

PLANNING COMMISSION REPORT
Regular Agenda - Public Hearing Item

PC Staff Report
11/14/2018

ITEM NO. 5B Z-18-00364 CO (OFFICE COMMERCIAL) DISTRICT TO CC200 (COMMUNITY COMMERCIAL) DISTRICT; 4.31 ACRES (SLD)

Z-18-00364: Consider a request to rezone approximately 4.31 acres from CO (Office Commercial) District to CC200 (Community Commercial) District, located at 2110, 2120, & 2130 Exchange Ct. Submitted by CFS Engineers, for Eastside Acquisitions LLC, property owner of record.

STAFF RECOMMENDATION: Staff recommends approval of the request to rezone approximately 4.31 acres, from CO (Office Commercial) District to an applicable commercial district based on the lesser change table set out in Section 20-1303(c), recommending approval of CN2 (Neighborhood Commercial Center) District and forwarding the recommendation to the City Commission with a recommendation for approval to CN2.

Applicant's Reason for Request: *The conditional rezoning from CO to CC200 would allow for more flexibility in the commercial development of lots. The SE corner was zoned CC200 and the SW corner was zoned CO in the mid-2000s. The developer thought at the time (a few years before the recession) that there was sufficient demand in the market to fill all the office availability on the SW corner and all of the commercial availability on the SE corner. Nearly 15 years later, there has not been a single user on either corner.*

KEY POINTS

- This application is submitted concurrently with a request for comprehensive plan amendment to expand the commercial node to the west side of O'Connell Road per CPA-18-00365.
- Section 20-1303(l)(ii) requires that a plan shall be prepared when the rezoning request is not consistent with adopted plans.
- A specific development application is not included with this request.
- The property is located on the southwest corner of the E. 23rd Street and O'Connell Road intersection.
- The property is not included in a specific area, sector or nodal plan.
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ASSOCIATED CASES/OTHER ACTION REQUIRED

- CPA-18-00365 to amend Chapter 6: Commercial Land Use and Chapter 14: Specific Plans, *Southeast Area Plan* to expand the CC200 node to include area west of O'Connell Road.
- A-8-12-03; 55.45 acre annexation
- PP-8-10-03; Fairfield Farms West Preliminary Plat Planning Commission approved on September 24, 2003.
- PDP-12-12-03; Farmland Northwest Addition
- FDP-8-13-05; Farmland Northwest Addition
- Z-8-27-07; 23.94 acre request to RM-D [RM12D Land Development Code in 2006]
- Z-8-28-03; 8.6 acre request to RS-2 [RS7 Land Development Code in 2006]
- Z-8-29-03; 27.24; acre request to RO-1B (revised to O and PRD-2)
- Z-12-52-02; 17.95 acre request to PRD-2

2115 Exchange Court

- Z-17-00157; 8.566 acres from PRD to RM15.

- MS-17-00704; Fairfield Apartments Addition No. 1
- SP-17-00703; 2115 Exchange Ct. Pending development application for multi-dwelling residential development.

2101 Exchange Court

- Z-15-00243; 9.8 acres from PRD to RM15.
- SP-15-00371; Bethel Estates
- MS-15-00370 Bethel Estates of Lawrence no. 1

Other Action Required

- Approval and adoption of Comprehensive Plan Amendment by governing bodies.
- City Commission approval of rezoning and adoption of ordinance.
- Publication of rezoning ordinance.

PLANS AND STUDIES REQUIRED

- *Traffic Study* – Not required for rezoning.
 - The 7-step TIS is accepted for rezoning request and a future TIS will be required with a more specific development project. Access will be provided from Exchange Court.
- *Downstream Sanitary Sewer Analysis* – Not required for rezoning.
 - The downstream sanitary sewer analysis cover letter dated July 19, 2018 provided by CFS Engineers has been reviewed and is accepted for this project to satisfy the criteria required for the DSSA as outlined in Administrative Policy 76. The proposed density and calculated wastewater discharge for the site will not change the impact to the downstream sanitary sewer capacity and is consistent with the previously approved Fairfield Farms design calculations.
- *Drainage Study* – Not required for rezoning.
- *Retail Market Study* – Not applicable to residential request.
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ATTACHMENTS

Attachment A: Traffic Impact Study
Attachment B: Proposed use restrictions provided by applicant.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- No comment received prior to publication of staff report.

