1. **Call to Order – Roll Call**

Chairperson Commissioner Vicky Blasi called the meeting to order at 7:30 p.m. Diana Brooks, Secretary called roll with the following members present: Gary Gegen, Tom Glasscock, Angie Banz, Dennis Gruenbacher, Jim Costello, Richard Suellentrop and Joy Scott. Commissioner Kelly Liles was absent.

Commissioner Blasi requested that the City Attorney explain the rules for the conducting of a public hearing. Ms. Alison Brown, City Attorney reviewed the steps for holding a public hearing on the two applications submitted by Abengoa Bioenergy of Kansas. She informed the public they would be allowed to speak after Abengoa’s presentation and each speaker would be given three minutes. She reminded the public that they were not to question the Commissioners, they were to make their statements and at the conclusion of all public comments, the chairperson would close the public portion of the hearing. She stated that after the public portion was closed, no public comments would be taken unless the Commissioners needed clarification of a particular speaker’s comments.

Ms Brown informed all present that those individuals who were not able to be in the building would be given the opportunity to speak first and would have to conform to the same rules.

2. **Approval of the Agenda**

Commissioner Dennis Gruenbacher moved that the Planning Commission approve the agenda. Commissioner Jim Costello second the motion. There was no discussion. Upon a call vote the motion carried 8-0.

3. **Approval of the Minutes**

A. Planning Commission meeting of December 26, 2006

   Commissioner Gary Gegen moved that the Planning Commission approve the minutes of the December 26, 2006 meeting. Commissioner Angie Banz second the motion. There was no discussion. Upon a call vote the motion carried 7-0 with Commissioner Joy Scott abstaining due to being absent from the meeting.

4. **Public Hearings**

A. Review of the request to withdraw Case No. BZA-A-06-02 an application appealing the Zoning Administrator’s decision regarding outdoor storage – ICM

   Commissioner Blasi stated that ICM requested to table this item until the February 27, 2007 meeting. She apologized for any inconvenience this may have caused.
B. Review of the request to approve Case No. BZA-V-07-01 an application for a variance from the required front and sideyard setback limitations at property located at 301 N. 1st St. – ICM, Inc.

Commissioner Blasi stated that ICM requested to table this item until the February 27, 2007 meeting. She apologized for any inconvenience this may have caused.

C. Review of the request to approve Case No. Z-07-01 a request to rezone property located at the SE corner of 167th St. and 61st St from the Sedgwick County Rural Residential District to the City of Colwich I-2 Heavy Industrial District – Abengoa Bioenergy of Kansas

Commissioner Vicky Blasi called the public hearing to order at 7:35 p.m. She stated that the public hearing was for a rezoning amendment requesting a change from the present Sedgwick County Rural Residential District to the City of Colwich I-2 Heavy Industrial District. She welcomed everyone in attendance and laid out the ground rules.

Commissioner Blasi detailed the process that the Governing Body would use when considering the matter, that after the Zoning Administrator’s presentation of the background information, the applicant would present their information and then all interested parties would be heard.

Commissioner Blasi questioned if any of the Planning Commissioners intended to disqualify themselves from hearing the case due to them or their spouses owning property in the area of notification or had conflicts of interest or a particular bias on the matter. Hearing no disqualifications Commissioner Blasi declared that a quorum of eight (8) was present for the hearing.

Commissioner Blasi stated that according to the Secretary that notice of the public hearing was published in the Mt. Hope Clarion on January 4, 2007 and notification was mailed to the applicant and 27 real property owners of record in the area of notification on January 8, 2007. She stated that unless there was evidence to the contrary that she would declare that proper notification had been given in order for the Planning Commission to hear the case. No evidence to the contrary was presented.

Commissioner Blasi questioned if any of the Planning Commissioners had received any ex parte verbal or written communications prior to the hearing which they would like to share with all the members. Commissioner Gruenbacher stated that he had received five written notices and four verbal comments against the project mostly involving truck traffic, smell or odor and pollution; and 43 verbal comments in support expressing increased tax dollars to the school, city and county, economic development, good for agriculture, good for jobs, this was still an agricultural community and did not need to lean everything on the urban community. Commissioner Scott stated she did not receive the 43 verbal communications in support.
Commissioner Blasi called upon the Zoning Administrator, Diana Brooks to provide the Commissioners with a background report on the case. Ms. Diana Brooks, Zoning Administrator, stated that the application was submitted for Mr. And Mrs. Paul Gruenbacher by the applicant’s agent Abengoa Bioenergy of Kansas. She stated that the application was for rezoning on property located at 167th St. and 61st St. from the Sedgwick County Rural Residential District to the City of Colwich I-2 Heavy Industrial District for the purpose of allowing the installation of an ethanol petroleum processing plant. She gave a description of the general location, the site size being 120 acres, and detailed the existing land use and zoning of property adjacent to the project.

Commissioner Blasi called upon the applicant to make a presentation on the request and respond to any of the information given by the Zoning Administrator. Mr. Chris Standlee, Vice President, Abengoa Bioenergy of Kansas, who presented a power point presentation detailing Abengoa being a technological company that applied innovative solutions for sustainable development in infrastructures, environment and energy sectors; their primary activity was the production of fuel ethanol; explained the process used for making ethanol and its benefits as a renewable fuel made from grain.

Mr. Standlee gave a history of the establishment of the High Plains Corporation, Abengoa constructing the first ethanol plant in 1996 in Spain; the purchase of the stock of High Plains Corporation in 2002 by Abengoa and the establishment of Abengoa Bioenergy of Kansas in 2006.

Mr. Standlee presented slides showing the eight plants owned by Abengoa four being international and four being inside the United States with one being the Colwich plant. He detailed the geographical read of the industry, and stated that Abengoa was the leader in ethanol research and development. The location of the and the proposed site of the new plant was detailed showing that the benefits of the new plant would to support and improve the existing Colwich facility, increase economic contributions for local and state economies, and increase their presence in the feed, grain and DDGS market.

Mr. Standlee detailed the project timeline, the impact on the local sales of products, local grain purchase, jobs, increase in usage of local utilities, supplies and services purchased.

