

CITY OF PRAIRIE VILLAGE

October 19, 2009

**Committee Meeting
6:00 p.m.**

**Council Meeting
7:30 p.m.**



City Council Meeting

October 19, 2009



Dinner

provided by:

SALTY IGUANA

Burritos and Enchiladas

Beans and Rice

Iguana dip,

Chips and sauce

Cookies

COUNCIL COMMITTEE
October 19, 2009
6:00 p.m.
Council Chambers

AGENDA

MICHAEL KELLY, COUNCIL PRESIDENT

CONSENT AGENDA

AGENDA ITEMS FOR DISCUSSION

- *COU2009-99 Consider Project 190721: 2009 Storm Drainage Repair Program
Construction Change Order #1 (Final)
Bob Pryzby**
- *COU2009-100 Consider Project 190728: Prairie Lane Drainage Project - Design Agreement
Bob Pryzby**
- *COU2009-96 Consider Approval of Project 190652 Park Identification Signs
Bob Pryzby**
- *COU2009-98 Consider Project 190656 Community Center Study
Bob Pryzby**
- *COU2009-97 Consider Project 190653 El Monte Fountain Improvements
Bob Pryzby**
- COU2009-101 Consider Approval of an Ordinance to enact a Master Franchise Code (to
enable a Wholesale Gas Transport Fee)
Steve Horner**
- COU2009-102 Consider Approval of an Ordinance for a Kansas Gas Service Franchise
Steve Horner**

**Discussion regarding consultant to assist with legislative relations and
monitoring
Quinn Bennion**

**Discussion regarding KDOT Transportation Enhancement grant application
for 2011 & 2012
Chris Engel**

***Council Action Requested the same night**



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: October 19, 2009

Council Meeting Date: October 19, 2009

***COU2009-99: CONSIDER PROJECT 190721: 2009 STORM DRAINAGE REPAIR PROGRAM CONSTRUCTION CHANGE ORDER #1 (FINAL)**

RECOMMENDATION

Move to approve construction change order #1 with WCI Inc. for Project 190721: 2009 Storm Drainage Repair Program for \$ \$27,282.53.

BACKGROUND

This Final Change Order reflects the final field measured quantities for all bid items. The largest increases were related to the item for Street Patch Repair, \$16,998.30. Field conditions required more asphalt to be repaired than originally estimated. ADA Ramp Replacement was another item that increased by \$5,511.00 due to additional ramps being affected by the drainage construction.

FUNDING SOURCE

Funds are available in the Capital Infrastructure Program under project 190721 - 2009 Storm Drainage Repair Program. The change order is a 7.2% increase to the existing contract amount.

RELATED TO VILLAGE VISION

TR1c. Ensure that infrastructure improvements meet the needs of all transportation users.

ATTACHMENTS

1. Construction Change Order #1 (FINAL) with WCI Inc.

PREPARED BY

S Robert Pryzby, Director of Public Works

October 19, 2008

Explanation of Changes

Project 190271; 2009 Storm Drainage Repair Program. This change order is to cover the following items:
Final As-Built Quantities. Additional Asphalt and ADA ramps.

This change order increases the contract amount by \$27,282.53

Calendar days were **not** added as result of this change order.

Original Contract Price	<u>\$377,423.20</u>
Current Contract Price, as adjusted by previous Change Orders	<u>\$377,423.20</u>
NET increase or decrease this Change Order	<u>\$27,282.53</u>
New Contract Price	<u><u>\$404,705.73</u></u>

No Change to Contract Time

The City does **not** anticipate a related Engineering Change Order.

Bob Pryzby, Director of Public Works
City of Prairie Village, KS

Date

Ronald L. Shaffer, Mayor
City of Prairie Village, KS

Date


WCI/Inc.

10-15-09
Date



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: October 19, 2009

Council Meeting Date: October 19, 2009

***COU2009-100: CONSIDER PROJECT 190728: PRAIRIE LANE DRAINAGE PROJECT- DESIGN AGREEMENT**

RECOMMENDATION

Move to approve the design agreement with George Butler Associates for Project 190728: 2009 Prairie Lane Drainage Improvements

BACKGROUND

This fee is for preliminary and final design services. The new drainage system will replace the existing system located in the back yards of properties to north of Prairie Lane. George Butler Associates was the City's design engineer for Storm Drainage Repair Program in recent years and at that time they did the conceptual design for the Prairie Lane drainage improvements. Given their involvement in the conceptual design we want to select them for the final design work. This is one of the drainage projects that will be funded by the Bond issue.

FUNDING SOURCE

It is requested to move \$55,000 from the Drainage Bond account to project 190728.

RELATED TO VILLAGE VISION

- TR1c. Ensure that infrastructure improvements meet the needs of all transportation users.

ATTACHMENTS

1. Design Agreement with George Butler Associates.

PREPARED BY

Keith Bredehoeft, Project Manager

October 19, 2009

AGREEMENT FOR PROFESSIONAL ENGINEER

For

DESIGN SERVICES

Of

PRAIRIE LANE STORM DRAINAGE IMPROVEMENTS

THIS AGREEMENT, made at the Prairie Village, Kansas, this _____ day of _____, _____ by and between the City of Prairie Village, Kansas, a municipal corporation with offices at 7700 Mission Road, Prairie Village, Kansas, 66208, hereinafter called the “City”, and George Butler Associates, Inc., a corporation with offices at One Renner Ridge, 9801 Renner Boulevard, Lenexa, KS 66219, hereinafter called the “Consultant”.

WITNESSED, THAT WHEREAS, City has determined a need to retain a professional engineering firm to provide civil engineering services for Design Services of Prairie Lane Storm Drainage Improvements, hereinafter called the “Project”,

AND WHEREAS, the City is authorized and empowered to contract with the Consultant for the necessary consulting services for the Project,

AND WHEREAS, the City has the necessary funds for payment of such services,

NOW THEREFORE, the City hereby hires and employs the Consultant as set forth in this Agreement effective the date first written above.

CITY RESPONSIBILITIES

- 1.1. The City has designated the Manager of Engineering Services, Mr. Keith Bredehoeft, to act as the representative for the City with respect to the services to be performed or furnished by the Consultant under this Agreement. This person shall have the authority to transmit instructions, receive information, interpret and define the City policies with respect to the Consultant’s services for this Project.
- 1.2. The City shall make available to the Consultant all existing data and records relevant to the Project such as, maps, plans, correspondence files and other information possessed by the City that is relevant to the Project. Consultant shall not be responsible for verifying or ensuring the accuracy of any information or content supplied by City or any other Project participant unless specifically defined by the scope of work, nor ensuring that such information or content does not violate or infringe any law or other third party rights. However, Consultant shall promptly advise the City, in writing, of any inaccuracies in the information provided or any other violation or infringement of any law or third party rights that Consultant observes. City shall indemnify Consultant for any infringement claims resulting from Consultant’s use of such content, materials or documents.
- 1.3. The City shall review for approval all criteria, design elements and documents as to the City requirements for the Project, including objectives, constraints, performance requirements and budget limitations.
- 1.4. The City shall provide copies of all existing standard details and documentation for use by the Consultant for the project.
- 1.5. The City shall diligently review all submittals presented by the Consultant.

2. CONSULTANT RESPONSIBILITIES

- 2.1. The Consultant shall either perform for or furnish to the City professional civil engineering services and related services in all phases of the Project to which this Agreement applies as hereinafter provided.
- 2.2. The Consultant shall serve as the prime professional Consultant for the City on this Project
- 2.3. The standard of care for all professional consulting services and related services either performed for or furnished by the Consultant under this Agreement will be the care and skill ordinarily used by members of the Consultant's profession, practicing under similar conditions at the same time and in the same locality.
- 2.4. Designate Mr. Les G. Barnt, P.E. to act as the Consultant's representative with respect to the services to be performed or furnished by the Consultant under this Agreement. Such person shall have authority to transmit instructions, receive information, and make decisions with respect to the Consultant's services for the Project.

3. SCOPE OF CONSULTANT SERVICES

- 3.1 Upon receipt of notice to proceed from the City, the Consultant shall provide all consulting services related to this project including, but not limited, to these phases and tasks. The proposed locations of work and the basic scope of work in order of priority are:

3.2 Design Development

Following review and approval of feasibility study phase by the City and after the City issues a notice to proceed with this phase; the Consultant shall proceed to provide these services:

- 3.2.1 Prepare design development documents that shall show the nature and extent of improvements, the conditions under which the Contractor shall work.
- 3.2.2 Make on site field investigations as required, to define and to verify Project construction needs, limits, alignment, underground utilities, nature and extent of proposed Project.
- 3.2.3 Preliminary plans shall include:
 - Watershed Map & hydrology and hydraulics of proposed improvements
 - Preliminary Plan and Profile Sheet for Storm Sewers
- 3.2.4 Present one set of preliminary plans each to the City utility companies as required.
- 3.2.5 Prepare an engineer's opinion of probable construction costs detailing typical construction pay items. Add a contingency fee of 20 percent to the sum of the opinion of construction costs.
- 3.2.6 Keep minutes of one meeting and disperse to all attendees within five working days.
- 3.2.7 Conduct a field check of plans with City staff.

3.3 Construction Document Development

Following review and approval of design development phase by the City; the Consultant shall proceed to provide these services:

- 3.3.1 Address comments from design development review.
- 3.3.2 Add necessary standard details sheets.
- 3.3.3 Submit one set of construction documents to the City and utility companies.
- 3.3.4 Prepare an engineer's opinion of probable construction costs detailing typical construction pay items. Add a contingency fee of 15 percent to the sum of the opinion of construction costs.
- 3.3.5 Keep minutes of one meeting and disperse to all attendees within five working days.
- 3.3.6 Provide files of the plan or drawing in .dxf Format.

4. TIME SCHEDULE

- 4.1 The Consultant's services and compensation under this Agreement have been agreed to in anticipation of orderly and continuous progress of the Project through completion of the Design Development and Construction Document Development Phase.
- 4.2 If the City fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, the Consultant shall be entitled to equitable adjustment of rates and amounts of compensations to reflect reasonable costs incurred by the Consultant as a result of the delay or changes in the various elements that comprise such rates of compensation.
- 4.3 Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the nonperforming party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and delay in or inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either City or Consultant under this Agreement. Consultant shall be granted a reasonable extension of time for any delay in its performance caused by any such circumstances.
- 4.4 Should such circumstances occur, the consultant shall, within a reasonable time of being prevented from performing, give written notice to the City describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.
- 4.5 Recognizing that time is of the essence, the Consultant proposes to complete the scope of services as specified in the Scope of Services:

Design Development Phase:	October 16 th , 2009
Construction Document Phase:	November 4 th , 2009
Letting Date:	To Be Determined

5 COMPENSATION

- 5.1 The City agrees to pay the Consultant as maximum compensation for the scope of services the following fees:

Design Development Phase:	Total Maximum Fee <u>\$25,396</u>
Construction Document Phase:	Total Maximum Fee <u>\$22,190</u>
	Total Fees: <u>\$47,586</u>
- 5.2 The compensation will be billed by Phase detailing the position, hours and appropriate hourly rates (which include overhead and profit) for Consultant's personnel classifications and Direct Non-Salary Costs.
- 5.3 The term "Direct Non-Salary Costs" shall include the Consultant payments in connection with the Project to other consultants, transportation, and reproduction costs. Payments will be billed to the City at actual cost. Transportation, including use of survey vehicle or automobile will be charged at the IRS rate in effect during the billing period. Reproduction work and materials will be charged at actual cost for copies submitted to the City.
- 5.4 All billings must be submitted monthly for all services rendered in the previous month. The Consultant will invoice the City on forms approved by the City. All properly prepared invoices shall be accompanied by a documented breakdown of expenses incurred. This documentation shall include personnel by job

classification, hourly rate, number of hours, description of subconsultant services and detail list of Direct Non-Salary Costs.

- 5.5 The maximum fee shall not be changed unless adjusted by an Engineering Change Order mutually agreed upon by the City and the Consultant prior to incurrence of any expense. The Engineering Change Order will be for major changes in scope, time or complexity of Project.

6 GENERAL PROVISIONS

- 6.1 **Opinion of Probable Cost and Schedule:** Since the Consultant has no control over the cost of labor, materials or equipment furnished by Contractors, or over competitive bidding or market conditions, the opinion of probable Project cost, construction cost or project schedules are based on the experience and best judgment of the Consultant, but the Consultant cannot and does not guarantee the costs or that actual schedules will not vary from the Consultant's projected schedules.
- 6.2 **Quantity Errors:** Negligent quantity miscalculations or omissions because of the Consultant's error shall be brought immediately to the City's attention. The Consultant shall not charge the City for the time and effort of checking and correcting the errors to the City's satisfaction.
- 6.3 **Reuse of Documents:** All documents including the plans and specifications provided or furnished by the Consultant pursuant to this Agreement are instruments of service in respect of the Project. The Consultant shall retain an ownership and property interest upon payment therefore whether or not the Project is completed. The City may make and retain copies for the use by the City and others; however, such documents are not intended or suitable for reuse by the City or others as an extension of the Project or on any other Project. Any such reuse without written approval or adaptation by the Consultant for the specific purpose intended will be at the City's sole risk and without liability to the Consultant. The City shall indemnify and hold harmless the Consultant from all claims, damages, losses and expenses including attorney's fees arising out of or resulting reuse of the documents.

In a similar manner, the Consultant is prohibited from reuse or disclosing any information contained in any documents, plans or specifications relative to the Project without the expressed written permission of the City.

- 6.4 **Insurance:** The Consultant shall procure and maintain, at its expense, the following insurance coverage: (a) Workers' Compensation -- Statutory Limits, with Employer's Liability limits of \$100,000 each employee, \$500,000 policy limit; (b) Commercial General Liability for bodily injury and property damage liability claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (c) Commercial Automobile Liability for bodily injury and property damage with limits of not less than \$1,000,000 each accident for all owned, non-owned and hired automobiles; (d) errors and omissions coverage of not less than \$1,000,000. Deductibles for any of the above coverage shall not exceed \$25,000 unless approved in writing by City. In addition, Consultant agrees to require all consultants and subconsultants to obtain and provide insurance in identical type and amounts of coverage together and to require satisfaction of all other insurance requirements provided in this Agreement.
- 6.4.1 Consultant's insurance shall be from an insurance carrier with an A.M. Best rating of A-IX or better, shall be on the GL 1986 ISO Occurrence form or such other form as may be approved by City, and shall name, by endorsement to be attached to the certificate of insurance, City, and its divisions, departments, officials, officers and employees, and other parties as specified by City as additional insureds as their interest may appear, except that the additional insured requirement shall not apply to Errors and Omissions coverage. Such endorsement shall be ISO CG2010 11/85 or equivalent. "Claims Made" and "Modified Occurrence" forms are not acceptable, except for Errors and Omissions coverage. Each certificate of insurance shall state that such insurance will not be canceled or coverage reduced until after thirty (30) days' unqualified written notice of cancellation

or reduction has been given to the City, except in the event of nonpayment of premium, in which case there shall be ten (10) days' unqualified written notice. Subrogation against City and City's Agent shall be waived. Consultant's insurance policies shall be endorsed to indicate that Consultant's insurance coverage is primary and any insurance maintained by City or City's Agent is non-contributing.

- 6.4.2 Before Consultant performs any portion of the Work, it shall provide City with certificates and endorsements evidencing the insurance required by this Article. Consultant agrees to maintain the insurance required by this Article of a minimum of three (3) years following completion of the Project and, during such entire three (3) year period, to continue to name City, City's agent, and other specified interests as additional insureds thereunder.
- 6.4.3 If due to the Consultant's negligent act, error or omission, any required item or component of the project is omitted from the Construction documents produced by the Consultant, the Consultant's liability shall be limited to the difference between the cost of adding the item at the time of discovery of the omission and the cost had the item or component been included in the construction documents. The Consultant will be responsible for any retrofit expense, waste, any intervening increase in the cost of the component, and a presumed premium of 10% of the cost of the component furnished through a change order from a contractor to the extent caused by the negligence or breach of contract of the Consultant or its subconsultants.
- 6.5 **Termination:** This Agreement may be terminated by either party upon seven days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party; provided, however, the nonperforming party shall have 14 calendar days from the receipt of the termination notice to cure the failure in a manner acceptable to the other party. Copies of all completed or partially completed designs, plans and specifications prepared under this Agreement shall be delivered to the City when and if this Agreement is terminated, but it is mutually agreed by the parties that the City will use them solely in connection with this Project, except with the written consent of the Consultant (subject to the above provision regarding Reuse of Documents).
- 6.6 **Termination for Convenience.** The City, within its sole discretion, may elect to terminate the Agreement with the Consultant for convenience upon three (3) days written Notice to Consultant. In the event of such termination, Consultant shall cease immediately all operations and shall be compensated for all work performed as of the date of termination in accordance with the terms of payment in this contract. Consultant shall not be entitled to any anticipatory profits of other costs other than direct costs of demobilization.
- 6.7 **Controlling Law:** This Agreement is to be governed by the laws of the State of Kansas.
- 6.8 **Indemnity:** To the fullest extent permitted by law, with respect to the performance of its obligations in this Agreement or implied by law, and whether performed by Consultant or any subconsultants hired by Consultant, the Consultant agrees to indemnify City, and its agents, servants, and employees from and against any and all claims, damages, and losses arising out of personal injury, death, or property damage, caused by the negligent acts, errors, or omissions of the Consultant or its subconsultants, to the extent and in proportion to the comparative degree of fault of the Consultant and its subconsultants. Consultant shall also pay for City's reasonable attorneys' fees, expert fees, and costs incurred in the defense of such a claim to the extent and in proportion to the comparative degree of fault of the Consultant and its subconsultants.
- 6.9 **Severability:** Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to

expressing the intention of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

6.10 **Notices:** Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from item to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

6.10 **Successors and Assigns:** The City and the Consultant each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns of the City and the Consultant are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, legal representatives and assigns of such other party in respect of all covenants and obligations of this Agreement.

Neither the City nor the Consultant may assign, sublet, or transfer any rights under the Agreement without the written consent of the other, which consent shall not be unreasonably withheld; provided, Consultant may assign its rights to payment without Owner's consent, and except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement.

Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by the Consultant to any Contractor, subcontractor, supplier, other person or entity or to any surety for or employee of any of them, or give any rights or benefits under this Agreement to anyone other than the City and the Consultant.

IN WITNESS WHEREOF: the parties hereto have executed this Agreement to be effective as of the date first above written.

City:

City of Prairie Village, Kansas

By:

Ronald L. Shaffer, Mayor

Address for giving notices:

City of Prairie Village
7700 Mission Road
Prairie Village, Kansas 66208

Telephone: 913-385-4600

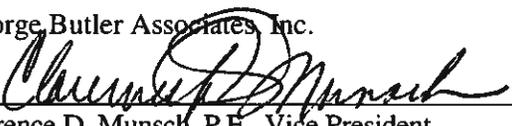
ATTEST:

Joyce Hagen Mundy, City Clerk

Consultant:

George Butler Associates, Inc.

By


Clarence D. Munsch, P.E., Vice President

Address for giving notices:

George Butler Associates, Inc.
One Renner Ridge
9801 Renner Boulevard
Lenexa, KS 66219

Telephone: 913-492-0400

APPROVED AS TO FORM BY:

Catherine Logan, City Attorney



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: October 19, 2009

Council Meeting Date: October 19, 2009

*COU2009-96: CONSIDER APPROVAL OF PROJECT 190652 PARK IDENTIFICATION SIGNS

RECOMMENDATION

Staff recommends the City Council approve the purchase of seventeen park identification signs from ICS of Kansas City, MO. for \$85,000.00 and the transfer of \$34,000.00 from Capital Improvement Program Parks unallocated to Project 190652.

COUNCIL ACTION REQUESTED ON **October 19, 2009**

BACKGROUND

The recently completed Park Master Plan contained a recommendation for replacing the existing park identification signs. The premise was for continuity of the City entrance sign design, which received many favorable comments. Staff has contacted the firm that supplied the City entrance signs. Several concepts were presented to the Parks and Recreation Committee. They have selected a design that used the same material as the City entrance signs but is in a different style so as not to be confused as an entrance sign. Attached is a sketch of the proposed signs.

