Salvation Army is not exempt from SUP - Code specific legal explanation
Eastside Neighborhood Coalition
7 July 2006

Like any other neighbors adjacent to dozens of other special land uses, the Eastside Neighborhood Coalition deserves a Special Use Permit to enforce the Salvation Army conditions.

Attempts by the Salvation Army to finesse the City Code to be exempt from a SUP simply are not borne out by numerous sections of the City Code or Kansas Statutes, regardless of what City staff claims.

1) **SUP exemption never existed**
The exemption from Special Use Permit requirements (SUP, previously UPR) for a "halfway house or service-oriented rehabilitation center" located in an industrial zone simply does not exist by Code [Sec. 20-1448 of old Zoning Code]. Sec. 20-1448 actually states that "the requirement for a UPR ***criteria*** shall not be applied", *not* that the UPR itself shall not be applied (as City staff misrepresented it). The UPR criteria in question are listed in Sec. 20-1809 of the old Zoning Code. Therefore, the Salvation Army facility is now, *and has always been,* subject to UPR requirements.
2) **Staff fabricated a version of Code Sec. 20-1448**
City staff formally misrepresented Zoning Code Sec. 20-1448 twice: 25 May 2004 Site Plan Review, and 6 June 2006 Site Plan Review. We highlighted this distortion at the 6 June City Commission meeting, and staff has now reinserted the word "criteria" into the 11 July Site Plan Review. Amazingly, they still claim the exemption exists.
3) **Sec. 20-1448 does not apply to transient shelter/soup kitchen**
Of the six land uses listed in Sec. 20-1448, neither transient shelter or soup kitchen is one of them. These two uses did not appear in the old Code. And under the new Code, they are strictly regulated by SUP.
4) **There is no "existing use allowed by-right"**
Neither a rehab center, a shelter, nor a soup kitchen were rights existing under the auspices of Sec. 20-1448 of the old Code. Therefore, they do not qualify under the new Code Sec. 20-1306(b) to continue without a SUP hearing.
5) **A site plan application is not a "use"**
Richard Zinn suggested in his letter of 16 March 2006 that a site plan "will constitute a use or development activity", and City staff adopted that position. "Use" is not defined in either the old or new Codes, so the standard dictionary definition applies. Webster New Encyclopedic Dictionary defines "use" as: the benefit or profit of property; the legal arrangement by which these benefits are established. City Code sections on development activity and on vesting of rights are the legal arrangement by which use is established, not the simple act of filing a site plan application.
6) **Development Activity has not occurred**
The old Zoning Code states that "Development does not include filling, grading, or excavation [Sec. 20-1428 (b)(1)], and excavation is the only activity on site to date.
7) **A site plan does not vest use rights**
The site plan does not vest use rights unencumbered by a SUP. KSA 12-764 says that "development rights shall vest upon the issuance of all permits required, construction has begun, and substantial amounts of work have been completed".
8) **Vesting of rights**
The new Development Code states that "Rights vest only after the related Building Permit is issued and substantial construction is begun in reliance on that permit" [Sec. 20-1305 (o)(2)].

9) **Site Plan application is not complete**
The application is incomplete without replatting, because the property exists under a 1930 plat of residential lots. The Site Plan legal description does not define the dimensions or boundaries of the land, simply a list of residential lots with the site plan superimposed on it. There can be no building across lot lines. The site plan review procedure in the old Code [Sec. 20-1430] requires City staff to assure site plan conformance with zoning and subdivision Code [Chapters 20 and 21].

10) **Vested rights for this residential plat has expired**
KSA 12-764 says that "if construction is not commenced within five years of filing a (residential) plat, the development rights in such shall expire".

11) **There are no existing rights to transition to the new Code.**
There is no existing use, no development activity, no complete site plan application, no replat, and no vested rights which could transition to the new Code by Sec. 20-110. Likewise, the site plan application is not an existing use allowed by-right, so no automatic special use status can transition to the new Code without a SUP hearing [Sec. 20-1306 (b) of the new Code].

Some of these legal points may be stronger than some of the others. The strong ones are hardly disputable, while all of them as a whole indicate that the City staff and Salvation Army position is weak if not completely wrong.

In light of such a strong case for requiring an SUP in this instance, why is it that the Salvation Army is being provided every opportunity to avoid the SUP? First they were granted an unrestricted site plan in 2004 because of erroneous meaning of Code Sec. 20-1448. When that non-renewable site plan expired, they were allowed to file a carbon copy while claiming it maintained a "use or development activity". Then the unanimous Planning Commission recommendation for rezoning to a class that requires a SUP was suspended in favor of two-party negotiations for a site plan with conditions attached.

When it was proven that conditions on a site plan are neither legal or enforceable, the Salvation Army was allowed to propose conventional zoning with conditions attached, or "conditional zoning". Now that Planning staff cannot find direct reference to conditional zoning in the new Land Development Code, and the concept has been historically rejected, staff is nevertheless inflating a weak argument for it; they say that one line under Sec. 20-1303(f) may allow it when the City Commission approves a rezoning "with conditions or modifications". So far neither David Corliss, David Chinn (consultant), nor David Schauner have found a legal case for conditional zoning in Lawrence. And assuming conditional zoning is disproved, Richard Zinn has already proposed another SUP dodge, conditional platting!

Aside from the undeserved molding of City Code to enable the Salvation Army at the expense of the adjoining neighborhoods, the other problem with conditions by any means other than a SUP is that the conditions are not enforceable.

The Salvation Army certainly can be the Salvation Army with SUP conditions. The neighborhoods want only the transient shelter and community meal program disallowed. Dozens of other parties operate successfully under SUP's without fear of revocation. And under the new Code, these two land uses always require a SUP.

Any way one looks at this issue, an SUP is the only logical, legal and fair way to assure the viability of both the Salvation Army and the adjoining neighborhoods.