Mr. Standlee stated that the new Abengoa plant would be a state of the art facility, that truck traffic would be routed away from populated areas, rail traffic was designed to move large loads at one time, there would be installed a state of the art wastewater treatment system to eliminate smells; a state of the art thermal oxidizers to reduce VOC emissions from feed drying, and that KDHE calculations showed Abengoa was a minor source of emissions, landscaping to help screen the facility from the road and neighboring residential areas; directional lighting to minimize impact at night; an independent lender’s engineer to confirm construction quality and help the community achieve the goals of the City of Colwich’s Comprehensive 20-Year Development plan.
Mr. Standlee detailed the timeline for the construction of the plant with an anticipated completion date of 2009.

Julie McLain, 235 Homestead Dr. stated that due to people having to stand out in the cold the meeting should be postponed until a bigger place could be located for the meeting. Ms. Brown stated that attempts had been made to move the meeting to a large facility but another facility was not available. Ms. Brown assured the Commissioners that state law was being followed and cited the Attorney General’s Opinion that stated a meeting did not have to be moved due to unusually large crowds.

**Commissioner Scott moved that the meeting be table until an appropriate site was made. Commissioner Costello second the motion. There was no discussion. Upon a roll call vote the motion failed five to three with Commissioners Scott, Costello, and Suellentrop voting yea; and Commissioners Banz, Gegen, Blasi, Gruenbacher, and Glasscock voting nay.**

Mr. Craig Kramer, Abengoa reminded the Planning Commission that all requests made by the City had been complied with being the moving of the trucks away from the City, the increased area of the landscaping berm, vegetation being planted on top of the berm to shield the plant from the residential district; and the development of a lighting plan to show that the lights would not be directed to the residential district. Mr. Kramer stated that the company would be using state of the art equipment to address emission issues from the plant being thermal oxidizers, and air scrubbers as well as a state of the art waste water treatment facility.

Ms. Cherry Larson, Ft. Collins Colorado, stated that her company had been contacted by Abengoa to perform an analysis on the current plant and their proposed limits on the new facility. She stated that the results showed no excess of ambient air quality standards and that the operation of both facilities would be within EPA guidelines.

Commissioner Blasi questioned if the Commissioners had questions for the applicant. Hearing none, Commissioner Blasi thanked Mr. Standlee for his presentation.

Commissioner Blasi asked if any members of the public wished to address the Commissioners on this case and reminded each speaker of the three-minute time limit.

Jason Day, 601 Brookside Ct. stated that if the plant was approved it would not be a benefit to the City. He stated that he felt the applications should not be approve based on increased tax benefits. He expressed that he did not think it should be approved based on a fear of the County approving it. He expressed concerns that the company if approved may construct a biomass plant, the park facility being constructed south of the current facility, the need for a biomethanator to treat both plants thus eliminating the need for lagoons, and that
the company had been offered a biomethanator in the past and turned it down. Mr. Day suggested placing the matter to a referendum vote of the people.

Charlene Lebaya, 506 Dawn Ln. expressed opposition to the Abengoa expansion with her main concerns being pollution for her family and the increased traffic. She stated that she lived in Colwich four years and would hate to see the community ruined by the expansion.

Wilma Ellenz, 600 Homestead stated that she was nervous about the traffic and felt it was not good for the town and asked the Commissioners to reconsider their vote.

Steve West, 412 S 6th, expressed the importance of communications and that there were a lot of citizens who had communicated they were against the project. He questioned why the Planning Commission and Council were for the application and hoped they would communicate their reasons to the public. He expressed that he hoped the Commissioners would change their minds and vote against the application.

Paris Ungles, 100 Centennial Ct. expressed he came as a concerned citizen who lived in Colwich 30 years and seen some of the things wrong with the current plant and questioned whether the new plant would fix those concerns. He asked the Commissioners to take this into consideration.

Joe Wappelhorst, 16822 W 61st St. N, expressed concerns regarding water being available for future generations. He detailed his discussion with the Kansas Department of Wildlife and Parks who expressed concerns that the state reservoirs were at low levels threatening water supplies and that there were demands being made on water supplies that could not be sustained. He expressed that given the uncertainty of the water supplies Abengoa’s needs may have an impact on Wichita’s water supplies. He said if Wichita was not concerned about their water supply, why did they stop a housing development in Bentley. He also expressed concerns regarding the response time by the Colwich Volunteer Fire Department versus a full-time Fire Department.

Steven Brenner, 301 W. Union Ave. stated that the northside of Colwich had more than enough traffic going out of ICM and Abengoa. He stated that the City of Colwich will grow without the industry and the City did not need a class three (3) heavy industry business. He stated that the farmers would survive with or without the plant being in the City of Colwich. He stated that the plant was too big and too noisy and the growth to the north would stop. He too suggested putting the decision to the vote of the people.

Joan Lane, 105 S. Crocker expressed opposition to the plant because she did not want the noise, did not want them using all the water, did not want the traffic, and did not want the smell. She asked that the Commissioners to take into account all that the speakers had said and asked they table the action until they could obtain more information on the issues and expressed her opposition to the plant.
Roger Maus, 17605 W. 45th St. stated that the issue had the City tore up, that the Planning Commission was responsible for planning for the future of Colwich, that Wichita was coming out this direction quickly, what would stop Cramner from selling his farm, and then the City may be surrounded with heavy industrial. He stated that if the Planning Commissioner’s approved the application the stink would be their responsibility. He expressed that the issue should go to the vote of the people.

Duane Simon, 6201 N. 167th W. stated he lived at this address almost 20 years, and that it was not right for the plant to go up there and if they wanted to build the plant they should go to the County not the City. He expressed that he felt many people were in opposition to the project.

Patty Konda, 605 Brookside Ct. stated that the Planning Commission should have seen how many people left. She too encouraged the plant to be put into the County and reduce the effect to the children. She expressed concerns for teen drivers and the contact with the railroad.

Ms. Brown introduced Mr. Bob Kaplan, attorney stating that Mr. Kaplan was representing several individuals and had presented 20 names of individuals who had ceded their time to him. The following individuals ceding their time were: Doug Stephens, Butch Spexarth, Teresa Harlow, Roseann Schippers, Jerome Schippers III, Jerome Schippers Jr., Samantha Moore, Greg Moore, Paul Schauf, Steve Wappelhorst, Rita Robbens, Harlan Kuhn, Margaret Rupp, Frances Rupp, and Marcus Wappelhorst. She stated that Mr. Kaplan would be allotted three minutes per person who signed the form.