Project Summary:

The proposed request is for rezoning of three undeveloped lots located on the north side of Exchange Court from CO (Office-Commercial) District to CC200 (Community Commercial) District. The application is submitted concurrently with a comprehensive plan amendment request CPA-18-00365.

The applicant has not submitted a specific development application with this request. The request is intended to alter the marketing dynamics of the property by expanding the list of possible uses for this site. The applicant proposes to restrict uses to align the future development with a neighborhood scale commercial development. This project includes an assessment of permitted uses in the existing CO (Office Commercial) zoning district and a restricted CC200 (Community Commercial) zoning district. Staff has also assessed this request against an alternative neighborhood commercial district, CN2 (Neighborhood Commercial Center) District.

1. CONFORMANCE WITH THE COMPREHENSIVE PLAN

Applicant’s Response: *The conditional zoning will be accomplished both within the constraints and while meeting the goals of the Comprehensive Plan. Specifically, existing conditions are favorable to meet Goal 2-Compatible Transition. The adjacent RM15 zoning meets policy 2.3 ‘Higher Density Residential Development as a Transitional use’. The policy also states that not all corners at a CC200 intersection shall be devoted to commercial uses which is met with the industrial area on the north side. Access to the site is in-line with the Horizon 2020 guidelines for CC200. Primary access will occur from 23rd Street to O’Connell, while secondary access will occur from Exchange Court. This will allow traffic to access the area without exiting the neighborhood. To address concerns over typically allowed CC200 uses at the corner, the proposed conditional constraints are provided in the attached “Removed Uses” document.*

The area included in the proposed rezoning is not currently included in any specific area, sector, neighborhood, or nodal plan. Development of the site is generally based on the land use principles included in *Horizon 2020*. The area is included as part of a designated “Higher Density Residential Area” as shown in the Future Land Use Map (3-2).

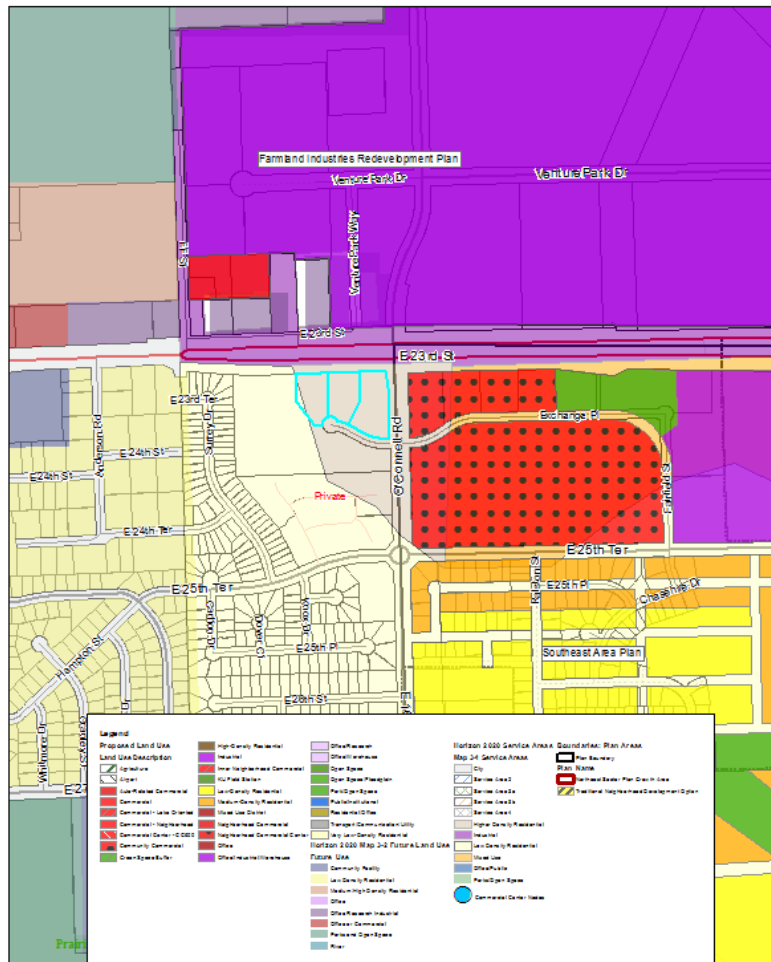


Figure 1: Future Land Use Map - Horizon 2020.

