: Brian Boeding

16. PRINT YOUR ADDRESS HERE: 7320 E. Oak Tree Lane

PRINT YOUR NAME HERE: Elizabeth Stonebrook

SIGN YOUR NAME HERE: Elizabeth Stonebrook

17. PRINT YOUR ADDRESS HERE: 7200 E. OAK TREE LN

PRINT YOUR NAME HERE: CARLA HAMILTON

SIGN YOUR NAME HERE: Carla J. Hamilton

18. PRINT YOUR ADDRESS HERE: 7425 Oak Tree Ln

PRINT YOUR NAME HERE: Lisa Brummer

SIGN YOUR NAME HERE: Lisa Brummer

19. PRINT YOUR ADDRESS HERE: 7520 E Oak Tree Ln

PRINT YOUR NAME HERE: Roger Schurter

SIGN YOUR NAME HERE: Roger Schurter

20. PRINT YOUR ADDRESS HERE: 6030 Heritage Hill Ln

PRINT YOUR NAME HERE: John D. Hunt Jr

SIGN YOUR NAME HERE: John D. Hunt Jr

21. PRINT YOUR ADDRESS HERE: 7320 E. Mill Stream Rd

PRINT YOUR NAME HERE: Erik Breckenridge

SIGN YOUR NAME HERE: Erik Breckenridge

22. PRINT YOUR ADDRESS HERE: 7425 E Millstream Rd

PRINT YOUR NAME HERE: Orpha Eyres

SIGN YOUR NAME HERE: Orpha Eyres

23. PRINT YOUR ADDRESS HERE: 7420 E MIL STREM

PRINT YOUR NAME HERE: JOHN GERLACH

SIGN YOUR NAME HERE: John B. Gerlach

24. PRINT YOUR ADDRESS HERE: 7201 OAK TRGE LN

PRINT YOUR NAME HERE: MARK LEIKER

SIGN YOUR NAME HERE: Mark Leiker

25. PRINT YOUR ADDRESS HERE: 5601 N ROCK RD

PRINT YOUR NAME HERE: Stanley Bergkamp

SIGN YOUR NAME HERE: Stanley Bergkamp

26. PRINT YOUR ADDRESS HERE: _____

PRINT YOUR NAME HERE: _____

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27. PRINT YOUR ADDRESS HERE: _____

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28. PRINT YOUR ADDRESS HERE: _____

PRINT YOUR NAME HERE: _____

SIGN YOUR NAME HERE: _____

FILED

JUL 24 2023

City Clerk

STAFF REPORT

STAFF COMMUNICATION

Section XI, Item A.

DATE: 06/27/2023

TO: Bel Aire Planning Commission

FROM: Jay Cook

RE: Agenda

FOR MEETING OF	7/13/2023
CITY COUNCIL	
INFORMATION ONLY	

SUMMARY:

ZON-23-01. Proposed re-zoning approximately 63+ acres zoned Agricultural District (AG) to Planned Unit Development - Industrial District (M-1). The current use is farm ground.

General location:

- Southeast corner of Hwy 254 and Rock Rd. (Location Map included)

Applicant/Agent:

- Property Owner: Webb254, LLC, Steve Barrett (Managing Member)
- Agent: Phil Meyer, Baughman Company, PA

History:

- The 63+ acres was annexed into the City of Bel Aire on May 22, 2003, via Ordinance No. 392, and was zoned Agricultural District (AG). In accordance with Bel Aire City Code Chapter 18, Article 7, Section 18.7.0, "the Agricultural District may serve as a 'holding zone' for land where future urban expansion is possible, but not yet appropriate due to the unavailability of urban level facilities and services. Property zoned AG for 'holding zone' purposes may be used for certain commercial and industrial special uses..."

Discussion:

- A zone change has been requested from the Agricultural District (AG) to the Planned Unit Development – Industrial District (M-1)
 - The Planned Unit Development - Industrial District (M-1) is intended to encourage innovation in commercial and industrial development, through designs allowing for a more efficient use of land, incorporation of new technologies in urban land development, and incorporation of a greater variety and flexibility in type, design, and layout of structures.
 - Use Regulations. No building, structure, land or premises shall be used, and no building or structure shall hereafter be erected, constructed, reconstructed, moved or altered except in conformance with those uses provided for below.
 - Permitted uses: The following uses shall be permitted by right in the Planned Unit Development - Industrial District (M-1), subject to all applicable development and performance standards:
 - Commercial office and retail uses pursuant to a Planned Unit Development.
 - Manufacturing and industrial uses pursuant to a Planned Unit Development.

- The City of Bel Aire, Kansas (the “City”) published notice of the request in *The Ark Valley News* on June 22, 2023, and mailed notices to the property owners within the notification area as prescribed by statute and Bel Aire City Code. Because the zoning change impacts property located adjacent to City limits, the notification area was expanded to 1000ft to said properties outside of the Bel Aire City limits.

Legal Considerations:

- Chapter 18, Article 5, Section 18.5.2 of the Bel Aire City Code (relating to Zoning Regulations) provides guidelines for matters which may be considered when approving or disapproving a zone change request. The Planning Commission may find that not all factors will be relevant to this zone change request. Matters that are determined by the Planning Commission to be important will be the basis for the Planning Commission's recommendation. In order to properly make a recommendation to the City Council, the Planning Commission should make specific and substantiated findings supporting its recommendation.

Findings of Fact

The following are the rezoning factors the Planning Commission should consider, a brief explanation of each factor, and staff’s opinion on findings for each factor.

- 1. CHARACTER OF THE NEIGHBORHOOD:** *(Factual description of the application area and surrounding property as to land usage, density, intensity, general condition, etc.)*
 - a. The subject property is on the north edge of the current City limits and development area.
 - b. The subject property is the last piece of four lots between Rock and Webb Rd, which other three (3) parcels have already been zoned M-1 for commercial/industrial purposes.
 - c. Currently, the neighborhood is characterized by agricultural, institutional, commercial, industrial, mixed-use, and residential multi-family but is a good prospect for large mixed-use due to its peripheral location in the City limits.
 - d. The subject property is a logical placement for an Industrial PUD due to its proximity to a major highway (Hwy 254) and the arterial Rock Rd.
- 2. ZONING AND USES OF PROPERTIES NEARBY:** *(Factual description of surrounding property as to existing zoning and land uses.)*

Direction/Area	Zoning Classification(s)	Land Use(s)
North/Sedgwick County	Agriculture County zoning	Farming/Ranch Use
South/Bel Aire	C-1 “Neighborhood commercial, office and retail, R-3 “Single-family residential” R-5 “Garden and patio homes, townhouses and condominiums”	Apartments, office, condos, Northeast Magnet School
East/Bel Aire	M-1 “Planned Unit Development – Industrial”	Vacant
West Northwest/Kechi	R-1 “Single-family residential”, C-3 “Heavy commercial”, I-1 “Industrial”	Single-family, Northpoint Centre Commercial, KDOT

3. **SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED:** *(How is the property currently zoned and what uses are allowed on the property? Are there uses suitable given surrounding zoning and site criteria? Are the current allowed uses the only ones that might be appropriate for the property?)*
- a. The property is currently zoned Agricultural District (AG) which is intended to maintain and enhance agricultural operations and preserve agricultural lands utilized for crop production or the raising of livestock.
 - b. The “holding zone” for newly annexed land in the City is Agricultural and this parcel has been given that zoning classification since annexation.
 - c. While the subject property continues to be suitable for AG zoning, the opportunity for development through a PUD or other zoning classification would provide development opportunities and growth opportunities for the city.
 - d. In the Jobs Focus Scenario of Bel Aire growth delineated in the Master Growth Plan adopted by the City, the area between Rock and Webb along Hwy 254 was planned with the potential for large-scale mixed use or commercial.
 - e. The subject property is proximate to existing development, has suitable topography for development, and is located in an area where infrastructure and services are available to be extended to support development.
 - f. The subject property is a logical placement for an Industrial PUD due to its proximity to a major highway (Hwy 254) and the arterial Rock Rd.
4. **EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY:** *[Can the uses allowed in the requested district by good neighbors to existing development? **This is a subjective question.** The focus should be on facts, not fears, and should be based on issues that zoning can address (e.g., allowed uses, minimum lot sizes, height, setbacks, traffic, etc.)]*
- a. The proposed planned development is located along the Hwy 254 corridor where such uses are likely and beneficial. Site development standards such as screening and landscaping requirements will mitigate detrimental effects from planned development on nearby residential or other uses, both required or proposed.
 - b. Traffic generation will be likely with the zoning change, but studies and engineering are currently underway along Hwy 254, Rock Rd., and Webb Rd. to mitigate negative impact of added traffic to surrounding developments and to ensure the safest, most effective route to any other development.
 - c. The Planned Unit Development - Industrial District (M-1) requires a screening and buffering plan per the Zoning Regulations that will benefit properties west and south of the subject property. The PUD also gives staff the opportunity to review plats and plans before any building commences to ensure other properties are not negatively affected by the development.
5. **LENGTH OF TIME THE SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED:** *(Factual information, but its importance may be somewhat subjective. A property may be vacant because the current zoning is unsuitable, but there may be other reasons not related to zoning. Some examples might be a glut of available property of the same zoning district, financing problems, land speculation, fragmented ownership, lack of available public services, or other development problems.)*

- a. The property is currently vacant and has been so since annexed in 2003.

6. RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY, AND WELFARE BY DESTRUCTION OF VALUE OF THE APPLICANT'S PROPERTY AS COMPARED TO THE HARDSHIP ON OTHER INDIVIDUAL LANDOWNERS: *(The protection of public health, safety, and welfare is the primary basis for zoning. The relationship between the property owner's right to use and obtain value from their property and the City's responsibility to its citizens should be weighed.)*

- a. The proposed rezoning to a PUD will be developed in accordance with the City's development standards that will mitigate any potential hazards to the public health, safety, and welfare.
- b. If successfully developed into an industrial project, the City will gain a significant number of local, high-paying jobs which will attract additional residents and promote surrounding development of other commercial, retail, and residential development. The result is potentially a material increase in the tax base, city services, and quality of life in the City.
- c. Staff cannot anticipate the effects on property values. If developed, surrounding property values may increase significantly from the economic activity. Decrease of property values for residential property immediately adjacent to an industrial site is also possible.
- d. If the zone change is disapproved, the value of the applicant's property will presumably be diminished because the PUD request will not be allowed.

7. CONFORMANCE WITH THE COMPREHENSIVE PLAN: *(Does the request agree with the adopted plan recommendations? If not, is the plan out-of-date or are there mitigating circumstances which speak to the nonconformity?)*

- a. While the Comprehensive Development plan is somewhat dated (not reflecting surrounding property subsequently zoned M-1 PUD), the vision map adopted by the Governing Body in 2014 nonetheless has the subject property as a potential commercial zone with surrounding mixed use. Increasing the intensity level of the subject property to M-1 PUD would not be unreasonable or create burden for other possible development trends of the City.
- b. The following are aspects of the Comprehensive Development plan that support the zoning change.
- c. Goal 1: Land should be developed within the corporate boundaries which continue the high quality of life for the citizens of Bel Aire and to produce efficient and effective delivery of public services to the growing community.
 Objective 1: Encourage congruent land uses that are compatible and developed in a lowest-impact method to adjacent properties.
 Recommendation b. Focus higher-impact developments on the peripheral of the city.
- d. Goal 4: The City must support economic development and diversification to ensure a stable and healthy financial growing community supports the development through the subsequent objectives:
 Objective 2: Maximize revenue generated from developments which will provide the most return for the investment and land use.

Recommendation b. Ensure location of development is planned orderly process (a PUD would ensure this type of development)
 Recommendation c. Ensure zoning and building policies reflects progression of development.

Objective 3: Move from sole residential community to a full-service community with diverse city services. The inclusion of possible large-scale development would encourage the development of other services (i.e., desirable businesses to follow).

8. **PROPERTY OWNER OPINIONS:** *The opinions of other property owners may be considered as one element of a decision in regard to the amendment associated with a single property, however, a decision either in support of or against any such rezoning may not be based upon a plebiscite of the neighbors.*

- a. An initial public hearing held prematurely on May 11, 2023 produced some public opinion (mostly residences west of Rock Road) opposed to the rezoning. Cited concerns included traffic, safety, lighting and property values. Subsequently, a protest petition from some property owners was filed on May 24, 2023 which addresses some of the factors differently than staff. The Planning Commission has been provided a copy of this petition.
- b. While residential property owners on the west side of Rock Road have offered opposition, staff believes most concerns can be properly addressed in the Planned Unit Development and Site Plan review.

9. **RECOMMENDATION OF PROFESSIONAL STAFF:** *[Should be based on the evidence presented, the factors, adopted plans and policies, and other technical reports (e.g., Capital Improvement Programs, facility master plans, etc.) which speak to the topic and staff's best professional judgement.]*

- a. Based on the preceding findings, staff recommends approval of the zone change request.

RECOMMENDED MOTION:

- I move to adopt the findings of fact of the staff *[as presented/as amended by this Planning Commission]* and recommend to the City Council approval to change the zoning district classification of the subject property from Agricultural District (AG) to Planned Unit Development - Industrial District (M-1) based on such findings of fact.

ZONING CHANGE APPLICATION CITY OF BEL AIRE, KANSAS

An application to change a land use of a property falls under the City of Bel Aire zoning regulations titled "Zoning District Change". A site plan is required as part of every zoning change application submitted to the City. This document will be used for meetings and public hearings regarding your request and should be neat, legible, well labeled, and drawn to scale. Submit the site plan to:

City Hall
7651 E Central Park Ave
Bel Aire, Kansas 67226
Attention: City Administrator

The site plan must contain the following elements:

1. **Sheet Size:** The site plan should be no larger than 11" x 17" and no smaller than 8 ½" x 11". Site plans for larger projects (greater than 6 acres), may be larger, with the approval of City Staff.
2. **Title:** A brief description of the zoning change.
3. **Applicant Name:** Name of the applicant and the agent who prepared the drawing, if applicable.
4. **North Arrow:** Indicate the north direction with respect to the project, Lot, or structure.
5. **Scale:** The scale should be adequate to portray the project, Lot, or structure on the sheet size required. For example, a Lot that is 70 feet by 100 feet can adequately be portrayed at a scale of 1" = 20' (in inch equals 20 feet) on an 11" x 17" sheet of paper. The scale should not be smaller than 1" = 20' and 1" = 50' for larger properties.
6. **Dimensions:** In addition to adequate scale representation, all key features (lot, buildings, driveways, etc.) on the site plan shall have dimensions in feet noted for all sides.
7. **Legal Description:** Legal description of Lot(s) or parcels requiring a zoning change. This description can be in the form of Lots and Blocks.
8. **Existing Conditions:** Indicate all structures and features as they exist on the property. These should be drawn to scale, as described above, and shall include, but not be limited to:
 - All structures and buildings
 - Parking Spaces
 - Fences
 - Significant trees or stands of trees
 - Other landscaping

- Floodplains
- Water area or features
- Significant topographical features
- Utilities, above and below ground
- Drainage patterns

9. All required zoning setbacks and easements: Using a dashed line, indicate all required zoning setbacks and utility, drainage, or other easements relative to the project, Lot(s), or structure.

10. All roads/streets adjacent to the property and access points off of those roads: Indicate all roads/streets, including the rights-of-way that surround or intersect the property, including alleys. Indicate all points of access (driveways) from the streets to the project, Lot (s), or structure. Indicate how each road/street is developed, e.g. paved, dirt, undeveloped.

11. Surrounding structures and uses if appropriate: Indicate surrounding uses and zoning as they apply to the request.

12. Modifications by the zoning change: Indicate any modifications to the existing structures or features that will result if the zoning change request is approved. If these modifications or additions are extensive, a second site drawing might be necessary to clarify the changes. These modifications or new features may include, but are not limited to:

- Buildings
- Structures
- Parking areas
- Vehicular drives
- Pedestrian walks
- Location and height of light fixtures
- Location of trash receptacles and loading areas
- Landscaped areas

13. An application shall be accompanied by a current abstractor's certificate containing a legal description of the area in the application as well as the name and address of the owner, and shall include the names and mailing addresses (with zip codes) of all property owners within the prescribed distance measured from the perimeter of the application area.

14. An application for zoning change shall be accompanied by the appropriate filing fee, (\$500.00 plus publication) and is payable to the City of Bel Aire.

APPLICATION

This form MUST be completed and filed at City Hall, Bel Aire, Kansas, 7651 E Central Park, Bel Aire, Kansas 67226. AN INCOMPLETE APPLICATION CANNOT BE ACCEPTED. Check the appropriate box below for type of application being submitted. A separate application and filing fee is required for each application. A preapplication conference with City Staff is recommended before filing this application.

- ☒ Change Zoning Districts: From: AG to M-1
- ☐ Amendments to Change Zoning Districts _____

City of Bel Aire Planning Commission

☐ Approved ☐ Rejected

Name of owner Webb254, LLC (Steve Barrett)

Address 1720 N. Webb Rd, Ste 110, Wichita, KS 67206 Telephone (316) 641-3268

Agent representing the owner Baughman Company, P.A. (Philip J. Meyer, L.A.)

Address 315 Ellis St, Wichita, KS 67211 Telephone (316) 262-7271

1. The application area is legally described as Lot(s) *; Block(s) *,
*
*
Addition, Bel Aire, Kansas. If appropriate, a metes and
bounds description may be attached. *See attached for legal description.

2. The application area contains 63.52 +/- acres.

3. This property is located at (address) 8325 E. 61st St N, Bel Aire which is generally
located at (relation to nearest streets) southeast of K-254 and Rock Rd.

4. The particular reason for seeking reclassification:

To allow future development of a Planned Industrial District

5. County control number: PIN Nos. 00540931 and 30015276

6. NAMES OF OWNERS - For land inside the city limits, an ownership list of the names, addresses and zip codes of the owners of record of real property located within 200 feet of the exterior boundary of the area described in the application both within the city limits and extending outside the city limits when necessary.

If such area is located adjacent to but within the city limits, the ownership list, in addition to the 200 feet inside the city limits, shall provide similar information extending to 1,000 feet into the unincorporated area.

If such area is located outside the city limits, the ownership list shall extend for 1,000 feet in the unincorporated area and, if the latter extends into the city limits, then such owners for 200 feet inside the city must also be included on the list.

The names of the owners of all property included in this application MUST be listed as applicants. Contract purchasers, lessees or other directly associated with the property may also be listed if they desire to be advised of the proceedings.