Mr. Kaplan 430 N. Market appearing on behalf of 26 individuals who had concerns about the building of a manufacturing facility near their home particularly a facility that generated air and water omissions that had the potential for polluting and having environmental issues. Mr. Kaplan introduced Dr. Ben Huie an environmental consultant with degrees from MIT and UCLA.

Mr. Kaplan stated that he did not feel there were good answers to take action on the plan at this time. He stated that before taking action the applicant should fully address and document answers to legitimate concerns, the Planning Commission and elected officials should have sufficient documents to make good decisions, water quality and discharge issues were serious and should be addressed, and questioned whether the problems causing the fish kill in 2004 had been addressed and resolved. He stated it should be determined if the State had taken any related enforcement or compliance actions, to say the present plant was operating within permit limitations was not true and was documented.

Mr. Kaplan stated it should be investigated whether Abengoa had been cited for any other local environmental violations by State or Federal government regulators and questioned how Abengoa would prevent future episodes.
Mr. Kaplan stated that air and odor emissions were an issue and questioned how Abengoa would prevent odors caused by it’s operation as there was no odor action plan in place; how would Abengoa control dust from the increased truck traffic; how would Abengoa handle complaints; and that there were many contradictions on Abengoa’s part expressed throughout the minutes of the meetings.

Mr. Kaplan questioned what Abengoa’s plans were for storage of biomass; and other organic source materials. He expressed concerns regarding the number of trucks, the rail traffic, 24-hour operation of the plant suggested by Mr. Cramer. He questioned if the new plant posed any traffic safety concerns and what Abengoa was willing to do for the community to buffer noise from all night rail switching.

Mr. Kaplan stated that the newspaper reported that members of the Community think that if Colwich didn’t approve the plant Sedgwick County would and the City would lose all control and revenue. He stated that the County Commissioners could not approve the plant because they did not have an application on file. He reminded the Commissioners that the ground was in the City of Colwich and that deannexation and Abengoa going to the County should not be considered.

Mr. Kaplan reviewed the 17 factors and findings and suggested tabling the meeting to hold a work sessions to accurately review the factors and findings. He stated that Mr. Cramer and Mr. Standlee stated that all permits required at this stage, which were approximately a half-dozen, should be presented for the Planning Commission and Council’s review and to his knowledge not one permit had been issued to date. He strongly suggested that Abengoa bring the old plant into compliance and operate it in compliance to prove they were a good corporate citizen.

Mr. Kaplan stated that the present industrial park had available sufficient acreage already zoned to accommodate this facility. He stated that the answer to the current property being suitable for its current use was yes. He stated that one factor asked was if the industrial use was compatible with neighboring residential. He stated that there was no amount of reasoning that could persuade anyone that a heavy industrial use was compatible with Rural Residential and Agricultural.

Mr. Kaplan stated that the answer to the public support should be that the application had overwhelming opposition.

Mr. Kaplan stated that there should be an action plan by the applicant to assure that all the issues were addressed. He stated there were serious issues and if not handled properly had serious implications. He encouraged the commissioners to obtain documentation that the company intended to construct the new plant appropriately.
Dr. Ben Huie stated he was an environmental scientist. He stated he had reviewed the earlier comments about the previous application and based on a review of the data he had serious concerns relating to the proposed rezoning and special use permit. He commented that the applicant’s presentation did not fully alleviate the concerns.

Dr. Huie stated that although representation had been made that the plant would use state of the art technology in the future the City should be sure they were looking at a proposal that would not be using older technology directly adjacent to a residential area. He stated that sufficient data had not been received for either one. He stated that he had not seen guarantees, but had seen representation. Dr. Huie stated that the old technology had been shown to be unreliable and resulted in leaks, and in addition the effluent treatment had been demonstrated to leave high levels in the wastewater, and when discharged into the lagoons it continued to have additional odor problems and had caused a fish kill.

Dr. Huie stated that because of its size the State would not require the plant to make improvements to the old technology, however communities could make such a requirement as a precondition of rezoning and special use. He supported such a requirement be made by the City and Abengoa should be required to meet EPA standards.

Dr. Huie stated Abengoa claimed they exercise due care in handling processed wastewater however they had been cited for one fish kill. He stated discharging such heavily loaded effluent leads to serious odor problems. He stated that hazardous air pollution and nuisance odor were not regulated in the same manner. He state that the City could not rely on KDHE and EPA to protect the local environment.

Dr. Huie stated that there should be thermal oxidizers installed, that wet cake must not be stored more than 72 hours, that a biomethanator should be installed, and scrubbers installed to the vents. He stated that there must be solid assurances that all technologies would be applied at the expansion and at the old facility and an odor action plan be developed to log complaints and the actions taken.

Dr. Huie detailed the sources from which odors could emit, the current plant being prone to odor problems, the company should exhibit their ability to operate their current facility without problems before allowing an expansion.

Mr. Kaplan suggested that with all the truck traffic that a street sweeper be purchased by the company to maintain the roads.

Frank Suellentrop, 623 Homestead Ct. reminded the Commissioners of the bylaws regarding making a decision, reviewed the comprehensive plan showing 60% of the respondents were in opposition to expanding the existing plant and reminded the Commissioners of the factors and findings to be considered. He expressed support for Mr. Kaplan’s suggestions to have a well thought out discussion. He stated that they could not consider Heavy Industrial compatible with Single Family Residential. He requested that the applications be denied.
Alvin Nevell, 14601 W. 77th N. expressed concerns with the traffic at 151st and K-96, with the money that would have to be spent to rebuild the roads to handle the truck traffic. He stated he was not against the plant but he was not in agreement with where the plant was being built. He reviewed the grain usage needed to support the plant and that there was not enough grain in the area. He stated that the byproducts would be shipped to the feed lots to the west and asked the Commissioners to vote no.

Bill Scheffler, 520 S. 1st stated that he agreed with all comments, was concerned with the quality of air, and lack of water at Cheney Reservoir. He stated he was against the project and asked the Commissioners to vote no.