The area has generally developed to be consistent with this recommended land use pattern, with the exception of the lots located along the north side of Exchange Court, which remain undeveloped.

Staff Finding – Approval of the request to a lesser commercial zoning district would result in applicable neighborhood conservation and compatibility while expanding the potential uses within this node.

2. ZONING AND USE OF NEARBY PROPERTY, INCLUDING OVERLAY ZONING

This property is located at the intersection of a principal arterial street and collector street (E. 23rd Street and O’Connell Road). The zoning on three sides of the intersection are more intense than the subject property. The area to the south and west of the proposed request is developed residentially. The area immediately to the south and west is currently undeveloped but zoned for medium density residential development, and a development application for multi-dwelling residential development is being processed. The property is part of the southwest corner of the node. This node is characterized with lower intensity land uses and transitions to low-density residential neighborhood to the west and south.

GENERAL INFORMATION

Current Zoning and Land Use: CO (Office Commercial) District. Vacant land

Surrounding Zoning and Land Use: CS (Commercial Strip) District and IG (General Industrial) District to the north. Knights of Columbus Site/Wireless Communication Tower, vacant lots, and developing industrial uses in the northeast and northwest quadrants of the node.

CC200 (Community Commercial) District to the east. Vacant land in the southeast node quadrant.

RM15 (Multi-Dwelling Residential) District to the south and west. Vacant land, pending development application for multi-dwelling residential use – SP-17-00703.

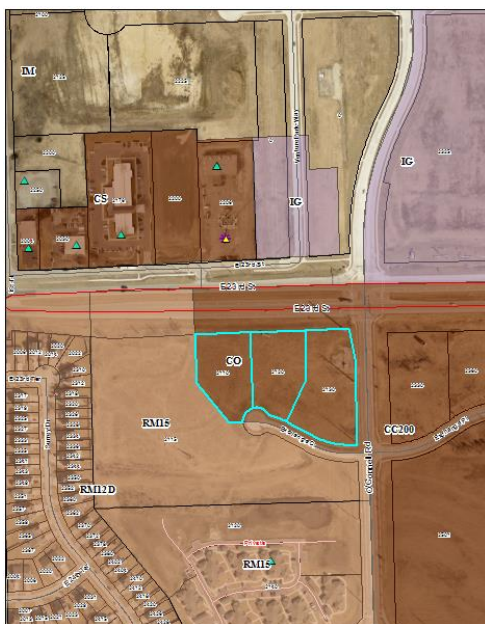


Figure 2: Surrounding Zoning

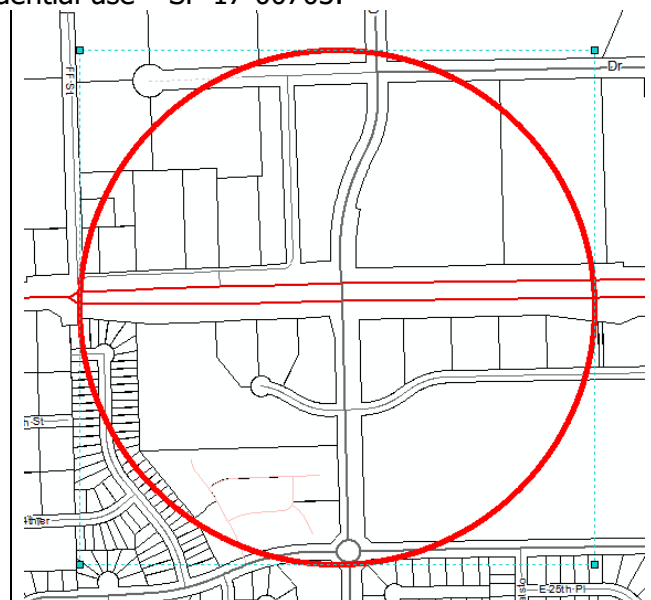


Figure 3: E. 23rd Street and O'Connell Road Node

Staff Finding – This property is surrounded by a variety of zoning districts including intensive commercial, industrial, and medium-density residential uses depending on location within the quadrant of the node. The north side of the node completely includes non-residential uses and zoning.