It is proposed to purchase seventeen signs- McCrum (1), Porter (2), Windsor (1), Harmon (2), Swimming Pool (1), Santa Fe (1), Meadowlake (1), Weltner (2), Bennett (1), Brenizer (1), Schliffke (1), Franklin (3).

Parks and Recreation Committee and staff are requesting a waiver bid approval as this is an only source vendor.

FUNDING SOURCE

The 2009 Capital Improvement Program has a budget of \$51,000. It is proposed to transfer \$34,000.00 from Capital Improvement Program Parks Unallocated to Project 190652.

RELATION TO VILLAGE VISION

CC1. Attractive Environment

CC1a. Make streetscape improvements to enhance pedestrian safety and attractiveness of the public realm.

CCS2. Parks and Green Space

CCS2a. Enhance parks for active and passive recreation through capital improvements such as landscaping, tree and flower planting, shelters, picnic facilities, athletic fields, etc.

ATTACHMENTS

Sketch of proposed Park Identification Sign

PREPARED BY

S Robert Pryzby, Director of Public Works

Date October 7, 2009



FRANKLIN PARK



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: October 19, 2009
Council Meeting Date: October 19, 2009

***COU2009-98: CONSIDER PROJECT 190656 COMMUNITY CENTER STUDY**

RECOMMENDATION

Staff recommends the City Council approve the transfer of \$50,000.00 from Capital Improvement Program Park unallocated to Project 190656.

COUNCIL ACTION REQUESTED ON OCTOBER 19, 2009

BACKGROUND

During the 2010 budget discussions, there was consensus to budget \$50,000.00 in the Capital Improvement Program Parks for the Community Center Study. The purpose was to provide funding for beginning the process to construct a community center possibly in conjunction with a Natatorium being proposed by the Shawnee Mission School District.

This request is allocating the funds as discussed.

FUNDING SOURCE

It is proposed to transfer \$50,000.00 from Capital Improvement Program Parks unallocated to Project 190656 Community Center.

RELATION TO VILLAGE VISION

CCS2. Parks and Green Space

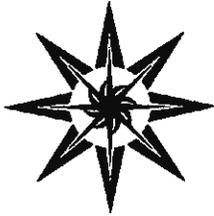
CCS2a. Preserve and protect natural areas.

CCS2b. Enhance parks for active and passive recreation through capital improvements such as landscaping, tree and flower planting, shelters, picnic facilities, athletic fields, etc.

PREPARED BY

S Robert Pryzby, Director of Public Works

Date October 7, 2009



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: October 19, 2009

Council Meeting Date: October 19, 2009

***COU2009-97: CONSIDER PROJECT 190653 EL MONTE FOUNTAIN IMPROVEMENTS**

RECOMMENDATION

Staff recommends the City Council approve the construction contract award to MEGA Industries for Project 190653 El Monte Fountain for \$51,009.00 and a transfer of \$36,000.00 from either Capital Improvement Program Parks Unallocated or Capital Improvement Program Street Unallocated or Development Funds or General Fund Contingency to Project 190653.

COUNCIL ACTION REQUESTED ON OCTOBER 19, 2009

BACKGROUND

Public Works staff accepted three bids of making improvements to the El Monte Fountain on September 25, 2009. MEGA Industries was the low bidder with a bid of \$51,009.00 for fountain rehabilitation including plumbing and electrical work. The other bids were Swift Construction for \$54,494.30 and Aquatic Creation who did not include electrical work.

The project will refurbish the fountain, improve the basin so water can be re-circulated, replace the asphalt sidewalk around the fountain with concrete, re-plumb the fountain with re-circulating pump, and provide electrical service.

MEGA Industries has constructed several projects for the City in the past with good results.

FUNDING SOURCE

Project 190653 in the 2009 Capital Improvement Program has \$20,720.75 allocated for this project. A transfer of \$36,000.00 (includes a \$5,000.00 construction contingency) from either Capital Improvement Program Parks Unallocated or Capital Improvement Program Street Unallocated or Development Funds or General Fund Contingency to Project 190653 is requested.

RELATION TO VILLAGE VISION

CC1. Attractive Environment

CC1a. Make streetscape improvements to enhance pedestrian safety and attractiveness of the public realm.

CCS2. Parks and Green Space

CCS2a. Preserve and protect natural areas.

CCS2b. Enhance parks for active and passive recreation through capital improvements such as landscaping, tree and flower planting, shelters, picnic facilities, athletic fields, etc.

CFS3. Streets and Sidewalks

CFS3a. Ensure streets and sidewalks are in good condition by conducting maintenance and repairs as needed.

PREPARED BY

S Robert Pryzby, Director of Public Works

Date October 7, 2009

HOLMAN HANSEN & COLVILLE, P.C.
ATTORNEYS AT LAW

Stephen B. Horner
sbh@hhc-law.com

P.O. Box 7490
10740 NALL AVENUE • SUITE 200
OVERLAND PARK, KANSAS 66211
(913) 648-7272 • FAX (913) 383-9596

Memorandum

To: Governing Body
cc: Quinn Bennion
From: Steve Horner, Assistant City Attorney
Date: October 2, 2009
Subject: Proposed Master Franchise Code and Proposed New KGS Franchise

1. Master Franchise Code

Background and Recommendation: It is recommended that the City adopt the proposed Master Franchise Code that requires all entities with utility or utility-like facilities in the Right-of-Way and/or that are providing a utility or utility-like service within the City to have a franchise. The primary purpose of this proposed Code is to codify the City's franchise requirement and to adopt the necessary provisions that will allow the City to charge a natural gas transport fee (addressed in the following section). In the past the City has had an unwritten policy that any utility or utility-like entity must have a franchise, adopted in the form of an ordinance. The basis of the City's franchise requirement comes from the Kansas Franchise Statute, K.S.A. 12-2001, *et seq.* In recent years, however, some newer entities have taken the position that the Kansas Franchise Statute provides only that a city *may* require a franchise, but that a city must first codify this requirement before it is applicable. Accordingly, some of these entities have refused to enter into franchises without a specific city code requirement. While I disagree with this interpretation, the proposed Code will remedy this situation. It will also:

- a. Clarify and preserve the City's right to separately adopt any necessary public health, safety and welfare regulations relating to the Right-of-Way and/or that otherwise impact utility facilities within the City, and provide that all franchisees are subject to such regulations. (For example, the City's ROW Ordinance and utility box regulations.) This will address the position taken in the past by some franchisees that they are only subject to the provisions specifically stated in their franchise and that they are otherwise exempt from other city regulations.
- b. Require franchisees to indemnify the City from any incident arising from their facilities within the City and/or the provision of their service within the City.
- c. Require franchisees to submit any appropriate bond and proof of insurance.
- d. Codify a franchise application requirement, including the ability for the City to establish an applicable franchise application fee.

The proposed Master Franchise Code will be adopted as a new Article 4 to Chapter XV of the Prairie Village City Code regarding Utilities.

2. KGS Natural Gas Franchise – (Transport Gas)

Background and Recommendation: The sale and price of local natural gas distribution is regulated by the Kansas Corporation Commission (KCC). Kansas Gas Service (KGS) is the designated natural gas provider for the City, and must provide a ready supply of natural gas. KGS currently has a natural gas franchise with the City (City Ordinance No. 1892), which is set to expire August 17, 2011. Under this franchise, KGS pays a franchise fee of 5% of its gross receipts; provided, it only remits 1% of gross receipts for governmental entities. Currently no franchise fees are being collected or remitted for any transport gas.

Several years ago Kansas law changed to allow the provision of transport gas for commercial customers receiving a minimum amount of natural gas.¹ KGS then requested and was granted authority to not only sell natural gas to retail customers, but to also transport natural gas through its pipelines for other natural gas sellers for a fee. The industry refers to this product as "transport gas," as opposed to the "retail sales gas" sold directly by KGS. Because KGS is not selling this transport gas, and because these transport gas sellers do not have a franchise with the City, the City is currently losing out on the franchise revenues that would otherwise be generated for the natural gas being provided to transport gas customers within the City – who are arguable the City's biggest natural gas customers.² As a result, those profiting by and using the transport gas system are not paying their fair share of the costs to use the Right-of-Way, creating an inequity for those who pay the City's natural gas franchise fee.

It would be difficult if not impossible for the City to identify and enter into a franchise with each entity selling transport gas in the City (now or in the future). Even if it could, some of these entities might then challenge the franchise requirement on the basis they have no facilities within the City. Therefore, it is proposed that the City require KGS, as the owner of the local gas distribution system, to act as the gatekeeper and collect from these transport gas sellers and then remit to the City a franchise fee on the transport gas. One difficulty is that KGS does not know what the transport gas sellers are charging their customers, and therefore we are unable to collect a gross receipts based franchise fee from these providers. However, KGS knows the volume of natural gas each transport gas seller is transporting through KGS' lines. Accordingly, KGS and some other Kansas municipalities (like Wichita, Topeka, Lawrence and Overland Park) have created a mechanism for assessing fees on transport gas based on volume. In short, KGS calculates the national annual average volumetric sales rate of natural gas and then multiplies that amount by the franchise fee percentage. (See attached KGS worksheet.) The transport gas providers are then charged a fee on a volumetric basis and this amount is remitted to the City along with KGS' franchise fee. In addition, the definition of KGS' gross receipts will also be modified to include KGS' transport fee. The provisions of both the propose Master Franchise Code and the proposed new KGS franchise include the necessary provisions to establish this mechanism of collecting a franchise fee on transport gas.

KGS has agreed to the proposed new natural gas franchise on the condition that the new fee provision commences on January 1. The franchise will have a 15-year term, provided, with proper notice either party can reopen the franchise after 5 or 10 years, or at any time upon: (1) a material change in federal, state or local law; (2) a material change in the structure or operation of the natural gas industry; (3) a material impact of any KCC action; or (4) an unexpected issue with the volumetric rate. The franchise fee will be 5% of gross receipts for all (retail) consumers, and will also include a similar charge on KGS' transport fee and the above-discussed volumetric transport gas fee. At its discretion, the City can later adjust the franchise fee percentage to any rate not exceeding 5%. The franchise also provides that KGS must abide by all applicable City regulations, including the City's ROW Ordinance, and provides that KGS will indemnify the City and will submit to the City a bond and proof of insurance.

¹ Currently this threshold is 1500 Mcf. For comparison, an average homeowner uses 90 Mcf per year.

² There are 28 transport gas customer locations in the City. (Some customers have multiple locations.)

Volumetric Rate Calculation Form
For the Transportation of Natural Gas in Pipelines Located in the City
Based on the NYMEX settlement prices for the dates shown, published the following business day

Source: Wall Street Journal, or DTN, or Gas Daily

Month	Last Year 15-Jul	Last Year 15-Aug	Last Year 15-Sep	Last Year 15-Oct	Last Year 17-Nov	Last Year 15-Dec	This Year 15-Jan	This Year 17-Feb	This Year 16-Mar	This Year 15-Apr	This Year 15-May	This Year 15-Jun
Aug Last Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
Sep Last Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
Oct Last Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
Nov Last Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
Dec Last Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
Jan Current Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
Feb Current Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
Mar Current Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
Apr Current Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
May Current Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
Jun Current Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
July Current Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
Aug Current Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
Sept Current Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
Oct Current Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
Nov Current Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
Dec Current Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
Jan Next Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
Feb Next Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
Mar Next Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
Apr Next Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
May Next Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
Jun Next Year	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596
Avg Settlement Price	11,636	8,788	8,018	7,109	6,904	6,086	5,460	4,970	4,711	4,818	5,242	5,596

July 2008 through June 2009 settlement price average	6.611
X Bundled Franchise Fee Rate	5.0%
=Volumetric Rate/MCF for 2010	0.3305

Note: If the 15th of the month falls on a week-end or holiday, then use the next business day settlement price.

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING GENERAL FRANCHISE AND FRANCHISE APPLICATION REQUIREMENTS IN THE CITY OF PRAIRIE VILLAGE, KANSAS; ADDING A NEW ARTICLE 4 TO CHAPTER XV OF THE CODE OF THE CITY OF PRAIRIE VILLAGE, KANSAS ENTITLED "FRANCHISES."

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

SECTION 1. That the Code of the City of Prairie Village, Kansas is hereby amended by adding a new Article 4 to Chapter XV which reads as follows:

ARTICLE 4 FRANCHISES

15-401. TITLE. This Ordinance shall be referred to and cited as the "Master Franchise Code." (Throughout this Article the Master Franchise Code may be referred to as "this Code.")

15-402. DEFINITIONS. For the purposes of this Code, the following words and phrases shall have the meanings given herein:

(a) City – shall mean the City of Prairie Village, Kansas. Any reference to "within the City" shall mean within the corporate city limits of the City of Prairie Village, Kansas.

(b) Entity – shall mean any individual person(s), governmental entity, business, corporation, partnership, firm, limited liability corporation, limited liability partnership, unincorporated association, joint venture or trust and shall include all forms of business enterprise not specifically listed herein.

(c) Facilities – shall mean lines, pipes, mains, laterals, wires, cables, conduit, ducts, poles, towers, cabinets, vaults, pedestals, boxes, appliances, antennae, transmitters, gates, meters, Gas Distribution System and Gas Distribution Facilities, together with all necessary appurtenances or other equipment thereto, or any part thereof, for the purpose of providing or otherwise facilitating any Service.

(d) Franchise – shall mean the grant, right, privilege and franchise by the City to provide, distribute, transport or sell a Service within the City and/or to install, construct, maintain, extend or operate Facilities along, across, upon, under or within the Right-of-Way. The grant, right, privilege and franchise shall be in accordance with the provisions of K.S.A. 12-2001, et seq., as amended, the City's Home Rule power, and applicable City ordinances.

(e) Franchisee or Grantee – shall mean any Entity that has a Franchise granted by the City pursuant to this Code, K.S.A. 12-2001, et seq., as amended, and/or the City's Home Rule power.

(f) Franchise Fee – shall mean consideration paid in the form of a charge upon a Franchisee as prescribed in the Ordinance granting the Franchise. Any such Franchisee Fee shall be subject to any applicable provisions of federal or state law.

(g) Gas Consumer – shall mean, without limitation, any Entity that receives natural gas or Other Energy within the City through a Gas Distribution System or Gas Distribution Facilities.

(h) Gas Distribution System or Gas Distribution Facilities – shall mean a pipeline or system of pipelines, including without limitation, mains, pipes, boxes, reducing and regulating stations, laterals, conduits and services extensions, together with all necessary appurtenances thereto, or any part thereof, for the purpose of

distribution or supplying natural gas or Other Energy for light, heat, power and all other purposes.

(i) MCF – shall mean a measurement of natural gas equal to one thousand (1,000) cubic feet. It is assumed for purposes of this Code that one MCF equals one million (1,000,000) British Thermal Units (BTUs).

(j) Other Energy – shall mean any energy provided in a gaseous, liquid, or slurry mixture form through pipelines for light, heat, power, and all other purposes as an alternative or replacement for natural gas, but specifically, it shall not include electrical energy.

(k) Reseller – shall mean a provider of Service within the City whereby the provider purchases and resells the Service of a duly authorized Franchisee, but only where the duly authorized Franchisee is already paying fees for the resold Service under its Franchise with the City. (For example, the resale of local exchange service as contemplated by K.S.A. 12-2001(n).)

(l) Right-of-Way – shall mean present and future streets, alleys, rights-of-way, and public easements, including easements dedicated to the City in plats of the City for streets and alleys. The “Right-of-Way” shall not include property owned by the City outside of said streets, alleys, rights-of-way, and easements, or public easements limited in their dedication of purpose or otherwise not intended for placement of Facilities (for example, a public easement dedicated only for stormwater purposes).

(m) Service – shall mean any utility or similar service to be provided, distributed, transported or sold to an Entity by means of a delivery or distribution system that is comprised of Facilities within the City, including without limitation, telecommunication, cable, broadband, Internet, Open Video Systems, steam, electric, water, telegraph, data transmission, natural gas, Other Energy, or any other similar service.

15-403

FRANCHISE REQUIREMENT. No Entity shall provide, distribute, transport or sell a Service within the City or shall install, construct, maintain, extend or operate Facilities along, across, upon, under or within the Right-of-Way without a Franchise authorizing the same, unless applicable federal or state law prohibits City enforcement of such requirement. This franchise requirement includes:

- (1) Entities with Facilities within the City in order to provide, distribute, transport or sell Service within the City;
- (2) Entities with Facilities within the City in order to provide, distribute, transport or sell Service outside, but not within the City; and
- (3) Entities without their own Facilities within the City that lease or otherwise use the Facilities of other Entities in order to provide, distribute, transport or sell Service within the City.

Provided, this franchise requirement shall not include a Reseller, or include a governmental entity that has entered into an agreement with the City pursuant to K.S.A. 12-2901 *et seq.* regarding the use and occupancy of the Right-of-Way.

15-404

GAS DISTRIBUTION SYSTEMS AND GAS DISTRIBUTION FACILITIES. It shall be unlawful for any Entity to install, construct, maintain, extend or operate or a Gas Distribution System or Gas Distribution Facilities or to provide, distribute, transport or sell natural gas or Other Energy within the City without first obtaining a Franchise authorizing the same and requiring a Franchise Fee. This franchise requirement applies to any provision, distribution, transportation or sale to a Gas Consumer within the City whether or not the portion of the Entity’s Gas Distribution System is in the Right-of-Way. Provided, in the event the Gas Distribution System or Gas Distribution Facilities of a Franchisee are used by an Entity without its own Gas Distribution System or Gas Distribution Facilities within the City for the transportation or sale of said

Entity's natural gas or Other Energy to a Gas Consumer, said Entity shall be exempt from the requirement of obtaining a Franchise if it reports, calculates and pays (either directly or through the Franchisee) a sum to be submitted to the City for such Services that is equivalent to the calculation of the Franchisee's Franchise Fee. In such event, if gross receipts are not or cannot be reported, a sufficient volumetric rate multiplied by the number of MCF of the transported natural gas or Other Energy may be used in making such calculation.

15-405 **PRESERVATION OF POLICE POWER AUTHORITY AND APPLICABILITY OF REGULATIONS.** Any rights granted pursuant to this Code or pursuant to any Franchise are subject to the authority of the City to adopt and enforce ordinances and regulations necessary to the health safety and welfare of the public. All Entities subject to this Code shall also be subject to and comply with all applicable federal and state laws, statutes and regulations, and all applicable rules, regulations, policies and ordinances enacted by the City, including without limitation, the City's Ordinance relating to the Use and Occupancy of the Public Right-of-Way (codified as Article 5 of Chapter XIII of the Code of the City of Prairie Village, Kansas, and amendments thereto). Provided, nothing in this Code shall be deemed to waive a right, if any, that an Entity might have to seek judicial or regulatory review as provided by law.

15-406 **NATURE OF RIGHTS GRANTED BY ANY FRANCHISE.** Franchises shall not convey title, equitable or legal, in the Right-of-Way or any other public property, but shall give only the right to occupy the Right-of-Way for the purposes and period stated within the Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse a Franchisee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. Any Franchise granted by the City shall be nonexclusive.

15-407 **INDEMNIFICATION OF THE CITY.** Any Entity installing, constructing, maintaining, extending or operating Facilities within the City or otherwise providing, distributing, transporting or selling a Service within the City shall hold the City harmless from any and all damages or claims arising or accruing from: the exercise of any right or privilege granted under this Code or a Franchise; the installation, construction, maintenance, extension, operation of its Facilities within the City; and the negligence or intentional acts or omissions of its employees, agents, or servants (including contractors and subcontractors) in the exercise of said installation, construction, maintenance, extension, operation, provision, distribution, transportation or sale. Failure of said Entity to obtain or maintain a Franchise shall in no manner waive this requirement and obligation.