1. Applicant Webb254, LLC (Steve Barrett) Phone (316) 641-3268
Address 1720 N. Webb Rd, Ste 110, Wichita, KS Zip Code 67206

Agent Baughman Company, P.A. (Philip J. Meyer, L.A.) Phone (316) 262-7271
Address 315 Ellis St, Wichita, KS Zip Code 67211

2. Applicant n/a Phone _____
Address _____ Zip Code _____

Agent _____ Phone _____
Address _____ Zip Code _____

3. Applicant n/a Phone _____
Address _____ Zip Code _____

Agent _____ Phone _____
Address _____ Zip Code _____

The applicant certifies that the foregoing information is true and correct to the best of their knowledge and acknowledges that the Governing Body shall have authority to impose such conditions as it deems necessary in order to serve the public interest and

welfare.
WEBB254, LLC

BAUGHMAN COMPANY, P.A.

x
Applicant's Signature

Steve Barrett (Managing Member)

BY

Philip J. Meyer
Authorized Agent (If Any)

The Petition must bear the signature(s) of the property owner(s). If an authorized agent signs on the owner's behalf, the agent shall sign his own name and attach the owner's written notarized authorization to this application.

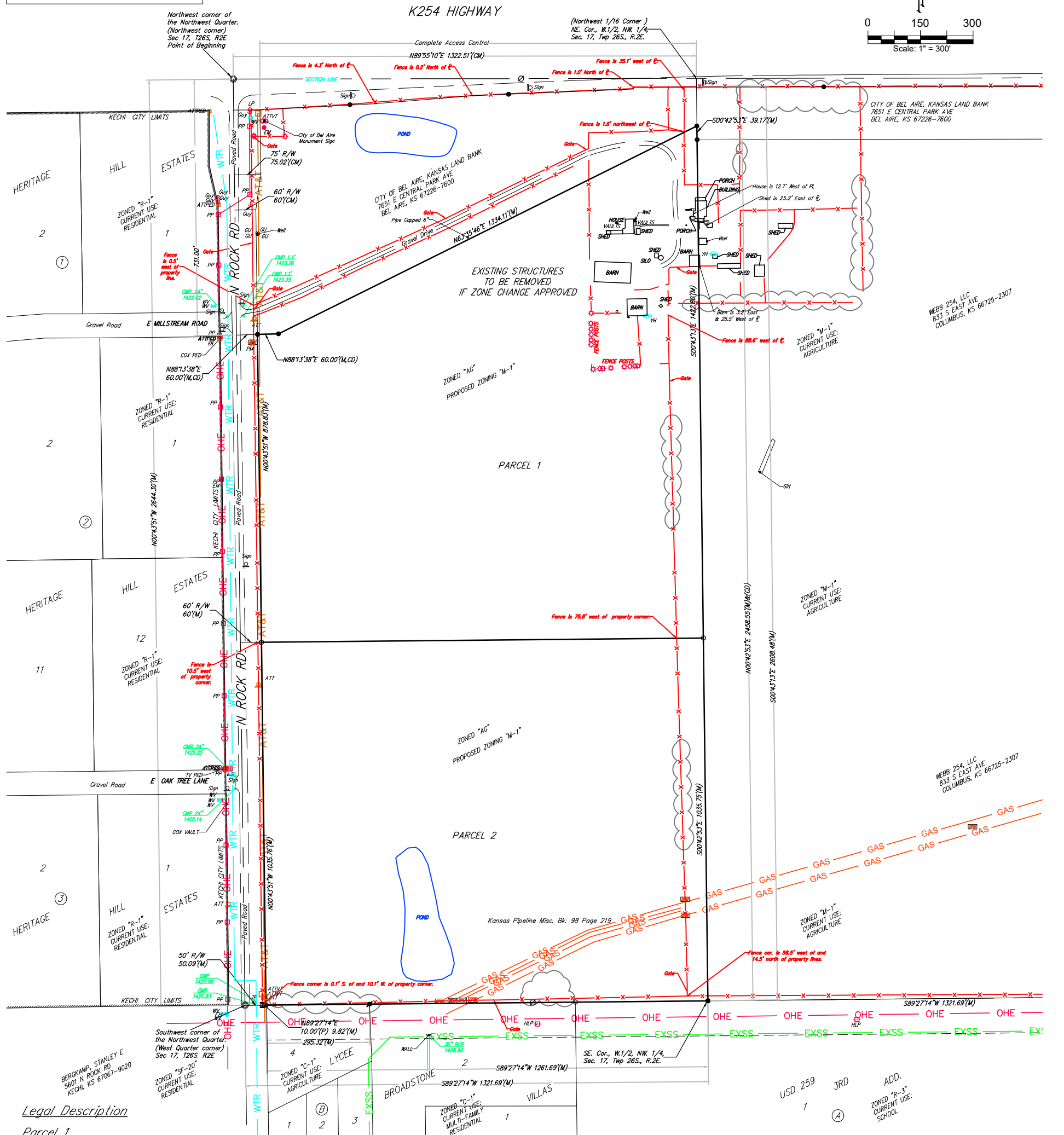
May 28th 2004

ZONING EXHIBIT

WEBB 254 SITE PLAN

BEL AIRE, SEDGWICK COUNTY, KANSAS

PAGE 1:
EXISTING STRUCTURES & BUILDINGS
FENCES
UTILITIES, ABOVE AND BELOW GROUND



Legal Description

Parcel 1

That part of the West Half (W/2) of the Northwest Quarter (NW/4) of Sec. 17, Township 26 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, EXCEPT that part described as beginning at the Northwest Corner of said Northwest Quarter; thence South along the West line of said Northwest Quarter, 731.00 feet; thence East, parallel with the North line of said Northwest Quarter, 120.00 feet; thence Northeasterly to a point on the East line of said West Half, said point being 175.00 feet South of the Northeast Corner of said West Half; thence North along said East line, 175.00 feet to said Northeast corner; thence West along said North line to the place of beginning, AND EXCEPT the West 50.00 feet; ALSO EXCEPT that portion of said West Half Commencing at the Southwest corner of said Northwest Quarter; THENCE N89°27'14"E, coincident with the south line of said Northwest Quarter, a distance of 60 feet for a Point of Beginning; THENCE N00°43'51"W, coincident with the East Right-of-Way of Rock Road as described in document titled "Easement for Right-of-Way" recorded in the office of the Sedgwick County Register of Deeds as DOC.#/FLM-PG: 29201718, a distance of 1035.76 feet; THENCE N89°27'14"E, parallel with the south line of said Northwest Quarter, a distance of 1261.88 feet, to the east line of said West Half; THENCE S00°43'13"E, coincident with the east line of said West Half, a distance of 1035.75 feet, to the south line of said Northwest Quarter; THENCE S89°27'14"W, coincident with the south line of said Northwest Quarter, a distance of 1261.69 feet, to the point of beginning. Subject to any road rights of way of record.

Parcel 2

That portion of the West Half of the Northwest Quarter of Section 17, Township 26 South, Range 2 East of the Sixth Principal Meridian, Sedgwick County, Kansas; more particularly described as Commencing at the Southwest corner of said Northwest Quarter; THENCE N89°27'14"E, coincident with the south line of said Northwest Quarter, a distance of 60 feet for a Point of Beginning; THENCE N00°43'51"W, coincident with the East Right-of-Way of Rock Road as described in document titled "Easement for Right-of-Way" recorded in the office of the Sedgwick County Register of Deeds as DOC.#/FLM-PG: 29201718, a distance of 1035.76 feet; THENCE N89°27'14"E, parallel with the south line of said Northwest Quarter, a distance of 1261.88 feet, to the east line of said West Half; THENCE S0°43'13"E, coincident with the east line of said West Half, a distance of 1035.75 feet, to the south line of said Northwest Quarter; THENCE S88°27'14"W, coincident with the south line of said Northwest Quarter, a distance of 1261.69 feet, to the point of beginning. Subject to any road rights of way of record.

NOTE:
ZONING SETBACKS AND UTILITY, DRAINAGE, OR OTHER EASEMENTS RELATIVE TO THE PROJECT SHALL BE PURSUANT TO THE SPECIFIC TERMS OF A PLANNED UNIT DEVELOPMENT APPROVED BY THE CITY OF BEL AIRE.

- ATT = A.T.&T. Marker
- ATTVT = A.T.&T. Telephone Vault
- PP = Power Pole
- Guy = Guy Anchor
- EB = Electric Box
- HLP = High Line Pole
- PP = Power Pole
- GMK = Gas Marker
- GPM = Gas Pipeline Marker
- MB = Mail Box
- TP = Telephone Pole
- Sign = Sign
- WV = Water Valve
- WMK = Water Marker
- YH = Yard Hydrant (Spigot)
- FH = Fire Hydrant
- WM = Water Meter
- Fence Post = Fence Post

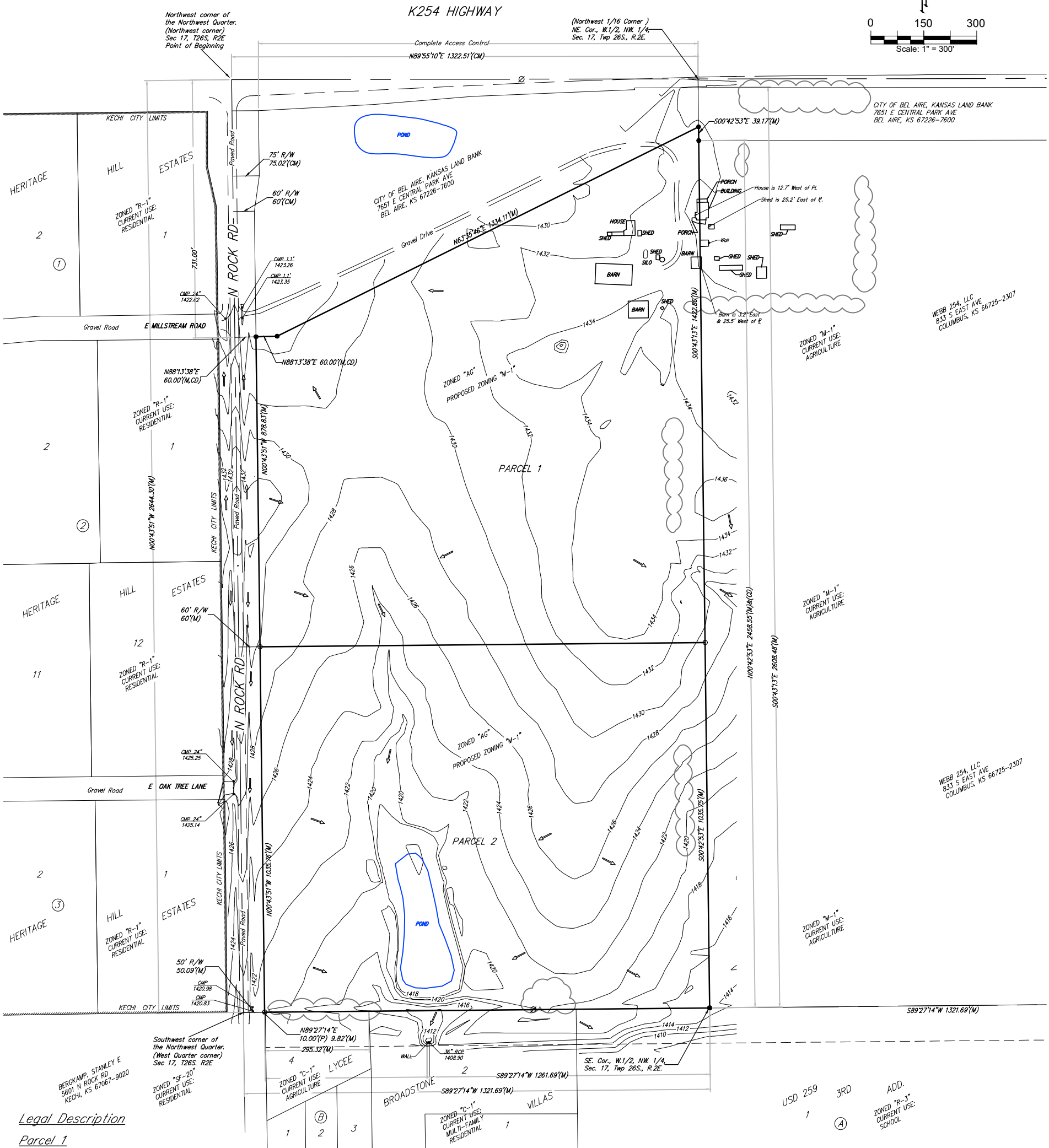
- GAS = Gas Line
- OHE = Overhead Electric Line
- EXSS = Sanitary Sewer Line
- SWS = Stormwater Sewer Line
- AT&T = Telephone Line
- WTR = Water Line
- Fence = Fence
- Tree Drip Line = Tree Drip Line

ZONING EXHIBIT

WEBB 254 SITE PLAN

BEL AIRE, SEDGWICK COUNTY, KANSAS

PAGE 2:
DRAINAGE PATTERNS
WATER AREA OR FEATURES
SIGNIFICANT TREES OR STANDS OF TREES



Legal Description

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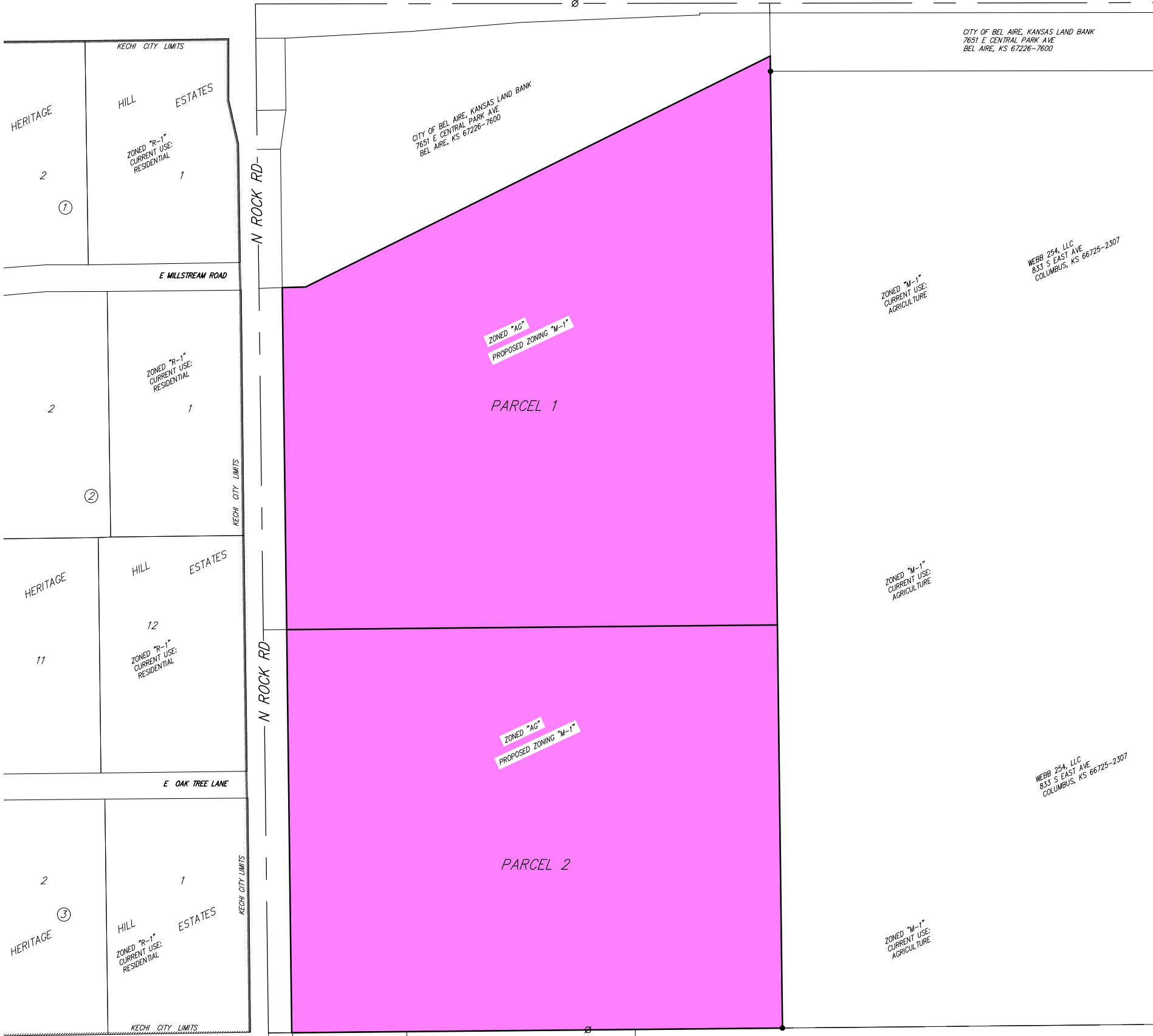
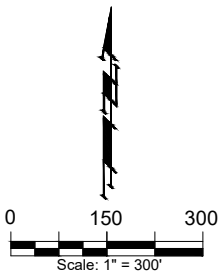
BAUGHMAN COMPANY
315 Ellis St. Wichita, KS 67211 316-262-7271
BaughmanCo.com

ZONING EXHIBIT

WEBB 254

BEL AIRE, SEDGWICK COUNTY, KANSAS

K254 HIGHWAY



Legal Description


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 INDICATES AREA OF = LEGAL DESCRIPTION TO BE ZONED "M-1"

Affidavit of Publication

STATE OF KANSAS,
SEDGWICK COUNTY, ss.

Chris Strunk, being first duly sworn, deposes and says: That he is Publisher of The Ark Valley News, formerly The Valley Center Index, a weekly newspaper printed in the State of Kansas, and published in and of general circulation in Sedgwick County Kansas, with a general paid circulation on a yearly basis in Sedgwick County, Kansas, and that said newspaper is not a trade, religious or fraternal publication.

Said newspaper is a weekly published at least weekly 50 times a year; has been so published continuously and uninterruptedly in said county and state for a period of more than five years prior to the first publication of said notice; and has been admitted at the post office of Valley Center in said County as second class matter.

That the attached notice is a true copy thereof and was published in the regular and entire issue of said newspaper for 1 consecutive weeks, the first publication thereof being made as aforesaid on the 22nd day of June, 2023, with subsequent publications being made on the following dates:

_____, 2023 _____, 2023
_____, 2023 _____, 2023
_____, 2023 _____, 2023

Subscribed and sworn to before me this 22nd day of June, 2023.

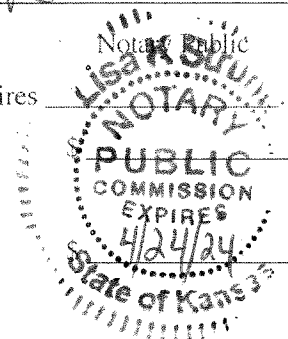




My commission expires _____

Additional copies _____

Printer's fee _____



Public notice

(Published in The Ark Valley News June 22, 2023.)

OFFICIAL NOTICE OF ZONING HEARING

TO WHOM IT MAY CONCERN AND TO ALL PERSONS INTERESTED:

Notice is Hereby Given that on July 13, 2023, the City of Bel Aire Planning Commission will consider the following re-zoning hearing in the order placed on the agenda after 6:30 p.m. in the City Council Chamber at City Hall in Bel Aire, Kansas:

ZON-23-01. Proposed re-zoning approximately 63+ acres zoned AG, to a M-1 Industrial Manufacturing. The current use farm ground.

Legal Description: (A complete legal description is available for public inspection which is on file with the Zoning Administrator at City Hall.)