3. CHARACTER OF THE NEIGHBORHOOD

Applicant's Response: *The neighborhood area is multi-family residential to the west and south. The areas to the east (CC200) and north (IM) are currently being developed.*

These three lots were included in a 55-acre annexation request in 2003. That request expanded the Prairie Park Neighborhood. At the time of annexation, the neighborhood boundary extended only to O'Connell Road. The development pattern, expressed through the zoning and subdivision plats, extended the neighborhood pattern. The planned development included detached residential zoning, duplex zoning, and residential office zoning.

The existing neighborhood boundary extends to E. 1700 Road/Kitsmiller Road to the east and Haskell Avenue to the west. E. 23rd Street is the north boundary of the neighborhood. The south boundary of the neighborhood is the existing city limits.

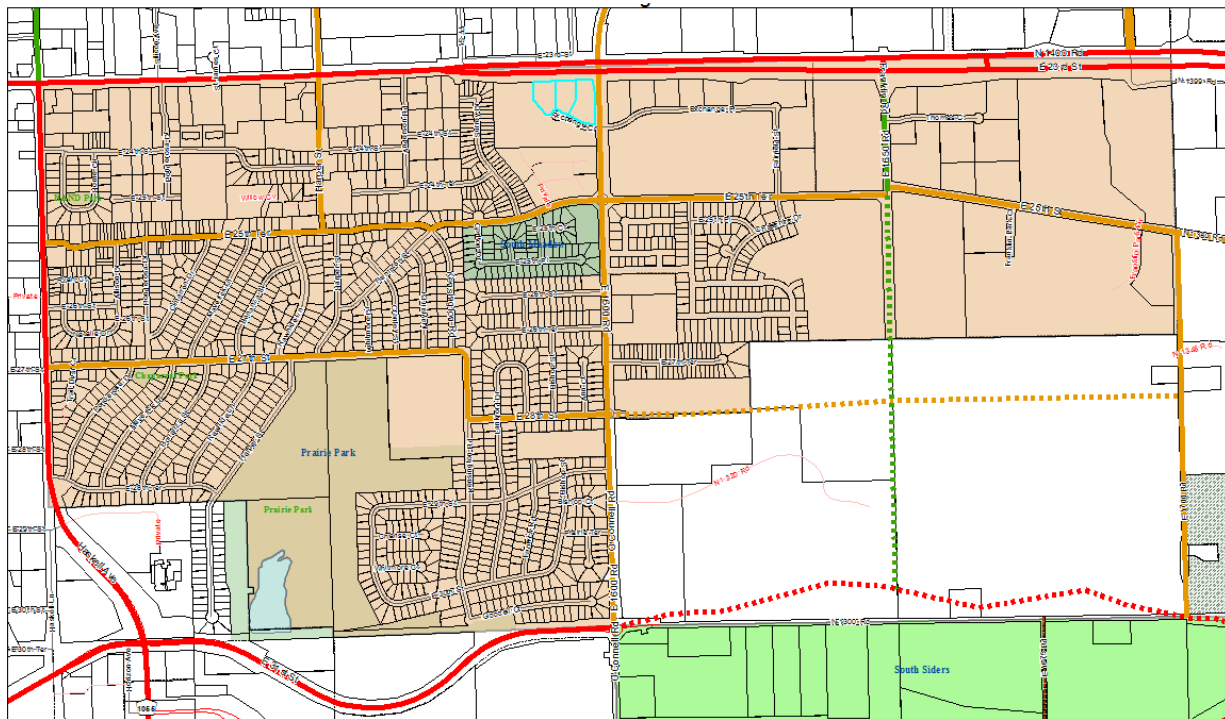


Figure 4: Prairie Park Neighborhood Boundary Map

The area has developed consistent with the platted subdivisions and zoning established in the early 2000's with the exception of these Exchange Court lots.

The neighborhood development pattern established on the west side of O'Connell Road is defined by the subdivision plats, creating the framework for the neighborhood. This pattern is repeated on the east side of O'Connell Road for the residential development south of E. 25th Terrace.