15-408. **LIABILITY INSURANCE AND BOND REQUIREMENT.**

(a) Each Franchisee shall file with the City evidence of liability insurance with an insurance company licensed to do business in Kansas. The amount will be not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate. The insurance will protect the City from and against all claims by any Entity whatsoever for loss or damage from personal injury, bodily injury, death, or property damage to the extent caused or alleged to have been caused by the negligent or wrongful acts or omissions of the Franchisee. The Franchisee shall also have coverage for automobile liability in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate. The City shall be an additional insured on all policies of Franchisee, to the extent permitted by law, unless waived in writing by the City. If the Franchisee is self-insured, it shall provide the City proof of compliance regarding its ability to self insure and proof of its

ability to provide coverage in the above amounts, and shall agree to indemnify and hold the City harmless for any losses associated with Franchisee's activities in the Right-of-Way. All contractors actually performing work for any Franchisee shall be subject to the same insurance requirements set forth herein. A copy of the liability insurance certificate or proof of self insurance must be on file with the City Clerk.

(b) To the extent any Franchisee installs, constructs, maintains, extends or operates any Facilities in the Right-of-Way, it shall maintain a performance and maintenance bond as set forth in the City's Ordinance relating to the Use and Occupancy of the Public Right-of-Way (codified as Article 5 of Chapter XIII of the Code of the City of Prairie Village, Kansas, and amendments thereto) or as set forth in the Franchise Ordinance of Franchisee. To the extent any Franchisee installs, constructs, maintains, extends or operates any Facilities anywhere else within the City, the City may require a bond in the Franchise when reasonably deemed necessary. A copy of any required bond must be on file with the City Clerk.

15-409

FRANCHISE APPLICATIONS AND RENEWALS.

(a) Applications. All applications for a Franchise shall be on forms provided or approved by the City. Any application fee shall be paid prior to processing by the City, unless otherwise agreed to by the City. Upon receipt of a completed application and any applicable fee, the designated city official shall prepare a report and make a recommendation respecting such application to the Governing Body. Each Service subject to a Franchise shall require a separate application.

(b) Application Fee. An application fee shall be paid at the time of the application in the amount established by the City; provided, the City may agree to defer submission of part or all of the application fee until all costs have been determined. As part of said application fee the City may include reimbursement for all reasonable costs incurred by the City in drafting, negotiating, adopting, and publishing the Franchise. Provided, nothing herein shall prevent the City from having any publication or other reasonable costs billed directly to the applicant. Said fee and costs shall not be considered or credited against the collection of applicable Franchise Fees.

(c) Franchise Renewal. Franchise renewals shall be in accordance with applicable law. The City and any Franchisee, by mutual consent or as otherwise provided in such Franchisee's Franchise, may enter into renewal negotiations. The City may require such Franchisee to update any application information and, subject to Kansas Statute or any provisions in such Franchisee's Franchise, submit an application fee.

15-410

APPLICABILITY. The provisions of this Code shall apply to the full extent of the terms herein, and said provisions shall be deemed incorporated into each Franchise.

15-411

FEDERAL AND STATE LAW. The requirements set forth in this Code shall be subject to the provisions of K.S.A. 12-2001 *et seq.*, as may be amended, and any other applicable federal or State law.

15-412

FAILURE TO ENFORCE. The failure of the City to insist upon the strict adherence to the requirements of this Code or of any Franchise shall not be construed as a waiver or relinquishment for the future of the rights of the City to enforce this Code or any Franchise or any term or provision thereof.

15-413

VIOLATIONS. Any Entity violating this Code shall be subject to a fine of up to \$500 per day. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this Code to fullest extent allowed by law,

including, but not limited to, the payment of a Franchise Fee or the equivalent thereof, and indemnification of the City.

15-414

SEVERABILITY. The provision of this Code shall be liberally construed to effectively carry out its purposes, which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience. If any clause, sentence or section of this Code shall be held to be invalid, it shall not affect the remaining provisions of this Code.

SECTION 2. This Ordinance shall take effect and be in force as of the date of its passage, approval and publication as provided by law.

PASSED by the Governing Body this ___ day of _____, 2009.

APPROVED by the Mayor this ___ day of _____, 2009.

Ronald L. Shaffer, Mayor

ATTEST:

APPROVED AS TO FORM:

Joyce Hagen Mundy, City Clerk

Stephen B. Horner, Assistant City Attorney

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO KANSAS GAS SERVICE, A DIVISION OF ONEOK, INC. ITS GRANTEES, SUCCESSORS AND ASSIGNS A FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE ALL WORKS AND PLANTS NECESSARY OR PROPER FOR SUPPLYING CONSUMERS WITH NATURAL GAS.

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

SECTION 1. Definitions.

For purposes of this Franchise, the following words and phrases shall have the meanings given herein:

City – shall mean the City of Prairie Village, Kansas.

Consumer – shall mean, without limitation, any Entity that receives natural gas within the Corporate City limits through the Franchisee's Distribution System or Distribution Facilities.

Distribution System or Distribution Facilities – shall mean a pipeline or system of pipelines, including without limitation, mains, pipes, boxes, reducing and regulating stations, laterals, conduits and services extensions, together with all necessary appurtenances thereto, or any part thereof located within the Right-of-Way, for the purpose of "Distribution" or supplying natural gas for light, heat, power and all other purposes.

Distributed or Distribution – shall mean all sales, supply, or transportation of natural gas to any Consumer for use within the City by the Franchisee or by others through the Facilities of the Franchisee in the Right-of-Way.

Entity – shall mean any individual person(s), governmental entity, business, corporation, partnership, firm, limited liability corporation, limited liability partnership, unincorporated association, joint venture or trust and shall include all forms of business enterprise not specifically listed herein.

Franchise – shall mean the grant of authority by the City to transport, distribute or sell natural gas within the City and to operate a Distribution System or Distribution Facilities. The grant of authority shall be in accordance with the provisions of K.S.A. 12-2001, et seq., as amended and City ordinances.

Franchisee – shall mean Kansas Gas Service, a Division of ONEOK, Inc.

Franchise Fee – shall mean consideration paid in the form of a charge upon the Franchisee as prescribed in this Franchise Ordinance.

Franchise Ordinance – shall mean this Ordinance granting a natural gas Franchise to the Franchisee.

Gross Receipts – shall mean any and all compensation and other consideration derived directly or indirectly by the Franchisee from any Distribution of natural gas to a Consumer for any use, including domestic, commercial and industrial purposes, and shall include, but not be limited to, revenues from any operation or use of any or all Distribution Facilities in the Right-of-Way by the Franchisee or others, including without limitation, charges as provided in tariffs filed and approved, and shall also include all fees or rentals received by the Franchisee for the lease or use of pipeline capacity within the corporate limits of the City for Transport Gas services; but such term shall not include revenue from certain miscellaneous charges and accounts, including but not limited to

delayed or late payment charges, connection and disconnection fees, reconnection fees, customer project contributions, returned check charges, and temporary service charges.

MCF – shall mean a measurement of natural gas equal to one thousand (1,000) cubic feet. It is assumed for purposes of this Franchise Ordinance that one MCF equals one million (1,000,000) British Thermal Units (BTUs).

Right-of-Way – shall mean present and future streets, alleys, rights-of-way, and public easements, including easements dedicated to the City in plats of the City for streets and alleys. The “Right-of-Way” shall not include property owned by the City outside of said streets, alleys, right-of-way and easements, or public easements limited in their dedication of purpose or otherwise not intended for placement of Distribution Facilities (for example, a public easement dedicated only for stormwater purposes).

Settlement Prices – shall mean the settlement prices for natural gas futures contracts traded on the New York Mercantile Exchange (NYMEX) on the fifteenth (15th) day of each month as published in the *Wall Street Journal* (WSJ), or other nationally recognized publication, on the following business day (or the next day in which a Settlement Price is published).

Transport Gas – shall mean all natural gas transported by the Franchisee or by others, but not sold by the Franchisee, to any Consumer within the City through the Distribution Facilities of the Franchisee.

Volumetric Rate – shall, upon the effective date of this Franchise, mean \$0.3305 per MCF for all Transport Gas Consumers for the period beginning with the first cycle of the monthly billing cycle which begins in January 2010. The Volumetric Rate shall be subject to adjustment and recalculation in the future in accordance with the provisions set forth below. The Volumetric Rate calculation form incorporated herein and attached hereto as Attachment A shall be used as a sample for recalculating the Volumetric Rate. There shall be an annual recalculation of the Volumetric Rate which shall be effective each January 1, with the first recalculation being effective in January 2011. The recalculation shall be based on Settlement Prices for the twelve (12) month period beginning in July of the second (2nd) preceding year and ending in June of the preceding year. For the fifteenth (15th) day of each month during said twelve (12) month period, the Settlement Prices for natural gas for the next twelve (12) months will be summed and divided by twelve (12) to determine an average Settlement Price. The average Settlement Prices for each of the twelve (12) months shall then be summed and divided by twelve (12) and multiplied by five percent (5%) to obtain the Volumetric Rate to be effective January 1 of the next succeeding year. The Volumetric Rate shall be calculated by the City in accordance with the procedures set out herein and filed with the City Clerk by July 31 of each year for those rates to be effective on January 1 of the following year.

SECTION 2. Grant of Franchise.

For the limited purpose of Distribution of natural gas to the City and the inhabitants thereof, for the full term of this Franchise Ordinance, subject, however, to the terms and conditions herein set forth, there is hereby granted to the Franchisee, the non-exclusive right, privilege, and franchise to construct, maintain, extend, and operate its Distribution Facilities in, through, and along the Right-of-Way of the City and for the limited purposes of this Franchise Ordinance to maintain and operate Distribution Facilities existing on City park land or other non-Right-of-Way public property as of the effective date of this Franchise Ordinance, provided all Franchisee facilities authorized on said public property pursuant to this Franchise Ordinance shall be subject to the removal and relocation provisions of the City’s Ordinance relating to the Use and Occupancy of the Public Right-of-Way, codified as Article 5 of Chapter XIII of the Code of the City of Prairie Village, Kansas, and amendments thereto. For such purposes, any removal or relocation from any such park land or other non-Right-of-Way public property shall be subject to the removal and relocation provisions

established for Right-of-Way, unless the Franchisee has been specifically granted a private easement of record for the same. Nothing in this grant shall be construed to franchise or authorize the use of the Franchisee's Distribution Facilities or the Right-of-Way by the Franchisee or others, for any purpose other than the provision of natural gas. The Franchisee may not allow a subsidiary, affiliate, or a third party to acquire rights to occupy the Right-of-Way under this Franchise Ordinance; provided, that nothing in this section shall prevent the Franchisee from allowing the use of its Distribution Facilities by others for the purpose of providing Transport Gas to Consumers when the City is compensated for such use, pursuant to the provisions of this Franchise Ordinance.

SECTION 3. Term and Re-opener Provisions.

A. The term of this Franchise shall be fifteen (15) years from the effective date of this Franchise Ordinance.

B. Upon written request of either the City or the Franchisee, this Franchise may be reopened and reviewed after five (5) years and after ten (10) years from the effective date of this Franchise and either the City or the Franchisee may propose amendments to any provision of this Franchise by giving sixty (60) days written notice to the other of the amendment(s) desired. The City and the Franchisee shall negotiate in good faith in an effort to agree upon a mutually satisfactory amendment(s).

C. Upon written request of either the City or the Franchisee, the Franchise shall be reopened and renegotiated at any time upon any of the following events:

1. Change in federal, state, or local law, regulation, or order, which materially affects any rights or obligations of either the City or the Franchisee, including but not limited to the scope of the grant to the Franchisee or the compensation to be received by the City;

2. Change in the structure or operation of the natural gas industry which materially affects any rights or obligations of either the City or the Franchisee, including but not limited to the scope of the grant to the Franchisee or the compensation to be received by the City;

3. Action by the Kansas Corporation Commission (KCC) with respect to this Franchise Ordinance and any amendments thereto, which precludes the Franchisee from recovering from its customers any costs or fees provided for hereunder.

D. Upon written request by the Franchisee to the City, the compensation provisions of this Franchise Ordinance shall be reopened and renegotiated if energy consumers within the City have access to alternative natural gas suppliers or other suppliers of energy which use the Right-of-Way and/or easements granted on publicly owned property and pay a franchise fee or other payment which results in a material disadvantage to the Franchisee. Upon written request by the Franchisee to the City, the compensation provisions of this Franchise Ordinance and the use of the Right-of-Way provisions of this Franchise Ordinance shall be reopened and renegotiated if energy consumers within the City have access to alternative natural gas suppliers or other suppliers of energy which use the Right-of-Way and do not have requirements on the use of the Right-of-Way substantially equivalent to the requirements of this Franchise Ordinance, which results in a material disadvantage to the Franchisee.

E. Upon written request by City to the Franchisee, the compensation provisions of Section 4. A. of this Franchise Ordinance shall be reopened; provided, however, that any new compensation provisions shall not exceed five percent (5%) of the Gross Receipts received from the Franchisee's Distribution of natural gas.

F. Upon written request by either party to the other, the compensation provisions of this Franchise Ordinance shall be reopened and renegotiated should issues arise related to the Volumetric Rate or matters related to the collection and payment of compensation due the City for Franchisee operations related to Transport Gas.

G. Amendments under this Section, if any, shall be made by ordinance as prescribed by statute. This Franchise Ordinance shall remain in effect according to its terms pending completion of any review or renegotiations pursuant to this Section.

SECTION 4. Compensation to the City.

In consideration of and as compensation for the Franchise hereby granted to the Franchisee by the City, the Franchisee shall make an accounting to the City of all natural gas that has been Distributed within the City on a monthly basis. The Franchisee shall pay the City as compensation:

A. A sum equal to five percent (5%) of the Gross Receipts received from the Franchisee's Distribution of natural gas to all Consumers; and

B. A sum equal to the Volumetric Rate multiplied by the number of MCF of Transport Gas.

The sums in A and B above shall be adjusted for uncollectible receivables and for uncollectible receivables which are later collected.

Payments of the compensation above shall commence with the first cycle of the monthly billing cycle which begins in January 2010. Prior to that date, payments shall continue to be calculated and be paid in the manner previously provided in City Ordinance No. 1892. Such payments shall be made on or before the last day of each month and shall be based upon such Gross Receipts charged and collected for the preceding month.

In the event the accounting rendered to the City by the Franchisee is found to be incorrect, then payment shall be made on the corrected amount, it being agreed that the City may accept any amount offered by the Franchisee, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or later found to be incorrect. The Franchisee agrees that all of its books, records, and documents and all of its contracts and agreements as may be reasonably necessary for an effective compliance review of this Franchise Ordinance shall at all reasonable times be opened to the inspection and examination of the officers of the City and its duly authorized agents, auditor, and employees for the purpose of verifying said accounting, or for any other lawful purpose. Notwithstanding the obligations herein, the Franchisee shall have the right to request the reasonable protection of proprietary information of the Franchisee so long as such request does not unreasonably frustrate the purposes of this subsection.

For each and every month, or any part thereof, that the compensation provided for by this Franchise Ordinance remains unpaid after the same becomes due and payable to the City, there shall be added to such payment, as a late charge, a sum equivalent to the statutory rate of interest on the unpaid amount. Such late charge shall be applicable to sums that are delinquent as well as any sums due the City as a result of an audit of the Franchisee's records.

SECTION 5. Use of Right-of-Way.

The Franchisee's use of the Right-of-Way granted by the City shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power relating to use, placement, location, or management of utilities located in the City's Right-of-Way. In addition, the Franchisee shall be

subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter adopted or promulgated by the City relating to permits, sidewalk and pavement cuts, utility location, construction coordination, screening, and other requirements on the use of the Right-of-Way. With regard to the same, the City and the Franchisee acknowledge that such rules, regulations, policies, resolutions and ordinances include, but are not limited to, the City's Ordinance relating to the Use and Occupancy of the Public Right-of-Way, codified as Article 5 of Chapter XIII of the Code of the City of Prairie Village, Kansas, and amendments thereto. Provided, however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of the Franchisee to oppose, challenge, or seek judicial review of, in such manner as is now or may hereafter be provided by law, any such rules, regulations, policies, resolutions, or ordinances proposed, adopted, or promulgated by the City.

SECTION 6. Notice of Property Annexed by City.

Notwithstanding anything to the contrary in this Franchise Ordinance, the fees provided for in Section 4 above shall not become effective within any area annexed by the City until the first of the month billing cycle which begins no more than sixty (60) days after the date that the City provides the Franchisee with a certified copy of the annexation ordinance, proof of publication as required by law and a map of the City detailing the annexed area.

SECTION 7. Indemnity and Hold Harmless.

The Franchisee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by court of competent jurisdiction to be caused by the negligence or intentional acts or omissions of the Franchisee, any agent, officer, director, representative, employee, affiliate or subcontractor of the Franchisee, or its respective officers agents, employees, directors or representative, while installing, repairing or maintaining Distribution Facilities in the Right-of-Way or in regards any action or inaction related to the Franchisee's obligations set forth in this Franchise.

The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the City, its officers, employees, contractors or subcontractors. If the Franchisee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the City under the state law and without waiving any defenses of the parties under state or federal law. This section is solely for the benefit of the City and the Franchisee and does not create or grant any rights, contractual or otherwise, to any other person or Entity.

SECTION 8. Insurance Requirements and Performance Bond.

A. During the term of this Franchise Ordinance, the Franchisee shall obtain and maintain insurance coverage at its sole expense, with financially reputable insurers that are licensed to do business in the State of Kansas. Should the Franchisee elect to use the services of an affiliated captive insurance company for this purpose, that company shall possess a certificate of authority from the Kansas Insurance Commissioner. The Franchisee shall provide not less than the following insurance:

1. Workers' compensation as provided for under any workers' compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.

2. Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability and umbrella or excess liability insurance of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate. The City shall be included as an additional insured with respect to liability arising from the Franchisee's operations under this Franchise Ordinance.

B. As an alternative to the requirements of subsection A, the Franchisee may demonstrate to the satisfaction of the City that it is self-insured and as such the Franchisee has the ability to provide coverage in an amount not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate, to protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death or property damage occasioned by the Franchisee, or alleged to so have been caused or occurred.

C. The Franchisee shall deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. The Franchisee shall make available to the City on request the policy declarations page.

D. The Franchisee shall, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of \$5,000 or the value of the restoration, whichever is greater, for a term consistent with the term of the permit plus two (2) additional years, and payable to the City to ensure the appropriate and timely performance in the construction and maintenance of Distribution Facilities located in the Right-of-Way. The required performance bond must be with good and sufficient sureties, issued by a surety authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance. Alternatively, if the Franchisee anticipates that it will be engaged in the construction and/or maintenance of its Facilities in the Right-of-Way multiple times during the course of a year, the Franchisee may choose to meet the bond requirements by providing a bond of \$50,000 annually.

SECTION 9. Right of Assignment.

This Franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made.

SECTION 10. Revocation and Termination.

In case of failure on the part of the Franchisee to comply with any of the provisions of this Franchise Ordinance, or if the Franchisee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise Ordinance, the Franchisee shall forfeit all right, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Franchise Ordinance shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Franchise, it shall first serve a written notice upon the Franchisee, setting forth in detail the neglect or failure complained of, and the Franchisee shall have ninety (90) days thereafter in which to comply with the conditions and requirements of this Franchise Ordinance. If a cure cannot be reasonably affected within ninety (90) days, the Franchisee shall be afforded such additional time to cure, as the City and the Franchisee shall agree. If at the end of such period the City deems that the conditions have not been complied with, the City shall take action to revoke and terminate this

Franchise by an affirmative vote of the City Council present at the meeting and voting, setting out the grounds upon which this Franchise is to be revoked and terminated; provided, to afford the Franchisee due process, the Franchisee shall first be provided reasonable notice of the date, time and location of the City Council's consideration, and shall have the right to address the City Council regarding such matter. Nothing herein shall prevent the City from invoking any other remedy that may otherwise exist at law. Upon any determination by the City Council to revoke and terminate this Franchise, the Franchisee shall have thirty (30) days to appeal such decision to the District Court of Johnson County, Kansas. This Franchise Ordinance shall be deemed revoked and terminated at the end of this thirty-day period, unless the Franchisee has instituted such an appeal. If the Franchisee does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment and any appeal therefrom. Provided, however, that the failure of the Franchisee to comply with any of the provisions of this Franchise Ordinance or the doing or causing to be done by the Franchisee of anything prohibited by or in violation of the terms of this Franchise Ordinance shall not be a ground for the revocation or termination thereof when such act or omission on the part of the Franchisee is due to any cause or delay beyond the control of the Franchisee or to bona fide legal proceedings.