General Location: Southeast of 254HWY and East of N. Rock Road

You may appear at this time either in person or by agent or attorney, if you so desire, and be heard on the matter. After hearing the views and wishes of all the persons interested in the case, the Planning Commission may close the hearing and consider a recommendation to the Governing Body, which, if approved under the City Zoning and Sub-Division regulations, would be effectuated by city code. The public hearing may be recessed and continued from time to time without notice.

DATED this 15 day of June 2023.

/s/ Jay Cook
Bel Aire Planning Commission Secretary

Permanent Utility Access Construction and Maintenance Easement

The undersigned: Leonal W. Kilgore, and Joanna L. Kilgore, Trustees of the LEONAL W. KILGORE REVOCABLE TRUST, owners of the real property described below (Grantor(s)), for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant and convey to the City of Bel Aire, Kansas (Grantee), a permanent easement to access, control, construct, maintain, repair, and secure a right of way, in, over, across and upon the following real property, herein legally described below, to-wit the "Easement Area":

See attached (3) Exhibits:

An additional consideration, the Kilgore's fence is to be replaced per Tim Cheatham's Construction Estimate: Exhibit #1

Legal description of tract of land with Parcel ID: 00269018: Exhibit #2

Legal description of tract of land with Parcel ID: 00269016: Exhibit #3

The use of the Easement Area, including the right of ingress and egress, shall be limited to the City, its representatives and contractors.

This grant of access is hereby made exclusively to the City, its successors and assigns, and is binding upon the Grantor(s), it's/their successors, heirs, and assigns.

Executed and granted this _____ day of _____, 2023.

IN WITNESS WHEREOF:

The Grantor authorizes and signs this permanent easement this _____ day of _____, 2023.

Leonal W. Kilgore, Property Owner

Joanna L. Kilgore, Property Owner

Accepted and filed by vote of the City Council on _____ day of August, 2023.

Jim Benage, Mayor, City of Bel Aire

STATE OF KANSAS)
)
) SS
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this _____ day of _____, 2023, before me, the undersigned, a Notary Public in and for the county and state aforesaid, came Leonal W. Kilgore and Joanna L. Kilgore, Grantor(s) and they have executed this instrument of writing on the day above first written.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal
the day and year written above.

Notary Public

My appointment expires: _____

STATE OF KANSAS)
)
) SS
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this _____ day of _____, 2023, before me, the undersigned, a Notary Public in and for the county and state aforesaid, came Jim Benage, City of Bel Aire, Mayor and he has executed this instrument of writing on the day above first written.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal
the day and year written above.

Notary Public

My appointment expires: _____

Tim Cheatham Construction, LLC
1015 W Woodside
McPherson, KS 67460
tc.construction@hotmail.com



Section XI, Item B.

Estimate

ADDRESS

Leonel Kilgore
5201 E 53rd st N
Kechi, KS 67067

ESTIMATE # 2136
DATE 06/16/2023

ACTIVITY	AMOUNT	DATE
Remove and replace Approx. 600 feet of three rail fence Move back 30 ft on property., 1 @ \$36,500.00 Woodcrete Rail System:3-Rail Woodcrete™ Rail System 3- Rail Woodcrete™ System Labor to tear out old fence and level ground Labor to install new Three rail fence	36,500.00T	
SUBTOTAL		36,500.00
TAX		2,737.50
TOTAL		\$39,237.50

Accepted By

Accepted Date

Owner: Leonal W. Kilgore Revocable Trust
 5201 E. 53rd Street North
 Kechi, KS 67067

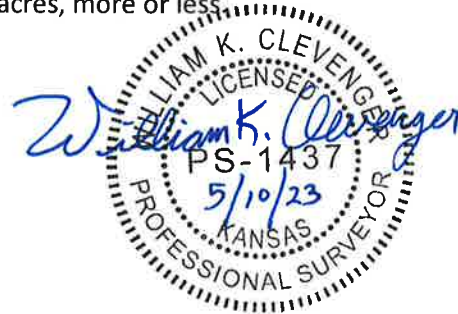
Parcel ID: 00269018

Right of way, Exhibit #2

A tract of land for additional right of way purposes, lying in the NW1/4 of Sec. 24, T26S, R1E, Bearings are referenced to the Kansas State Plane Coordinate System, 1983, South Zone, and being more particularly described as follows:

Commencing at the northwest corner of said NW1/4; thence N88°47'30"E along the north line of said NW1/4, 1187.76 feet; thence S0°44'36"E, perpendicular to said north line, 30.00 feet to the northwest corner of Tract 2 recorded as Document No. 29709587 at the Register of Deeds in Sedgwick County, Kansas for the point of beginning; thence N88°47'30"E, 135.00 feet to the northeast corner of said tract; thence S0°44'36"E, along the east line of said tract, 30.00 feet; thence S88°47'30"W, parallel with the north line of said tract, 135.00 feet to the northeast corner of Reserve EE, Chapel Landing, Bel Aire, Sedgwick County Kansas; thence N0°44'36"W, 30.00 feet to the place of beginning; written by William K. Clevenger, PS-1437 on May 10, 2023.

The tract described above contains 4,050 square feet or 0.09 acres, more or less.

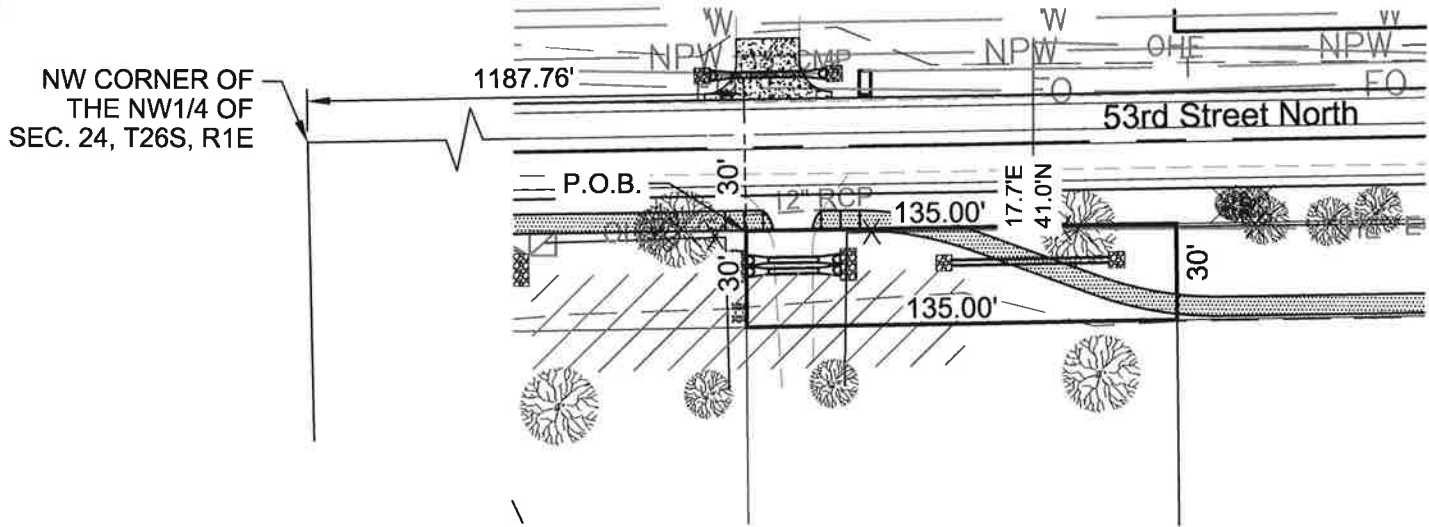


By: _____

William K. Clevenger, KS PS #1437
 Garver, LLC
 1995 Midfield Road
 Wichita, KS 67209
 (316) 264-8008

RIGHT OF WAY, EXHIBIT #2



Section XI, Item B.



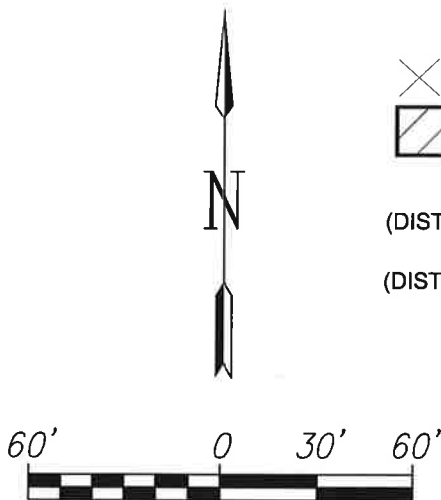
Leonal W Kilgore Revocable Trust
5201 E 53rd Street N
Kechi, KS 67067

PIN: 00269018

Right of Way Area: 4,050 Sq. Ft.±
0.09 Acres±

-  = PROPOSED TREE REMOVAL
-  = PROPOSED ADDITIONAL STREET RIGHT OF WAY

(DISTANCE)E = EXISTING EDGE OF PAVEMENT
TO NEW PROPERTY LINE
(DISTANCE)N = NEW EDGE OF PAVEMENT TO
NEW PROPERTY LINE



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1995 Midfield Road
Wichita, KS 67209
(316) 264-8008

FIGURE NUMBER

SHEET NUMBER **3** 55

Owner: Leonal W. Kilgore Revocable Trust
 5201 E. 53rd Street North
 Kechi, KS 67067

Parcel ID: 00269016

Right of way, Exhibit #3

A tract of land for additional right of way purposes, lying in the NW1/4 of Sec. 24, T26S, R1E, Bearings are referenced to the Kansas State Plane Coordinate System, 1983, South Zone, and being more particularly described as follows:

Commencing at the northwest corner of the east half of said NW1/4; thence S0°44'36"E, along the west line of said east half, 30.00 feet to the northwest corner of Tract 1 recorded as Document No. 29709587 at the Register of Deeds in Sedgwick County, Kansas for the point of beginning; thence N88°47'30"E, 318.85 feet to the northeast corner of said tract; thence S00°44'36"E, along the east line of said tract, 30.00 feet to the northwest corner of Reserve "B" Chapel Landing 6th, Bel Aire, Sedgwick County, Kansas; thence S88°47'30"W, parallel with the north line of said tract, 318.85 feet to a point on the west line of said tract; thence N00°44'36"W, 30.00 feet to the place of beginning; written by William K. Clevenger, PS-1437 on May 10, 2023.

The tract described above contains 9,556 square feet or 0.22 acres, more or less.

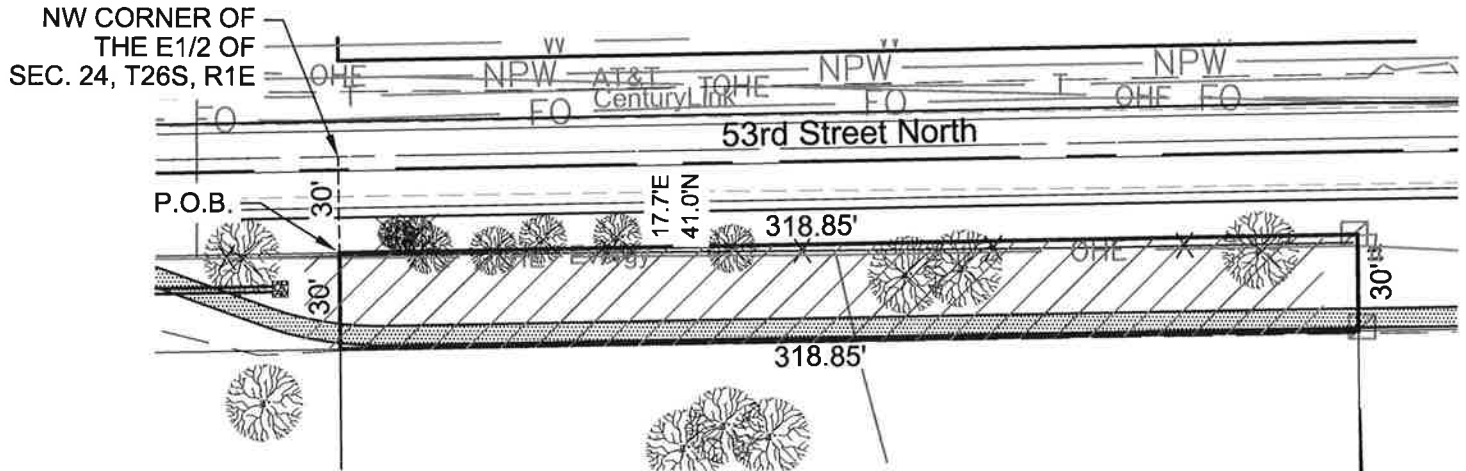


By: _____

William K. Clevenger, KS PS #1437
 Garver, LLC
 1995 Midfield Road
 Wichita, KS 67209
 (316) 264-8008

RIGHT OF WAY, EXHIBIT #3

Section XI, Item B.



Leonal W Kilgore Revocable Trust
5201 E 53rd Street N
Kechi, KS 67067

PIN: 00269016

Right of Way Area: 9,566 Sq. Ft.±
0.22 Acres±



X = PROPOSED TREE REMOVAL

□ = PROPOSED ADDITIONAL STREET RIGHT OF WAY

(DISTANCE)E = EXISTING EDGE OF PAVEMENT
TO NEW PROPERTY LINE

(DISTANCE)N = NEW EDGE OF PAVEMENT TO
NEW PROPERTY LINE



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1995 Midfield Road
Wichita, KS 67209
(316) 264-8008

FIGURE NUMBER

SHEET NUMBER 3 57

City of Bel Aire

STAFF REPORT

DATE: 07/26/2023

TO: Bel Aire Planning Commission

FROM: Jay Cook

RE: Agenda

STAFF COMMUNICATION

FOR MEETING OF	7/13/2023
CITY COUNCIL	
INFORMATION ONLY	

SUMMARY:

SD-23-04. Final Plat of approximately 96 acres in Sunflower Commerce Park 2nd. The development is labeled Sunflower Commerce Park 3rd.

Applicant/Agent:

- Applicant: Michael Le, Bayside Development
- Agent: Jake Vasa, SEH, Inc

Background Information:

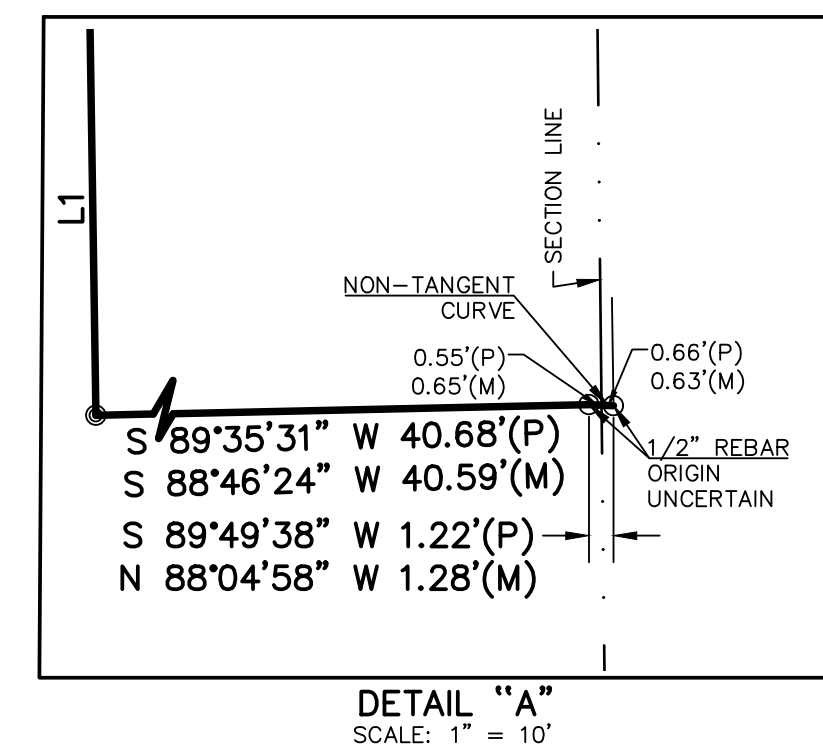
- The 96-acre tract is located in platted Sunflower Commerce Park 2nd Addition plat.
- The property is currently vacant and the applicant desires to subdivide the parcel for the opportunity for future business growth in Bel Aire through manufacturing and warehouses.
- The land was platted for Epic Sports and future growth of that business if the land options were exercised; total acreage of the plat is around 245 acres.
- The process started in 2016 and was completed in 2018. Floodplain, Evergy power lines, pipeline easements were some of the items the city worked through to complete the platting process.
- The Covenants from the Sunflower Commerce Park is the binding design document; the PUD page two has the basic overall PUD rules.

Discussion:

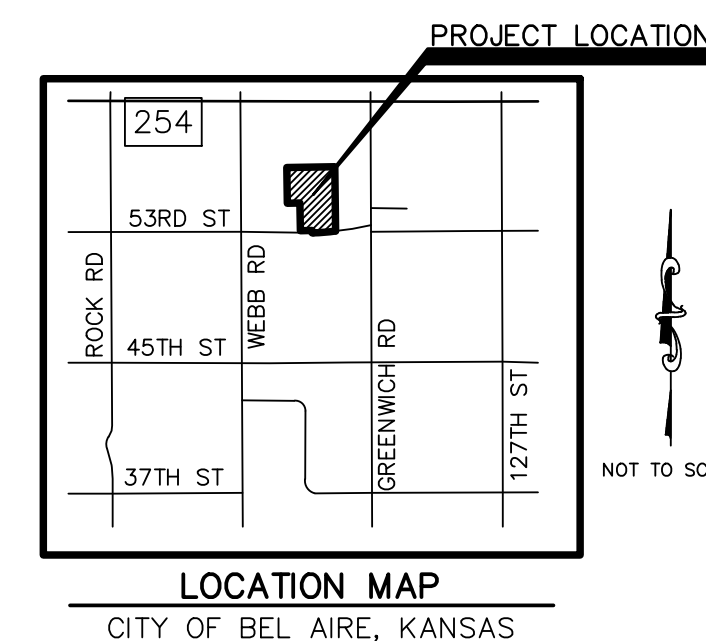
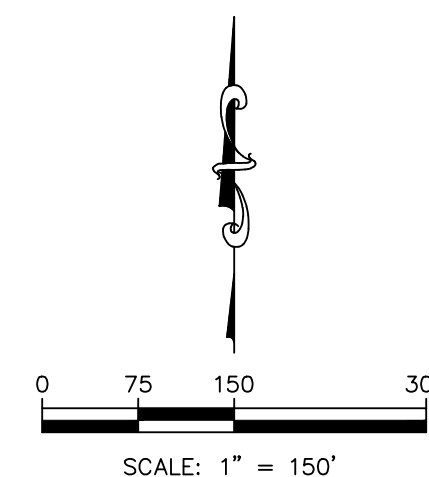
- Staff has reviewed the final plat for the Sunflower Commerce Park 3rd addition.
- Any conditions or comments placed on the preliminary plat should be corrected before the final plat is approved and sent to City Council.
- The language of the PUD is included in the final plat as presented.
- Easements are clearly marked with Reserve A and B for drainage.
- Floodplain notated as required by City Code.
- **The city engineer will contact the civil engineer directly with any item not covered with this process.**

Recommended Motion:









Approve the final plat of Sunflower Commerce Park 3rd addition subject to Planning Commission discussion and submit to governing body for approval and acceptance of streets and other public ways, service and utility easements.