Donna Barrager 6233 N. 167th St. W stated that she was not against bioethanol production but she felt the plant should be away from a residential area, and in an area of the country that had an abundance of water. She stated that she did not want a train car area across from her home, and was concerned with trash blowing into the yard or the corner becoming a waste dump. She asked that the Commissioners vote no as the change would not be appropriate for Colwich.

Earl Barrager, 6233 N. 167th St. W expressed concerns regarding the general location published in the newspaper, the number of trucks that would be in the area and the impact they could have on buses going to and from school. He expressed concern at the increase emissions from the trucks and the impact the trucks would have on traffic at 151st and K-96. Ms. Linda Gage 502 Meadow Lane deferred her three (3) minutes to Mr. Barrager. Mr. Barrager further discussed that the intersections were not designed to handle the large amount of truck traffic. He expressed this was not the place for the plant because there was not enough water, too much traffic, and asked the Commissioners to vote no.

Ann Spexarth, 6455 N. 151st St. W. highlighted an article from the Wichita Eagle, by Scott Kohl, technical director for ICM in which he stated that it was becoming clear that the industry could not be sustained with grain production and that it would be driven toward cellulosic feedstock to continue to meet demands. She expressed concern with the development of a biomass plant at the Abengoa site based on the quoted article.

Mark Spexarth, 6455 N. 151st St. W. requested the Commissioners vote no and deferred his three minutes to Ann Spexarth. Ms. Spexarth quoted an article from Farm and Ranch Guide in which Abengoa’s planner for biomass procurement stated that Abengoa had plans on the table which called for plants to be built that utilized 900 tons of biomass per day. Ms. Spexarth urged the Commissioners to vote no on the rezoning.

Mike Kraus, 427 Homestead Ct. questioned if Commissioner Gruenbacher would like the plant next to his house, discussed the price of grain and the cost of ethanol, and that he could see why the farmers would like to see the plant go in. He stated he was not against ethanol and suggested they move out of town a couple of miles.
Sharon Sheffler, 520 S 1st reminded the Commissioners of the history of the City, the City being a family, faith based, agricultural, and residential community. She questioned the use of the land and asked that the Commissioners to vote no.

Julie McLain, 235 Homestead Ct. stated that she called Sedgwick County and Wichita MAPD and talked to Bill Longnecker who stated that they would never recommended this type of zoning as residential should never be across the street from Heavy Industrial. She stated that Mr. Longnecker stated they had the Golden Rules of Zoning that they always looked at and sent her a copy. She stated that one of the questions was “Could uses allowed in the requested district be good neighbors to the existing developments.” She stated that there was no way that that the Commissioners could answer yes to that. She stated that one question was the relative gain to the public safety and welfare as compared to the loss in the value or the hardship imposed upon the applicant. She stated that again, she did not see any gain to the public health, safety and welfare in passing this. She stated that the other one was opposition or support of neighborhood residents and that she thought a lot of opposition had been heard.

Cindy Stanley, 101 S. Crocker, stated that she was concerned for the health of the children as she did not want the children to breath toxic air because Abengoa did not purchase scrubbers for the stacks, smell the odor or drink contaminated water because Abengoa refused to clean up their lagoons. She stated that there was no need to have an open lagoon and questioned the long term effects on everyone’s health. She stated that in four years the company had spent $17 million to upgrade the plant and that she would like to see a breakdown of money to come in to the City of Colwich. She questioned if 78 jobs were worth destroying the environment and that the numbers were misrepresented. She stated she believed there would be deaths by people being hit by semi-trucks, health problems for the children and adults, contaminated water from the lagoons, and that property owners would sell their homes and more renters would come in.

Pat Wappelhorst, 16822 W. 61st St. W, stated that she lived in the area for 15 years and that her children grew up and called Colwich home. She stated that Colwich was a clean, well maintained, and respectable town. She expressed concerns as to how much would need to be spent to fix streets, and monitor the company’s non-compliance with the EPA and State standards. She questioned what it would do to property values, and expressed concerns as to who would live in a town that was dependent upon an ethanol plant. She stated that the City of Colwich was not dependent upon one company, and asked what it would cost the City in revenue from the many Colwich residents who would be moving and questioned if Abengoa would receive tax abatements and for how long. She questioned if the Company would still be in existence in 10 years. She expressed that if the Commissioners approved the expansion they would permanently change the value of the town. She stated that the Commissioners should be loyal to the residents and businesses who had been good neighbors and welcoming businesses that would nurture not hinder or prohibit growth and Colwich’s way of life. She asked the Commissioners to vote no.
Ben Harlow, 229 Homestead Ct. expressed concern at the discussion of dependence on foreign oil and the need for alternative resources being real. He questioned whether ethanol was the answer, and did not support letting Colwich become an industrial City. He questioned if Abengoa wanted to purchase his home for the fair market value, expressed support for the plant in a different location and stated that there was a lot of vacant land along K-96. He asked people to educate themselves on ethanol as it was not a good marriage for future resources.

Jennifer Stephens, 6811 N. 151st W expressed concerns with the heavy industrial zoning being in close proximity to a residential neighborhood. She expressed concerns regarding the trucks on 151st St. and the potential for train accidents on a road not constructed to handle traffic. She questioned the amount of grain grown in the area, and asked that the Commissioners to let some other community have the plant. She expressed that the air stunk, that the expansion was handled in a subversive manner, questioned if the Commissioners had investigated the company, and questioned if Abengoa was up to code. She stated that the City had done well without Abengoa’s money. She stated that if the Commissioners voted to approve the zoning without taking the care and diligence to determine the facts and they sold out the Community, the citizens would witness a shame. She stated that they would foolishly sell out their community for money and trade the town for the promises of a company who had not kept their promises in the past.

David Vander Griend, President and CEO ICM, 310 N. 1st and 2729 Wildrose, Wichita stated that ICM was the leading US design firm in fuel ethanol. He stated that he wanted to talk about the land west of the railroad tracks. He stated that ICM had plants located throughout the US being: one-half mile from of a McDonalds, one-half mile from a Super 8 Hotel, one-quarter mile from a retirement home and all the facilities were operating fine and great in the communities. He stated that the plants had odor action plans, and questioned if anyone on the Planning Commission had visited a plant. He stated that the technology they would be using was being used in Nebraska and recommended going to clearly understand what was being constructed. He stated that ICM had requested design data regarding noise, emission, and odor as he had responsibility for 550 and soon to be 750 employees, 75 of which had Colwich mailing addresses.