SECTION 11. Rights and Duties of the Franchisee Upon Expiration of Franchise.

Upon expiration of this Franchise Ordinance, whether by lapse of time, by agreement between the Franchisee and the City, or by forfeiture thereof, the Franchisee shall have the right to remove any and all of its mains and pipes, laterals, appurtenances, and equipment used in its business within a reasonable time and after such expiration, but in such event, it shall be the duty of the Franchisee, immediately upon and during such removal to restore the streets, avenues, alleys, parks, and other public ways and grounds from which said pipes, laterals, and other equipment have been removed, to the equivalent condition as the same were before said removal was effects.

SECTION 12. Acceptance of Terms by the Franchisee.

The Franchisee shall have sixty (60) days after the final passage and approval of this Franchise Ordinance to file with the City Clerk its acceptance in writing of the provisions, terms and conditions of this Franchise Ordinance, which acceptance shall be duly acknowledged before some officer authorized by law to administer oaths; and when so accepted, this Franchise Ordinance and acceptance shall constitute a contract between the City and the Franchisee subject to the provisions of the laws of the State of Kansas, and said contract shall be deemed effective on the date the Franchisee files acceptance with the City.

SECTION 13. Conditions of Franchise.

This non-exclusive Franchise, grant, and privilege is granted under and subject to all applicable laws and under and subject to all of the orders, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction, and each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other causes beyond the City's or the Franchisee's control.

SECTION 14. Invalidity of Ordinance.

If any clause, sentence, or section of this Franchise Ordinance shall be held to be invalid, it shall not affect the remaining provisions of this Franchise Ordinance.

SECTION 15. Failure to Enforce.

The failure of either the City or the Franchisee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Franchise Ordinance

shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Franchisee unless said waiver or relinquishment is in writing and signed by both the City and the Franchisee.

SECTION 16. Payment of Costs.

The Franchisee shall be responsible for payment of all costs and expense of publishing this Franchise Ordinance and any amendments thereof.

SECTION 17. Repeal of Conflicting Ordinances.

The Franchisee's prior franchise, as adopted by City Ordinance No. 1892, is hereby repealed as of the first cycle of the monthly billing cycle which begins in January 2010. Provided, the repeal of said franchise shall not affect any rights of either party regarding any unpaid consideration thereunder, if any, and said franchise repealed is hereby continued in force and effect after the passage, approval, acceptance and publication of this Franchise Ordinance for the sole purposes of preserving such rights.

SECTION 18. Notice.

Unless expressly otherwise agreed by the parties, every notice or response to be served upon the City or the Franchisee shall be in writing, and shall be deemed to have been duly given to the required party when delivered personally to the person designated below, or five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service. The notices or responses shall be addressed as follows:

The City:
City of Prairie Village
7700 Mission Road
Prairie Village, Kansas 66208
Attn: City Clerk

The Franchisee:
Kansas Gas Service
7421 W 129th Street
Overland Park, Kansas 66213
Attn: President, Kansas Gas Service

The City and the Franchisee may designate such other address or addresses from time to time by giving written notice to the other party.

SECTION 19. Effective Date of Ordinance.

This Franchise Ordinance shall take effect and be in force from and after its passage, approval by the City, acceptance by the Franchisee, and publication in the official city newspaper.

PASSED by the Governing Body this ___ day of _____, 2009.

APPROVED by the Mayor this ___ day of _____, 2009.

Ronald L. Shaffer, Mayor

ATTEST:

APPROVED AS TO FORM:

Joyce Hagen Mundy, City Clerk

Stephen B. Horner, Assistant City Attorney



ADMINISTRATION DEPARTMENT

Council Meeting Date: October 19, 2009

Council Discussion: Kansas Department of Transportation - Transportation Enhancement (KDOT TE) Grant

RECOMMENDATION

Staff recommends submitting Brush Creek Trail from 75th Street and Nall to Windsor Park for 2011-2012 KDOT TE funding consideration.

BACKGROUND

KDOT TE funding is the city's best opportunity to receive external funding for the city's comprehensive trails plan. Staff submitted a project for TE funding consideration as part of the A.R.R.A. stimulus package in March 2009. That project, a trail from Porter Park to the Village Shops, was rated 14th of 55 projects with the top 6 projects receiving funding. During that process and the ensuing discussions with KDOT, recommended improvements were identified that should enhance the city's chance of having the project selected for 2011-2012 funding.

If approved, the current proposal would begin at 75th Street and Nall Avenue and run east along Brush Creek, cross over Roe Avenue into Porter Park, continue along the creek up to 71st Street, head east along 71st Street across Mission Road and follow the creek between Cherokee and Brighton Gardens into Windsor Park (see attached maps). The deadline for submitting the grant application to MARC is November 30, 2009. Once submitted, MARC will rate the projects for final submission to KDOT by December 30, 2009. Grant recipients should be notified by late summer 2010.

The Public Works Department will be the lead department on this grant/project and will coordinate with MARC by the submission deadline.

This proposal was approved by Parks & Recreation Committee on October 14, 2009.

FINANCIAL IMPACT

KDOT TE grants require a 20% city match. If the estimated cost of the trail project (\$1,100,000) is correct, the City would need to budget \$220,000 for its portion in the funding year. Currently included in the Parks CIP for 2012 is \$305,000 for trails although the plan is not funded.

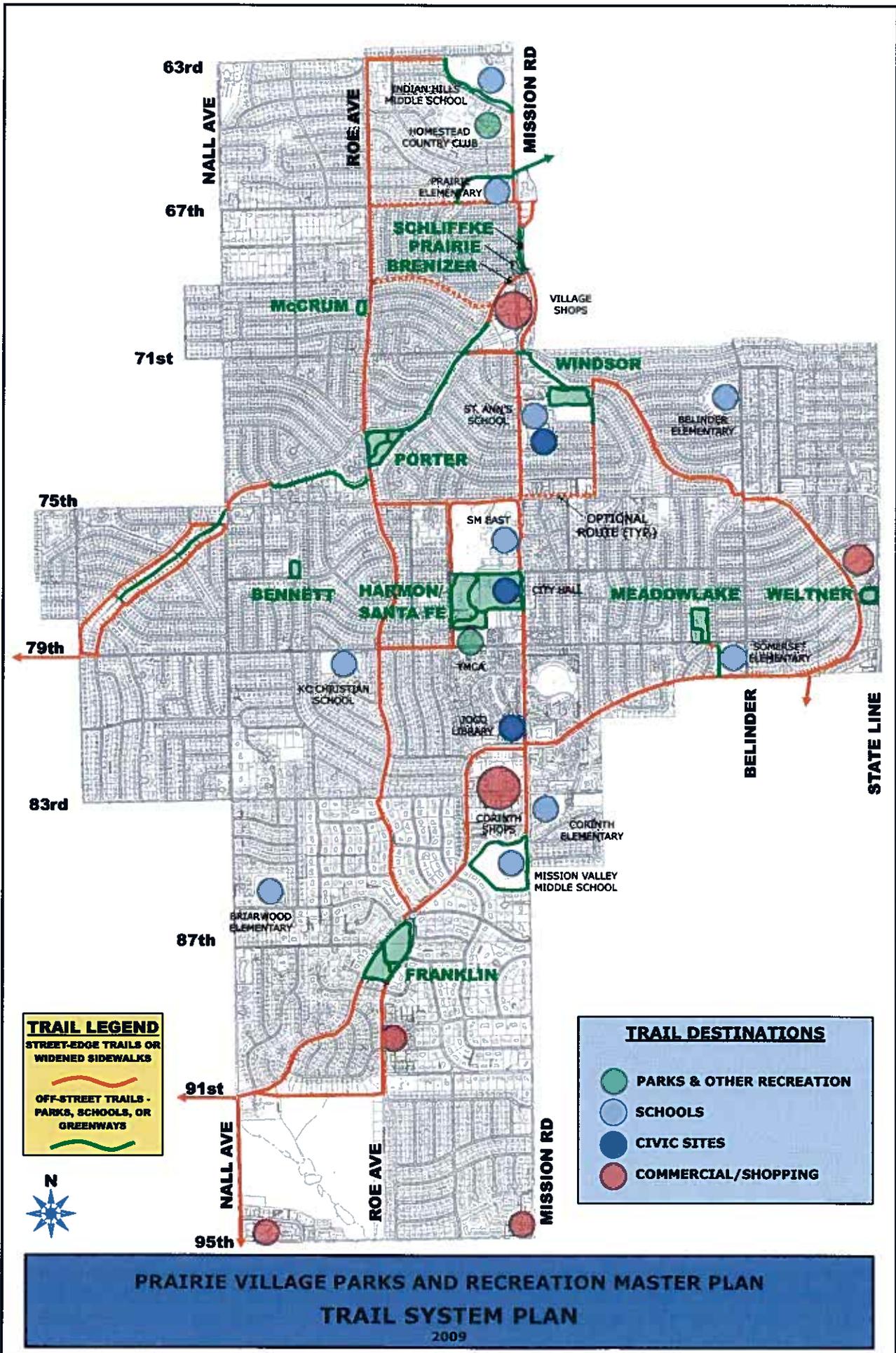
ATTACHMENTS

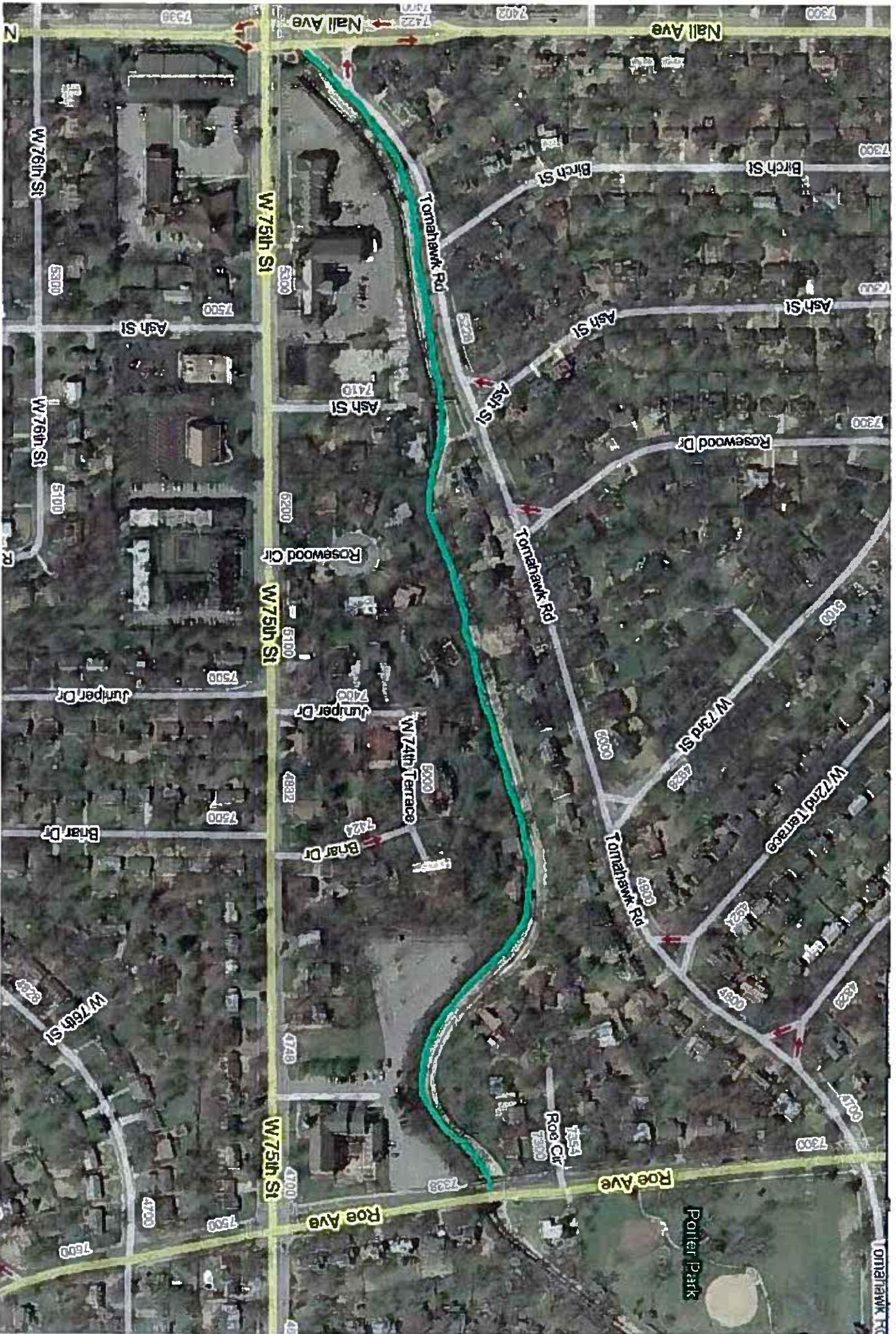
Comprehensive trails plan and trail segment maps.

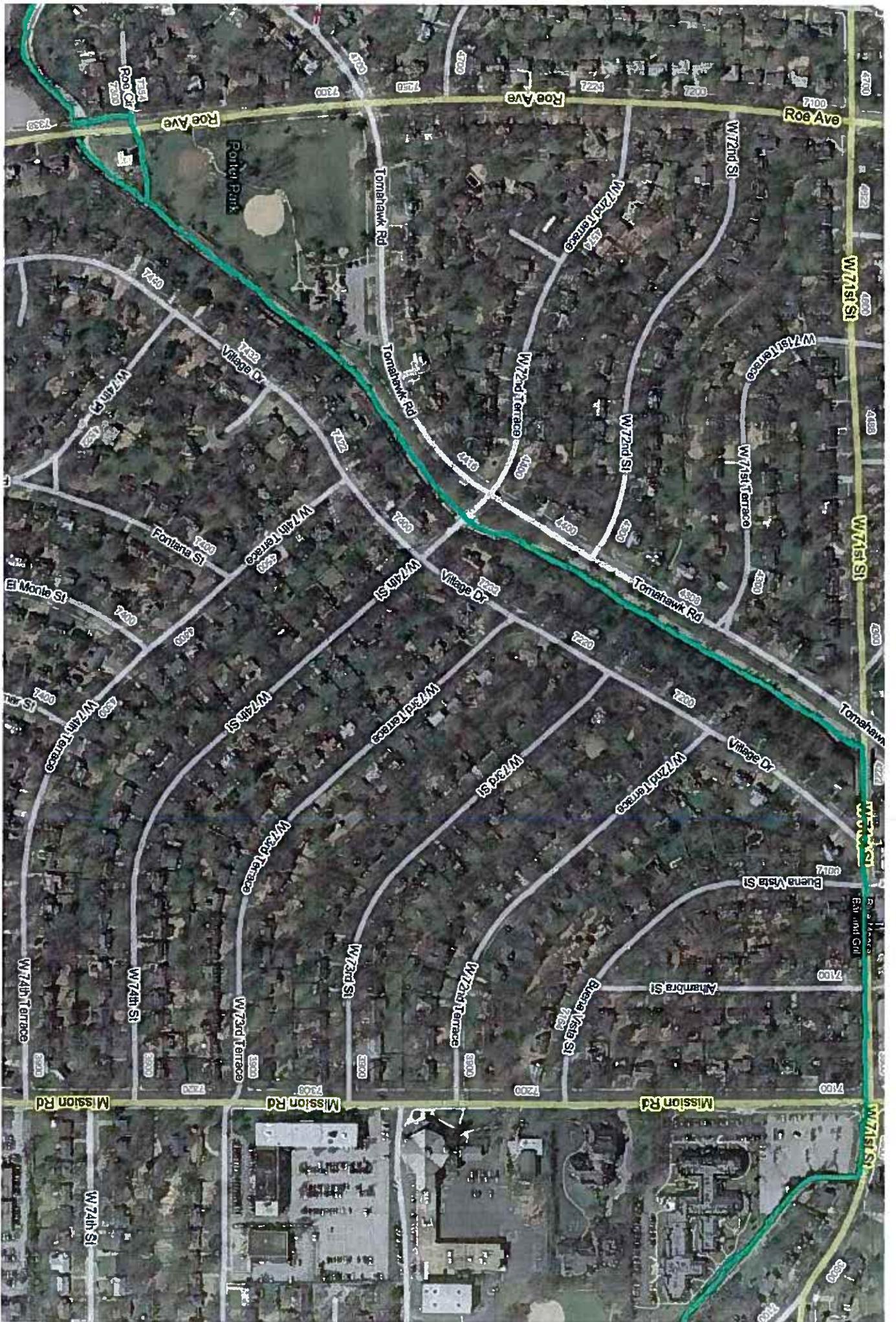
PREPARED BY

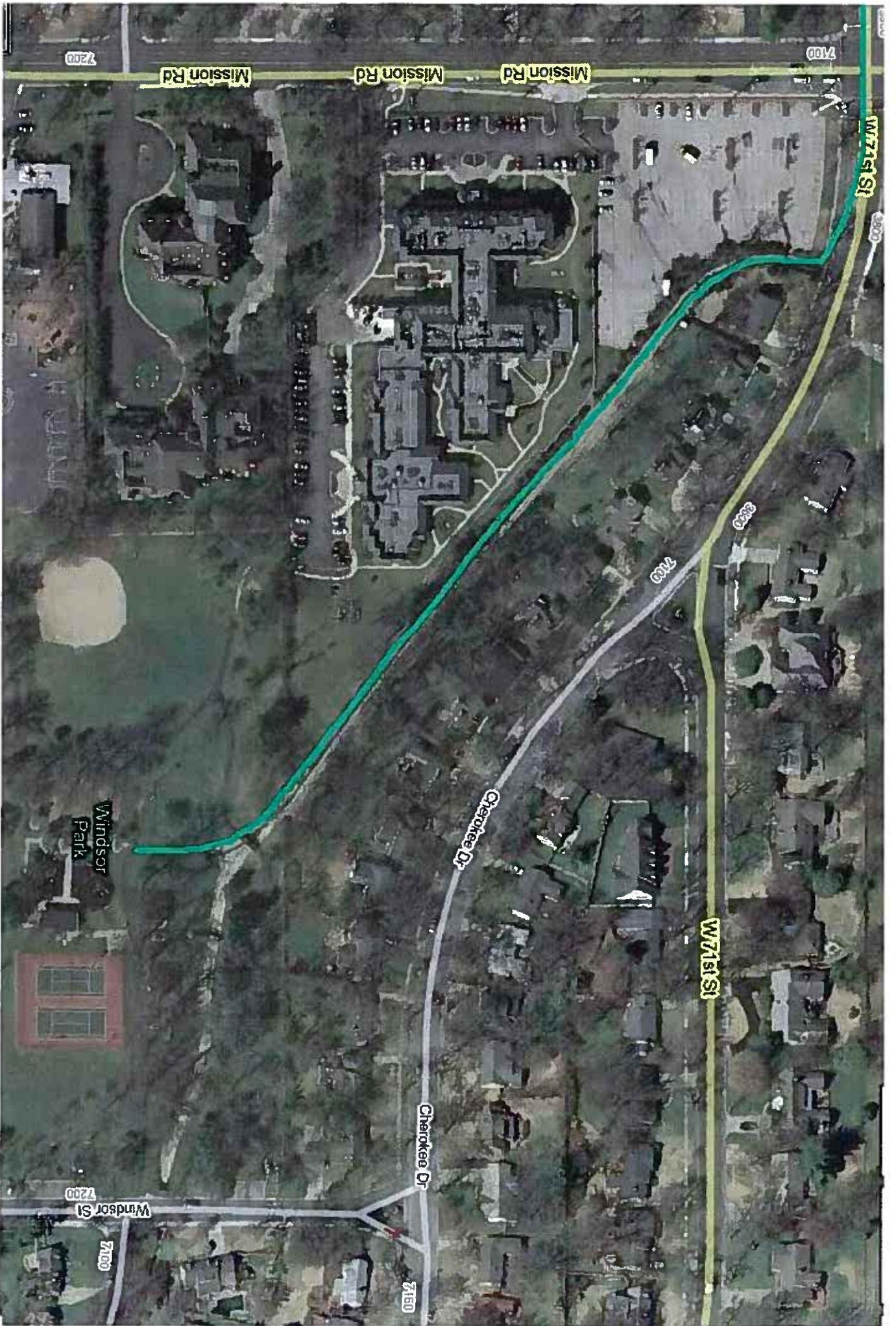
Chris Engel

Date: 10/15/2009









Mission Rd

W71st St

W71st St

Cherokee Dr

Cherokee Dr

Windsor Park

Windsor St

7200

7100

7100

7300

7200

7100

7150

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
October 19, 2009
7:30 p.m.**

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL
- IV. PUBLIC PARTICIPATION
- V. CONSENT AGENDA

All items listed below are considered to be routine by the Governing Body and will be enacted by one motion (Roll Call Vote). There will be no separate discussion of these items unless a Council member so requests, in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the regular agenda.