LINE & CURVE TABLE	
L1	N 00°07'47" W 90.00'(P) N 00°53'01" W 90.07'(M)
C1	L=50.43' R=48.00' CB=S 60°46'43" E CD=48.14'
C2	L=187.65' R=97.00' CB=S 86°06'02" E CD=159.73'



LEGEND

	SECTION CORNER MONUMENT FOUND
	1/2"x24" REBAR W/KVE CLS-20 YELLOW CAP SET
	MONUMENT FOUND, ORIGIN UNCERTAIN
	1/2" REBAR W/"ARMSTRONG LS-780" CAP
	PLATTED BEARING AND DISTANCE PER SUNFLOWER COMMERCE PARK 2ND ADDITION
	MEASURED BEARING AND DISTANCE
	BENCHMARK LOCATION
	COMPLETE ACCESS CONTROL


DATUM BENCHMARK:
 DATUM IS U.S. SURVEY FEET AND REFERS TO NAVD88 DATUM DERIVED FROM CONNECTIONS TO THE SEDGWICK COUNTY NTRIP NETWORK.
 ORTHOMETRIC HEIGHT WAS DETERMINED USING THE GEOID 18 MODEL.

BENCHMARKS:
BM #4: PLATTED BENCHMARK #4, PER SUNFLOWER COMMERCE PARK
2ND ADDITION, CHISELED SQUARE ON THE NORTH OF A REINFORCED
CONCRETE BOX, HALF MILE WEST OF GREENWICH ROAD ON 53RD
STREET NORTH.

BM #64: CHISELED "X" ON THE SOUTH SIDE OF UTILITY POLE
CONCRETE PAD, 135'± EAST OF THE NORTHWEST CORNER OF LOT 2,
BLOCK A, SUNFLOWER COMMERCE PARK 2ND ADDITION.
ELEV=1392.35

BM #65: CHISELED SQUARE WITH "X" SET ON WEST OF UTILITY POLE
CONCRETE PAD, 50'± SOUTHEAST OF THE NORTHEAST CORNER OF LOT
2, BLOCK A, SUNFLOWER COMMERCE PARK 2ND ADDITION.
ELEV=1394.07

DATE OF PREPARATION: JUNE 28, 2023

	200 N. EMPORIA, SUITE 100 WICHITA, KANSAS 67202 PH. (316) 440-4304 wh@kveg.com www.kveg.com	PROJECT NO. 02352566
		DRAWN BY AL
		CHECKED BY TH
		CEN 2566PLAT SHEET 1 OF 2

FINAL PLAT
SUNFLOWER COMMERCE PARK 3RD ADDITION
A REPLAT OF LOT 2, BLOCK A, SUNFLOWER COMMERCE PARK 2ND ADDITION,
BEL AIRE, SEDGWICK COUNTY, KANSAS

RECORD DESCRIPTION (DOC#/FLM-PG: 29775209):

LOT 2, BLOCK A, SUNFLOWER COMMERCE PARK 2ND, AN ADDITION TO BEL AIRE, SEDGWICK COUNTY, KANSAS.

OWNER'S CERTIFICATE AND DEDICATION

STATE OF KANSAS }
COUNTY OF SEDGWICK } SS

THIS IS TO CERTIFY THAT THE UNDERSIGNED OWNER(S) OF THE LAND DESCRIBED IN THE LAND SURVEYOR'S DESCRIPTION HAVE CAUSED THE SAME TO BE SURVEYED AND SUBDIVIDED ON THE ACCOMPANYING PLAT INTO LOTS, BLOCKS, A STREET, AND RESERVES UNDER THE NAME OF "SUNFLOWER COMMERCE PARK 3RD ADDITION", A REPLAT OF LOT 2, BLOCK A, SUNFLOWER COMMERCE PARK 2ND ADDITION, CITY OF BEL AIRE, SEDGWICK COUNTY, KANSAS. THAT ALL HIGHWAYS, STREETS, EASEMENTS, AND PUBLIC SITES AS DENOTED ON THE PLAT ARE HEREBY DEDICATED TO AND FOR THE USE OF THE PUBLIC FOR THE LIMITED PURPOSE OF CONSTRUCTING, OPERATING, MAINTAINING, AND REPAIRING PUBLIC IMPROVEMENTS AND FRANCHISE UTILITIES WITHIN THE CITY OF BEL AIRE; AND FURTHER THAT THE LAND CONTAINED HEREIN IS HELD AND SHALL BE CONVEYED SUBJECT TO ANY APPLICABLE RESTRICTIONS, RESERVATIONS AND COVENANTS NOW ON FILE OR HEREAFTER FILED IN THE OFFICE OF THE REGISTER OF DEEDS OF SEDGWICK COUNTY, KANSAS.

RESERVES "A" AND "B" ARE HEREBY RESERVED FOR OPEN SPACE, LANDSCAPING, ENTRY MONUMENTS, SIDEWALKS, DRAINAGE, DRAINAGE STRUCTURES AND FLOOD PROTECTION. ANY UTILITIES SHALL BE CONFINED TO EASEMENTS CREATED BY SEPARATE DOCUMENT. OWNER HEREBY COVENANTS AND AGREES FOR SUCH OWNER AND OWNER'S GRANTEEES, DEVISEES, SUCCESSORS AND ASSIGNS, (1) THAT NO HUMAN HABITAT OR OTHER CONSTRUCTION MAY BE BUILT IN SAID RESERVES AND THAT NO OBSTRUCTION SHALL BE PLACED THEREIN; (2) THAT NO LEVEE OR ANY FILL, CHANGE OF GRADE, CREATION OF CHANNELS OR OTHER WORK SHALL BE CONSTRUCTED EXCEPT WITH THE APPROVAL OF THE KANSAS STATE BOARD OF AGRICULTURE, DIVISION OF WATER RESOURCES IN ACCORDANCE WITH KSA 24-126; AND (3) THAT SAID RESERVES SHALL BE THE RESPONSIBILITY OF THE HOMEOWNERS' ASSOCIATION UNTIL SUCH TIME AS THE GOVERNING BODY EXERCISING JURISDICTION UNDER 82A-301 ELECTS TO ASSUME RESPONSIBILITY FOR, MAINTENANCE OF AND IMPROVEMENTS TO DRAINAGE.

NO PRIVATE DRAINAGE SYSTEMS SHALL BE LOCATED WITHIN PUBLIC DRAINAGE EASEMENTS UNLESS A RESIDENTIAL DRAINAGE RELIEF PERMIT IS OBTAINED FROM THE CITY OF BEL AIRE PUBLIC WORKS & UTILITIES DEPARTMENT.

A MASTER DRAINAGE PLAN HAS BEEN DEVELOPED FOR THIS PLAT. ALL DRAINAGE EASEMENTS, RIGHTS-OF-WAY, AND RESERVES SHALL REMAIN AT ESTABLISHED GRADES (UNLESS MODIFIED WITH THE APPROVAL OF THE CITY ENGINEER) AND SHALL BE UNOBSTRUCTED TO ALLOW FOR THE CONVEYANCE OF STORMWATER IN ACCORDANCE WITH THE STORMWATER MANUAL. THE MAINTENANCE OF ALL DRAINAGEWAYS AND DRAINAGE FACILITIES IN BACKYARD DRAINAGE EASEMENTS AND RESERVES SHALL BE THE RESPONSIBILITY OF THE PROPERTY OWNER, AND SHALL BE ENFORCED BY THE HOMEOWNERS' ASSOCIATION AND BE PROVIDED FOR IN THE HOMEOWNERS' ASSOCIATION COVENANTS. LOT GRADING PLAN CERTIFICATE PERTAINING TO SUCH OWNER'S LOT TO ANY PERSON INSTALLING A LAWN, LANDSCAPING, FENCING, OR OTHER IMPROVEMENTS OR STRUCTURES AND REQUIRE THEM TO MAINTAIN THE GRADE LEVELS SHOWN ON THE INDIVIDUAL LOT GRADING PLAN CERTIFICATE.

PLAT IS SHOWN TO BE LOCATED IN ZONE "X" AREA OF MINIMAL FLOOD HAZARD & A PORTION IN ZONE "A" AREA WITHOUT BASE FLOOD ELEVATION, AS SAID PROPERTY PLOTS BY SCALE ON THE FLOOD INSURANCE RATE MAP NUMBER 20173C0240G. FEMA FLOODPLAIN AND REGULATORY FLOODWAY BOUNDARIES ARE SUBJECT TO PERIODIC CHANGE, AND SUCH CHANGE MAY AFFECT THE INTENDED LAND USE WITHIN THE SUBDIVISION.

ALL STREETS, ARE HEREBY DEDICATED TO AND FOR THE USE OF THE PUBLIC AND ALL ACCESS CONTROLS ARE HEREBY DEDICATED TO THE CITY OF BEL AIRE.

NAME: _____
TITLE: _____
COMPANY: _____
DATE SIGNED: _____

MORTGAGE HOLDER

THE CONSENT OF THE MORTGAGE HOLDER IN THE FOLLOWING FORM FOR AN INDIVIDUAL CAPACITY OR MODIFIED IF A REPRESENTATIVE CAPACITY:

THE _____ (NAME OF INSTITUTION) BY _____
(NAME & TITLE OF OFFICER), HOLDERS OF A MORTGAGE ON THE ABOVE DESCRIBED PROPERTY DO HEREBY CONSENT TO THE PLAT OF SUNFLOWER COMMERCE PARK 3RD ADDITION, CITY OF BEL AIRE, SEDGWICK COUNTY, KANSAS.

(NAME OF INSTITUTION
& LOCATION)

(NAME AND TITLE)

NOTARY CERTIFICATE

STATE OF KANSAS }
COUNTY OF SEDGWICK } SS

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME, THIS ____ DAY OF _____, 20____,
BY _____ (PRINTED NAME) ON BEHALF OF _____
INSTITUTION/COMPANY).

_____, NOTARY PUBLIC

MY COMMISSION EXPIRES: _____.

PUD REGULATIONS:

THE SUNFLOWER COMMERCE PARK 3RD ADDITION, A REPLAT OF LOT 2, BLOCK A, SUNFLOWER COMMERCE PARK 2ND ADDITION INTO 8 LOTS AND 2 RESERVES CONFORMS TO THE STANDARDS AND ZONING IN PLACE ON THE PROPERTY FROM THE ORIGINAL PUD PLAT OF SUNFLOWER COMMERCE PARK 2ND ADDITION. NO WAIVERS OR VARIANCES ARE ANTICIPATED ON THIS REPLAT. ALL SUBMITTALS AS REQUIRED THROUGH THE CITY OF BEL AIRE AND SEDGWICK COUNTY PERMITTING SHALL BE ENFORCED AND PRESENTED AT SUCH TIME THE LOTS DEVELOP.

COUNTY SURVEYOR CERTIFICATE

THIS PLAT HAS BEEN REVIEWED IN ACCORDANCE WITH K.S.A.
58-2005 ON THIS ____ DAY OF _____, 20____.

TRICIA L. ROBELLO, P.S. #1246
DEPUTY COUNTY SURVEYOR
SEDGWICK COUNTY, KS.

PLANNING COMMISSION CERTIFICATE

STATE OF KANSAS }
COUNTY OF SEDGWICK } SS

THIS PLAT OF "SUNFLOWER COMMERCE PARK 3RD ADDITION", HAS BEEN SUBMITTED TO AND APPROVED BY THE BEL AIRE PLANNING COMMISSION, BEL AIRE, KANSAS, WITH THE RECOMMENDATION THAT MUCH AT BE APPROVED AS PROPOSED.
DATED THIS ____ DAY OF _____, 20____.

AT THE DIRECTION OF THE BEL AIRE PLANNING COMMISSION.

_____, CHAIRPERSON
JAMES SCHMIDT

ATTEST: _____, SECRETARY
JAY COOK

CITY ATTORNEY CERTIFICATE

THE TITLE EVIDENCE OF THE LAND INCLUDED IN THIS PLAT HAS BEEN REVIEWED BY ME AND THIS PLAT IS APPROVED PURSUANT TO THE PROVISIONS OF K.S.A. 12-401.

DATE SIGNED: _____
_____, CITY ATTORNEY
MARIA SCHROCK

GOVERNING BODY CERTIFICATE

STATE OF KANSAS }
COUNTY OF SEDGWICK } SS

THE DEDICATIONS SHOWN ON THIS PLAT, IF ANY, ARE HEREBY ACCEPTED BY THE GOVERNING BODY OF THE CITY OF BEL AIRE, KANSAS ON ____ DAY OF _____, 20____.

AT THE DIRECTION OF THE BEL AIRE CITY COUNCIL.

_____, MAYOR
JIM BENAGE

ATTEST: _____, CITY CLERK
MELISSA KREHBIEL

TRANSFER RECORD

ENTERED ON TRANSFER RECORD THIS ____ DAY OF _____, 20____.

_____, COUNTY CLERK
KELLY B. ARNOLD

REGISTER OF DEEDS CERTIFICATE

STATE OF KANSAS }
COUNTY OF SEDGWICK } SS

THIS IS TO CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD IN THE REGISTER OF DEEDS OFFICE, AT _____, M.
ON ____ DAY OF _____, 20____.


_____, REGISTER OF DEEDS
TONYA E. BUCKINGHAM
_____, DEPUTY
KENLY ZEHRING

SURVEYOR'S CERTIFICATION:

I, TRENTON C. HEINEN, DO HEREBY CERTIFY THAT I AM A DULY LICENSED AND REGISTERED PROFESSIONAL SURVEYOR IN THE STATE OF KANSAS, WITH EXPERIENCE AND PROFICIENCY IN LAND SURVEYING; THAT THE HERETOFORE DESCRIBED PROPERTY WAS SURVEYED AND SUBDIVIDED BY ME OR UNDER MY DIRECT SUPERVISION; THAT ALL SUBDIVISION REGULATIONS OF WICHITA HAVE BEEN COMPLIED WITH IN THE PREPARATION OF THIS PLAT; THAT THIS PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE KANSAS MINIMUM STANDARDS FOR BOUNDARY SURVEYS, AND THAT ALL THE MONUMENTS SHOWN HEREIN ACTUALLY EXIST AND THEIR POSITIONS ARE CORRECTLY SHOWN TO THE BEST OF MY KNOWLEDGE AND BELIEF. GIVEN UNDER MY HAND AND SEAL AT WICHITA, KANSAS, THIS ____ DAY OF _____, 20____.

DATE OF SURVEY: MARCH 10, 2023

DATE OF PREPARATION: JUNE 28, 2023

		200 N. EMPORIA, SUITE 100 WICHITA, KANSAS 67202 PH. (316) 440-4304 wh@kveng.com www.kveng.com	PROJECT NO. G23S2566
			DRAWN BY AL
			CHECKED BY TCH
FINAL PLAT SUNFLOWER COMMERCE PARK 3RD, BEL AIRE, SEDGWICK COUNTY, KS.			DATE 2566PLAT
			SHEET 2 OF 2
KAW VALLEY ENGINEERING, INC., IS AUTHORIZED TO OFFER SURVEYING SERVICES BY KANSAS STATE CERTIFICATE OF AUTHORIZATION NO. LS-20. EXPIRES 12/31/24			



Bel Aire Tree Board

CITY HALL – SENIOR CENTER
Monday June 26, 2023
6:00 P.M.

I. Call to Order: By Chairperson Rebecca Armstrong

II. Roll Call:

- a. Sylvia McCombs __no__
- b. Gary Northwall __yes__
- c. Hilde Yops __yes__
- d. Bruce Roepke __yes__
- e. Jesse Miller __no__
- f. Emily Ryder __yes__
- g. Rebecca Armstrong __yes__

III. Guests: No guests.

IV. Approval of Minutes from Previous Meeting:

Action: Motion to approve the minutes of the May 22 2023 Tree Board meeting.

Motion: ____Gary____ Second: ____Hilde____ Vote: __ALL YES__

v. Board Member Reports/Comments

Sylvia: General update.

Hilde: Central Park Update

Gary: Update General Communications - Possible Arbor Day tree in the Fall.
City park survey results tomorrow at Rec Center, Jun 27, 2023 5:30PM - 7PM.

Bruce: Update on Japanese Maple seeds - Growing well so far.



Bel Aire Tree Board

Jesse: Update on City Website and Facebook - no update for us before meeting.

Emily: General update - will be working on education opportunities to share with community at events.

Rebecca: Opportunities Schools, Parks, open spaces - We need more exposure on the city website (next meeting, we should discuss website revamp). Trees at school need mulch (~20 trees). Could use a map of trees at our parks.

VI. Old Business:

VII. New Business:

1. **Brainstorm: What do you want to see happen here in Bel Aire?**
2. **What do you want to get involved in?**
3. **How can we make these things happen?**
 - a. **Events/Activities for 2023-2024.**
 - a. **Fall Fest**
 - b. **Spring Fest**
 - c. **National Night Out (August) - optional.**
 - d. **Educational:**
 - i. **Schools**
 - ii. **other:** Poster contest options

VIII. Adjournment:

Action: Motion to adjourn.

Motion ____ Gary ____ Second ____ Bruce ____ Vote: ____ ALL YES ____

Meeting adjourned at: ____ 7:05 ____ P.M



VOLUNTEER HOURS

NAME	DATE	ACTIVITIES	
Gary Northwall	6/26		1.5
Jesse Miller			
Sylvia McCombs			
Emily Ryder	6/26	Litter and Meeting	9.0
Bruce Roepke	6/26		1.5
Rebecca Armstrong	6/26	Meetings and Tree Inspections	6.5
Hilde Yolpe	6/26		1.5
Total			20.0

City of Bel Aire Utility Advisory Committee Minutes\
Wednesday June 14, 2023

1. Call to Order: meeting called to order by Chairman Tenbrink at 3:03 PM.
2. Roll Call: UAC members present – Broyles, Moss, Kitt and Tenbrink. Terry Ercolani was absent due to work commitment. Also, in attendance; Maria Shrock, Bel Aire City Attorney and Jay Cook, Bel Aire city staff.
3. Approval of Agenda: Motion by Moss to approve the agenda, seconded by Broyles. Agenda approved.
4. Approval of April 12, 2023, Meeting Minutes and documentation of May 10th visit to Waste Connection recycling center in South Hutchinson Kansas. Motion by Moss to approve the minutes, seconded by Broyles. Minutes and documentation approved.
5. New Business:
 - A. Jay Cook presented the committee with a copy of a letter from KDHE stating that KDHE had reviewed Bel Aire 2022 Municipal Separate Storm Sewer System Annual Report. The review determined that the Best Management Practices implemented by the city satisfies the point requirements for 2022 and reminded the City that the point requirements increase for 2023.
 - B. New City attorney Maria Shrock introduced herself to the committee and gave a run down on her resume. Each committee member present introduced themselves to Maria.
 - C. The take-a-way from the from recycling center visit on May10th. The committee members that were able to visit the recycling center gave a brief statement of their impression of the recycling center.
 - D. Tenbrink handed out a copy of the new 2% rate increase approved by the city governing body for trash and recycling. A brief discussion followed.
 - E. Tenbrink gave a brief CUA update.
 - i. CUA will install composite samplers in order to analyze wastewater influent
 - ii. Wastewater disinfection by some UV light units are broken and will have to be replaced.
 - F. Kechi tree limb and brush waste disposal. Tenbrink stated we were still looking for a solution.
 - G. July "Did You Know" covered drought conditions that we are experiencing and offers suggestions for adjusting our watering habits. The "DYK" was approved to be sent on to the city staff.
6. Round table discussion:
 - A. Maria Shrock – No report
 - B. Broyles - No report.
 - C. Moss - No report.
 - D. Kitt – No report
 - E. Tenbrink –

I. The national average carbon dioxide output rate for electricity generated is the highest in 4 million years.

II. Bel Aire rain fall so far for June is 4.15 inches.

7. Next UAC meeting July 12, 2022 @ 3-5 PM at City Hall Senior Center.
8. Motion by Moss to adjourn, second by Kitt. Meeting adjourned at 4:17 PM

Dan Broyles
UAC Committee Member

AGENDA

Aurora Park Gravel Roads Task Force
City Hall Community Room
7651 E Central Park Avenue
Bel Aire, KS
July 10th, 2023 at 6:00 pm

CALL TO ORDER: Sean Matheny called the meeting to order at 6:02 pm. Lisa Bellecci led a prayer.