The area on the north side of E. 23rd Street is a distinct development area characterized by industrial and commercial uses. The area is developing as an employment center that will need supporting service uses in the future. While these neighborhood areas are distinct, they interface at the intersection of E. 23rd Street and O’Connell Road creating a node with a symbiotic relationships between residential, employment, and service uses catering to both residents and non-residential users.

Staff Finding – The subject property is located within a node that includes a range of permitted uses. A majority of the immediate intersection area has not been developed at this time. Each intersection quadrant is distinct and should each developed in a means that ensure compatibility to the other quadrants of the intersection and also to their immediately adjacent land uses and neighborhoods.

4. PLANS FOR THE AREA OR NEIGHBORHOOD, AS REFLECTED IN ADOPTED AREA AND/OR SECTOR PLANS INCLUDING THE PROPERTY OR ADJOINING PROPERTY

The area located west of O’Connell Road is part of the Prairie Park Neighborhood and is not included in an adopted area, sector, neighborhood, or nodal plan. The eastern half of the Prairie Park Neighborhood, located east of O’Connell Road, is included in the *Southeast Area Plan*. The subject property is adjacent to but outside of the *Southeast Area Plan* boundary. The property is part of the O’Connell Road/E. 23rd Street node identified in *Horizon 2020* as a “Community Commercial” area.

The north side of the intersection is included in the *Farmland Industries Redevelopment Plan*. The purpose of that plan is to facilitate the redevelopment of a “brownfield into a major community asset.” The area is planned for industrial, business, and research park land uses with limited commercial uses supporting the needs of the area’s workforce. The plan indicates that commercial land use are limited to the areas adjacent to the intersection of E. 23rd Street and FF Street. This intersection is located west of O’Connell Road and aligns with the back entrance to the Douglas County Fairgrounds. The plan did not include an assessment of the nodal impact for areas south of E. 23rd Street.

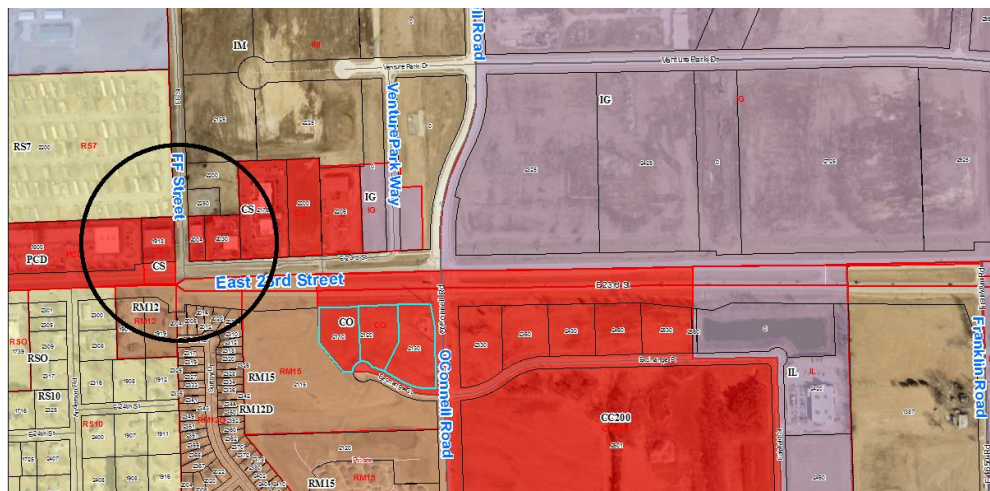


Figure 5: E. 23rd Street and FF Street

Staff Finding – The approved area plans do not address the southwest quadrant of this node regarding development expectations. Planning and land use expectations were identified in 2003

with the initial annexation, rezoning, and subdivision entitlements. The property is part of the O'Connell Road/E. 23rd Street node identified in Horizon 2020 as a "Community Commercial" area.

5. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED UNDER THE EXISTING ZONING REGULATIONS

Applicant's Response: *The existing zoning classification is/will remain commercial. Conditional rezoning will provide more flexibility in development options. We believe that there is a unique consideration for this particular corner to be community commercial in that many retailers are focused on morning traffic (in this case eastbound), and the ease of getting into the near-side corner is important to many of these users. To ensure that use concerns are addressed, the owner has voluntarily developed a "Removed Uses" document (attached) to further restrict development types to meet City concerns.*

Attached to this report is a list of proposed use restrictions created by the applicant. This section of the report summarizes the comparison of the proposed change and restrictions in the context of the Land Development Code. This finding is a pivotal consideration. At the heart of this request is an assertion that the CO District is intended to function as a medium-intensity office zoning district. This district would prevent strip commercial development by allowing office uses, but not allowing other higher-intensity commercial uses serving as a buffer between arterial or collector streets and residential neighborhoods (Section 20-209). The City's historic use of the CO District has been only as a transfer base zoning district from the O-1 (Office) District in the 1966 Zoning Code to this comparable Land Development Code designation in 2006. No CO zoning has been added to the inventory since the adoption of the Land Development Code.

The CC District is intended to implement the comprehensive plan's community commercial polices at a community scale serving multiple neighborhoods per Section 20-211 of the Land Development Code. The intersection of E. 23rd Street and O'Connell Road is identified in *Horizon 2020* as suitable for a new CC200 Community Commercial center. The existing zoning on the east side of O'Connell Road implements this land use policy.

Staff recognizes the need to evaluate several of the commercial zoning districts following the adoption of the comprehensive plan update to align districts and uses with the draft comprehensive plan's vision and intent.

Staff concurs that the CO District has not performed as desired in this location, evidenced by the lack of development of these remaining parcels. The CC200 District greatly expands the amount of permitted uses, and the applicant's response has been to propose specific restrictions to mimic a neighborhood-scale commercial development. This expanded list would permit by right many commercial uses that are prohibited in the CO District or would require a special use permit in the CN2 District.

Assessment of permitted uses in the CO, restricted CC200, and CN2 Districts.

Use Groups that are unaffected by the proposed change:

1. Communication Facilities
2. Urban Agricultural
3. Adaptive Reuse

4. Sexually Oriented Businesses¹
5. Religious Assembly
6. Office
7. Parking Facilities
8. Recycling
9. Group Living
10. Community Facility Uses ²

RESIDENTIAL USES

The CO District does not allow residential uses. The Proposed CC200 would permit various forms of *Multi-Dwelling Residential* uses. The same result can be achieved with the CN2 District.

OTHER USES

The proposed change to CC200 would add *Recycling* as a use that is currently prohibited. The applicant proposes use restrictions to this group that would nullify the intensity of this use if approved.

INDUSTRIAL USES

Industrial facilities that are generally associated as low external/exterior uses or have a strong office component are permitted to some degree in the CO District. The proposed CC District permits more uses by right than the CO district, which requires a special use permit for some uses. The CN2 District is more restrictive in this group of uses than the CO and the proposed CC District. The applicant proposes to restrict all uses in the *Wholesale, Storage & Distribution* use group if approved. These uses are not be permitted in any neighborhood-scale zoning district.

VEHICLE SALES AND SERVICES

The proposed change permits a range of uses related to automotive activities that are currently prohibited by the existing CO District. Uses including *Car Wash, Fleet Storage, Gas and Fuel Sales, Light and Heavy Auto Sales, Rental, Service and Repair, and RV and Boat Sales* would be permitted as proposed. The applicant proposes to restrict *Inoperable Vehicle Storage* uses. The CN2 District permits *Car Wash, Gas and Fuels Sales, and Light Equipment Repair* uses as Special Uses. *Light Equipment Sales and Rental* uses would be permitted by right in the CN2 District.

RETAIL SALES AND SERVICES

Commercial uses permitted in this group are substantially expanded by the proposed CC200 District request. The applicant proposes to restrict only *Retail Establishment, Large* uses. The CO District allows *Food and Beverage Sales* and *General Retail Sales* uses with restrictions when included in mixed use *Office* developments. The CN2 district does not require a mix of uses as the CO District does, but does limit the total square footage that may be included in a commercial development.

TRANSIENT ACCOMMODATIONS

The proposed change would add *Hotel, Motel, and Extended Stay* uses that are currently prohibited in all neighborhood-scale zoning districts. This use would be allowed in the existing CC District to the east, and in the CS and IL Districts located on the north side of E. 23rd Street within the node.

¹ The CC District allows some SOB uses. The applicant proposes restrictions that would prohibit uses making the impact of the change nil for this use group.