By Staff:

- 1. Approve Regular Council Meeting Minutes - October 5, 2009
- 2. Approve Claims Ordinance 2864

By Committee:

- 3. Adopt Ordinance 2213 Amending Chapter 2 of the Prairie Village Municipal Code, 2003, Entitled "Animal Control and Regulation" by Amending Section 2-101 Entitled "Definitions" by Adopting a new Section 2-107 Entitled "Public Nuisance" by Amending Section 2-109 Entitled "Registration-Tags" Section 2-110 Entitled "License Fee-Designated" and Section 2-111 Entitled "License Fee-Overdue" and by Renumbering Certain Sections (Council Committee of the Whole Minutes - October 5, 2009)
- 4. Revise the Fee Schedule for Animal Licensing to include 2-year and 3-year licenses and a monthly late fee (Council Committee of the Whole Minutes - October 5, 2009)

- VI. **MAYOR'S REPORT**

Ratify the Mayor's appointment of Nancy Wallerstein to the Prairie Village Planning Commission to complete an unexpired term ending April, 2011.

- VII. **COMMITTEE REPORTS**

Council Committee of the Whole - Michael Kelly

COU2009-99 Consider Project 190721: 2009 Storm Drainage Repair Program Construction Change Order #1 (Final)

COU2009-100 Consider Project 190728: Prairie Lane Drainage Project-Design Agreement

COU2009-96 Consider Approval of Project 190652 Park Identification Signs

COU2009-98 Consider Project 190656 Community Center Study

COU2009-97 Consider Project 190653 El Monte Fountain Improvements

Planning Commission - Dennis Enslinger

PC2009-13: Consider Amendments to Chapter 19.34 "Accessory Uses"

PC2009-18: Consider Renewal of Special Use Permit for wireless communication antenna at 7801 Delmar by Sprint/Nextel

PC2009-14: Consider Renewal of Special Use Permit for wireless communication antenna at 7801 Delmar by T-Mobile

PC2009-15: Consider Request for Special Use Permit for wireless communication antenna at 7801 Delmar by Clearwire Wireless

PC2009-16: Consider Request for Special Use Permit for wireless communication antenna at 9011 Roe Avenue by Clearwire Wireless

PC2009-17: Consider Renewal for Special Use Permit for wireless communication antenna at 7700 Mission Road by Sprint/Nextel

Parks and Recreation

2010 Parks Projects Prioritization Discussion - Diana Ewy Sharp

VIII. STAFF REPORTS

IX. OLD BUSINESS

X. NEW BUSINESS

COU2009-103 - Consider Resolution No. #2009-19 declaring that a Nuisance, pursuant to K.S.A. 12-1617e and Sections 4-503 of the Prairie Village Municipal Code, exists at 7578 High Drive and ordering the nuisance be abated by the property owner of record, Mark Birnbaum.

XI. ANNOUNCEMENTS

XII. ADJOURNMENT

If any individual requires special accommodations -- for example, qualified interpreter, large print, reader, hearing assistance -- in order to attend the meeting, please notify the City Clerk at 381-6464, Extension 4616, no later than 48 hours prior to the beginning of the meeting.

If you are unable to attend this meeting, comments may be received by e-mail at cityclerk@PVKANSAS.COM

CONSENT AGENDA

CITY OF PRAIRIE VILLAGE, KS

October 19, 2009

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
October 5, 2009**

The City Council of Prairie Village, Kansas, met in regular session on Monday, October 5, 2009, at 7:30 p.m. in the Council Chambers of the Municipal Building.

ROLL CALL

Mayor Ron Shaffer called the meeting to order and roll call was taken with the following Council members present: Al Herrera, Dale Warman, David Voysey, Michael Kelly, Andrew Wang, Laura Wassmer, Dale Beckerman, Charles Clark, David Morrison, Diana Ewy Sharp and David Belz.

Also present were: Quinn Bennion, City Administrator; Katie Logan, City Attorney; Captain Tim Schwartzkopf; Bob Pryzby, Director of Public Works; Dennis Enslinger, Assistant City Administrator; Chris Engel, Assistant to the City Administrator and Joyce Hagen Mundy, City Clerk.

Mayor Shaffer led all those present in the Pledge of Allegiance.

PUBLIC PARTICIPATION

Jane Kapleau, 2600 West 76th Place, expressed concern with the activities at a home in their neighborhood and the lack of police response to their calls. She stated her son had witnessed the sale of drugs taking place on the property. She noted neighbors have placed over 30 calls to the police department in the past month. Mayor Shaffer confirmed that a representative of their neighborhood spoke

with Captain Schwartzkopf earlier in the day. He assured her that the City would do everything that is legally possible to address their concerns.

Matthew Morgan, 2400 West 75th Place, expressed concern for the safety of the children residing at this residence and noted several calls had been made to the police department.

Mayor Shaffer acknowledged the presence of sixteen students from Rockhurst High School attending the meeting for their American Government class.

CONSENT AGENDA

Michael Kelly moved the approval of the Consent Agenda for Monday, October 5, 2009.

1. Approve Regular Council Meeting Minutes - September 21, 2009
2. Approve the lease agreement with Datamax for a replacement copy machine at Public Works
3. Approve revisions to Personnel Policy PP935 entitled "Cellular Phones"
4. Adopt Resolution 2009-17 designating authorized individuals for UMB Bank
5. Adopt Resolution 2009-18 designating authorized individuals for Great Southern Bank and a Collateral Security Agreement with Great Southern Bank.

A roll call vote was taken with the following members voting "aye": Herrera, Warman, Voysey, Kelly, Wang, Wassmer, Beckerman, Clark, Morrison, Ewy Sharp and Belz.

COMMITTEE REPORTS

There were no committee reports to come before the Council.

OLD BUSINESS

Quinn Bennion advised the Governing Body that he did not anticipate any additional bond action coming back to the Council prior to the sale of bonds on November 2nd unless a protest petition is filed. Official action on the sale will take place at the City Council meeting that evening.

NEW BUSINESS

Mayor Shaffer regrettably announced that he had received a letter of resignation from David Voysey and noted that this would be Mr. Voysey's last Council Meeting. Mayor Shaffer presented Mr. Voysey with a proclamation recognizing his three and a half years of service on the Council.

David Voysey stated he had enjoyed his time on the Council and working with both staff and City Council members. He noted he has sold his home and had hoped his family would have been able to find another home in Prairie Village; however, their new home is just outside the city limits. Mr. Voysey introduced his family and thanked them for their support and understanding while he attended to his Council responsibilities. Mr. Voysey encouraged the students present to consider future participation in local government and noted the satisfaction he has received from his time as Council representative. He stated he leaves the Finance Committee in very capable hands. Diana Ewy Sharp expressed her appreciation for David's leadership on the Park & Recreation Committee.

ANNOUNCEMENTS

Committee meetings scheduled for the next two weeks include:

Planning Commission	10/06/2009	7:00 p.m.
Sister City Committee	10/12/2009	7:00 p.m.

Communications Committee	10/13/2009	5:30 p.m.
Parks & Recreation Committee	10/14/2009	7:00 p.m.
Council Committee of the Whole	10/19/2009	6:00 p.m.
City Council	10/19/2009	7:30 p.m.

=====

The October exhibit in the R.G. Endres Gallery will be the annual State of the Arts. It will be a juried exhibit and three prizes of \$1,000 will be awarded including the R. G. Endres Memorial Best of Show Award. There will also be a new prize of \$500 - the Viewer's Choice Award. The reception will be held on October 9th from 6::00 to 8:00 p.m., with the awards being announced at 7:00 p.m.

The quarterly meeting of the First Suburb Coalition will be held this Friday at 8 a.m. Council members are encouraged to attend.

The 25th Annual Peanut Butter Week is October 5th through 9th. Bring some Peanut Butter to the Council Meeting.

Flu shots will be available to Council Members for \$10 on October 22, 2009 from 7:30 - 9:00 a.m. at Public Works or from 2 - 4 at City Hall.

The 50th Anniversary books, Prairie Village Our Story, are being sold to the public.

ADJOURNMENT

With no further business to come before the Council, the meeting was adjourned at 7:50 p.m.

Joyce Hagen Mundy
City Clerk

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

October 19, 2009

**Copy of Ordinance
2864**

Ordinance Page No.

An Ordinance Making Appropriate for the Payment of Certain Claims.

Be it ordained by the governing body of the City of Prairie Village, Kansas.

Section 1. That in order to pay the claims hereinafter stated which have been properly audited and approved, there is hereby appropriated out of funds in the City treasury the sum required for each claim.

NAME	WARRANT NUMBER	AMOUNT	TOTAL
<u>EXPENDITURES:</u>			
Accounts Payable			
93007-93089	9/4/2009	218,023.63	
93090	9/8/2009	24.00	
93091	9/11/2009	24.00	
93093-93183	9/18/2009	739,610.76	
93184-93185	9/23/2009	572.14	
93186-93190	9/25/2009	70,094.11	
93191	9/29/2009	12.00	
Payroll Expenditures			
9/11/2009		245,422.53	
9/25/2009		246,514.06	
Electronic Payments			
Intrust Bank -credit card fees (General Oper)		394.16	
State of Kansas - sales tax remittance		622.49	
Marshall & Ilsley - Police Pension remittance		7,754.06	
Intrust Bank - fee		418.54	
KCP&L		16,205.84	
CBIZ - Section 125 admin fees		252.92	
Intrust Bank - purchasing card transactions		7,135.99	
United Health Care		1,179.67	
Kansas Gas		532.83	
Wells Fargo HSA		7,260.63	
TOTAL EXPENDITURES:			\$ 1,562,054.36
Voided Checks			
Shawn Broz	# 88120	(77.48)	
TOTAL VOIDED CHECKS:			(77.48)
GRAND TOTAL CLAIMS ORDINANCE			1,561,976.88

Section 2. That this ordinance shall take effect and be in force from and after its passage.

Passed this 19th day of October 2009.

Signed or Approved this 19th day of October 2009.

(SEAL)

ATTEST: _____

City Treasurer

Mayor

COUNCIL COMMITTEE OF THE WHOLE
October 5, 2009

The Council Committee of the Whole met on Monday, October 5, 2009 at 6:00 p.m. The meeting was called to order by Council President Michael Kelly with the following members present: Mayor Shaffer, Al Herrera, Dale Warman, David Voysey, Michael Kelly, Andrew Wang, Laura Wassmer, Dale Beckerman, Charles Clark, David Morrison, Diana Ewy Sharp and David Belz. Staff members present: Quinn Bennion, City Administrator; Captain Tim Schwartzkopf; Bob Pryzby, Director of Public Works; Katie Logan, City Attorney; Dennis Enslinger, Assistant City Administrator; Chris Engel, Assistant to the City Administrator and Joyce Hagen Mundy, City Clerk.

COU2009-94 Consider changes to the Prairie Village Municipal Code Chapter 2 entitled "Animals"

Captain Schwartzkopf stated the proposed revision adding Section 2-107 establishes procedures for dealing with barking dog complaints by identifying the animal action as a public nuisance. The ordinance grants authority for officers to enter onto private property to seize and impound an animal that is creating a public nuisance, if necessary.

The new language is as follows:

- K. "Impound" means taking any animal into the confinement, care, or custody of the City.

2-107 Public Nuisance.

- A. **A Public Nuisance is any animal that:**
 - 1. **Molests or chases vehicles or persons;**
 - 2. **Damages private or public property;**
 - 3. **Scatters refuse that is bagged or otherwise contained;**
 - 4. **Barks, whines, howls, or creates any other disturbance which is continuous or untimely.**
- C. **It is unlawful for the owner or harbinger of any animal to negligently, carelessly, willfully or maliciously permit such animal to become a public nuisance.**
- B. **Anyone having the authority of an Animal Control Officer, including but not limited to Law Enforcement Officers, is given the authority to seize and impound any animal which is a public nuisance as defined by this section.**

Approximately ten percent of the calls logged at Dispatch are animal related calls. This provision will not be used in all instances; however, it will give the Department the ability to remove the animal if they are unable to address the complaint by other means.

Mayor Shaffer asked if this was in response to recent complaints. Captain Schwartzkopf replied historically this has been a problem for the Department. They

receive complaints in the evening regarding barking dogs, go to the residence and find no one home and they are only able to leave a door hanger and not resolve the problem for the neighbors.

Andrew Wang asked if the calls are primarily early evening or late at night. Captain Schwartzkopf noted they could be during the day, but most are in the evening.

Dale Beckerman asked if the Department relied solely on the complaint. Captain Schwartzkopf stated the officers will respond to the location and usually will hear the animal. If there is no one home, they will follow-up the next day but that does not solve the problem. Mr. Beckerman noted nothing in the proposed ordinance requires that a warning be given. Captain Schwartzkopf assured the Council that this action would only be used as necessary.

Dale Warman stated this would not be used on every call, but noted it is difficult for an officer to not be able to resolve the complaint because the owner is not at home and the animal continues to bark. Al Herrera confirmed there would be a related citation and fine. He urged the Department to publish this change in the City newsletter.

Dennis Enslinger noted the City Clerk's Department is also proposing amendments to this Chapter to address changes in animal registration. The new financial software will give the City the capability to license animals based on their required rabies vaccinations. The proposed ordinance revision changes the licensing year from the calendar year to a twelve month period. It will also allow for the City to issue a multi-year license to animals with multi-year vaccinations through the issuance of a permanent animal tag.

This will benefit both the City Staff by spreading out workload for processing over 6400 animal licenses and the residents who will be able to license animals based on their required rabies vaccination and to purchase multi-year licenses. The ordinance will provide for the issuance of a ticket after 60 days consisted with other licenses, the current ordinance provides for the issuance of tickets after May 31st or 90 days.

David Voysey made the following motion, which was seconded by Dale Warman and passed unanimously:

**MOVE THE GOVERNING BODY ADOPT ORDINANCE 2213
AMENDING CHAPTER 2 OF THE PRAIRIE VILLAGE MUNICIPAL
CODE, 2003, ENTITLED "ANIMAL CONTROL AND REGULATION"
BY AMENDING SECTION 2-101 ENTITLED "DEFINITIONS"; BY
ADOPTING A NEW SECTION 2-107 ENTITLED "PUBLIC NUISANCE"
BY AMENDING SECTION 2-109 ENTITLED "REGISTRATION-TAGS"
SECTION 2-110 ENTITLED "LICENSE FEE-DESIGNATED" AND
SECTION 2-111 ENTITLED "LICENSE FEE-OVERDUE"; AND BY
RENUMBERING CERTAIN SECTIONS.**

**COUNCIL ACTION REQUIRED
CONSENT AGENDA**

COU2009-95 Consider Revisions to the Fee Schedule related to Animal Licensing

The City Clerk's Department recommends changing the licensing schedule for animal licensing to coincide with the rabies vaccination date of the animal. The Department also recommends allowing two and three year licenses for those animals that receive two and three year rabies vaccinations. To accommodate this change the City will be issuing permanent animal tags that do not reflect a year. When the license is renewed the City's records will be updated, but a new tag will not be issued. A discount is proposed for the two and three-year licenses. As with other licenses, no refunds will be allowed. Late penalties will be assessed, as they are with other licenses, each month the license is delinquent after 60 days.

The following fees are recommended:

Animal Licenses - per animal	
Initial or renewal for 1 year	
Neutered	\$ 6
Not Neutered	\$25
Initial or renewal for 2 years	
Neutered	\$10
Not Neutered	\$45
Initial or renewal for 3 years	
Neutered	\$15
Not Neutered	\$70
Late Fee - applied after 60 days	\$ 3/month

Laura Wassmer made the following motion, which was seconded by Dale Beckerman and passed unanimously:

**MOVE THE GOVERNING BODY REVISE THE FEE SCHEDULE
FOR ANIMAL LICENSING TO INCLUDE A 2-YEAR AND 3-YEAR
LICENSES AND A MONTHLY LATE FEE
COUNCIL ACTION REQUIRED
CONSENT AGENDA**

Sister City Presentation

Chris Engel presented a video of the recent trip to Dolyna taken by Mayor Shaffer and other representatives of Prairie Village in response to an invitation by Dolyna to attend their Independence Day Celebration. Prairie Village was one of five sister cities represented at the celebration. A brief video was presented from the trip showing the area, events attended and people.

David Morrison arrived.

Chris Engel stated one of the goals of the Sister City in establishing this relationship is to develop exchange opportunities for government representatives, students, business leaders, etc. During this trip some of the groundwork was established for possible future exchange opportunities.

Mayor Shaffer noted the Prairie Village delegation was treated like royalty throughout their visit. The people of Dolyana are very sincere in their desire to continue and expand their relationship with Prairie Village. Laura Wassmer noted the warmth of the delegation that visited and encouraged Council members to participate in their next visit to Prairie Village.

Discussion on Planning Services

Michael Kelly noted at the last Council meeting, the Council was informed of Ron Williamson's desire to retire and in preparation for that he feels the Council should discuss the process for replacement. He feels this is an opportunity for the City to solicit requests for qualifications from other entities offering planning services. He noted it has been four years since this was done by the City for this position and felt this was an opportunity to test the market.

Charles Clark stated this person works for the Planning Commission and not the City Council. He feels it is their decision. Mr. Kelly disagreed feels the Mayor should appoint a committee of Council, staff and residents to make the selection. This individual potentially deals with very political issues and he feels the selection should be a Council decision.

Al Herrera feels that when the City has formed a strong relationship with a contractor they should not be thrown out simply because of a length of time has passed. He agrees with Mr. Clark that the authority lies with the Planning Commission. He added Mr. Williamson knows the City and has done a tremendous job for the City. Mr. Kelly responded this is not about Ron Williamson and the job he has done, it is about the process.

Quinn Bennion noted this is not an actual appointment such as the City Attorney or Prosecutor. It is similar to the selection of the auditors or engineer selection where the contract is approved by the City Council. During the 2005 process RFQ's were sent out with two firms responding. They were interviewed by the Planning Commission, who then made a recommendation to the Council for the contract to be approved.

Mayor Shaffer stated the City does not know Mr. Williamson's schedule for retirement and he feels it is premature to set a replacement process and feels the direction/recommendation should come from the Planning

Commission. He does not want to appoint a separate committee at this point in time.

Laura Wassmer stated she felt the City should be open to exploring other firms when the opportunity presents itself. However, she would like to hear the Planning Commission's thoughts.

Dale Warman noted this is an important position that is more strongly impacted by the individual filling the position than the firm. It is essential that the members of the Planning Commission trust and respect this individual in order for him/her to work with them.

David Morrison requested information on the selection of past consultants.