PRESENT: Lisa Bellecci, Gary Breault, Marty Couey, Chad Crittenden, Carolyn Gunzelman, Logan Schrag, Mark Schroeder, Connie White

ABSENT: Butch Amey, Judy Schroeder

APPROVAL OF MINUTES: From June 26th Meeting. ** Change in the section "Cleaning Culverts": "companies that they are paying to maintain the culverts" should say "companies That the city is paying to do utility work." **MOTION to accept Minutes as Amended** by Marty Couey; Gary Breault seconded. **Motion carried 9 - 0.**

MEETING SCHEDULE: Next Meeting Date & Time. August 14th, 2023. 6:00 pm

UNFINISHED BUSINESS:

1. Update from meeting with Ty Lasher by Sean Matheny:

a) Ty will set up a meeting for himself with Sean and Marty at Public Works (Marty has been going out 1/week to see the test roadway). All seem to agree with what needs to be done. The purpose of the meeting will be to write out a Maintenance Proposal. RE: others coming to that meeting, two more members can be included and still stay within the guidelines.

b) Ty indicated funding / budget of using this new gravel will not be a problem for next year's budget. There has already been a savings to the city.

c) Proposed Maintenance of Gravel: Upon recommendation of Marty at Public Works

d) Continued discussion of Drainage Issues - Ty says wait on cleaning culverts till ditches are fixed. Ty is okay with having a meeting with Ann and the construction company and Marty (public works) to assess the grading of the ditches and give a quote, which would then go to City Council for approval.

e) Fixing of Culverts: Ty asked Sean his opinion on residents paying for their own culvert to be fixed. Sean spoke to the Task Force's reason for being, which didn't include canvassing residents; however, he thought a one-time small fee would be agreeable if people see the city putting in particular amounts and efforts as well.

2. Concern about holding the city accountable if drainage and culverts plans are not accepted by Council when the Task Force ends in October of 2023. Chair Matheny did not expect a problem.

3. Other Comments or Questions: Task Force members expressed satisfaction again with the new gravel. Noted: the rock did not float away in the rain. Members have heard no complaints from their neighbors.

NEW BUSINESS:

Chad Crittenden shared a video of the status of the ditches around the relevant roadways of Aurora Park on the morning of the 4.5 inch rain. Flooding of ditches was very high; discussion ensued of the bottleneck that cannot allow water through, of broken culverts, etc.

ADJOURNMENT: Motion to Adjourn the meeting by Carolyn Gunzelman, 2nd by Logan Schrag. **Motion carried 9 - 0.** Meeting adjourned at 6:44 p.m.

DRAFT



MINUTES
PLANNING COMMISSION
 7651 E. Central Park Ave, Bel Aire, KS
 July 13, 2023 6:30 PM

City of
Bel Aire

I. Call to Order

II. Roll Call

John Charleston, Edgar Salazar, Phillip Jordan, Dee Roths were present. James Schmidt, Heath Travnichek, and Paul Matzek were absent.

Also present were, Secretary and Director of Planning and Community Development, Jay Cook, Code Enforcement Officer, Garrett Wichman, City Engineer, Anne Stephens, City Attorney, Maria Schrock and Attorney, J.T. Klaus.

III. Pledge of Allegiance to the Flag – Chairman Jordan led the Pledge of Allegiance.

IV. Consent Agenda

A. Approval of Minutes from Previous Meeting

Motion: Commissioner Charleston made a motion to approve the minutes of May 11, 2023. Commissioner Roths seconded the motion. Before the vote, Secretary Cook offered a written “proposed corrections to minutes from 5/11 planning commission meeting” from a resident in Heritage Hills Subdivision (attached). Mr. Cook stated that the proposed corrections were reviewed by staff and the original minutes were accurate and complete. The proposed corrections were considered by staff to be immaterial. Planning Commission then considered the corrections as well as staff recommendations and chose to keep the minutes as they were presented. The original motion was voted on and the ***Motion carried 4-0***

V. Old Business/New Business

A. ZON-23-01 - Rezoning approximately 64 from AG to M-1 Industrial generally located at the Southeast corner of K-254 and Rock Rd.

Chairman Jordan began the New Business Agenda item V. (A.) which is a public hearing on Case ZON-23-01; an application to rezone property generally located at the SE corner of Highway 254 and Rock Road from Agricultural District (AG) to Planned Unit Development – Industrial District (M-1).

Chairman Jordan opened with ground rules and information regarding the process of hearing a zoning case, the rights of the citizens and applicant/agent to be heard, the fact that the Planning Commission may consider the agenda item in the future as it is a PUD with a required site plan and approval, and the process of being heard during the public hearing.

Chairman Jordan then asked if any of the Planning Commission members intended to disqualify themselves from the hearing due to conflict of interest or a particular bias on the matter. He then declared that legal and proper notification was given in accordance with State Law and the Zoning Regulations adopted by the City of Bel Aire.

Chairman Jordan then asked if any Planning Commission members received any ex parte verbal or written communication and gave the members an opportunity to disclose those conversations. No members mentioned any ex parte communications.

Findings of Fact

Secretary Cook presented a PowerPoint presentation as a visual aid to the staff report that was provided to the Planning Commission (attached). The presentation went through the Findings of Fact (Golden Factors) and discussed each factor individually as to the acceptableness and the reasonableness of the zoning change request. After completing the presentation, Secretary Cook asked for any questions. No questions were asked of staff's representation.

Following staff's report, Chairman Jordan stated that as this is a zoning change, the Planning Commission can only make a recommendation to the City Council and it is the responsibility of the Council to make the final decision.

Chairman Jordan then called upon the applicant or its agent to make their request and give additional response to the Zoning Report. Representing the applicant was Phil Meyer with Baughman Company. Mr. Meyer stated that this is an expansion of the existing zoning changes that go east to Webb Rd. He stated that this is just step one of the process and the PUD process would come after the rezoning, giving another layer of oversight followed by site plan review. He then stood for questions from the Planning Commission members. No questions were asked at that time.

Chairman Jordan opened the public hearing.

Several residents from the Heritage Hills subdivision in Kechi, KS and other residents from the City of Bel Aire wished to speak on this zone change.

Lyle Ackerman, 4920 N Hillcrest, Bel Aire. Mr. Ackerman spoke in favor of this zone change by giving a history of the property based off of his experience with the City. He believed that the location is optimal and the opportunity for retail, commercial, and industrial growth with provide the City the opportunity to grow into a full-service city.

Gary O'Neal, 4967 N Hillcrest, Bel Aire. Mr. O'Neal expressed to the Commissioners that the property was annexed when he was mayor of the City of Bel Aire and that the land was always intended to have commercial and industrial uses along Highway 254.

Ryan Hendricks, 7620 E Oak Tree Ln., Kechi. Mr. Hendricks spoke to concerns with traffic control of Rock Road and its conditions. Mr. Hendricks did mention that he had a tour with Integra that is wanting to become the developer on this land. He stated that he is very pleased with what they have shown him and would be happy to be a neighbor to Integra.

Dean Kuckelman, 7735 Oak Tree Ln., Kechi. Mr. Kuckelman shared his concerns with the findings of fact and golden factors presented by staff. These concerns include the character of the neighborhood, zoning, and use. Mr. Kuckelman stated that regardless of staffs opinion, the

character of the neighborhood is residential and it disfavors approval. He stated that Highway 254 should separate any discussion and that only South of 254 should be considered in the determination. He also stated that the zoning nearby disfavors approval. He spoke to concerns of buffering and not having a lesser dense or intense usage between the existing zoning and the neighborhood West of Rock.

Donnis McPhaul, 7901 Oak Tree Ln., Kechi. Dr. McPhaul shared concerns to the Commission about Rock Rd and its safety. She also discussed the noise of added traffic flow and possible traffic accidents. She also mentioned she had met with Integra and they have alleviated some of her concerns for traffic as they would be entering in off of Webb Rd.

Erik Breckenridge, 7320 E Mill Stream Rd., Kechi. Mr. Breckenridge shared concerns about the character of the neighborhood and traffic flow. He asked for Bel Aire's support in keeping the area as quite as possible and to ensure the importance of environmental concerns. He also shared concerns about the possibility of a lesser desirable neighbor developing the property.

Suzanne Hawley, 7730 E Mill Stream Rd., Kechi. Ms. Hawley shared her reflecting concerns as the other residents from Heritage Hill. She shared concerns with some of the Golden Factors. Mainly the character of the neighborhood. She stated that Rock Road is mainly residential and Webb Road is mainly commercial. She also disagreed with compliance to the Master Plan stating that the map does not include any industrial zoning and that adjacent land uses be separated by no more than one usage level.

Betty Martine, 5931 Memphis, Bel Aire. Ms. Martine expressed that she believes this change will be a great asset to Bel Aire and Kechi residents.

Chairman Jordan asked if there were any written communications or petitions from the public. Garrett Wichman handed out three written communications to the Planning Commission members from residents in favor of the zone change (attached). Written communication came from Gary Breault, Jeff Englert, as well as Tom and Jeanne Heiman. These written communications were read by Secretary Cook and placed on the record. There was also written communication from Dean Kuckelman titled "alternative proposed findings of fact for 7/13/23 Planning Commission meeting" which will also be put on the record (attached).

Chairman Jordan then allowed the applicant/agent to respond to the public comments. Phil Meyer did have a rebuttal in regard to concerns from the public. A majority of the concerns he had heard were about traffic control and flow. Phil mentioned that Matt Cortez was here to speak as well. Matt Cortez works with Integra as an Architect and has been working with KDOT as well. The concepts of their plan would be an overpass at Rock Rd and 254 Hwy so there is no access to 254 Hwy from Rock Rd. At Webb Rd. there will be a diverted diamond interchange at that intersection.

Chairman Jordan allowed final public comments from the public.

Ryan Hedricks spoke again after hearing from Phil Meyer and Matt Cortez. Ryan's final comments stated that Rock Rd. could remain a two-lane road but it does need a pedestrian egress, or a walking trail.

Dean Kuckelman then spoke on the emails that were received and put into the public record. He stated that he does not know who the authors of the emails were but they do not live across the street. They were speaking as citizens of Bel Aire while the only property owners were from Heritage Hill.

Secretary Cook did mention for the record that a protest petition was received to the city on this zone change at the previous hearing on the rezone (attached).

Chairman Jordan closed the public hearing.

A brief recess was requested and granted.

Following the recess, there was discussion among the Commissioners regarding the findings of fact.

Commissioner Salazar stated that he knows Mr. Kuckelman personally but has not had any communications regarding the case.

Commissioner Roths spoke to the suitability of the subject property considering the history of Bel Aire and purchasing the property with intent to develop into something and a PUD would be the best way to develop.

Commissioner Salazar commented on the different zonings and pointed out the opinions of the property owners is important to consider.

Commissioner Charleston mentioned that he understands the Rock Road dilemma but right now it is the zoning that is in question. He spoke to character of the neighborhood and the vacancy of the property for 20 years and that this land has always been indicated to be used for M-1 Industrial. He commented on the character of the neighborhood stating that Highway 254 would be a good place for an Industrial PUD.

Commissioner Roths spoke to the recommendation of professional staff and she believes that staff is very capable and knowledgeable and trust their opinions and their abilities moving forward.

Chairman Jordan went through the Golden Factors and spoke to his opinion on favoring or disfavoring. Regarding Character of the Neighborhood, Jordan felt like the rezoning marginally favors this factor because it could be argued either way. Suitability of the subject property for uses to which it is restricted is strongly in favor. He stated that his opinion on traffic and other issues can be improved making extent to which removal of the restrictions will detrimentally affect nearby properties is heavily favored. The length of time property has been vacant is strongly in favor of the rezone as the agricultural zoning is a place holder until something is more usable. Relative gain of public health and welfare strongly favors the rezone due to job creation and other advantages. Jordan also believes that the Comprehensive plan favors the zone change even if the map has commercial instead of industrial in the area. He stated that it does bother him that there is a large jump between the zoning of adjacent neighborhoods, but the PUD will solve most of these issues. Property Owners opinions changed to much more positive comments but would still disfavor the zone change. He also stated that the recommendation of staff would strongly favor changing the zoning.

Motion: Chairman Jordan made a motion to recommend to the City Council that Case No. ZON-23-01 be approved rezoning the subject property from Agricultural District (AG) to Planned Unit Development – Industrial District (M-1) Commissioner Dee Roths seconded the motion. *Motion carried 4-0*

B. SD-23-04 Preliminary Plat. Proposed platting of approximately 96 acres within Sunflower Commerce Park 2nd Addition PUD.

Secretary Cook gave a presentation on the application for the Commissioners.

Representing the applicant was Anthony Krejci with SEH, Inc. The applicant is proposing to re-plat within the Sunflower Commerce Park PUD restrictions. Andrew did mention that he had already submitted plans with Anne Stephens our city engineer on a drainage plan for review.

Chairman Jordan opened the public hearing.

There was no one to speak in regard to SD-23-04.

Chairman Jordan closed the public hearing.

The Planning Commission did discuss about the lighting that would be placed on the lots and staff mentioned that would be further reviewed when presented to them.

Motion: Commissioner Dee Roths made a motion to accept the preliminary plat for Sunflower Commerce Park 3rd addition without conditions. John Charleston seconded the motion. *Motion carried 4-0*

C. SD-23-05. Sunflower Commerce Park 3rd Addition Final Plat - Request to plat approximately 96 acres in the Sunflower Commerce Park.

Secretary Cook mentioned that the plat has been reviewed and staff recommends that it be approved. Anne Stephens our city engineer did mention she did not have any concerns at this time.

Motion: Commissioner John Charleston made a motion to recommend to send on to the City Council, Sunflower Commerce Park 3rd Addition as presented. Chairman Jordan seconded the motion. *Motion carried 4-0*

VI. Next Meeting: Thursday, August 10 at 6:30 PM

Motion: Chairman Phillip Jordan made a motion to approve the next meeting date: August 10, 2023 at 6:30 p.m. *Motion carried 4-0*

VIII. ADJOURNMENT

Motion: Commissioner John Charleston made a motion to adjourn. Commissioner Dee Roths seconded the motion. *Motion Carried 4-0*

Proposed Corrections to Minutes From 5/11 Planning Commission Meeting

Attendees at the 5/11 Planning Commission Meeting propose the following corrections, so that the Minutes more accurately reflect what happened at the meeting:

- a. The request from "one resident" wasn't that "Kechi residents in the Heritage Hills [sic] subdivision be treated better than Bel Aire residents." A more accurate statement would be: "One resident requested that everyone who would be impacted by the proposed zoning change and PUD be given more input into the process than just the 'normal' input of being invited to public meetings and having a right to file protest petitions. The rationale for that request was that this is not a "normal" zoning change: The City and State have publicly announced a proposed Integra plant that would involve 2,500 employees and nearly \$2 billion in capital expenses."
- b. It is not accurate to say that "the factors seemed to be divided evenly between recommendation and denial." A more accurate statement would be: "Commissioner Jordan went through each of the Golden Factors, and expressed his opinion that most factors appeared to support recommending denial. At least two of the commissioners said they needed more information to make a decision. One of the commissioners simply said they favored approval because that is what the staff recommended. One of the commissioners said they favored approval because they favored 'progress.' None of the commissioners said that they believed the Golden Factors favored recommending approval, or even that the Golden Factors were divided evenly between recommending approval and recommending denial."

STAFF REPORT

STAFF COMMUNICATION

FOR MEETING OF	7/13/2023
CITY COUNCIL	
INFORMATION ONLY	

DATE: 06/27/2023

TO: Bel Aire Planning Commission

FROM: Jay Cook

RE: Agenda

SUMMARY:

ZON-23-01. Proposed re-zoning approximately 63+ acres zoned Agricultural District (AG) to Planned Unit Development - Industrial District (M-1). The current use is farm ground.

General location:

- Southeast corner of Hwy 254 and Rock Rd. (Location Map included)

Applicant/Agent:

- Property Owner: Webb254, LLC, Steve Barrett (Managing Member)
- Agent: Phil Meyer, Baughman Company, PA

History:

- The 63+ acres was annexed into the City of Bel Aire on May 22, 2003, via Ordinance No. 392, and was zoned Agricultural District (AG). In accordance with Bel Aire City Code Chapter 18, Article 7, Section 18.7.0, "the Agricultural District may serve as a 'holding zone' for land where future urban expansion is possible, but not yet appropriate due to the unavailability of urban level facilities and services. Property zoned AG for 'holding zone' purposes may be used for certain commercial and industrial special uses..."

Discussion:

- A zone change has been requested from the Agricultural District (AG) to the Planned Unit Development – Industrial District (M-1)
 - The Planned Unit Development - Industrial District (M-1) is intended to encourage innovation in commercial and industrial development, through designs allowing for a more efficient use of land, incorporation of new technologies in urban land development, and incorporation of a greater variety and flexibility in type, design, and layout of structures.
 - Use Regulations. No building, structure, land or premises shall be used, and no building or structure shall hereafter be erected, constructed, reconstructed, moved or altered except in conformance with those uses provided for below.
 - Permitted uses: The following uses shall be permitted by right in the Planned Unit Development - Industrial District (M-1), subject to all applicable development and performance standards:
 - Commercial office and retail uses pursuant to a Planned Unit Development.
 - Manufacturing and industrial uses pursuant to a Planned Unit Development.

- The City of Bel Aire, Kansas (the “City”) published notice of the public hearing in *The Ark Valley News* on June 22, 2023, and mailed notices to the property owners within the notification area as prescribed by statute and Bel Aire City Code. Because the zoning change impacts property located adjacent to City limits, the notification area was expanded to 1000ft to said properties outside of the Bel Aire City limits.