Mr. VanderGriend stated that he had tried to purchase land north of their site and at the first meeting he was told the land would be used for the biomass plant of which he expressed concerns. He stated that next it was mentioned the lot north would be used for storage of cars of which he was concerned about because of the residents directly to the west across the road. He stated that when he made an attempt to purchase the land to protect it from any of those things happening, he was told Abengoa had uses for that piece of property. He stated that this was the property that would be adjacent to the homeowners, with three of those homeowners being employees of ICM.
Millie Sigg, 526 Cardinal Lane gave a history of her family living in Colwich. She expressed concerns regarding the VOCs and the effect of chemicals on small children and the associated hazards. She expressed concerns with the newness of the industry and referred to a Wichita Eagle article stating that the industry would crumble and that there was a movement to use switch grass. She questioned if the plant was being supported by the Federal government and if they had EPA violations would it be shut down. She detailed an insulation plant in Colorado in the 1950’s and 1960’s that went bankrupt leaving the community with serious health problems. She stated that she was not comfortable harboring such an industry and that everyone had a right to clean air. She expressed that she could not walk at times or work in her yard due to the smell.

Loretta Brand, 702 Brookside expressed concerns regarding the air and water pollution and the plant would be devastating to the City of Colwich.

Betty Pugh, 107 N, 6th St. asked that the action be delayed and studied if the Planning Commission could not answer all the concerns.

Victor Breitnbach, 211 S 2nd expressed that he hoped the Planning Commission had given serious thought to the application and what it would do to the City of Colwich. He stated that the City did not need Abengoa and Abengoa did not own anything and that there was nothing to gain from Abengoa. He expressed concerns with the price of grain going up and the impact on the economy.

Commissioner Blasi called for any further public comments hearing none recessed the meeting for 10:05 p.m. Commissioner Blasi reconvened the meeting at 10:10 p.m.

Commissioner Blasi questioned if there were any written communications. Ms. Brooks stated that one letter had been received from Brad Banz. Commissioner Blasi asked that the Zoning Administrator read the letter of support of the project into the record.

Commissioner Blasi asked if the applicant wished to respond to the public comments and asked that they keep their comments to a 15 minute period. Mr. Standlee thanked everyone for sharing their concerns. He stated that he believed there were more misconceptions about the facility than there were truths. He stated that the overall pollution would decrease, screening would be better, pollution would be better, odor better, and traffic would be controlled and re-routed away from the City. He stated that City of Wichita water would be used and that the company was guaranteed by the City of Wichita that there was adequate water supply for their operations. Mr. Standlee stated that the ethanol process did not destroy water, that it would be treated and reintroduced into the environment in an environmentally friendly way. He stated that there would be a fire brigade on site at the plant and that they would train with the Colwich Fire Department.
Mr. Standlee complimented Mr. Kaplan and expressed his respect for Mr. Kaplan as he had known him for over 30 years. He stated that all questions had been answered, plans submitted, that Abengoa had prior discharge issues that had been addressed by entering into an agreement with KDHE, and the plant was operating within the required limits of the agreement. He stated that when the company acquired the plant four years ago it did have some wastewater treatment issues. The wastewater treatment facility was capable of handling the wastewater load of the plant when it was running at normal operations, but it was not capable of handling the wastewater operations when the plant was not running normally. He stated that part of the money specifically addressed the wastewater issue and most recently an additional amount had been spent to further address the issue so that when the current agreement was complete with KDHE the plant would be fully capable of handling the wastewater treatment.

Mr. Standlee stressed that there were no current plans for a biomass site at this facility. He stated that there was a question about permits and that the facility could not be constructed without them. The Heavy Industrial zoning already existed in close proximity to the residential and agricultural area for over 25 years. He stated that the plan was an expansion of the existing use that would improve the existing situation. He stated that the Commissioners had enough information to vote in favor of approving the plans. He pointed out that Dr. Huie’s concerns were addressed in the design of the new facility. He stated that there were concerns about the water from the existing facility being treated with a biomethanator. He stated that the plan was not to install a biomethanator in the existing plant but all the water from the current plant would be piped to the new plant to be treated in the plants ecosystem. He stated that the traffic situation was overstated and estimated that there would be one truck each three minutes during hours of operation with all traffic being routed away from the populated areas, and that the company would not be asking for tax abatement.

Commissioner Blasi asked if anyone from the public wished to respond to the applicant or make any final comments and the public would have 15-minutes.

Cindy Stanley, 101 S. Crocker asked how the company planned to control the plant and questioned if the dirty water was going to be hauled off. She questioned if the water would sit there and put into biomethanators in the new plant which was not a good option and the lagoons needed to be cleaned of sludge. She stated that she did not trust the company and questioned if the City had the money to take the company to District Court for non-compliance. She stated that the City did not have a way of knowing whether they were exceeding their emissions.

Mr. Kaplan, 430 N. Market suggested Mr. Standlee submit documentation and present a plan as he had not seen any in the file. Mr. Kaplan asked what the anticipated use of the land west of the railroad track and suggested tabling the action until the next meeting to give the Planning Commission the opportunity to meet with the Council and the Zoning Administrator to discuss the decision that they were making.
Earl Barrager 6233 N. 167th St. W stated that the City could live without ethanol but the City could not live without water and that the general location described in the publication was correct.

Alvin Neville 14601 W. 77th St. N stated that the traffic was a major deal, as the traffic going east west from the plant would go down 151st which was a county road not built to specifications with shoulders that were not wide enough to move equipment. He stated it was not fair for farmers to take all the traffic on 151st St. to the north across the river. He stated that the trucks should go to 167th either east or west and access K-96. He questioned why Colwich needed one of the largest plants in the country and stated that he did not think that the grain in the area would support the plant.

Pat Wappelhorst 16822 W 61st N. stated the traffic could not be control as she goes down 167th Street and passes semi-trucks all the time. She expressed that Abengoa did not start making upgrades to the plant until they wanted to enlarger the plant.