Joyce Hagen Mundy responded the City has only had two Planning Consultants. The initial Planner was Dick Kellenberg who served until 1992 and wrote most of the initial zoning regulations for Johnson County cities. After his retirement, requests for qualifications went out and the firm of Bucher, Willis & Ratliff was selected to provide those services. As Mr. Warman noted, the relationship between the Commission and the Planner is essential and recognizing the level of respect was not high BWR changed the individual from their firm providing those services. Ron Williamson has provided those since 1994.

Quinn Bennion stated the terms for consulting contracts are inconsistent within the City and the terms are based on the scope and need for stability. He noted the auditors have a three year contract, engineers have a two year contract, banking services is a four year agreement and others have one year contracts.

Dale Beckerman stated given the cycle of projects considered by the Planning Commission, he felt it would be better to have a longer term than shorter term with a minimum of four or five years. He also agrees the action should be initiated by the Planning Commission.

Michael Kelly questioned why the terms were different. Mr. Pryzby responded they were set based on past practice. He added he prefers to have contracts with a stated term.

David Belz stated while serving on the interviewing committee for engineers he has noted a large increase in the number and quality of proposals received since the City opened up the process with a regular selection process. Firms know that a specific contractor does not have the work in the

City locked up and they will take the time to submit proposals. He feels it is healthy to let contractors know this is not a permanent agreement.

David Voysey stated the discussion has been good, but at this point in time there is nothing to be done.

STAFF REPORTS

Public Safety

- Captain Schwartzkopf was welcomed back by Mayor Shaffer and reported on his ten weeks at the FBI International Academy. Quinn Bennion noted this is a highly selective academy and it is an honor to be selected to participate.
- Captain Schwartzkopf noted there was a serious injury accident this afternoon at 65th & Roe involving a vehicle and a scooter. The couple riding on the scooter was taken to different hospitals for treatment. The woman was in serious condition with her leg being removed at the knee. Officers are continuing their investigation.
- Saturday, October 10th, the City's Animal Control Officers will host Prairie Village Dog Days from noon to four o'clock at Harmon Park.

Public Works

- Bob Pryzby read a letter of apology from an individual arrested for his actions in breaking into the pool complex last summer and the related damages. Al Herrera confirmed the City will receive monetary restitution for the damages
- The CARS Program recently distributed an additional \$1 million in funds for the 2010 program. The City programs being recommended for funding in 2010 are 83rd Street - Roe to Nall and Somerset Drive, Mission Road to Roe Avenue
- The current CIP projects are in their final inspection stage. This year's projects have gone very well.
- Demolition has begun on the center on the northeast side of Mission Road at 95th Street and related storm drainage work will follow along 95th Street.
- The City received three bids for the El Monte fountain work and one bid for the construction of a prosecutor's office.

Administration

- Dennis Enslinger reported the Environmental Committee Forum will be held this Thursday, October 8th with dinner at 6 p.m. and the presentation at 7 p.m.
- The City's State of the Arts exhibit is up and the reception will be held on Friday, October 9th from 6 to 8 p.m. The announcement of awards will take place at 7:30 p.m.
- The demolition of the strip center at 95th & Mission will be completed tomorrow with construction of a new Walgreen's store to follow.
- The City has had preliminary discussions on the possible construction of an office building at 71st & Mission Road. In order to do this the

property will need to be rezoned and the application will come before the City Council.

- Katie Logan stated OPUS has inquired about extending the 18 month term set in their rezoning ordinance for submittal of a final development plan for Meadowbrook. Under the current term, final development plans have to be submitted by January 25, 2010. Ms. Logan stated it is her opinion that since the condition is part of an ordinance which has not become final the only way to extend the term would be to rescind the ordinance and enact another ordinance with the new term. She noted both these actions would require a two-thirds vote of the Governing Body for approval.

Charles Clark confirmed if no action is taken and the final development plans are not submitted the ordinance expires and any redevelopment would be back at square one. Diana Ewy Sharp asked how this happened.

Katie Logan responded the ordinance should have addressed how to extend the submittal period. The condition was added to prevent the project from languishing in the development/preconstruction stage. There was no discussion regarding the possible extension of the submittal date. Quinn Bennion noted the process to extend is a shorter process. Ms. Logan stated the motion to rescind and to extend could take place at the same meeting, but both will need ten votes to pass.

Dennis Enslinger noted that if the Council fails to get the necessary ten votes to extend, the ordinance dies. In hindsight, a condition should have been added to the ordinance allowing the Council to extend the time period. Although this action does not require a public hearing, staff feels that some notice must be provided to the residents within two hundred feet of the pending request.

Mayor Shaffer asked if OPUS was aware of this finding. Dennis Enslinger replied he has had preliminary discussions with them; however, now that he has received clarification from the City Attorney on the process, he will notify them in writing.

- Dennis Enslinger provided an update on the Housing Tour attended by Quinn Bennion, Laura Wassmer and Ruth Hopkins on Saturday, September 26th. Two of the developments that appeared to have the most possibility for Prairie Village were the Buckley Court Townhomes in Overland Park and the Arbor Creek development at 159th & Murlen in Olathe which is a separated mixed use development with residential in one area and commercial in another.

Laura Wassmer said the tour was very helpful in picturing potential redevelopment and encouraged others to tour sights as they consider the future development of the City. Mr. Enslinger suggested the tour be reformatted into a morning event only, visiting two locations.

- Quinn Bennion announced the City has received its renewal quotes for employee health insurance. The renewal has been negotiated down to 7% with plan changes; however, the 2010 budget amount was only 5%. Andrew Wang said he thought there was a cap on the amount of the increase. Mr. Bennion responded the cap was about 14% which was the initial quote.
- The pedestrian bridge behind Village Presbyterian Church is almost completed. This was a joint project with the City of Mission Hills.
- The League of Kansas Municipalities Conference began Saturday and continues until Tuesday. He, Mayor Shaffer, Al Herrera, Diana Ewy Sharp and Ruth Hopkins (who is still at the conference) attended. The general speakers were excellent as well as several of the work sessions. Diana Ewy Sharp stated she attended a very informative session on Community Improvement Districts (CID) and on the changing demographics of area noting only 25% of the households have children residing in them.

MAYOR'S REPORT

- Mayor Shaffer reported that Wednesday he will leave for the Aspen Institute for four days of training as a member of the MARC Board.
- Dennis Enslinger is one of the candidates for appointment to the Total Transportation Policy Committee for the Mid America Regional Council
- His recent trip to Washington, D.C. was very successful with important contacts made with our area representatives and leaders.
- He and several Council members attended the Shawnee Mission Education Foundation annual Breakfast last week.
- He met with the MARC Board to discuss transportation issues last Tuesday.
- Last Friday he participated in the Lancer Day parade.

Adjournment

With no further business to come before the Committee, Council President Michael Kelly adjourned the meeting at 7:20 p.m.

Michael Kelly
Council President



MAYOR

Council Meeting Date: October 19, 2009

**Consent Agenda Consider appointment to the Prairie Village Planning
Commission**

RECOMMENDATION

Mayor Shaffer requests Council ratification of the appointment of Nancy Wallerstein to the Prairie Village Planning Commission to complete an unexpired term ending April, 2011.

BACKGROUND

Nancy Wallerstein, a thirty-year resident of Prairie Village, has been an active volunteer for the community serving on the City Council, Johnson County Park & Recreation District and the Northeast Johnson County Chamber of Commerce. Nancy brings a wealth of experience, historical background and commitment to this position as well as a broad resident view to the Commission through her community contacts.

ATTACHMENTS

1. Volunteer application

PREPARED BY

Joyce Hagen Mundy
City Clerk

Date: October 13, 2009



City of Prairie Village APPLICATION TO VOLUNTEER

Please complete this form and return it to the City Clerk's Office, 7700 Mission Road, Prairie Village, Kansas 66208. If you have any questions, please contact the City Clerk's Office at 913-381-6464 or send an e-mail to cityclerk@pvkansas.com.

Name NANCY WALLERSTEIN Spouse's Name EDWARD

Address 4100 W. 89TH ST Zip 66207

Ward 5 Telephone: Home 913-381-8530 Work 913-381-6576

Fax 913-381-6576 Other Number(s): 913-593-4472 C

Business Affiliation THE PRAIRIE SCHOOLER, INC

Business Address PO BOX 8381, PVKS 66208

What Committee(s) interest(s) you?
PLANNING COMMISSION

Please tell us about yourself, listing any special skills or experiences you have which would qualify you for a volunteer with the City of Prairie Village.

A 30 YEAR RESIDENT OF PRAIRIE VILLAGE, COMMUNITY VOLUNTEER WITH PARKS, CHAMBER, PV CITY COUNCIL, THEATRES, MUSEUMS, AND SCHOOL DISTRICT. I HAVE SERVED IN MANY CAPACITIES TO REGULATE, SET POLICIES, REVIEW PLANS, CREATE RFP'S AND PROVIDE FORUMS FOR CITIZEN INPUT AND CREATE A VISION FOR THE FUTURE OF PV AND JO.CO.

Thank you for your interest in our community.

*Thanks for your consideration
Nancy*



PLANNING COMMISSION

Council Meeting Date: October 19, 2009

Consider PC2009-13 Amendments to Zoning Ordinance Chapter 19.34 "Accessory Uses"

RECOMMENDATION

Recommend the Governing Body adopt Ordinance 2214 amending Chapter 19.34 of the Prairie Village Municipal Code, entitled "Accessory Uses" by amending Section 19.34.040 entitle "Accessory Uses - Miscellaneous Provisions" paragraph (F)(i)

BACKGROUND

Chapter 19.34 addresses Accessory Uses including such items as permanent emergency standby generators. The current ordinance allows the Planning Commission to approve these in the side yard of residences if certain criteria are met. Over the past few months, the Commission has heard several of these applications and felt that staff could grant approval based on the criteria established by the zoning regulations with the option to bring the application before the Commission for review if it is not approved by the Building Official.

A public hearing was held on the proposed revision on October 6, 2009, with no one present to speak on the proposed amendment. The minutes from that public hearing are attached.

The following text shows the proposed changes. Text to be deleted is lined out and new text is in bold.

- F. Permanent standby emergency generators shall be permitted as an accessory use for single-family and two-family dwellings subject to the following conditions:
- i. Proposed locations of permanent standby emergency generators that do not meet Subsection d above, but are not located in a front yard may be submitted to the ~~Planning Commission~~ **Building Official or his/her designee** for review and approval.

The ~~Planning Commission~~ **Building Official or his/her designee** shall give consideration to the following criteria in approving or disapproving a location:

1. That there are special circumstances or conditions affecting the property.
2. That adequate distance exists between the location and adjacent property.
3. That the proposed location will be adequately screened from the street.
4. That the location will not cause significant adverse impact on adjacent properties.
5. That the ~~Planning Commission~~ **Building Official or his/her designee** may impose any conditions it deems necessary to mitigate any negative impacts of the proposed location. (Ord. 2188, Sec. II, 2009)
6. **If in the opinion of the Building Official or his/her designee, the proposed generator does not meet the criteria stated above, an application may be made to the Planning Commission for site plan approval.**

ATTACHMENTS

Excerpt of Planning Commission minutes of October 6, 2009
Proposed Ordinance

PREPARED BY

Joyce Hagen Mundy
Planning Commission Secretary/City Clerk

Date: October 12, 2009

**PLANNING COMMISSION MINUTES
OCTOBER 6, 2009**

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, October 6, 2009 in the Council Chambers, 7700 Mission Road. Chairman Ken Vaughn called the meeting to order at 7:00 p.m. with the following members present: Bob Lindeblad, Dirk Schafer; Randy Kronblad, Nancy Vennard and Marlene Nagel.

The following persons were present in their advisory capacity to the Planning Commission: Ron Williamson, Planning Consultant; Dale Beckerman, Council Liaison; Dennis Enslinger, Assistant City Administrator; Jim Brown, City Building Official; and Joyce Hagen Mundy, City Clerk/Planning Commission Secretary.

APPROVAL OF MINUTES

Bob Lindeblad noted a typographical error on page 2; "5000 W 05th Street" should be "5000 West 95th Street" and moved the approval of the minutes of September 1, 2009 with the correction noted. The motion was seconded by Randy Kronblad and passed by a vote of 5 to 0 with Nancy Vennard abstaining.

PUBLIC HEARINGS

Chairman Ken Vaughn stated there would be several public hearings and reviewed the rules of procedure to be followed for the public hearings.

**PC2009-013 - Revisions to the Prairie Village Zoning Regulations
Chapter 19.34 entitled "Accessory Uses"**

Ron Williamson stated at the September 1, 2009 meeting of the Planning Commission Staff were directed to prepare an amendment to the Permanent Standby Emergency Generators Ordinance allowing for Staff approval for side yard locations provided the generator meets the criteria. The Planning Commission has reviewed and approved a number of these requests, all of which were compatible with the criteria in subsection (i). Planning Commission approval requires more time and cost for the homeowner which in the opinion of the Commission is not necessary. The emergency generators are more common now and their design has improved so that they are quieter and are only about the same size or smaller than an air conditioning unit.

The proposed change in the ordinance will give approval authority to the Building Official, but if in the opinion of the Building Official the proposed generator does not meet the criteria, an application can be made to the Planning Commission.

The following text shows the proposed changes. Text to be deleted is lined out and new text is in bold.

- F. Permanent standby emergency generators shall be permitted as an accessory use for single-family and two-family dwellings subject to the following conditions:
 - i. Proposed locations of permanent standby emergency generators that do not meet Subsection d above, but are not located in a front yard may be submitted

to the ~~Planning Commission~~ **Building Official** or his/her designee for review and approval.

The ~~Planning Commission~~ **Building Official** or his/her designee shall give consideration to the following criteria in approving or disapproving a location:

1. That there are special circumstances or conditions affecting the property.
2. That adequate distance exists between the location and adjacent property.
3. That the proposed location will be adequately screened from the street.
4. That the location will not cause significant adverse impact on adjacent properties.
5. That the ~~Planning Commission~~ **Building Official** or his/her designee may impose any conditions it deems necessary to mitigate any negative impacts of the proposed location. (Ord. 2188, Sec. II, 2009)
6. **If in the opinion of the Building Official or his/her designee, the proposed generator does not meet the criteria stated above, an application may be made to the Planning Commission for site plan approval.**

Chairman Ken Vaughn asked if there was anyone wishing to address the Commission regarding the proposed revisions. Seeing none, he closed the public hearing at 7:05 p.m.

Randy Kronblad moved the Planning Commission recommend the Governing Body adopt an ordinance making the revisions proposed to PVMC 19.34. (F) "Permanent Standby Emergency Generators". The motion was seconded by Marlene Nagel and passed unanimously.

Ordinance No. 2214

AN ORDINANCE AMENDING CHAPTER 19.34 OF THE PRAIRIE VILLAGE MUNICIPAL CODE, ENTITLED "ACCESSORY USES" BY AMENDING SECTION 19.34.040(F)(i) ENTITLED "PERMANENT STANDBY GENERATORS"

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

Section I. Planning Commission Recommendation.

After having received a recommendation from the Planning Commission on application PC2009-13 and proper notice having been published and hearing held on October 6, 2009, as provided by law and under the authority of and subject to the provisions of the Zoning Regulations of the City of Prairie Village, Kansas, the Zoning Ordinance is amended as set forth in Section II.

Section II. Amendment to Chapter 19.34

Chapter 19.34 of the Prairie Village Municipal Code, entitled "Accessory Uses" is hereby amended by adding Section 19.34.040(F)(i) to read as follows:

19.34.40 F.

- i. Proposed locations of permanent standby emergency generators that do not meet Subsection d above, but are not located in a front yard may be submitted to the Building Official or his/her designee for review and approval.

The Building Official or his/her designee shall give consideration to the following criteria in approving or disapproving a location:

1. That there are special circumstances or conditions affecting the property.
2. That adequate distance exists between the location and adjacent property.
3. That the proposed location will be adequately screened from the street.
4. That the location will not cause significant adverse impact on adjacent properties.
5. That the Building Official or his/her designee may impose any conditions it deems necessary to mitigate any negative impacts of the proposed location.
6. If in the opinion of the Building Official or his/her designee, the proposed generator does not meet the criteria stated above, an application may be made to the Planning Commission for site plan approval.

Section III. Effective Date

This ordinance shall take effect and be in force from and after its passage, approval and publication as provided by law.

PASSED AND APPROVED THIS 19th day of October, 2009.

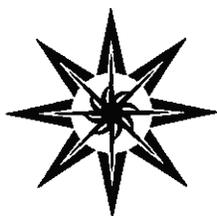
Ronald L. Shaffer, Mayor

ATTEST:

APPROVED AS TO FORM:

Joyce Hagen Mundy
City Clerk

Catherine P. Logan
City Attorney



PLANNING COMMISSION

Council Meeting Date: October 19, 2009

Consider PC2009-18 Renewal of a Special Use Permit for the installation of wireless communication antenna at 7801 Delmar - Sprint/Nextel

RECOMMENDATION

Governing Body adopt Ordinance 2215 approving the renewal of a Special Use Permit for the installation, operation and maintenance of communication antenna and related equipment by Sprint/Nextel on the property described as 7801 Delmar, Prairie Village, Kansas.

BACKGROUND

T-Mobile, Sprint and Cricket are the current carriers on the water tower and are requesting renewal of a Special Use Permit that allowed the installation of antennas and the associated equipment cabinets on the water tower at 7801 Delmar. The initial application was approved for three carriers in 1997 and renewed in 2003. The carriers in 2003 were T-Mobile, Nextel and AT&T. Since that time, Nextel changed to Sprint and AT&T has transferred its facilities to Cricket. T-Mobile is still operating as T-Mobile.

The Special Use Permit renewal that was approved September 3, 2003 was for three carriers and subject to the following 15 conditions:

1. The renewal of the Special Use Permit shall be for a maximum of six years from the date of the ordinance approving the renewal with subsequent six year renewals.
2. The antennas and equipment cabinets shall be painted a color that matches the water tower and all wires that connect to the antennas shall be enclosed in a metal shield that is painted the same color as the water tower. The applicant shall maintain the painted surfaces and repaint as needed.
3. There will be no security lighting installed around the base of the tower.
4. The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
5. The equipment cabinets shall be located on the west side of the tower. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence, and landscape screening as shown on the revised landscape plan. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
6. The applicant shall have a structural inspection of all antennas and cables performed by a licensed professional engineer prior to every six year renewal and submit it as a part of the renewal application. This has not been done yet for this renewal application and will need to be conducted and the findings submitted to the City prior to the application being forwarded to the City Council.
7. Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.

8. The Special Use Permit will be for three carriers. Additional carriers will need to apply for a Special Use Permit and submit site plans for approval prior to the installation of antennas and equipment.
9. The carriers will be allowed to erect temporary towers when the Water District is stripping and painting the tower.
10. The utility transformer will be placed on Water District property.
11. A copy of the lease with the Water District shall be submitted to the City prior to the publication of the ordinance approving the renewal of the Special Use Permit.
12. Grass tiles shall be used to provide vehicle and equipment access to the area beneath the tower.
13. The approved Site Plan, dated April 14, 1997, shall be reincorporated as the Site Plan for approval of this application.
14. The applicant shall submit a new landscape plan for Staff approval indicating the existing plants and those that will be installed to replace the ones that have died. The plan shall be submitted and approved prior to the City Council meeting and the applicant shall guarantee the installation and maintenance.
15. The applicant may change out equipment boxes, cable and antennas provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.

There are no changes planned for T-Mobile and Cricket, but the Sprint antennas will be modified to allow the installation of a new provider, Clearwire. This request for renewal is past the six year approval period; however, it could not be considered earlier due to the moratorium on Wireless Communications Facilities applications.

The equipment cabinet's location was approved for the west side of the water tower and fencing and landscaping were installed to screen them. The fence and landscaping appear to be in good shape and have accomplished their purpose. There is a large tree in the north compound that the applicant has requested to trim. The branches are hanging low and touching some of the equipment boxes. The tree does a great job in the overall screening of the installation so trimming should be limited to the minimum necessary for the installation.