Legal Considerations:

- Chapter 18, Article 5, Section 18.5.2 of the Bel Aire City Code (relating to Zoning Regulations) provides guidelines for matters which may be considered when approving or disapproving a zone change request. The Planning Commission may find that not all factors will be relevant to this zone change request. Matters that are determined by the Planning Commission to be important will be the basis for the Planning Commission's recommendation. In order to properly make a recommendation to the City Council, the Planning Commission should make specific and substantiated findings supporting its recommendation.

Findings of Fact

The following are the rezoning factors the Planning Commission should consider, a brief explanation of each factor, and staff’s opinion on findings for each factor.

1. **CHARACTER OF THE NEIGHBORHOOD:** *(Factual description of the application area and surrounding property as to land usage, density, intensity, general condition, etc.)*
 - a. The subject property is on the north edge of the current City limits and development area.
 - b. The subject property is the last piece of four lots between Rock and Webb Rd, which other three (3) parcels have already been zoned M-1 for commercial/industrial purposes.
 - c. Currently, the neighborhood is characterized by agricultural, institutional, commercial, industrial, mixed-use, and residential multi-family but is a good prospect for large mixed-use due to its peripheral location in the City limits.
 - d. The subject property is a logical placement for an Industrial PUD due to its proximity to a major highway (Hwy 254) and the arterial Rock Rd.
2. **ZONING AND USES OF PROPERTIES NEARBY:** *(Factual description of surrounding property as to existing zoning and land uses.)*

Direction/Area	Zoning Classification(s)	Land Use(s)
North/Sedgwick County	Agriculture County zoning	Farming/Ranch Use
South/Bel Aire	C-1 “Neighborhood commercial, office and retail, R-3 “Single-family residential” R-5 “Garden and patio homes, townhouses and condominiums”	Apartments, office, condos, Northeast Magnet School
East/Bel Aire	M-1 “Planned Unit Development – Industrial”	Vacant
West Northwest/Kechi	R-1 “Single-family residential”, C-3 “Heavy commercial”, I-1 “Industrial”	Single-family, Northpoint Centre Commercial, KDOT

3. **SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED:** *(How is the property currently zoned and what uses are allowed on the property? Are there uses suitable given surrounding zoning and site criteria? Are the current allowed uses the only ones that might be appropriate for the property?)*
- a. The property is currently zoned Agricultural District (AG) which is intended to maintain and enhance agricultural operations and preserve agricultural lands utilized for crop production or the raising of livestock.
 - b. The “holding zone” for newly annexed land in the City is Agricultural and this parcel has been given that zoning classification since annexation.
 - c. While the subject property continues to be suitable for AG zoning, the opportunity for development through a PUD or other zoning classification would provide development opportunities and growth opportunities for the city.
 - d. In the Jobs Focus Scenario of Bel Aire growth delineated in the Master Growth Plan adopted by the City, the area between Rock and Webb along Hwy 254 was planned with the potential for large-scale mixed use or commercial.
 - e. The subject property is proximate to existing development, has suitable topography for development, and is located in an area where infrastructure and services are available to be extended to support development.
 - f. The subject property is a logical placement for an Industrial PUD due to its proximity to a major highway (Hwy 254) and the arterial Rock Rd.
4. **EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY:** *[Can the uses allowed in the requested district by good neighbors to existing development? **This is a subjective question.** The focus should be on facts, not fears, and should be based on issues that zoning can address (e.g., allowed uses, minimum lot sizes, height, setbacks, traffic, etc.)*
- a. The proposed planned development is located along the Hwy 254 corridor where such uses are likely and beneficial. Site development standards such as screening and landscaping requirements will mitigate detrimental effects from planned development on nearby residential or other uses, both required or proposed.
 - b. Traffic generation will be likely with the zoning change, but studies and engineering are currently underway along Hwy 254, Rock Rd., and Webb Rd. to mitigate negative impact of added traffic to surrounding developments and to ensure the safest, most effective route to any other development.
 - c. The Planned Unit Development - Industrial District (M-1) requires a screening and buffering plan per the Zoning Regulations that will benefit properties west and south of the subject property. The PUD also gives staff the opportunity to review plats and plans before any building commences to ensure other properties are not negatively affected by the development.
5. **LENGTH OF TIME THE SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED:** *(Factual information, but its importance may be somewhat subjective. A property may be vacant because the current zoning is unsuitable, but there may be other reasons not related to zoning. Some examples might be a glut of available property of the same zoning district, financing problems, land speculation, fragmented ownership, lack of available public services, or other development problems.)*

- a. The property is currently vacant and has been so since annexed in 2003.
- 6. RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY, AND WELFARE BY DESTRUCTION OF VALUE OF THE APPLICANT'S PROPERTY AS COMPARED TO THE HARDSHIP ON OTHER INDIVIDUAL LANDOWNERS:** *(The protection of public health, safety, and welfare is the primary basis for zoning. The relationship between the property owner's right to use and obtain value from their property and the City's responsibility to its citizens should be weighed.)*
- a. The proposed rezoning to a PUD will be developed in accordance with the City's development standards that will mitigate any potential hazards to the public health, safety, and welfare.
 - b. If successfully developed into an industrial project, the City will gain a significant number of local, high-paying jobs which will attract additional residents and promote surrounding development of other commercial, retail, and residential development. The result is potentially a material increase in the tax base, city services, and quality of life in the City.
 - c. Staff cannot anticipate the effects on property values. If developed, surrounding property values may increase significantly from the economic activity. Decrease of property values for residential property immediately adjacent to an industrial site is also possible.
 - d. If the zone change is disapproved, the value of the applicant's property will presumably be diminished because the PUD request will not be allowed.
- 7. CONFORMANCE WITH THE COMPREHENSIVE PLAN:** *(Does the request agree with the adopted plan recommendations? If not, is the plan out-of-date or are there mitigating circumstances which speak to the nonconformity?)*
- a. While the Comprehensive Development plan is somewhat dated (not reflecting surrounding property subsequently zoned M-1 PUD), the vision map adopted by the Governing Body in 2014 nonetheless has the subject property as a potential commercial zone with surrounding mixed use. Increasing the intensity level of the subject property to M-1 PUD would not be unreasonable or create burden for other possible development trends of the City.
 - b. The following are aspects of the Comprehensive Development plan that support the zoning change.
 - c. Goal 1: Land should be developed within the corporate boundaries which continue the high quality of life for the citizens of Bel Aire and to produce efficient and effective delivery of public services to the growing community.
 - Objective 1: Encourage congruent land uses that are compatible and developed in a lowest-impact method to adjacent properties.
 - Recommendation b. Focus higher-impact developments on the peripheral of the city.
 - d. Goal 4: The City must support economic development and diversification to ensure a stable and healthy financial growing community supports the development through the subsequent objectives:
 - Objective 2: Maximize revenue generated from developments which will provide the most return for the investment and land use.

Recommendation b. Ensure location of development is planned in an orderly process (a PUD would ensure this type of development)

Recommendation c. Ensure zoning and building policies reflects progression of development.

Objective 3: Move from sole residential community to a full-service community with diverse city services. The inclusion of possible large-scale development would encourage the development of other services (i.e., desirable businesses to follow).

8. PROPERTY OWNER OPINIONS: *The opinions of other property owners may be considered as one element of a decision in regard to the amendment associated with a single property, however, a decision either in support of or against any such rezoning may not be based upon a plebiscite of the neighbors.*

- a. An initial public hearing held prematurely on May 11, 2023 produced some public opinion (mostly residences west of Rock Road) opposed to the rezoning. Cited concerns included traffic, safety, lighting and property values. Subsequently, a protest petition from some property owners was filed on May 24, 2023 which addresses some of the factors differently than staff. The Planning Commission has been provided a copy of this petition.
- b. While residential property owners on the west side of Rock Road have offered opposition, staff believes most concerns can be properly addressed in the Planned Unit Development and Site Plan review.

9. RECOMMENDATION OF PROFESSIONAL STAFF: *[Should be based on the evidence presented, the factors, adopted plans and policies, and other technical reports (e.g., Capital Improvement Programs, facility master plans, etc.) which speak to the topic and staff's best professional judgement.]*

- a. Based on the preceding findings, staff recommends approval of the zone change request.

RECOMMENDED MOTION:

- I move to adopt the findings of fact of the staff *[as presented/as amended by this Planning Commission]* and recommend to the City Council approval to change the zoning district classification of the subject property from Agricultural District (AG) to Planned Unit Development - Industrial District (M-1) based on such findings of fact.

Jay Cook

From: Jeff Englert <jenglert@naimartens.com>
Sent: Tuesday, July 11, 2023 11:28 AM
To: Jay Cook; Ty Lasher
Subject: Item V.A on the Planning Commission Agenda for ZON-23-01

Ty/Jay,

I was just made aware of the planning commission agenda item regarding the proposed zoning change this coming Thursday at K-254 and Rock. I would attend the meeting to speak in support of the proposed zoning change from AG to M-1 for this property. However, I am out of town. Therefore, I wanted to email you to communicate my support for this zoning change. Thanks

Jeff Englert
Senior Vice President
NAI Martens
1330 E. Douglas Ave.
Wichita, KS 67214
Cell 316.214.3436

NAI Martens will never request or send wire transfer instructions by email. If you receive a request for this information, please contact the sender at 316-262-0000.

Jay Cook

From: Ty Lasher
Sent: Thursday, July 13, 2023 3:25 PM
To: Jay Cook
Subject: FW: Zoning change at Rock and 254 from Ag to Manufacturing



Ty Lasher
City Manager
 7651 E. Central Park Ave.
 Bel Aire, KS 67226
 P: (316) 744-2451 ext:



From: drgarybro@cox.net <drgarybro@cox.net>
Sent: Thursday, July 13, 2023 3:22 PM
To: Ty Lasher <TLasher@belaireks.gov>
Subject: Zoning change at Rock and 254 from Ag to Manufacturing

Hi Ty,

Hope you're doing well. Jim asked to attend or email you with support for the proposed change needed for the Integra Development project.

I don't think I will be able to make it to the planning commission meeting tonight but he said it would be helpful for me to email you and let you know that I support the zoning change.

This is an incredible opportunity for Bel Aire and the surrounding area including Kechi. Business development in the area is inevitable. We are fortunate to have this type of business interested in relocating here.

I understand the local residential concerns, and these concerns can be addressed in the PUD process.

Gary L Breault
 Heartland Animal Hospital
 4100 N Woodlawn
 Bel Aire, Ks 67220
 316-744-2043

Jay Cook

From: Ty Lasher
Sent: Wednesday, July 12, 2023 7:17 AM
To: Jay Cook
Subject: FW: Planning Commission Agenda on July 13,2023



Ty Lasher
City Manager
 7651 E. Central Park Ave.
 Bel Aire, KS 67226
 P: (316) 744-2451 ext:



From: Thomas Heiman <tjheiman@prodigy.net>
Sent: Tuesday, July 11, 2023 9:35 PM
To: Ty Lasher <TLasher@belaireks.gov>
Cc: Jim Benage <JBenage@belaireks.gov>
Subject: Planning Commission Agenda on July 13,2023

Mr. Lasher,

Do to a prior commitment, I can not attend the Planning Commission meeting on July 13, 2023 but as a resident of Bel Aire, I would like to share my feelings on for item V.A on the agenda for Zon-23-01.

As a resident of Bel Aire for 22 years, this note is in support of a zoning change at K-254 and Rock road fro AG to M-1. This change will help the citizens of Bel Aire in multiple ways which makes the change very logical.

Thanks for the opportunity to give input.

Tom and Jeanne Heiman
 4953 N. Parkhurst Ct.

Petition Protesting 7/13 Planning Commission Recommendation

As explained below, the decision of the Planning Commission to recommend approval of ZON-23-01 was so wide of the mark that its unreasonableness lies outside the realm of fair debate.

Character of the Neighborhood.

Jay Cook, Director of Planning and Development conceded at the 7/13 hearing that major highways like K254 serve as boundaries for zoning decisions. At the May 11 hearing, Commissioner Jordan specifically and candidly pointed out that the M1 zoning to the east of the property is not “character” because nothing has been built on it yet, and because zoning is specifically considered in factor 2. No commissioners voiced disagreement with this characterization by Commissioner Jordan.

Thus defined, the “character of the neighborhood” is predominantly agricultural and rural residential, with one high school, one medical office, and some multi-family housing thrown in.

Bel Aire Zoning Ordinance 18.7.1 recognizes that Rural Residential Districts are appropriate “where a neighborhood character of single-family dwellings on large lots has been established.” And the AG district “is intended to maintain and enhance agricultural operations and preserve agricultural lands utilized for crop production or the raising of livestock.” Those neighborhood characters are simply not compatible with an M-1 District. In fact, they are at nearly opposite ends of the density spectrum, as Bel Aire has consistently recognized.

Properties to the northwest of the subject property are not part of the Bel Aire Planning Area, as recognized by the 2014 Comprehensive Plan: “The “Bel Aire Planning Area” as delineated for this Plan includes the City and properties to the North and East of the current developed land in the City limits of Bel Aire as illustrated in the “Vision” Future Land Use Map.”

This factor weighs in favor of denying the application for rezoning.

Zoning and Uses of Properties Nearby

The City’s presentation included properties that are north of 254 and west of Rock Road, and thus not “nearby.” Jay Cook, Director of Planning and Development

conceded at the 7/13 hearing that major highways like K254 serve as boundaries for zoning decisions. The presentation also focussed on property that has been “zoned” M-1” but never “used” as M-1.

The M-1 rezoning of the property that is nearby the subject property is entitled to little weight because it is very recent (April of 2022), and the approval of that zoning change was based in part on four factors that do not exist for the current proposed rezoning.

First, as noted in the April 15, 2022 Staff Report, when the Commission applied the Golden Factors it was apparently with the understanding that traffic would come from Webb Road - already a four-lane road, and that “intersection plans [were] in the works with KDOT” for a “a proposed interchange at K-254 and Webb Road.” No similar plans have been identified as “in the works” for an interchange at K-254 and Rock Road. Also, Webb Road is already a four-lane road with shoulders on both sides. Rock is a two-lane road with no shoulders.

Second, the April 15 Staff Report pointed out that “the requested M-1 zoning is about as far away from rural residential as one can get.” That is not the case for the current proposed rezoning, which is “about as close to rural residential as one can get.” The Staff Report did say that “you can’t expect that this area will stay rural forever –especially with it being this close to a City and with the intersection plans in the works with KDOT” - but it was obviously referring to plans for the intersection at 254 and Webb, not the intersection at 254 and Rock.

Third, the approval of the zoning change was apparently based in part on the recommendation in the Staff Report that, through the PUD process, the “Planning Commission will have the opportunity to ensure that a buffer is created between the residential area to the west and the school to the south.” In other words, a property that is “generally located about ¼ mile east of Rock Road” would require a buffer between it and the rural residential district that is east of Rock Road, and the high school that is south of the annexed property. It would be illogical and irrational to suggest a buffer in 2022 between M1 and Rural Residential properties that are separated by a quarter mile, but then use that zoning change the very next year to justify rezoning to M1 the property that is immediately adjacent to the Rural Residential properties.

Lastly, the Staff Report points out that “No interested parties, other than the agent for the applicant showed up to speak either for or against the proposed rezoning.” that is certainly not the case here, where there is significant opposition to the proposed rezoning. ■ April 2022 Minutes.pdf

The proposed zoning change would be contrary to Goal 1, Objective 1 of the 2014 Comprehensive Plan: “Encourage congruent land uses that are compatible and developed in a lowest-impact method to adjacent properties.”

This factor weighs in favor of denying the requested zoning changes - the existing uses favor denial, and the adjacent M1 zoning was approved in 2022 based on the premise that the site would use 254 and Webb for access, and that the property rezoned in 2022 would include a buffer to the Rural Residential property, and that the property that is currently requesting rezoning would also act as a buffer between M1 and Rural Residential.

Suitability of the Subject Property for the Uses to Which it Has Been Restricted

The Staff Report recognizes that the land is zoned as AG, which “is intended to maintain and enhance agricultural operations and preserve agricultural lands utilized for crop production or the raising of livestock.” ((Emphasis added). The Staff Report doesn’t say anything about why the property is no longer “suitable” for that use, and there is no apparent reason why the land is unsuitable for “raising of livestock.” In fact, Mr. Cook conceded at the hearing that the subject property is *suitable* for agricultural use. Mr. Cook argued that AG is not the *most suitable* use for the subject property - but both the Zoning Regulation and the *Golden* case refer to “suitability” - not “most suitable.”

The Staff Report claims that “The holding zone” for newly annexed land in the City is Agricultural.” But Zoning Regulation 18.6.3. says: “All land which is hereafter annexed into the City shall be zoned AG – Agricultural until such classification shall have been changed by an amendment to the zoning regulations as provided by this Code. A written agreement with the landowner prior to such annexation to designate a specific zoning district designation other than AG may be approved as part of the Annexation process.” . The Staff Report does not mention any such written agreement. Also, if newly annexed land starts as AG, the rezoning still must meet all the requirements of the Zoning Regulations. In other words, starting as AG in annexation does not lower the hurdle for changing the zoning classification - contrary to the City’s argument at the hearing.

Also, land that is annexed does not automatically fall into a “holding zone.” Instead, under 18.7.0, “Agricultural District may serve as a “holding zone” for land where future urban expansion is possible, but not yet appropriate due to the unavailability of urban level facilities and services. (Emphasis added). The Staff Report says nothing about the unavailability of urban level facilities and services when Bel Aire annexed and zoned the land in May of 2003. No evidence was presented at the hearing that “urban level facilities and services” were not available when the property was annexed in 2000. In fact, Mr. Cook’s statement at the

hearing that those facilities “may not” have been available in 2000 is a tacit admission that those facilities *may have been* available in 2000.

To summarize, it does not appear that this land really is a “holding zone”, and even if it was that would not help satisfy this “suitability” factor.

The subject property was used by Bel Aire for agricultural purposes from the time Bel Aire bought the land in 2003, until it sold the land in 2023. There was no written agreement with the prior owner to designate the land as anything other than an Agricultural District. The City has never designated the land as a “holding zone” or as temporary commercial or industrial special uses. There was no evidence of unavailability of urban level facilities and services when Bel Aire annexed and zoned the land in May of 2003. There is nothing about the subject property that makes it “unsuitable for the uses to which it has been currently restricted” - i.e. Agricultural.

This factor weighs in favor of denying the application for rezoning.

Extent to Which Removal of the Restrictions Will Detrimentially Affect Nearby Property

Mr. Cook conceded at the hearing that the City does not know whether the zoning changes will increase the value of neighboring properties, or decrease those values. Statements from Dr. Donnis McPhaul quoted from research that suggests that the additional noise and traffic would decrease those values, and the city offered no evidence to rebut that research.