Dr. Ben Huie 110805 Rolling Hills Dr. supported Mr. Kaplan’s suggestion of having a get together and putting down some conditions to assure that the various concerns had been addressed. He suggested deferring action to delineate exactly what needed to be done.

Mr. Joe Wappelhorst, 16822 W. 61st N., stated that it was obvious that the town didn’t want the plant and questioned how the Planning Commission could vote in favor of the plant.

Hearing no further comments, Commissioner Blasi called for a motion to close the public hearing at 10:35 p.m.

Commissioner Banz moved that the Planning Commission close the public hearing at 10:35 p.m. Commissioner Suellentrop second the motion. There was no discussion. Upon a call vote the motion carried 8-0.

Commissioner Blasi stated that the Planning Commission would deliberate the request and consider the 17 factors in order to make a finding and recommendation to the Governing Body. She stated that each factor would be read and the collective opinion would be summarized for the minutes.

FACTORS AND FINDINGS:

1. What are the existing uses of property and their character and condition on the subject property and in the surrounding neighborhood?

   Farmland to the west. Industrial and light industrial to the south

2. What is the current zoning of the subject project and that of the surrounding neighborhood in relationship to the requested change in zoning classifications?
Rural Residential on the north and west; LI on the east; I-2 to the south and R-1 and R-2 on the west and southwest.

3. Is the length of time the subject project has remained undeveloped or vacant as zoned a factor in the consideration for a change in zoning?

No

4. Would the requested change in zoning correct an error in the application of these regulations as applied to the subject property?

No

5. Is the change in zoning requested because of changed or changing conditions in the area of the subject property and, if so, what is the nature of significance of such changed or changing conditions.

Nothing has changed on the existing property

6. Do adequate sewage disposal and water supply and all other necessary public facilities including street access exist or can they be provided to serve the uses that would be permitted on the subject property if the change in zoning was approved?

Adequate sewer and water supply is available but street access is questionable. City water will be used for domestic water use, sewer use will be for domestic use, and industrial water will be purchased per Abengoa’s agreement from the City of Wichita. The designing of the road would be done by PEC per the City and County standards as required by the City. The number of trucks being 200 per day during daytime hours was clarified.

7. Would the subject property need to be platted or replatted or in lieu of dedications made for rights-of-way, easements, access control or building setback lines if the change in zoning was approved?

N/A as Abengoa had already gone through the platting process.

8. Would a screening plan be necessary for existing and/or potential uses of the subject property if the change in zoning was approved?

N/A as Abengoa had already gone through the platting process.

9. Is the general amount of suitable vacant land or buildings available or not available for development that currently has the same zoning district classification as is requested for the subject property?

No, there is no other land available close to the railroad system.
10. In the event that the subject property is requested for business or industrial uses, are such uses needed to provide more services or employment opportunities?

Colwich does not in need of more jobs.

11. Is the subject property suitable for the current zoning to which it has been restricted?

Needs to the rezoned to comply with the comprehensive plan.

12. If the change in zoning was approved, would the uses which would be permitted on the subject property be compatible with the uses permitted on other property in the neighborhood.

The area to be rezoned is too big, not compatible with all uses permitted. It is compatible with the property to the east but not to the west.

13. Would the change in zoning as requested be consistent with the purpose of the zoning district classification and the intent and purpose of these regulations?

Yes

14. Is the request for the zoning change in conformance with the Comprehensive Plan and does it further enhance the implementation of the Plan?

Yes

15. What is the nature of the support or opposition of the requested change in zoning?

There is opposition and support being smell, traffic emission, contaminated water, water usage, response time by the fire department, companies past history and performance in the last five years and their inability to follow through, concerns about the children, the basics that Colwich has provided over the last 100 years being a strong faith based community, why people have chosen to move and live in the community, an attorney hired to represent the group, possible tax revenue for the city, tax revenue for the school district, economic benefits for area farmers and business, the infrastructure already in place instead of a much less desirable industry, no longer dependent upon foreign oil.
16. Are there any informational materials or recommendations available from professional persons knowledgeable on this request which would be helpful in its evaluation?

Previous minutes, each Commissioner’s homework to share information with the public and from representatives from Abengoa

17. Does the relative gain to the public health, safety and general welfare outweigh the loss in value or the hardship imposed upon the applicant by not approving the requested change in zoning?

The old plant would be improved, the adding of the number of trucks would not be safe for everyone, and the problem the truck traffic would cause school bus traffic.

Commissioner Blais reminded the Planning Commission that a proper motion should reflect the factors on which it was based and called for a motion. There was discussion regarding the holding of a workshop session; the topics to be discussed at the workshop; experts in the ethanol field who were not competitors of Abengoa; the school bus traffic in and around the proposed plant being dealt with the same as larger communities deal with high traffic areas; the concerns with traffic accessing K-96 being communicated to KDOT at their transportation meetings; the possibility of the conditioning approval of the zoning change when the company submitted a traffic plan approved by Sedgwick County.

Commissioner Glasscock questioned placing the matter before the voters. Ms. Brown explained that the State placed the zoning law with cities and all matters in zoning must go through the zoning process. She stated that there was no provision for members of the Community to vote on zoning matters. She stated that zoning changes came to the Governing Body as a recommendation from the Planning Commission for approval or disapproval.

Commissioner Suellentrop questioned a referendum vote. Ms. Brown stated that the Sedgwick County Election Commissioner would not approve placing recommendation votes on a ballot and zoning decisions needed to be made according to State statutes.

Commissioner Scott stated that the Commissioners had heard a lot of comments and that she was going to make sure that the public was being represented.

Commissioner Banz reminded the Commissioners that the area was zoned industrial before Union Park Addition came into being. She stated she did not know who was on the Planning Commission or who allowed Union Park to go in across from the industrial area but the process was done backwards and the City was having to live with the situation.

Commissioner Costello stated that no one envisioned that a plant would go up next to a residential development and that the Planning Commission was missing an opportunity to put in a buffer zone.
Having considered the evidence at the hearing and the factors to evaluate the rezoning application, I Joy Scott move that we recommend to the Governing Body that Case No. Z-07-01 be disapproved to change the zoning district classification from the Sedgwick County Rural Residential District to the I-1 Heavy Industrial District based on the finds of the Planning Commission as recorded in the minutes. Motion seconded by Jim Costello

Discussion. Commissioner Suellentrop stated that he felt the site was too big even though he was supportive of ethanol production he based his opinion on factors six (6) and 12. Commissioner Gruenbacher stated a new plant would be a good way to improve the old plant.