In accordance with the Commission's Citizen Participation Policy, a neighborhood meeting was held on September 16th with information presented on all four carriers. Three neighbors attended and expressed no opposition to the renewal or the addition of Clearwire. Their questions were related to the structural capacity of the tower, expansion of the equipment compound and added height to the tower. All were satisfactorily answered. A public hearing was held before the Planning Commission on October 6, 2009 with no one present to speak on this application. A complete analysis of the application can be found in the minutes from that meeting which are attached.

The Planning Commission found favorably on the findings of fact and recommends the Governing Body approve PC2009-18, the renewal of the Special Use Permit for wireless communication antenna at 7801 Delmar by Sprint/Nextel subject to the conditions listed below:

- 1) The Special Use Permit renewal will be approved for the existing three carriers T-Mobile, Sprint and Cricket. Additional carriers may locate on the water tower subject to approval of a site plan by the Planning Commission and an amended Special Use Permit will not be required.
- 2) The approval of the Special Use Permit Renewal shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas and that all the

conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required.

- 3) The antennas and equipment cabinets shall be painted a color that matches the water tower and all wires that connect to the antennas shall be enclosed in a metal shield that is painted the same color as the water tower. The applicant shall maintain the painted surfaces and repaint as needed.
- 4) There will be no security lighting installed around the base of the tower.
- 5) The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
- 6) The equipment cabinets shall be located in the compound on the west side of the tower. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence, and landscape screening as shown on the revised landscape plan and the fence and landscaping shall be maintained in good condition by the applicant. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
- 7) The applicant shall have a structural inspection of all antennas and cables performed by a licensed professional engineer prior to every ten year renewal and submit it as a part of the renewal application. This has not been done yet for this renewal application and will need to be conducted and the findings submitted to the City prior to the application being forwarded to the City Council.
- 8) Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
- 9) The carriers will be allowed to erect temporary towers when the Water District is stripping and painting the tower.
- 10) The utility transformer will be placed on Water District property.
- 11) Grass tiles that provide vehicle and equipment access to the area beneath the tower shall be maintained in good condition by the applicant.
- 12) The approved Site Plan, dated April 14, 1997, and the revised Landscape Plan approved in 2003, shall be reincorporated as the Site Plan for approval of this application.
- 13) The applicant may change out equipment boxes, cable and antennas provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official or his/her designee, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
- 14) The applicant shall not prevent other users from locating on the water tower.
- 15) If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.
- 16) The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.
- 17) In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable

- law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
- 18) In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
 - 19) The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
 - 20) The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
 - 21) A copy of the lease between the applicant and Water District #1 shall be submitted to the City and contain the following provisions:
 - a. The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.
 - b. The landowner shall be responsible for the removal of the communications facility in the event that the leaseholder fails to remove it upon abandonment.
 - 22) The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
 - 23) In the event that a carrier transfers its facilities to another carrier or changes its name due to merger acquisition, etc., it will notify the City within 30 days of such change and will provide a description of the service provider by that carrier. If modifications are required as a result of this change, they will be approved by Staff unless in the opinion of Staff they are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval.

Village Vision

Wireless communications are not specifically addressed in Village Vision. However it falls into two general goal areas which are maintaining and improving infrastructure and improving communications between the City and its residents.

ATTACHMENTS

PC2009-18 Staff Report

Excerpt Planning Commission Minutes - October 6, 2009

Proposed Ordinance

PREPARED BY

Joyce Hagen Mundy
Planning Commission Secretary/City Clerk

DATE:

October 12, 2009



BWR | Right in the Center

STAFF REPORT

TO: Prairie Village Planning Commission
FROM: Ron Williamson, BWR, Planning Consultant
SUBJECT: PC 2009-14 and PC 2009-18: Request to Renew a Special Use Permit for Antennas and Equipment on the Water Tower at 7801 Delmar
DATE: October 6, 2009 BWR Project # 2009-0024.01.0002

COMMENTS:

Applications PC 2009-14 and PC 2009-18 have been combined into one application so that the renewal of the carriers on the water tower can be reviewed and addressed at one time.

T-Mobile, Sprint and Cricket are the current carriers on the water tower and are requesting renewal of a Special Use Permit that allowed the installation of antennas and the associated equipment cabinets on the water tower at 7801 Delmar. The initial application was approved for three carriers in 1997 and renewed in 2003. The carriers in 2003 were T-Mobile, Nextel and at&t. Since that time, Nextel changed to Sprint and at&t has transferred its facilities to Cricket. T-Mobile is still T-Mobile.

City Staff was unaware that at&t had transferred its facilities to cricket. A condition needs to be added to the approval that if a carrier changes or a merger occurs creating a new entity, the City should be notified. If no changes occur in the installation, no approvals would be necessary.

Cricket Communications is a subsidiary of Leap Wireless and a new carrier for Prairie Village. Cricket was founded in 1999 and its initial marketing was Chattanooga, Tennessee. It has been expanding into new market areas since that time. Cricket offers broadband service but uses a flat rate month-to-month contract rather than long term service agreements.

There are no changes planned for T-Mobile and Cricket, but the Sprint antennas will be modified to allow the installation of Clearwire. Since Clearwire is an additional carrier, it will need to be approved as a separate Special Use Permit and the proposed modifications will be addressed at that time. The Clearwire application for a Special Use Permit is on this agenda also. If additional carriers want to locate on the water tower in the future, however, it is recommended that they be handled as a Site Plan Approval by the Planning Commission rather than a Special Use Permit.

The equipment cabinets location was approved for the west side of the water tower and fencing and landscaping were installed to screen them. The fence and landscaping appear to be in good shape and have accomplished their purpose. There is a large tree in the north compound that the applicant has requested to trim. The branches are hanging low and touching some of the equipment boxes. The tree does a great job in the overall screening of the installation so trimming should be limited to the minimum necessary for the installation.

BUCHER, WILLIS & RATLIFF CORPORATION

903 East 104th Street | Suite 900 | Kansas City, Missouri 64131-3451 | P 816.363.2696 | F 816.363.0027 | www.bwrcorp.com
engineering | planning | architecture

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The Special Use Permit renewal that was approved September 3, 2003 was for three carriers and subject to the following 15 conditions:

1. The renewal of the Special Use Permit shall be for a maximum of six years from the date of the ordinance approving the renewal with subsequent six year renewals.
2. The antennas and equipment cabinets shall be painted a color that matches the water tower and all wires that connect to the antennas shall be enclosed in a metal shield that is painted the same color as the water tower. The applicant shall maintain the painted surfaces and repaint as needed.
3. There will be no security lighting installed around the base of the tower.
4. The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
5. The equipment cabinets shall be located on the west side of the tower. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence, and landscape screening as shown on the revised landscape plan. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
6. The applicant shall have a structural inspection of all antennas and cables performed by a licensed professional engineer prior to every six year renewal and submit it as a part of the renewal application. This has not been done yet for this renewal application and will need to be conducted and the findings submitted to the City prior to the application being forwarded to the City Council.
7. Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
8. The Special Use Permit will be for three carriers. Additional carriers will need to apply for a Special Use Permit and submit site plans for approval prior to the installation of antennas and equipment.
9. The carriers will be allowed to erect temporary towers when the Water District is stripping and painting the tower.
10. The utility transformer will be placed on Water District property.
11. A copy of the lease with the Water District shall be submitted to the City prior to the publication of the ordinance approving the renewal of the Special Use Permit.
12. Grass tiles shall be used to provide vehicle and equipment access to the area beneath the tower.
13. The approved Site Plan, dated April 14, 1997, shall be reincorporated as the Site Plan for approval of this application.
14. The applicant shall submit a new landscape plan for Staff approval indicating the existing plants and those that will be installed to replace the ones that have died. The plan shall be submitted and approved prior to the City Council meeting and the applicant shall guarantee the installation and maintenance.
15. The applicant may change out equipment boxes, cable and antennas provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.

The original Special Use Permit approved in 1997 and the subsequent renewal in 2003 were under the Wireless Communications Policy. Under the new ordinance, the Factors for Consideration and the Application Information requirements are somewhat different than the policy and therefore a complete review is being done. This renewal request is past the six year approval time, but it could not be considered earlier because of the moratorium on Wireless Communications Facilities applications. The moratorium was rescinded by the City Council in July when the new ordinance was approved.

APPLICATION INFORMATION:

The Staff has reviewed the renewal application based on the City's new ordinance for Wireless Communication Facilities and has the following comments regarding the information submitted. It should be noted that since this is only an application for renewal of an existing antenna installation and not a tower, a number of items in the ordinance may not be applicable. The required application information, as set out in the new ordinance, is shown in bold type.

- A. A study comparing potential sites within an approximate one mile radius of the proposed application area. The study shall include the location and capacity of existing towers, alternative tower sites, a discussion of the ability or inability of each site to host the proposed communications facility and reasons why certain of these sites were excluded from consideration. The study must show what other sites are available and why the proposed location was selected over the others. It must also establish the need for the proposed facility and include a map showing the service area of the proposed facility as well as other alternative tower site and antennas.**

If the use of exiting towers, alternative tower structures, and sites are unavailable, a reason or reasons specifying why they are unavailable needs to be set out and may include one or more of the following: refusal by current tower or site owner; topographical limitations; adjacent impediments blocking transmission; site limitations to tower or facility or tower; no space on existing facility or tower; other limiting factors rendering existing facilities or towers unusable. The documentation submitted must use technological and written evidence, that these sites are inadequate to fulfill the grid needs of the wireless service provider, or that a reasonable co-location lease agreement could not be reached with the owners of said alternative sites.

The applicant shall submit an overall plan that shows the coverage gaps in service or lack of network capacity throughout the entire City and provide an indication of future needed/proposed wireless communication facilities, towers, and/or antenna.

The applicant shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall also provide documentation establishing the minimum height necessary to provide the applicant's services and the height required to provide for co-location. The study shall include coverage maps for the proposed monopole at the requested height and at ten feet descending intervals to 50 feet.

The Planning Commission or Governing Body at its discretion may require a third party analysis, at the applicant's expense, to confirm the need for the facility.

The applicant shall be responsible to provide timely updates of the above described study and information during the Special Use Permit process.

Since this is the second renewal of an existing installation, the City has not required a study of alternative locations within a one-mile radius. The City has encouraged the use of existing structures in order to minimize the impact on the surrounding neighborhoods. The applicant has indicated that this installation is an important location in the continued service for their customers.

- B. Multiple photo simulations of the proposed facility as viewed from the adjacent residential properties and public rights of way as directed by City Staff.**
Since the antennas and equipment cabinets are installed, the applicant has not been required to submit photo simulation.
- C. When possible, all wireless communication towers and alternative tower structures must be designed to accommodate multiple providers (co-location), unless after consideration of the recommendation of the Planning Commission, the City Council finds that the height or other factors required to make such an accommodation will have a more detrimental effect on the community than having multiple sites. Failure of a permit holder to negotiate in good faith to provide fairly priced co-location opportunities, based on industry standards may be grounds for denial or revocation of the Special Use Permit. A signed statement shall be submitted indicating the applicant's intention to share space on the tower with other providers.**
The agreement between the carriers and the Water District #1 will not prohibit other providers from placing antennas on the water tower.
- D. Any application for construction of a new wireless communication facility, tower, antenna or equipment compound must provide a detailed site plan of the proposed project. This properly scaled site plan will include one page (including ground contours) that portrays the layout of the site, including the proposed facility, the fall radius of any proposed monopole, as well as proposed and existing structures within 200 feet of the tower base and the identification of the specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate. Access to and from the site, as well as dimensioned proposed and existing drives, must be included on this plan. Detailed exterior elevations (from all views) of the tower, screening wall, and all proposed buildings must also be submitted. Finally, a landscape plan detailing location, size, number and species of plant materials must be included for review and approval by the Planning Commission.**
The installation is in place and the 1997 Site Plan and the revised Landscape Plan approved in 2003 will be reincorporated in the Conditions of Approval. Therefore, specific Site Plan Review and Approval is not necessary.
- E. Description of the transmission medium that will be used by the applicant to offer or to provide services and a statement that applicant will meet all federal, state and city regulations and law, including but not limited to FCC regulations.**

The applicant shall provide an engineer's statement that anticipated levels of electromagnetic radiation to be generated by facilities on the site, including the effective radiated power (ERP) of the antenna, shall be within the guidelines established by the

FCC. The cumulative effect of all antennas and related facilities on a site will also comply with the radio frequency radiation emission guidelines established by the FCC. An antenna radiation pattern shall be included for each antenna.
Not applicable.

- F. **Preliminary construction schedule including completion dates.**
Not applicable.
- G. **The applicant shall provide a copy of its FCC license**
Submitted with previous renewal.
- H. **Copies of letters sent to other wireless communication providers and their response regarding their interest to co-locate.**
Not applicable since it is an existing structure.
- I. **Any other relevant information requested by City Staff.**
None requested.

The applicant held a neighborhood meeting on September 16th and presented information on all four carriers. Three neighbors attended and expressed no opposition to the renewal or the addition of Clearwire. Their questions were related to the structural capacity of the tower, expansion of the equipment compound and added height to the tower. All were satisfactorily answered.

FACTORS FOR CONSIDERATION:

The Planning Commission shall make Findings of Fact to support its recommendation to approve, conditionally approve, or disapprove this Special Use Permit. It is not necessary that a Finding of Fact be made for each factor described herein. However, there should be a conclusion that the request should be approved or denied based upon consideration of as many factors as are applicable. The factors to be considered in approving or disapproving a Special Use Permit for a wireless facility shall include, but not be limited to the following:

- A. **The character of the neighborhood.**
The water tower is located in a predominately public use area. Harmon Park, the YMCA, City Hall Campus, Shawnee Mission East High School, and churches are found to the north, east and south. Single-family residents are located to the west.
- B. **The zoning and uses of property nearby.**
The property to the west is zoned R-1B and is developed for single-family residences; the property to the north and east is zoned R-1A Single-family and is occupied by Harmon Park; and the property to the south is Zoned R-1A Single-family Residential and is occupied by the Park and YMCA.
- C. **The extent that a change will detrimentally affect neighboring property**
This is the renewal of an existing Special Use Permit that will not have a detrimental affect on neighboring property.
- D. **The relative gain to public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners.**

This is an existing installation which will not create any hardship on adjacent landowners.

- E. **The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.**

The proposed antenna installation meets all the setback, height and area regulations contained in the Zoning Ordinance.

- F. **The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.**

This application will have no adverse affect on the welfare or convenience of the public. The City has not received any complaints regarding this installation.

- G. **The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such as the special use will not cause substantial injury to the value of the property in the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will cause substantial injury to the value of property in the immediate neighborhood, consideration shall be given to:**

1. **The location, size, nature and height of buildings, structures, walls, and fences on the site; and**
2. **The nature and extent of landscaping and screening on the site.**

The installation of the antennas on the water tower has had relatively little impact and has not dominated the immediate neighborhood as to hinder development. It also should be pointed out that the neighborhood is totally developed and fencing and landscaping have been installed to screen the equipment compound from the residents to the west.

- H. **Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.**

Off street parking will not be necessary for this particular use other than a parking space currently available for service people to maintain equipment. The parking that is provided on the site will be adequate for this need.

- I. **Adequate utility, drainage, and other such necessary facilities have been or will be provided.**

Since the improvements have already been made on the site, existing utility, drainage, and other facilities appear to be adequate.

- J. **Adequate access roads or entrance and exist drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.**

The site and the equipment should require only service vehicles for installation and periodic maintenance. The traffic generated by the use is so minimal that it will not create any additional congestion on the streets.

- K. Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors or unnecessarily intrusive noises.**
The antennas and equipment do not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that would affect the general public.
- L. Architectural design and building materials are compatible with such design and materials used in the neighborhood in which the proposed facility is to be built or located.**
The antennas are mounted on the water tower and their design is consistent with the design of the water tower. All cables have been required to be covered with a cap compatible with the water tower construction and painting. The equipment cabinets are enclosed by a seven foot high wood fence and landscaping. The plant materials have matured to the point that they provide good screening.
- M. City Staff recommendations.**
It is the opinion of Staff that the proposed renewal of the Special Use Permit for three existing carriers favorably meets the Factors for Consideration and recommends that it be approved subject to the pertinent conditions of the renewal in 2003 and the new conditions contained in the new wireless communications facilities ordinance. Under the new ordinance, the Special Use Permit Renewal may be extended for ten years rather than five and it is recommended that this be done.

RECOMMENDATION:

After a review of the proposed application and making its findings in relation to the thirteen Factors for Consideration previously outlined, the Planning Commission may either recommend approval of the Special Use Permit with or without conditions, recommend denial, or continue it to another meeting. In granting this Special Use Permit, however, the Planning Commission may impose such conditions, safeguards, and restrictions upon the premises benefited by approval of the Special Use Permit as may be necessary to reduce or minimize any potentially injurious affect on other property in the neighborhood. If the Planning Commission recommends approval to the Governing Body, it is recommended that the following conditions be included:

- 1) The Special Use Permit renewal will be approved for the existing three carriers T-Mobile, Sprint and Cricket. Additional carriers may locate on the water tower subject to approval of a site plan by the Planning Commission and an amended Special Use Permit will not be required.
- 2) The approval of the Special Use Permit Renewal shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required.
- 3) The antennas and equipment cabinets shall be painted a color that matches the water tower and all wires that connect to the antennas shall be enclosed in a metal shield that is painted the same color as the water tower. The applicant shall maintain the painted surfaces and repaint as needed.

- 4) There will be no security lighting installed around the base of the tower.
- 5) The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
- 6) The equipment cabinets shall be located in the compound on the west side of the tower. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence, and landscape screening as shown on the revised landscape plan and the fence and landscaping shall be maintained in good condition by the applicant. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
- 7) The applicant shall have a structural inspection of all antennas and cables performed by a licensed professional engineer prior to every ten year renewal and submit it as a part of the renewal application. This has not been done yet for this renewal application and will need to be conducted and the findings submitted to the City prior to the application being forwarded to the City Council.
- 8) Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
- 9) The carriers will be allowed to erect temporary towers when the Water District is stripping and painting the tower.
- 10) The utility transformer will be placed on Water District property.
- 11) Grass tiles that provide vehicle and equipment access to the area beneath the tower shall be maintained in good condition by the applicant.
- 12) The approved Site Plan, dated April 14, 1997, and the revised Landscape Plan approved in 2003, shall be reincorporated as the Site Plan for approval of this application.
- 13) The applicant may change out equipment boxes, cable and antennas provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official or his/her designee, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
- 14) The applicant shall not prevent other users from locating on the water tower.
- 15) If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.
- 16) The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the

Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.

- 17) In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
- 18) In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
- 19) The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
- 20) The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
- 21) A copy of the lease between the applicant and Water District #1 shall be submitted to the City and contain the following provisions:
 1. The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.
 2. The landowner shall be responsible for the removal of the communications facility in the event that the leaseholder fails to remove it upon abandonment.
- 22) The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
- 23) In the event that a carrier transfers its facilities to another carrier or changes its name due to merger acquisition, etc., it will notify the City within 30 days of such change and will provide a description of the service provider by that carrier. If modifications are required as a result of this change, they will be approved by Staff unless in the opinion of Staff they are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval.

**EXCERPT
PLANNING COMMISSION MINUTES
OCTOBER 6, 2009**

**PC2009-14 Renewal of Special Use Permit for Wireless Communications on the water tower
PC2009-18 at 7801 Delmar**

Ron Williamson noted these two applications are renewals of existing Special Use Permits on the water tower at 7801 Delmar and both carriers are being represented by Selective Site Consultants. Therefore, they will be discussed together; however, separate motions will need to be made on each application.

Trevor Wood, with Selective Site Consultants, 8500 West 110th Street, Suite 300, Overland Park, addressed the Commission representing Sprint/Nextel. He noted this installation has been in place for more than a decade. They have presented information documenting there continues to be a need for service from this location. The applicant has an agreement with Water District #1 for the use of their tower. No change is proposed to the antenna or the related ground equipment with the request for renewal.

Chairman Ken Vaughn asked if there was anyone wishing to address the Commission regarding application PC2009-14. Seeing none, he closed the public hearing at 7:10p.m.