Mr. Cook conceded at the hearing that the zoning change will bring additional traffic, and the applicant asked Matt Cortez to address that concern. Mr. Cortez explained that KDOT is considering eliminating the K254-Rock interchange, but conceded that the timetable for that is uncertain. Nobody from KDOT spoke at the hearing, but a KDOT representative has told neighbors that the K254-Rock flyover will not be completed in time to alleviate traffic that the zoning change will cause. This presentation was a tacit admission by Staff that “we don’t know yet what the traffic impact will be on nearby properties, but we are hoping for something good from some unnamed “studies and engineering.”

If the City Council is placing *any* reliance on this paragraph, it should table the vote on the rezoning until it can review the “studies and engineering” that might mitigate the increased traffic.

The Master Plan states that “higher intensity land uses tend to negatively impact lower intensity uses.” It is undisputed that M1 is a “higher density” than the

current AG land use of the subject property, than the Rural Residential land use that is to the west, than the multi-family housing that is to the south, than the high school that is to the south, and to the agricultural land that is to the southwest. Thus, according to the City's own Master Plan, approving the zoning change will negatively affect nearby properties. There is nothing in the Master Plan that says this negative impact will not happen if there is a PUD.

The 2016 Bel Aire Master Growth Plan requires avoiding this detrimental impact by: "[a]llowing adjacent land uses to be separated by no more than one intensity level." The Plan does not provide an exception to this requirement where there is PUD. The intensity levels between the proposed M-1 district and the adjacent properties in every direction are separated by more than one intensity level.

The first sentence of the "Basic Land Use Concepts" provides:

"Land uses are planned and regulated according to intensity, which describes the level of activity and density of a use, along with the associated impacts. The activities of higher intensity land uses tend to negatively impact lower intensity uses. For example, a manufacturing plant typically has a fairly high level of activity, which may produce noise and traffic that affect nearby homes."

This is exactly the situation created by the proposed zoning change. The proposed change is from agricultural - the lowest density - to industry/manufacturing - second in density only to Utility/Infrastructure. And it is directly adjacent to Rural Residential density and Agricultural density.

A comparison of 18.7.0 (AG) to 18.7.13 (M-1) shows that virtually none of the Permitted Uses or Accessory Uses that rezoning to M-1 would allow are allowed under the AG District. So, virtually all of the AG restrictions would be "removed." 18.1.3 explains that the purpose of the zoning regulations is "To establish a variety of zoning district classifications according to the use of land and buildings with varying intensities of uses and standards whose interrelationships of boundary zones form a compatible pattern of land uses and buffer areas which enhance the value of each zone." If the zoning change were approved, there would be no buffer zone between Rural Residential and the incompatible M-1 uses that are proposed by the requested zoning change. The applicant has presented no facts to show that the proposed zoning change would "enhance the value of each zone" - especially the adjacent Agricultural and Rural Residential zones. Nor has the applicant presented evidence that the proposed rezoning would "enhance the value of" the high school, the apartment complex, the medical office, or the agricultural land on the west side of Rock Road.

It is undisputed that the zoning change, without any mitigation, will increase traffic on Rock Road, and drastically increase the risk of accidents at 254 and Rock Road. The Commission lacks the necessary facts to quantify or even estimate this detrimental effect until it receives results from any studies and engineering that might currently be underway along Hwy 254, Rock Rd., and Webb Rd. to mitigate negative impact of added traffic.

Other potential detrimental effects to nearby properties include: light pollution, environmental pollution, water usage, obtrusive utility lines, encroachment on property by widening Rock Road, noise, and hours of operation. The commission lacks the necessary facts to quantify or even estimate these detrimental effects until it receives results from any studies and engineering that might currently be underway.

This factor weighs in favor of denying the application for rezoning.

Length of Time the Subject Property Has Remained Vacant as Zoned

Mr. Cook's presentation to the Planning Commission treated the subject property as "vacant." But land that is being used for agricultural is not "vacant" - it is agricultural. And "not purchased" does not mean "vacant."

Golden v. City of Overland Park, 224 Kan. 591 (Kan. 1978) created the eponymous Golden Factors, and that case makes it clear that the question for this factor is whether the subject property remained vacant because the applicant for the zoning change "was unable to make any economically feasible use of his property under the existing zoning." *Id.* at 599. In that case, the applicant presented evidence that a glut in the market for office space made it impossible for him to make any economically feasible use of his property under the then-existing zoning that limited the land use to commercial office buildings.

In the current rezoning application, no facts have been presented to show that the current or former land owners have been unable to use the land for "raising livestock" or the other permitted uses under the existing AG zoning. Instead, the subject property has been used for "raising livestock" during the entire time that Bel Aire owned property, and the current owner has presented no evidence to show that they would be unable to make any economically feasible use of the property under the existing Ag zoning. Unlike in *Golden*, there has been no showing that there is a glut on the market for agricultural land. It is not enough for the property owner to show that they could make *more* money if the rezoning is approved.

This factor weighs in favor of denying the application for rezoning.

Relative Gain to the Public Health, Safety, and Welfare By Destruction of Value of the Applicant's Property As Compared to the Hardship on Other Individual Landowners.

This factor focusses on the “gains” achieved by denying the zoning change, compared to the hardship upon the owner that applies for the zoning change. The Staff Report and the City’s presentation to the Planning Commission pulls this factor from 18.5.2.E.10, which is apparently pulled from page 598 of *Golden v. City of Overland Park*, 224 Kan. 591 (Kan. 1978). But both the Staff Report and the presentation incorrectly inserted the word “other” before the words “Individual Landowner.” The Kansas Supreme Court described this factor in *Golden* this way: “the relative gain to the public health, safety, and welfare by the destruction of the value of plaintiff’s property as compared to the hardship imposed upon the individual landowner.” (Emphasis added).

The City’s replacement of “the” with “other” in the Staff Report confuses the meaning of this factor. As written by the Kansas Supreme Court, this factor is intended to compare the gain to public health, safety and welfare that would be achieved by denying the request, with the hardship that denial would impose on the “individual landowner” that requested the zoning change. This is how the Kansas Court of Appeals interpreted this factor at pages 1272 and 1276 of *R.H. Gump Revocable Trust v. City of Wichita*, 131 P.3d 1268 (Kan. Ct. App. 2006).

The “facts” included in the Staff Report do not address either the gain that denial would bring to public health, safety, and welfare, nor the hardship that denial would cause the owner of the subject property.

Denial of the proposed zoning change would benefit the public health, safety, and welfare because it would avoid a drastic increase of traffic through the dangerous intersection of 254 and Rock Road, and would avoid the additional drain on resources and potential environmental hazards that a large industrial site might create - as compared to the current agricultural uses. The ability of a PUD to mitigate these risks is speculation at this point. The landowner has not presented any facts to show that denial of the proposed zoning change would impose any undue hardship on them. It is not enough for the property owner to show that they could make *more* money if the rezoning is approved.

This factor weighs in favor of denying the application for rezoning.

Conformance With the Comprehensive Plan

The Comprehensive Plan does not show the entire subject property as M1. Instead, part of the subject property is shown as commercial.

The Staff Report and the Staff's presentation at the hearing pointed out that the Comprehensive Plan supports maximizing revenue for the City and using the periphery for industrial and commercial, but neither the report or the presentation informed the Commission about parts of the Comprehensive Plan and Master Plan support denial of the proposed zoning change.

18.5.2.E.12 refers to the "master plan" - not the Comprehensive Plan. :

The proposed rezoning does not conform with the adopted or recognized master plan being utilized by the city. Instead, the proposed rezoning violates fundamental protections in the Bel Aire Master Plan - protections that are intended to protect nearby properties from detrimental effects. Specifically, the first sentence of the "Basic Land Use Concepts" provides that: "The activities of higher intensity land uses tend to negatively impact lower intensity uses. For example, a manufacturing plant typically has a fairly high level of activity, which may produce noise and traffic that affect nearby homes." Similarly, the 2016 Bel Aire Master Growth Plan requires "Maximiz[ing] compatibility between land uses to preserve community character" by "[a]llowing adjacent land uses to be separated by no more than one intensity level." The difference in intensity levels between the proposed M-1 rezoning and all of adjacent properties would be greater than one.

Section 18.1.5 provides that "Where any nonconformity with the Comprehensive Plan or other planning policy may be perceived, the provisions of these regulations shall control."

Objective 1 for Goal 1 strives to: "Encourage congruent land uses that are compatible and developed in a lowest-impact method to adjacent properties." The proposed M1 zoning would not be compatible with the adjacent agricultural or rural residential uses.

Objective 2 for Goal 4 includes: "Avoid development that would create a negative impact on the quality of residential life." The proposed zoning change would be counter to this objective.

This factor weighs in favor of denying the application for rezoning.

Property Owner Opinions

The protest petition filed on May 24 includes opinions of other property owners that are opposed to the proposed rezoning. Property owners spoke against rezoning at both the May 11 and July 13 hearings.

Although three Bel Aire residents spoke in favor of the rezoning, they offered no explanation for how the rezoning would impact their properties - only that they favored the rezoning because it would benefit Bel Aire as a whole. Those opinions may help the City with the Golden Factor that addresses public welfare, but they have no bearing on the Golden Factor that addresses property owner opinions, because their statements had no logical connection to their status *as a property owner*. Similarly, the emails that Mr. Cook read to the commission add nothing to this Golden Factor because the authors were not available to answer any questions, and their comments were written from the perspective of a Bel Aire resident, and not a property owner.

Some of these Bel Aire residents stated, without citing any supporting evidence, that Bel Aire's intention since it bought the subject property in 2020 was always to convert it to industrial property. But Rural Residential (including Heritage Hill) and Agricultural uses were here *before* 2020. In other words, "we were here first"! If Bel Aire truly bought the subject property with the intention of converting it to industrial uses, then it shouldn't have bought the property in the first place, and it would have avoided its current predicament: A rezoning that would violate fundamental precepts of zoning and of its own master plans. This factor weighs in favor of denying the application for rezoning.

Recommendation of Professional Staff

Because the staff recommendation is based on a misinterpretation or misapplication of the Golden Factors and 18.5.2.E, the staff recommendation is entitled to little weight.

Heritage Hills Protest Petition

ZON-23-01

The undersigned residents of Heritage Hills lodge this petition, protesting the decision by the City of Bel Aire Planning Commission to recommend the proposed rezoning from AG ("The current use farm ground") to M-1, on the following grounds:

1. The Official Notice of Zoning Hearing (Notice) may have violated 18.5.2.B.2., of the Bel Aire City Code (the "code") because, according to the Staff Report, the Notice was only sent to "the property owners within the required distance of 200 ft.", even though the Code requires "If a proposed zoning change impacts property which is located adjacent to the city's limits, the area of notification of the action shall be extended to at least 1,000 feet in the unincorporated area."
2. According to the Bel Aire Zoning Application form, "A site plan is required as part of every zoning change application submitted to the City." The form also emphasizes that: "AN INCOMPLETE APPLICATION CANNOT BE ACCEPTED." Bel Aire accepted the site plan, despite the failure of the site plan to meet the following requirements (as explained on the application form):
 - a. An arrow to indicate the north direction
 - b. A scale that is "adequate to portray the project, Lot or structure"
 - c. Dimensions in feet noted for all sides of key features ("lot, buildings, driveway, etc.")
 - d. "Utilities, above and below ground"
 - e. "Drainage patterns"
 - f. "All required zoning setbacks and easements: Using a dashed line, indicate all required zoning setbacks and utility, drainage, or other easements relative to the project, Lot(s) or structure."
 - g. "Indicate surrounding uses and zoning as they apply to the request."
 - h. "Indicate any modifications to the existing structures or features that will result if the zoning change request is approved." Including, buildings, structures, parking areas, vehicular drives, pedestrian walks, location and height of light fixtures, location of trash receptacles and loading areas, landscaped areas.

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- i. Instead of providing the “particular reason for reclassification”, the application simply, and perhaps incorrectly states: “For commercial development.”
 - j. It is not clear whether the application bears the signature of all the property owners, or if a written notarized authorization by the owner(s) was provided or required.
3. As set out in the paragraphs above, “procedures in conformity with law were [NOT] employed by Bel Aire.” These procedural nonconformities are a reason to reject the recommendation of the commission, as established in *Golden v. City of Overland Park*, 224 Kan. 591 (Kan. 1978).
4. Turning to the substance of the decision, as directed by *Golden v. City of Overland Park*, 224 Kan. 591, 596 (Kan. 1978), and as explained below, the action of the Bel Aire Planning Commission “was taken without regard to the benefit or harm involved to the community at large including all interested parties and was so wide of the mark its unreasonableness lies outside the realm of fair debate.”
5. (1) The character of the neighborhood. The character of the surrounding neighborhood weighs against approval. Commissioner Jordan specifically and candidly pointed out that the M1 zoning to the east of the property is not “character” because nothing has been built on it yet, and zoning is specifically considered in factor 2. That leaves only the *residential* “character of the surrounding neighborhood.” No commissioners disagreed with this characterization by Commissioner Jordan.
6. (2) the zoning and uses of properties nearby. Zoning of nearby property weighs against approval. Commissioner Jordan tried to piece together from memory the zoning of the neighboring properties, and concluded that roughly 25% was M1, but 75% was residential – along with the Northeast Magnet High School. Commissioner Jordan and at least one other commissioner pointed out that neither the applicant nor the Bel Aire staff provided the information necessary for the commission to understand the zoning of nearby property and properly apply this “Golden Factor.” At least one commissioner pointed out that they are volunteers, and that the paid and permanent and permanent staff of Bel Aire should have provided this critical information. This should minimize the weight (if any) placed on the Golden Factor for the “recommendations of permanent or professional staff.” If the Commission is not provided the information that they need to make a reasoned decision that considers all of the Golden Factors, then the “unreasonableness [of the decision] lies outside the realm of fair debate.” This also means that the Golden Factor “recommendations of permanent or professional staff” should

not carry much, if any, weight. Based on a quick quick review of the 2016 Zoning map, it appears that none of the ground in the Section that we are concerned about is zoned as M1. Instead, that section is 75% AG, and the other 25% is a split between Residential and Commercial.

7. (3) the suitability of the subject property for the uses to which it has been restricted; Commissioner Jordan noted 254 and “main arterial roads”, but it wasn’t clear if he meant Webb or Rock or both as arterial roads. This distinction between Webb and Rock is significant to the “suitability of property” factor, and entirely ignored by the Commission. Webb is four-lane, has adequate turning lanes, and a wider median at 254 than Rock Road has. This wider median is essential: the 254-Rock interchange has a well-deserved reputation as a fatally dangerous intersection.

Also, Webb Road does not have a high school less than a mile from the property - Rock Road does. USD 259 estimates that 70 buses load and unload every day at Northeast Magnet High School each school day. The Director of Pupil Transportation for USD 259 confirmed that nobody from Bel Aire contacted them about the proposed rezoning - let alone sought their input about the proposed Integra plant.

Similarly, a representative of the K254 Corridor Development Association indicated that the Association was surprised when they were told about Integra building at that intersection, and that the Association won’t have a plan for that intersection until the summer of 2024.

Similarly, residents of Willow Bend are concerned that, if the access to Integra is off of Rock Road, Wichita may be compelled to expand Rock Road from 45th Street south through Willow Bend, ruining the curved sidewalks and tree lines that were part and parcel of the design of Willow Bend. The HOA is concerned about the impact on the picturesque nature of the neighborhood. Willow Bend may well “fight” to move access to Integra eastward to Web where a housing community does not currently exist.

This failure to even *consider* this distinction between Rock and Webb, and to engage key stakeholders before announcing the Integra plant demonstrates that the “unreasonableness [of the Commission’s decision] lies outside the realm of fair debate.”

8. (4) the extent to which removal of the restrictions will detrimentally affect nearby property; Commissioner Jordan pointed out the commission had no

information on this point, other than the current neighbors expressing their concern that property values would fall. One neighbor commented that “if you think this doesn’t hurt property values, you can buy my house.” The Commission had *no* response to this comment. The chair of the Commission, in an apparent attempt to justify approving the zoning change, mentioned that he casually asked this question of two real estate professionals (apparently outside the context of this specific request to changing zoning) and the responses were along the lines of “I don’t know” and “Meh.” The Chair’s basic point was “we care about people, but this is progress and we can’t stand in the way of progress.” With due respect to the Chair and his good intentions, applying a Golden Factor does *not* mean ignoring the factor if you lack the information necessary to apply the factor! And it does not mean ignoring the Golden Factors simply because they stand in the way of “progress.” If the professional staff failed to provide any evidence of this factor to the Commission, or to explain that the Commission can’t apply a factor if they lack the necessary information, then the Golden Factor “recommendations of permanent or professional staff” should not carry much, if any, weight.

Indeed, the only evidence about the impact on value comes from Bel Aire’s own Master Plan¹, where the first sentence of the “Basic Land Use Concepts” provides:

Land uses are planned and regulated according to intensity, which describes the level of activity and density of a use, along with the associated impacts. The activities of higher intensity land uses tend to negatively impact lower intensity uses. For example, a manufacturing plant typically has a fairly high level of activity, which may produce noise and traffic that affect nearby homes.

This is *exactly* the situation created by the proposed zoning change! The proposed change is from agricultural - the *lowest* density - to industry/manufacturing - second in density only to Utility/Infrastructure. And it is directly adjacent to Residential Urban Density!

Thus, this factor weighs heavily against approval.

¹ This Protest Petition refers to the Master Plan that was retrieved from the Bel Aire website on 5/21. The 5/5/23 Staff Report that recommends approval of the zoning change refers to a “2018 Master growth plan” [sic]. Because the Master Growth Plan on Bel Aire’s website is not dated, it isn’t clear whether the Staff Report is referring to the same Master Growth Plan that Bel Aire has posted on its website. If the Staff Report is referring to a different master growth plan, the Petitioners reserve the right to revise this Petition.

9. (5) the length of time the subject property has remained vacant as zoned. This factor also cuts against approval, because this agricultural land hasn't been "vacant" – it has been used for agriculture. Commissioner Dee Ann Roberts commented on seeing calves born on the properties. This factor weighs toward a zoning change only where the property sat vacant because it was no longer suitable for the existing zoning classification, which isn't the case here. The Notice does not claim that the subject property is or has been vacant. Instead, the Notice explains that: "The current use farm ground." If that description is correct, then this Golden Factor weighs against approval. If that description is incorrect, then the staff failed to perform their duties, and the Golden Factor "recommendations of permanent or professional staff" should not carry much, if any, weight.
10. (6) the relative gain to the public health, safety, and welfare by the destruction of the value of plaintiff's property as compared to the hardship imposed upon the individual landowner. There was no evidence presented by the applicant, nor suggested by the commission that the zoning change would provide any "gain to the health, safety, and welfare." And the Commission frankly confessed that they didn't have a clue about the "destruction of the value of the plaintiff's property." But there *was* evidence of the "hardship imposed upon the individual landowner." This evidence was unrebutted, and included:
- a. Some residents moved to Heritage Hills decades ago to enjoy the lack of traffic, lack of light at night, and lack of sound - all of that is at risk.
 - b. Some residents would rather sell their house than live across the street from a property that employs 2,500 people and costs about \$2 billion to build.
11. In addition to not meeting *any* of the *enumerated* Golden Factors, the proposed zoning change does not conform to the City's master zoning plan, for several reasons.