² There are only nominal differences between the CO and CC Districts for this use group.

ANIMAL SERVICES

Animal Service uses are moderately expanded in the CC District adding *kennel* and *Livestock Sales* uses as a Special Use Permit. There is no difference between the existing CO District and alternatively the CN2 District regarding this use group.

EATING AND DRINKING ESTABLISHMENTS

This group of uses includes a range of establishment types from Bars and Lounges, to Brew Pubs, to *Fast Order Food*, with or without a *Drive-In* element. Traditional *Restaurant* uses are included in this use group. The CO District allows a limited number of *Eating and Drinking Establishments* and specifically excludes intensive uses such as a *Bar or Lounge* and *Fast Order Food, Drive-In* uses. The CC District assumes a draw from multiple surrounding neighborhood and therefore is more accommodating to an expanded range of uses. The district generally permits auto-centric uses and services that are not generally suitable for a neighborhood-scale district.

The applicant proposes no restrictions that limit uses consistent with neighborhood-scale zoning. The request as proposed would expand service uses including convenience food uses and services within the node.

MEDICAL FACILITIES

The existing CO District allows a variety of medical related uses that would not be permitted if rezoned to CC200. Uses with an office component would be permitted, but those with a predominantly residential character (*Extended Care*) would not be permitted. *Extended Care* uses are a reasonable type of transition use appropriately located at the edges of neighborhood and in some cases may be appropriate within the interior of a neighborhood. Medical uses currently permitted in the CO District would also be permitted in the CN2 District.

RECREATIONAL FACILITIES

The CO District permits *Parks and Open Space* uses and *Active Recreation* uses as a Special Use. *Participant Sports (Indoor and Outdoor)*, and *Entertainment and Spectator Sport (Limited and General)* are not permitted in the CO District. The applicant proposes to restrict the two more intensive uses, *Entertainment and Spectator Sports - General* and *Participant Sports & Recreation, Outdoor*, to align with a neighborhood-scale development. Comparatively, the CN2 District allows, by right, the same uses as the proposed CC200 restricted District.

Staff Finding – Staff concurs that the CO District is not suitable given that it has not been developed. The existing CO District, as currently codified, has not resulted in neighborhood-scale development despite the development activity in the area. The site is desirable and suitable for service type uses with direct access to the street network and existing infrastructure. The proposed change, CC200 with restrictions, expands the opportunity to develop the site to meet the service needs in the southwest quadrant of the node. It also expands uses beyond those that would typically be suitable at a neighborhood-scale. The CN2 District would achieve the goal of providing an expanded list of uses, but at a neighborhood-scale suitable to the location and its surrounding context.

6. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED

Applicant's Response: *15-16 years. These 3 lots have garnered zero interest from the market in this time, in spite of being professionally marketed by four different Lawrence and Kansas City brokerage firms.*

The area was included in a 2003 annexation. Zoning and preliminary plat development applications extended the neighborhood land use pattern to O'Connell Road. The three parcels were rezoned to CO (Office Commercial) in 2006 with the adoption of the Land Development Code. The property has remained vacant since annexation in 2003.

- 1966-2003: A Agricultural Zoning
- 2003: per Z-08-29-03A zoned A to O (Office) District
- 2006: per adoption of Land Development Code CO (Office Commercial) District

Staff Finding – The property has been zoned for a transitional land use since the property was annexed in 2003. The property is undeveloped.

7. EXTENT TO WHICH APPROVING THE REZONING WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES

Applicant's Response: *The conditional rezoning will give nearby residents much-needed commercial options and serve future growth in the area. As mentioned in the above paragraph, access zoning transitions, and specific development restrictions are being considered and addressed. A public meeting was held notifying the surrounding property owners. The fact that not one neighbor attended shows there is little concern with this change.*

(Applicant's reference to "the above paragraph" refers to their response to the question how does the request conform with the Comprehensive Plan.)

Approval of this request would expand the roster of permitted uses for these properties, and marginally limit uses to ensure neighborhood-scale compatibility as proposed. Staff concurs that there is a growing need for conveniently located services for the area's expanding residential neighborhoods and the developing employment district.