Upon a roll call vote the motion was approved 5-3 with Commissioners Costello, Banz, Suellentrop, Blasi, and Scott voting yea; and Commissioners Gegen, Gruenbacher, and Glasscock voting nay.

Commissioner Blasi stated that the case would be forwarded to the Governing Body with the Planning Commission’s recommendation and a written summary of the hearing for consideration at their special meeting on Tuesday, February 13, 2007 which begins at 7:00 p.m. in the Council’s meeting room in City Hall.

Commissioner Blasi stated that the protest petitions against the change in zoning, but not directed at the Planning Commission’s recommendation as such would be received by the City Clerk until February 13, 2007 at 5:00 p.m. She detailed the petitions needed accurate legal descriptions from the owners of record of 20% or more of the total real property within the notification area.

Commissioner Blasi thanked everyone for participating and called agenda item 4-D.

D. Reviews of the request to approve Case No. SU-07-01 a request for a special use permit to establish an ethanol production facility – Abengoa Bioenergy of Kansas

Commissioner Vicky Blasi called the public hearing to order at 11:40 p.m. She stated that the public hearing was for an application for the establishment of an ethanol production facility as a special use in the I-2 Heavy Industrial District. She welcomed everyone in attendance and laid out the ground rules.

Commissioner Blasi detailed the process that the Governing Body would through when considering the matter; that after the Zoning Administrator’s presentation of background information the applicant would present their case; and then all interested parties would be heard.

Commissioner Blasi questioned if any of the Planning Commissioner intended to disqualify themselves from hearing the case due to them or their spouses owning property in the area of notification or had conflicts of interest or had a particular bias on the matter. Hearing no disqualifications Commissioner Blasi declared that a quorum of eight (8) was present for the hearing.
Commissioner Blasi stated that according to the Secretary that notice of the public hearing was published in the Mt. Hope Clarion on January 4, 2007 and notification was mailed to the applicant and 27 real property owners of record in the area of notification on January 8, 2007. She stated that unless there was evidence to the contrary that she would declare that proper notification had been given in order for the Planning Commission to hear the case. No evidence to the contrary was presented.

Commissioner Blasi questioned if any of the Planning Commissioners had received any ex parte verbal or written communications prior to the hearing which they would like to share with all the members at this time. There was verbal and written communications as previously stated.

Commissioner Blasi called upon the Zoning Administrator, Diana Brooks to provide the Commission with a background report on the case. Ms. Diana Brooks, Zoning Administrator, stated that the application was submitted for Mr. And Mrs. Paul Gruenbacher by the applicant’s agent Abengoa Bioenergy of Kansas. She stated that this was an application for a special use permit for the purpose of allowing the installation of an ethanol petroleum processing plant in the I-2 Heavy Industrial District. She gave a description of the general location, the site size being 160 acres, and detailed the existing land use and zoning of property adjacent to the project.

Commissioner Blasi called upon the applicant to make a presentation to the Commissioners. Mr. Chris Standlee, Abengoa Bioenergy of Kansas requested that the chairperson accept the information as stated previously by reference. Commissioner Blasi so adopted.

Commissioner Blasi asked if there were any members of the public that wished to speak to the case. Ms. Brown stated that the Commissioners could adopt by reference the comments made earlier by the public and then hearing only individuals who had further new information. Commissioner Blasi so adopted.

Mr. Bob Kaplan 430 N. Market, expressed concerns with being consistent with the previous vote. Ms. Brown informed the Commissioners that due to the application for a special use permit being submitted for consideration that the Commission was obligated to hear the case. Ms. Brown stated that the Commissioners were asking the Council to act on either the approval or denial of the special use which could only be done on land that was zoned correctly. She stated that with the denial of the rezoning, the Planning Commissioner would be recommending approval or denial of the special use and whether or not it was zoned that way it would be the responsibility of the Council to either take their recommendation or overturn it. She reminded the Commissioners that the action taken by them was not binding and was only a recommendation to the Governing Body.
Alvin Neville, 14601 W. 77th stated that industrial had a lot of uses that required a lot of traffic in and out. He stated he talked to David Spears two weeks ago who stated he was not aware of the design by Abengoa and that Abengoa did not indicate that they were taking all the traffic to the east.

Earl Barrager, 6233 N. 167th St. W, stated that it was brought up earlier about the school buses on Hillside, Maize, and Ridge Road. He stated that the biggest difference between the two locations was the speed limits being in town 40 and in the rural area being 70.

Sharon Sheffler, 520 S. 1st Street, commented that the streets in Wichita were four lanes and the streets in Colwich were two lanes which made a huge difference.

Pat Wappelhorst, 16822 W. 61st St. N, stated that the comprehensive plan was a plan that was not set in stone. She stated that whoever let an ethanol plant go in made a mistake and whoever lets a bigger one go in was making a bigger mistake.

Ann Spexarth, 6455 N. 151st W. expressed that the future of the company was in biomass plants.

Commissioner Blasi called for any further public comments. Hearing none, asked the Zoning Administrator if there had been any written communications. Ms. Brooks stated there was none.

Commissioner Blasi called for any further comments from the applicant. Hearing none, called for final public comments. There were none.

Commissioner Blasi, hearing no further public comments closed the public hearing at 12:00 a.m.

Commissioner Blasi stated that the Planning Commission would now deliberate the request and moved to adopt the previous 17 factors and findings discussions as it related to the request. Commissioner Banz second the motion. There was no discussion. Upon a call vote the motion carried 8-0.

There was discussion regarding how Abengoa would handle complaints. Mr. Kramer stated that they would investigate. The Commission questioned if they had an odor action plan. Mr. Kramer stated he had never heard of an odor action plan.

 Having considered the evidence at the hearing and the factors to evaluate the special use application, I Joy Scott move that we recommend to the Governing Body that Case No. SU-07-01 be disapproved for the establishment of an ethanol production plant.