First, the Master Plan explains: "Bel Aire prides itself a city of the future with respect for its past. The title 'Progress with Principles' was conceived to reinforce this motto. It conveys the Plan's intent to guide growth into the future while preserving the fabric of existing neighborhoods and maintaining Bel Aire's unique character." Neither the applicant nor the Commission explained how the proposed zoning change would "preserve the fabric" of Heritage Hills.

Second, the proposed zoning change is inconsistent with the directive to “Adhere to the Preferred Balanced Growth Scenario to ensure land uses are developed in appropriate locations.” The proposed zoning change does *not* adhere to the Preferred Balanced Growth Scenario Map because it would place adjacent parcels that are separated by more than one intensity level. The parcel for which the zoning change is sought is Mixed Use/Local Commercial. The Master Plan describes this as: “Low-intensity commercial uses with a local market area such as retail stores, restaurants, offices and personal services (i.e. bank, barber, doctor). Sites may be developed with individual uses or a compatible mix of local commercial uses and housing.” That zoning would not be compatible with the directive in the Master Plan to “Allow adjacent land uses to be separated by no more than one intensity level . . .” “because Residential Suburban Density is within one intensity level of Mixed Use/Local Commercial. The proposed zoning change would allow adjacent land uses to be separated by a whopping *four intensity levels!* Worse, Heritage Hills is a sort of “Super-Suburban Density” because it is much less dense than Residential Suburban Density. category: “Single-family homes developed at a relatively low density of about 6 units per acre or less, which is typical of suburban residential subdivisions.” Instead of 6 units per acre, Heritage Hills is a gob-smacking 1 unit per five acres!

Third, the first point under Implementation Strategies for Future Development sets this requirement: “Maximize compatibility between land uses to preserve community character as development occurs.” An industrial facility with 2,500 employees is in no way “compatible” with the existing “Residential Suburban Density.”

Fourth, the only location for M-1 on the Preferred Balance Growth Scenario is East of Greenwich, which is about 2.5 miles away from the site of the proposed zoning change! And there are gradual changes in intensity levels, consistent with the Implementation Strategies for Future Development. Similarly, Alternatives 1 and 2 do not place M-1 next to residential, let alone next to Residential Suburban Density.

Fifth, there was no real discussion at the hearing about conformity with the Master Plan. Instead, some of the Commissioners simply stated, without providing any detail or explanation, that the proposed zoning change would conform to the Master Plan.

As explained by the Kansas Supreme Court : “The legislature stressed the making of such plans, and we believe they should not be overlooked when changes in zoning are under consideration.” 224 Kan. at 598.

12. The recommendation of permanent or professional staff does not support the rezoning. In recommending the requested zoning change for approval, the Commission relied heavily on the recommendation of staff, which is not an enumerated Golden Factor, but the Kansas Supreme Court does mention “a consideration of the recommendations of permanent or professional staff.” 224 Kan. at 598. There was no discussion at the hearing about any of the details of the staff recommendation, and a quick look at the May 5 Staff Report suggests why: The “Report” on this proposed zoning change is only six sentences long and does mention *any* of the Golden Factors. Of those six sentences, only these two sentences have any substance: “The 2018 Master growth plan [sic] and the antiquated comprehensive indicates this would be a commercial use district. M-1 is two steps from table 1.2 contained within the 2018 Master Growth Plan; commercial use category and meets the initial requirement. ” But there is no “Table 1.2” in the Master Plan retrieved from the Bel Aire website. Instead, the Master Plan classifies this land as “Mixed Use/Local Commercial, which *Figure 1.2* shows as *four* steps away from Industry/Manufacturing. Perhaps more importantly, the Staff Report does not even mention that the property is adjacent to the Heritage Hills property that fits the *Figure 1.2* definition of Residential Suburban Density - which *Figure 1.2* shows as being *seven* steps away from the proposed M-1 zoning.

Not only does the Staff Report appear to contain significant errors, the Staff Report does not even mention any of the enumerated Golden Factors, much less explain the facts that the Commission should have considered when applying those factors. Thus, the action of the Bel Aire Planning Commission “was taken without regard to the benefit or harm involved to the community at large including all interested parties and was so wide of the mark its unreasonableness lies outside the realm of fair debate.” 224 Kan. at 596.

13. In addition to not meeting *any* of the *enumerated* Golden Factors, the City has violated the Golden Rule: Treat others as you would like to be treated. The city did not engage with any of the residents before agreeing to enormous tax breaks and a huge public release of the “great economic benefits” to Bel Aire and Kansas and beyond. The neighborhood learned about this when they watched the slap-on-the-back videos. When asked by a resident “If you lived here, would you like for this enormous monstrosity to be built across the

street from you”, the Commission made no response at all. When asked if the residents could have input in the PUD, the response from the paid staff was to the effect of: “You will have the same rights as any Bel Aire resident would have, and no more.” The paid staff also claimed that this zoning change was not tied to any specific business, despite a huge public announcement by the state and Bel Aire that Integra would be building a huge site on the property. The paid staff not only left the residents out of the process, they also apparently left Integra out of the rezoning process.

14. In addition to not following the procedural requirements of the BAZO, and violating the Golden Rule, the commission may have violated the rules of procedure at the hearing. Specifically, Commissioner Jordan made a passionate plea for tabling the decision until the commission had more information. Commissioner David Floyd also made a passionate plea for tabling the decision until the commission had more information. He noted that they were all volunteers, and it wasn’t their job to go out and find all the information that they needed to apply the Golden Factors. He also noted that “We are talking about forever here.” Commissioner Floyd was visibly upset and explained that he believed he had to vote yes because a no vote would mean he didn’t support the zoning change, and he just wanted to get more information before voting yes or no. He went so far as to say something like: “I sure wish that the motion had been to table the decision, instead of to make the decision.” No one explained to Commissioner Floyd that he could have made a counter motion, or a cross motion, or abstained from voting. If Commissioner Floyd had abstained from voting, the vote would have been tied at 2 to 2, which, according to 5.13 B: “A tie vote, or the failure to obtain a majority vote of the Planning Commission on any motion, shall be deemed to be a recommendation of disapproval.” If this was a failure of the staff to perform their duties, then the Golden Factor “recommendations of permanent or professional staff” should not carry much, if any, weight.

In conclusion: 1) the recommendation of approval violated Bel Aire’s own rules that apply to applications for zoning changes; 2) did not satisfy *any* of the Golden Factors; 3) violated the procedural rules for voting at commission hearings ; and 4) violated the Golden Rule.

DULY SIGNED AND VERIFIED BY:

- A. Residents who DID receive Notice of the proposed zoning change (one per household):

1. PRINT YOUR ADDRESS HERE: _____

- PRINT YOUR NAME HERE: _____
- SIGN YOUR NAME HERE: _____
2. PRINT YOUR ADDRESS HERE: 7901 E. OAKTREE LN, Lechi KS
- PRINT YOUR NAME HERE: Donnis McPhaul
- SIGN YOUR NAME HERE: Donnis McPhaul
3. PRINT YOUR ADDRESS HERE: 7730 E OAKTREE LN, KS
- PRINT YOUR NAME HERE: MERLIN MARSHALL
- SIGN YOUR NAME HERE: DELORE MARSHALL
4. PRINT YOUR ADDRESS HERE: 7625 E Oak Tree Lane
- PRINT YOUR NAME HERE: Lois Dunham
- SIGN YOUR NAME HERE: Lois Dunham
5. PRINT YOUR ADDRESS HERE: Angela Leiker
- PRINT YOUR NAME HERE: 7201 E. Oak Tree Ln
- SIGN YOUR NAME HERE: Angela M Leiker
6. PRINT YOUR ADDRESS HERE: 7735 OAK TREE LN
- PRINT YOUR NAME HERE: ANNE KUCKEMAN
- SIGN YOUR NAME HERE: Anne Kuckelman
7. PRINT YOUR ADDRESS HERE: 7620 E. Oak Tree Ln
- PRINT YOUR NAME HERE: Louis R. Hendricks
- SIGN YOUR NAME HERE: L. R. Hendricks
8. PRINT YOUR ADDRESS HERE: _____
- PRINT YOUR NAME HERE: _____

SIGN YOUR NAME HERE: _____

B. Residents who DID NOT receive notice from Bel Aire of the proposed zoning change (one per household):

9. PRINT YOUR ADDRESS HERE: 7420 E OAK TREE LN

PRINT YOUR NAME HERE: BRIAN BOEDING

SIGN YOUR NAME HERE: [Signature]

10. PRINT YOUR ADDRESS HERE: 7425 Oak Tree Ln

PRINT YOUR NAME HERE: Lisa Brummer

SIGN YOUR NAME HERE: [Signature]

11. PRINT YOUR ADDRESS HERE: 7325 E OAK TREE LN

PRINT YOUR NAME HERE: [Signature]

SIGN YOUR NAME HERE: Jeff Palmer

12. PRINT YOUR ADDRESS HERE: 7320 OAK TREE LN

PRINT YOUR NAME HERE: DONALD STONEBROOK

SIGN YOUR NAME HERE: Donald Stonebrook

13. PRINT YOUR ADDRESS HERE: 7200 OAK TREE LN

PRINT YOUR NAME HERE: JERRY HAMILTON

SIGN YOUR NAME HERE: [Signature]

14. PRINT YOUR ADDRESS HERE: 7201 OAK TREE LN

PRINT YOUR NAME HERE: MARK LEIKER MD

SIGN YOUR NAME HERE: Mark Leiker

15. PRINT YOUR ADDRESS HERE: 7325 E. Oak Tree Ln.

PRINT YOUR NAME HERE: Patty L. Sanders

SIGN YOUR NAME HERE: Patty L. Sanders

16. PRINT YOUR ADDRESS HERE: _____

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17. PRINT YOUR ADDRESS HERE: _____

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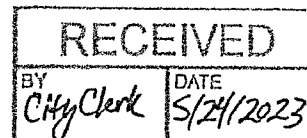
21. PRINT YOUR ADDRESS HERE: _____

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22. PRINT YOUR ADDRESS HERE: _____

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23. PRINT YOUR ADDRESS HERE: _____

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24. PRINT YOUR ADDRESS HERE: _____

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SIGN YOUR NAME HERE: _____

DRAFT

RECEIVED	
BY	DATE

MANAGERS REPORT

DATE: July 28, 2023
TO: Mayor Benage and City Council
FROM: Ty Lasher, City Manager
RE: August 1, 2023 Agenda



Consent Agenda (Item IV)

The Consent Agenda contains only the minutes of the July 18, 2023 regular City Council meeting.

AP Ordinance (Item VII)

This reporting period includes one payroll. Due to rainy weather and storms, some pool rentals were canceled or shortened, and refunds were issued to the renters. Utility Maintenance Contractors was paid \$30,800 for 22 new water service line installations. \$494,755 was paid to Nowak Construction for Cedar Pass water and sewer main installations and \$206,000 went to Bank of New York for CCUA expenses.

City Requested Appearances (Item VIII)

David Floyd will be recognized for his service on the Planning Commission.

Zoning Ordinance for case ZON-23-01 (Item A)

The property owner, Webb254, LLC, has requested a zone change from the current Agricultural District (AG) to the Planned Unit Development – Industrial District (M-1) on a parcel of land located on the southeast corner of Rock and K-254. The zone change process requires official notification, public hearing at the planning commission meeting and a recommendation from the planning commission for council to consider. At the July 13th planning commission meeting, this item was considered and a public hearing held. Following the public hearing, the Planning Commission voted unanimously (4-0) to recommend that the City Council approve the requested zone change. On July 24th, a protest petition was filed with the City Clerk and fell within the statutory 14-day protest period following the public hearing. The protest petition requires a super majority (5 of the 6) approval of the governing body for the zone change approval. Typically, it is a simple two-thirds majority (4 of the 6) vote of the governing body to take action on a zoning request. In accordance with State Law and Bel Aire City Code, the Council may take one of the following actions when considering adoption of the requested zone change:

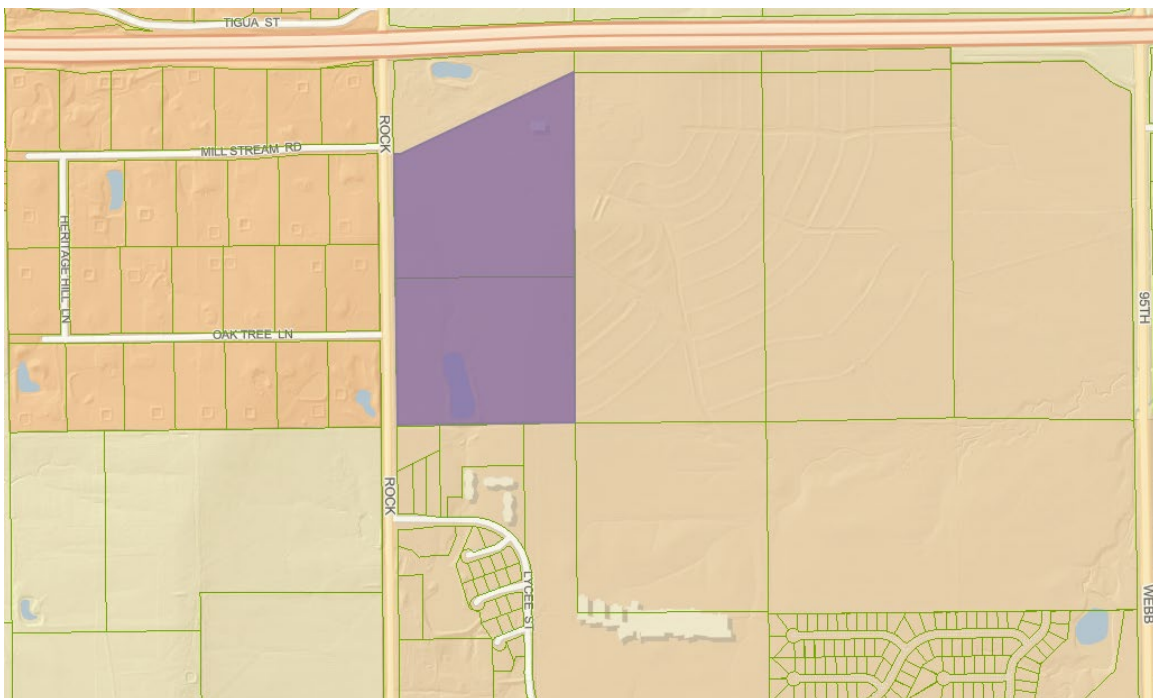
Adopt the findings and factors and recommendation of the Planning Commission on Case No. ZON-23-01 and to approve Ordinance No. 704.
[Requires 75% vote or 5 votes.]

Override the Planning Commission's recommendation, disapprove Case No. ZON-23-01. *[Requires 2/3 vote or 4 votes.]*

Revise the findings and factors and recommendation of the Planning Commission on Case No. ZON-23-01; revise the ordinance to reflect those changes and approve the revised Ordinance. *[Requires 75% vote or 5 votes.]*

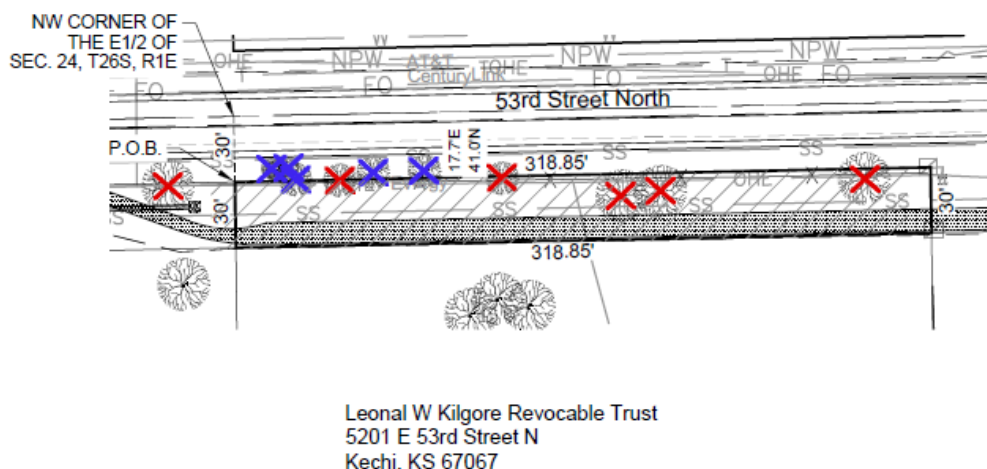
Return the recommendation to the Planning Commission on Case No. ZON-23-01 for further consideration at its next regular meeting because.
[Requires 2/3 vote or 4 votes.]

Included in your packet are several documents and reports for you to read as you consider this zone change request. Staff will be making presentations at the meeting and there may be public comment as well. Staff is recommending that Council adopt the recommendation of the Planning Commission. The City Attorney, Director of Planning & Development and I will be at the meeting for questions.



Right of Way Agreements, 53rd Street (Items B & C)

During the design of the 53rd Street Reconstruction Project, Garver has identified 6 parcels of property where right-of-way or drainage easements are needed. The City hired Skeens Consultant Services to assist with obtaining the right-of-way and drainage easements. Negotiations are now completed with the owners of one property, the Kilgores. In addition to an agreement for Right-of-Way Dedication, City staff is preparing an agreement regarding fence removal/replacement for the property. In the interest of being responsive to the sellers, staff felt it was imperative to get these items on the agenda for the August 1st Council meeting. City staff is refining the agreements and they will be added to the packet on or before Tuesday morning.



Appoint Voting Delegates & Alternates for LKM Meeting (Items D & E)

As members of the League of Kansas Municipalities, Bel Aire is entitled to three votes at the annual business meeting held during the annual conference. This year the conference will be in Wichita on October 7th – 9th. The annual business will be conducted at noon on October 9th. So far, Emily, Jim and I have registered. I and Jim can attend the annual business meeting and hoping Emily can as well. If any other governing body members are attending, they can take my place as a voting delegate. If Emily can't make it, maybe another governing body member can take her place or you can appoint a staff person.

Bel Aire, as a member city of the League of Kansas Municipalities, is allowed three alternates for the League Annual Business meeting. If there are any other governing body members who plan to attend, they can be alternates. If not, Ted Henry, Maria Schrock and Darrell Atteberry will be attending and can serve as alternate voting delegates.

Final Plat for Sunflower Commerce Park 3rd Addition (Item F)

The developer for Sunflower Commerce Park 3rd has provided a final plat to modify the current PUD. The tract is located in Sunflower Commerce Park 2nd Addition. The land was platted for Epic Sports and future growth of that business if the land options were exercised which were not. The remaining parcel was sold to the current developer who desires to subdivide the parcel for manufacturing and warehouses. On July 13th, the Planning Commission reviewed the final plat and voted (by a 4-0 motion) to approve the final plat as presented. Staff recommends Council accept the dedications within the Final Plat for Sunflower Commerce Park 3rd Addition (SD-23-04).