The change of permitted uses must balance the impact to the immediately adjacent neighborhood to the southwest and the available, but undeveloped, commercially zoned lots to the east. There may be a risk of impacting the existing commercial lots by allowing the same or substantially similar uses at this quadrant of the node.

This request presumes a more feasible development opportunity for the southwest quadrant of the node by rezoning the property to a base zoning district that permits more use by-right than the current base zoning district.

This site is immediately adjacent to medium and low-density residential developments. Any development of this site must mitigate negative impacts through appropriate site design, building and parking orientation, lighting, and landscaping. By design, the CC District is not a neighborhood-scale zoning district. A change to a neighborhood-scale zoning district, such as CN2, would be more compatible, which would allow a substantially similar set of land uses while preserving the neighborhood-scale development expectations. The drawback in this instance is that some potential uses would require special use permit approval prior to development than being permitted by-right.

Staff Finding – Approving the change as proposed by the applicant instills a limited degree of protections for the adjacent residential neighborhood by limiting certain uses. Approval of the request as proposed may also have effects to the timing of development for land currently zoned CC200 on the east side of O’Connell Road.

A compromise zoning district, CN2, provides substantially similar uses to the proposed restricted CC District while preserving the neighborhood-scale development expectations.

8. THE GAIN, IF ANY, TO THE PUBLIC HEALTH, SAFETY AND WELFARE DUE TO THE DENIAL OF THE APPLICATION, AS COMPARED TO THE HARDSHIP IMPOSED UPON THE LANDOWNER, IF ANY, AS A RESULT OF DENIAL OF THE APPLICATION

Applicant’s Response: *The developer is working closely with the City to identify a commercial use that would benefit all parties involved and provide public value. The conditional zoning from CO to CC200 will provide more options for community improvement and future growth. Denial, the property to remain CO could result in the property remaining vacant for the foreseeable future.*

Evaluation of this criterion includes weighing the benefits to the public versus the benefit of the owners of the subject property. Benefits are measured based on anticipated impacts of the rezoning request on the public health, safety, and welfare.

There is no identifiable public gain by rezoning the property to CC200 with or without restrictions. The property is undeveloped, and this request is speculative since there is no specific development application associated with this request. Staff recognizes the status of office uses within the community and the limited development desirability evidenced by the lack of requests for the CO District in other parts of the community.

The request as proposed by the developer includes uses that are not compatible in a “transitional” location and do not integrate with the immediately adjacent residential uses.

A compromise to this request that both expands the commercial use options while respecting and enhancing the neighborhood structure would be to rezone the property to the CN2 District. Some desirable uses, *Gas and Fuel Sales, Fast Order Food, Drive In, Bar or Lounge* and Various *Retail* uses require a Special Use permit or are otherwise restricted in size by code. The hardship to certain development options would be the requirement to seek additional land use entitlements (Special Use Permit) prior to development.

Denial of the request leaves the property in a state with limited development options. Approval of CN2, per the lesser change table, expands the possible uses and provides some assurances to the neighborhood that certain uses would require special use permit to be reviewed and approved.

Staff Finding – Approving the CN2 District for the property is a reasonable compromise to expand the development opportunities to activate the land while affirming the neighborhood context that defines the southwest quadrant of the node.

9. PROFESSIONAL STAFF RECOMMENDATION

Neither the *Southeast Area Plan* nor the *Farmland Industries Redevelopment Plan* included a specific assessment, analysis, or recommendation for this quadrant of the node. Two significant factors go

into staff's analysis of this request; the recognition that the CO District has not performed as intended and the length of time the property has remained vacant given the surrounding development activity.

Staff concurs that an expansion of possible commercial uses is appropriate for this portion of the node with limitations that are better administered through the CN2 District than the proposed restricted CC200 District.

The Land Development Code provides a mechanism for the Planning Commission to consider an alternative to an affirmative or negative action on the specific request. The Planning Commission may consider and recommend a zoning district that is less intense than the request without requiring a new public hearing per the lesser change table found in Section 20-1303 of the Land Development Code.

CONCLUSION

Staff supports the request for an expansion of uses for the property to spur additional development that would serve both the surrounding neighborhood and commercial/industrial land uses. The Land Development Code would require in some cases a Special Use Permit to ensure compatibility with the surrounding neighborhood instead of what would be possible by-right in a higher intensity commercial zoning district.