Mr. Jeff Jones, Attorney, Abengoa requested that the Planning Commission take action on each parcel listed in the application separately being the 120 acres owned by Paul and Margaret Gruenbacher and 40 acres owned by Abengoa existing in the I-2 Heavy Industrial District.
Motion died for lack of second.

Having considered the evidence at the hearing and the factors to evaluate the special use application, I Joy Scott move that we recommend to the Governing Body that Case No. SU-07-01 be disapproved for the establishment of an ethanol production plant in the I-2 Heavy District for the 40 acres based on the findings of the Planning Commission as recorded in the minutes.

Motion died for lack of second.

Having considered the evidence at the hearing and the factors to evaluate the special use application, I Dennis Gruenbacher move that we recommend to the Governing Body that Case No. SU-07-01 be approved for the establishment of an ethanol production plant in the I-2 Heavy Industrial District on the 40 acres based on the findings of the Planning Commission as recorded in the minutes and that such approval be subject to the following:

That the final plat and screening plan be approved by the Governing Body and that effectuating ordinance be published by the City Clerk when the final plat has been recorded with the Register of Deeds.

That the company be required to meet all of the standards, regulations and rules of the Local, State and Federal ethanol production oversight authorities.

That the City Council ensure that an independent consultant is hired to oversee the building of the facility to assure that pollution, sound, and water issues comply with all Local, State, and Federal regulatory standards.

That the company install and retain a biomethanator, CO2 scrubber and thermal oxidizer for the duration of the ethanol manufacturing establishment, until such time as improved technology and industry standards supports replacement with improved technological components, all in the interest of the communities’ health, safety, and welfare.

Motion second by Commissioner Gary Gegen.

Discussion followed. Commissioner Blasi moved that the Commissioners incorporate the 17 factors and findings as previously adopted. Commissioner Gruenbacher second the motion. There was no discussion. Upon a call vote the motion carried 7-1 with Commissioner Scott voting nay.
Commissioner Gruenbacher amended his motion to: Having considered the evidence at the hearing and the factors to evaluate the special use application, I Dennis Gruenbacher move that we recommend to the Governing Body that Case No. SU-07-01 be approved for the establishment of a “grain” ethanol production plant in the I-2 Heavy Industrial District on the 40 acres based on the findings of the Planning Commission as recorded in the minutes and that such approval be subject to the following:

That the final plat and screening plan be approved by the Governing Body and that effectuating ordinance be published by the City Clerk when the final plat has been recorded with the Register of Deeds.

That the company be required to meet all of the standards, regulations and rules of the Local, State and Federal ethanol production oversight authorities.

That the City Council ensure that an independent consultant is hired to oversee the building of the facility to assure that pollution, sound, and water issues comply with all Local, State, and Federal regulatory standards.

That the company install and retain a biomethanator, CO2 scrubber and thermal oxidizer for the duration of the ethanol manufacturing establishment, until such time as improved technology and industry standards supports replacement with improved technological components, all in the interest of the communities’ health, safety, and welfare.

Amended motion second by Commissioner Gary Gegen.

Upon a roll call vote the motion carried 7-1 with Commissioners Costello, Banz, Gegen, Suellentrop, Blasi, Gruenbacher, and Glasscock voting yea and Commissioner Scott voting nay.

Having considered the evidence and the factors on the rezoning application for the establishment of an ethanol plant facility of 120 acres of rural residential north of the 40 heavy industrial I Richard Suellentrop move that we recommend to the Governing Body that Case No. SU-07-01 be denied based on the findings of the Planning Commission as recorded in the minutes. Commissioner Costello second the motion. There was no discussion. Upon a roll call vote the motion carried 5-3 with Commissioners Costello, Banz, Suellentrop, Blasi and Scott voting yea and Commissioners Gegen, Gruenbacher, and Glasscock voting nay.

Commissioner Blasi stated that the case would be forwarded to the Governing Body with the Planning Commission’s recommendation and a written summary of the hearing for consideration at their special meeting on Tuesday, February 13, 2007 which begins at 7:00 p.m. in the Council’s meeting room in City Hall.
Commissioner Blasi stated that the protest petitions against the change in zoning, but not directed at the Planning Commission’s recommendation as such would be received by the City Clerk until February 13, 2007 at 5:00 p.m. She detailed the petitions needed accurate legal descriptions from the owners of record of 20% or more of the total real property within the notification area.

Commissioner Blasi called for a motion to recess for a period of five (5) minutes.

**Commissioner Dennis Gruenbacher moved that the Planning Commission recess for a period of five (5) minutes beginning at 12:21 p.m. Commissioner Blasi second the motion. There was no discussion. Upon a call vote the motion carried 8-0.**

The meeting reconvened at 12:26 a.m.

5. Public Agendas

There were no public agenda items.

6. Plats

There were no plats for review.

7. Committee and Staff reports

A. Review of the December expenditure report

Ms. Brooks presented the January expenditure report showing that the budget for Planning and Zoning was within the limits adopted by the Council.

B. Review of the 2006 annual zoning activity report

Ms. Brooks presented the 2006 zoning activity report showing the total number of building permits issued were 59 with a total valuation of $7,140,378. She stated that this was an increase over the previous two years.

C. Review of the monthly zoning activity report

Ms. Brooks reported that there were three permits issued for January, 2007 being one (1) new home, and two (2) re-roofing/re-siding permits issued.

8. Screening Plans - None

There were no screening plans submitted for review.
9. Miscellaneous

   A. Election of Officers

       Commissioner Gruenbacher moved that the Planning Commission elect Vicki Blasi as chairperson. Commissioner Glasscock second the motion. There was no discussion. Upon a call vote the motion carried 8-0.

       Commissioner Gruenbacher moved that the Planning Commission elect Tom Glasscock as vice chairperson. Commissioner Blasi second the motion. There was no discussion. Upon a call vote the motion carried 8-0.

       Commissioner Blasi moved that the Planning Commission elect Diana Brooks as Zoning Secretary. Commissioner Banz second the motion. There was no discussion. Upon a call vote the motion carried 8-0.

10. Adjourn

       There being no further business, Commissioner Banz moved for adjournment at 12:30 a.m. Commissioner Scott second the motion. There was no discussion. Upon a call vote the motion carried 8-0.

Respectfully submitted,


Diana K. Brooks, Secretary