Ron Williamson provided background information on this communication site. T-Mobile, Sprint and Cricket are the current carriers on the water tower and are requesting renewal of a Special Use Permit that allowed the installation of antennas and the associated equipment cabinets on the water tower at 7801 Delmar. The initial application was approved for three carriers in 1997 and renewed in 2003. The carriers in 2003 were T-Mobile, Nextel and at&t. Since that time, Nextel changed to Sprint and at&t has transferred its facilities to Cricket. T-Mobile is still operating as T-Mobile.

City Staff was unaware that AT&T had transferred its facilities to Cricket, therefore, staff has added a condition to the approval that if a carrier changes or a merger occurs creating a new entity, the City should be notified. If no changes occur in the installation, no approvals would be necessary.

Cricket Communications is a subsidiary of Leap Wireless and a new carrier for Prairie Village. Cricket was founded in 1999 and its initial marketing was Chattanooga, Tennessee. It has been expanding into new market areas since that time. Cricket offers broadband service but uses a flat rate month-to-month contract rather than long term service agreements.

There are no changes planned for T-Mobile and Cricket, but the Sprint antennas will be modified to allow the installation of Clearwire.

The equipment cabinet's location was approved for the west side of the water tower and fencing and landscaping were installed to screen them. The fence and landscaping appear to be in good shape and have accomplished their purpose. There is a large tree in the north compound that the applicant has requested to trim. The branches are hanging low and touching some of the equipment boxes. The tree does a great job in the overall screening of the installation so trimming should be limited to the minimum necessary for the installation.

The Special Use Permit renewal that was approved September 3, 2003 was for three carriers and subject to the following 15 conditions:

16. The renewal of the Special Use Permit shall be for a maximum of six years from the date of the ordinance approving the renewal with subsequent six year renewals.
17. The antennas and equipment cabinets shall be painted a color that matches the water tower and all wires that connect to the antennas shall be enclosed in a metal shield that is painted the same color as the water tower. The applicant shall maintain the painted surfaces and repaint as needed.
18. There will be no security lighting installed around the base of the tower.
19. The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
20. The equipment cabinets shall be located on the west side of the tower. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence, and landscape screening as shown on the revised landscape plan. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
21. The applicant shall have a structural inspection of all antennas and cables performed by a licensed professional engineer prior to every six year renewal and submit it as a part of the renewal application. This has not been done yet for this renewal application and will need to be conducted and the findings submitted to the City prior to the application being forwarded to the City Council.
22. Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
23. The Special Use Permit will be for three carriers. Additional carriers will need to apply for a Special Use Permit and submit site plans for approval prior to the installation of antennas and equipment.
24. The carriers will be allowed to erect temporary towers when the Water District is stripping and painting the tower.
25. The utility transformer will be placed on Water District property.
26. A copy of the lease with the Water District shall be submitted to the City prior to the publication of the ordinance approving the renewal of the Special Use Permit.
27. Grass tiles shall be used to provide vehicle and equipment access to the area beneath the tower.
28. The approved Site Plan, dated April 14, 1997, shall be reincorporated as the Site Plan for approval of this application.
29. The applicant shall submit a new landscape plan for Staff approval indicating the existing plants and those that will be installed to replace the ones that have died. The plan shall be submitted and approved prior to the City Council meeting and the applicant shall guarantee the installation and maintenance.
30. The applicant may change out equipment boxes, cable and antennas provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.

The original Special Use Permit approved in 1997 and the subsequent renewal in 2003 was under the Wireless Communications Policy. Under the new ordinance, the Factors for Consideration and the Application Information requirements are somewhat different than the policy and therefore a complete review is being done. Mr. Williamson noted this renewal request is past the

six year approval time, but it could not be considered earlier because of the moratorium on Wireless Communications Facilities applications. The moratorium was rescinded by the City Council in July when the new ordinance was approved.

Ron Williamson led the Commission through the review of the application based on the new wireless communications ordinance, noting that since the application is for the renewal of an existing antenna installation and not a tower, a number of items in the ordinance may not be applicable. The required application information, as set out in the new ordinance, is shown in bold type.

- A. **A study comparing potential sites within an approximate one mile radius of the proposed application area. The study shall include the location and capacity of existing towers, alternative tower sites, a discussion of the ability or inability of each site to host the proposed communications facility and reasons why certain of these sites were excluded from consideration. The study must show what other sites are available and why the proposed location was selected over the others. It must also establish the need for the proposed facility and include a map showing the service area of the proposed facility as well as other alternative tower site and antennas.**

If the use of existing towers, alternative tower structures, and sites are unavailable, a reason or reasons specifying why they are unavailable needs to be set out and may include one or more of the following: refusal by current tower or site owner; topographical limitations; adjacent impediments blocking transmission; site limitations to tower or facility or tower; no space on existing facility or tower; other limiting factors rendering existing facilities or towers unusable. The documentation submitted must use technological and written evidence, that these sites are inadequate to fulfill the grid needs of the wireless service provider, or that a reasonable co-location lease agreement could not be reached with the owners of said alternative sites.

The applicant shall submit an overall plan that shows the coverage gaps in service or lack of network capacity throughout the entire City and provide an indication of future needed/proposed wireless communication facilities, towers, and/or antenna.

The applicant shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall also provide documentation establishing the minimum height necessary to provide the applicant's services and the height required to provide for co-location. The study shall include coverage maps for the proposed monopole at the requested height and at ten foot descending intervals to 50 feet.

The Planning Commission or Governing Body at its discretion may require a third party analysis, at the applicant's expense, to confirm the need for the facility.

The applicant shall be responsible to provide timely updates of the above described study and information during the Special Use Permit process.

Since this is the second renewal of an existing installation, the City has not required a study of alternative locations within a one-mile radius. The City has encouraged the use of existing

structures in order to minimize the impact on the surrounding neighborhoods. The applicant has indicated that this installation is an important location in the continued service for their customers.

- B. Multiple photo simulations of the proposed facility as viewed from the adjacent residential properties and public rights of way as directed by City Staff.**

Since the antennas and equipment cabinets are installed, the applicant has not been required to submit photo simulation.

- C. When possible, all wireless communication towers and alternative tower structures must be designed to accommodate multiple providers (co-location), unless after consideration of the recommendation of the Planning Commission, the City Council finds that the height or other factors required to make such an accommodation will have a more detrimental effect on the community than having multiple sites. Failure of a permit holder to negotiate in good faith to provide fairly priced co-location opportunities, based on industry standards may be grounds for denial or revocation of the Special Use Permit. A signed statement shall be submitted indicating the applicant's intention to share space on the tower with other providers.**

The agreement between the carriers and the Water District #1 will not prohibit other providers from placing antennas on the water tower.

- D. Any application for construction of a new wireless communication facility, tower, and antenna or equipment compound must provide a detailed site plan of the proposed project. This properly scaled site plan will include one page (including ground contours) that portrays the layout of the site, including the proposed facility, the fall radius of any proposed monopole, as well as proposed and existing structures within 200 feet of the tower base and the identification of the specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate. Access to and from the site, as well as dimensioned proposed and existing drives, must be included on this plan. Detailed exterior elevations (from all views) of the tower, screening wall, and all proposed buildings must also be submitted. Finally, a landscape plan detailing location, size, number and species of plant materials must be included for review and approval by the Planning Commission.**

The installation is in place and the 1997 Site Plan and the revised Landscape Plan approved in 2003 will be reincorporated in the Conditions of Approval. Therefore, specific Site Plan Review and Approval is not necessary.

- E. Description of the transmission medium that will be used by the applicant to offer or to provide services and a statement that applicant will meet all federal, state and city regulations and law, including but not limited to FCC regulations.**

The applicant shall provide an engineer's statement that anticipated levels of electromagnetic radiation to be generated by facilities on the site, including the effective radiated power (ERP) of the antenna, shall be within the guidelines established by the FCC. The cumulative effect of all antennas and related facilities on a site will also comply with the radio frequency radiation emission guidelines established by the FCC. An antenna radiation pattern shall be included for each antenna.

Not applicable.

- F. Preliminary construction schedule including completion dates.**

Not applicable.

- G. The applicant shall provide a copy of its FCC license**

Submitted with previous renewal.

H. Copies of letters sent to other wireless communication providers and their response regarding their interest to co-locate.

Not applicable since it is an existing structure.

I. Any other relevant information requested by City Staff.

None requested.

The applicant held a neighborhood meeting on September 16th and presented information on all four carriers. Three neighbors attended and expressed no opposition to the renewal or the addition of Clearwire. Their questions were related to the structural capacity of the tower, expansion of the equipment compound and added height to the tower. All were satisfactorily answered.

The Planning Commission reviewed the Findings of Fact on this application as follows:

A. The character of the neighborhood.

The water tower is located in a predominately public use area. Harmon Park, the YMCA, City Hall Campus, Shawnee Mission East High School, and churches are found to the north, east and south. Single-family residents are located to the west.

B. The zoning and uses of property nearby.

The property to the west is zoned R-1B and is developed for single-family residences; the property to the north and east is zoned R-1A Single-family and is occupied by Harmon Park; and the property to the south is Zoned R-1A Single-family Residential and is occupied by the Park and YMCA.

C. The extent that a change will detrimentally affect neighboring property

This is the renewal of an existing Special Use Permit that will not have a detrimental affect on neighboring property.

D. The relative gain to public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners.

This is an existing installation and will not create any hardship on adjacent landowners.

E. The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.

The proposed antenna installation meets all the setback, height and area regulations contained in the Zoning Ordinance.

F. The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.

This application will have no adverse affect on the welfare or convenience of the public. The City has not received any complaints regarding this installation.

G. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such as the special use will not cause substantial injury to the value of the property in the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will cause substantial injury to the value of property in the immediate neighborhood, consideration shall be given to:

1. **The location, size, nature and height of buildings, structures, walls, and fences on the site; and**
2. **The nature and extent of landscaping and screening on the site.**

The installation of the antennas on the water tower has had relatively little impact and has not dominated the immediate neighborhood as to hinder development. It also should be pointed out that the neighborhood is totally developed and fencing and landscaping have been installed to screen the equipment compound from the residents to the west.

- H. **Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.**

Off street parking will not be necessary for this particular use other than a parking space currently available for service people to maintain equipment. The parking that is provided on the site will be adequate for this need.

- I. **Adequate utility, drainage, and other such necessary facilities have been or will be provided.**

Since the improvements have already been made on the site, existing utility, drainage, and other facilities appear to be adequate.

- J. **Adequate access roads or entrance and exist drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.**

The site and the equipment should require only service vehicles for installation and periodic maintenance. The traffic generated by the use is so minimal that it will not create any additional congestion on the streets.

- K. **Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors or unnecessarily intrusive noises.**

The antennas and equipment do not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that would affect the general public.

- L. **Architectural design and building materials are compatible with such design and materials used in the neighborhood in which the proposed facility is to be built or located.**

The antennas are mounted on the water tower and their design is consistent with the design of the water tower. All cables have been required to be covered with a cap compatible with the water tower construction and painting. The equipment cabinets are enclosed by a seven foot high wood fence and landscaping. The plant materials have matured to the point that they provide good screening.

- M. **City Staff recommendations.**

It is the opinion of Staff that the proposed renewal of the Special Use Permit for three existing carriers favorably meets the Factors for Consideration and recommends that it be approved subject to the pertinent conditions of the renewal in 2003 and the new conditions contained in the new wireless communications facilities ordinance. Under the new ordinance, the Special Use Permit Renewal may be extended for ten years rather than five and it is recommended that this be done.

Ken Vaughn asked how the City would keep track of changes on the towers from mergers. Trevor Wood replied that as this has become more common, communications companies have become more diligent at notifying cities of changes. He was confident that the City would be notified of any changes in the future.

Bob Lindeblad moved the Planning Commission find favorably on the findings of fact and recommend the Governing Body approve PC2009-18 the renewal of the Special Use Permit for wireless communication antenna at 7801 Delmar by Sprint/Nextel subject to the conditions listed below:

- 24) The Special Use Permit renewal will be approved for the existing three carriers T-Mobile, Sprint and Cricket. Additional carriers may locate on the water tower subject to approval of a site plan by the Planning Commission and an amended Special Use Permit will not be required.
- 25) The approval of the Special Use Permit Renewal shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required.
- 26) The antennas and equipment cabinets shall be painted a color that matches the water tower and all wires that connect to the antennas shall be enclosed in a metal shield that is painted the same color as the water tower. The applicant shall maintain the painted surfaces and repaint as needed.
- 27) There will be no security lighting installed around the base of the tower.
- 28) The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
- 29) The equipment cabinets shall be located in the compound on the west side of the tower. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence, and landscape screening as shown on the revised landscape plan and the fence and landscaping shall be maintained in good condition by the applicant. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
- 30) The applicant shall have a structural inspection of all antennas and cables performed by a licensed professional engineer prior to every ten year renewal and submit it as a part of the renewal application. This has not been done yet for this renewal application and will need to be conducted and the findings submitted to the City prior to the application being forwarded to the City Council.
- 31) Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
- 32) The carriers will be allowed to erect temporary towers when the Water District is stripping and painting the tower.
- 33) The utility transformer will be placed on Water District property.
- 34) Grass tiles that provide vehicle and equipment access to the area beneath the tower shall be maintained in good condition by the applicant.
- 35) The approved Site Plan, dated April 14, 1997, and the revised Landscape Plan approved in 2003, shall be reincorporated as the Site Plan for approval of this application.
- 36) The applicant may change out equipment boxes, cable and antennas provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official or his/her designee, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
- 37) The applicant shall not prevent other users from locating on the water tower.
- 38) If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall

- remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.
- 39) The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.
 - 40) In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
 - 41) In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
 - 42) The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
 - 43) The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
 - 44) A copy of the lease between the applicant and Water District #1 shall be submitted to the City and contain the following provisions:
 - c. The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.
 - d. The landowner shall be responsible for the removal of the communications facility in the event that the leaseholder fails to remove it upon abandonment.
 - 45) The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
 - 46) In the event that a carrier transfers its facilities to another carrier or changes its name due to merger acquisition, etc., it will notify the City within 30 days of such change and will provide a description of the service provider by that carrier. If modifications are required as a result of this change, they will be approved by Staff unless in the opinion of Staff they are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval.

The motion was seconded by Nancy Vennard.

Marlene Nagel questioned condition number 15 which allows an antenna installation to not operate for a continuous 12 month period before abandonment, stating she felt that was a long time. Ron Williamson responded this issue was discussed at great length during the creation of the ordinance and the Commission agreed to 12 months. This condition is specifically set out in the Wireless Communications Ordinance.

The motion was voted on and passed by a vote of 6 to 0.

ORDINANCE 2215

AN ORDINANCE RENEWING A SPECIAL USE PERMIT FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF COMMUNICATION ANTENNAE AND RELATED EQUIPMENT BY SPRINT/NEXTEL ON THE PROPERTY DESCRIBED AS 7801 DELMAR, PRAIRIE VILLAGE, KANSAS

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE:

Section I. Planning Commission Recommendation. At its regular meeting on October 6, 2009, the Prairie Village Planning Commission held a public hearing, found the findings of fact to be favorable and recommended that the Governing Body approve PC2009-18 the renewal of a Special Use Permit for the installation, operation and maintenance of antennae by Sprint/Nextel at 7801 Delmar subject to the following conditions:

- 1) The Special Use Permit renewal will be approved for the existing three carriers T-Mobile, Sprint and Cricket. Additional carriers may locate on the water tower subject to approval of a site plan by the Planning Commission and an amended Special Use Permit will not be required.
- 2) The approval of the Special Use Permit Renewal shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required.
- 3) The antennas and equipment cabinets shall be painted a color that matches the water tower and all wires that connect to the antennas shall be enclosed in a metal shield that is painted the same color as the water tower. The applicant shall maintain the painted surfaces and repaint as needed.
- 4) There will be no security lighting installed around the base of the tower.
- 5) The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
- 6) The equipment cabinets shall be located in the compound on the west side of the tower. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence, and landscape screening as shown on the revised landscape plan and the fence and landscaping shall be maintained in good condition by the applicant. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
- 7) The applicant shall have a structural inspection of all antennas and cables performed by a licensed professional engineer prior to every ten year renewal and submit it as a part of the renewal application. This has not been done yet for this renewal application and will need to be conducted and the findings submitted to the City prior to the application being forwarded to the City Council.
- 8) Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
- 9) The carriers will be allowed to erect temporary towers when the Water District is stripping and painting the tower.
- 10) The utility transformer will be placed on Water District property.
- 11) Grass tiles that provide vehicle and equipment access to the area beneath the tower shall be maintained in good condition by the applicant.
- 12) The approved Site Plan, dated April 14, 1997, and the revised Landscape Plan approved in 2003, shall be reincorporated as the Site Plan for approval of this application.
- 13) The applicant may change out equipment boxes, cable and antennas provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official or his/her designee, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
- 14) The applicant shall not prevent other users from locating on the water tower.
- 15) If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall remove the same

within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.

- 16) The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.
- 17) In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
- 18) In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
- 19) The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
- 20) The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
- 21) A copy of the lease between the applicant and Water District #1 shall be submitted to the City and contain the following provisions:
 - a. The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.
 - b. The landowner shall be responsible for the removal of the communications facility in the event that the leaseholder fails to remove it upon abandonment.
- 22) The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
- 23) In the event that a carrier transfers its facilities to another carrier or changes its name due to merger acquisition, etc., it will notify the City within 30 days of such change and will provide a description of the service provider by that carrier. If modifications are required as a result of this change, they will be approved by Staff unless in the opinion of Staff they are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval.

Section II. Findings of the Governing Body. The Governing Body adopts by specific reference the findings of fact on application PC2009-18 as contained in the minutes of the Planning Commission meeting of October 6, 2009, and approves the recommendations of the Planning Commission.

Section III. Granting of the Special Use Permit. Be it therefore ordained that the City of Prairie Village grant a Special Use Permit to Sprint/Nextel for antennae at 7801 Delmar, Prairie Village, Kansas subject to the twenty-three specific conditions listed above.

Section IV. Take Effect. That this ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper as provided by law.

PASSED AND ADOPTED THIS __th DAY OF OCTOBER, 2009.

CITY OF PRAIRIE VILLAGE, KANSAS

By: /s/ Ronald L. Shaffer

Ronald L. Shaffer, Mayor

ATTEST:

/s/ Joyce Hagen Mundy
Joyce Hagen Mundy, City Clerk

APPROVED AS TO FORM:

/s/ Catherine P. Logan
Catherine P. Logan, City Attorney



Council Meeting Date: October 19, 2009

Consider PC2009-14 Renewal of a Special Use Permit for the installation of wireless communication antenna at 7801 Delmar - T-Mobile

RECOMMENDATION

Governing Body adopt Ordinance 2216 approving the renewal of a Special Use Permit for the installation, operation and maintenance of communication antenna and related equipment by T-Mobile on the property described as 7801 Delmar, Prairie Village, Kansas.

BACKGROUND

T-Mobile, Sprint and Cricket are the current carriers on the water tower and are requesting renewal of a Special Use Permit that allowed the installation of antennas and the associated equipment cabinets on the water tower at 7801 Delmar. The initial application was approved for three carriers in 1997 and renewed in 2003. The carriers in 2003 were T-Mobile, Nextel and AT&T. Since that time, Nextel changed to Sprint and AT&T has transferred its facilities to Cricket. T-Mobile is still operating as T-Mobile.

The Special Use Permit renewal that was approved September 3, 2003 was for three carriers and subject to the following 15 conditions:

1. The renewal of the Special Use Permit shall be for a maximum of six years from the date of the ordinance approving the renewal with subsequent six year renewals.
2. The antennas and equipment cabinets shall be painted a color that matches the water tower and all wires that connect to the antennas shall be enclosed in a metal shield that is painted the same color as the water tower. The applicant shall maintain the painted surfaces and repaint as needed.
3. There will be no security lighting installed around the base of the tower.
4. The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
5. The equipment cabinets shall be located on the west side of the tower. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence, and landscape screening as shown on the revised landscape plan. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
6. The applicant shall have a structural inspection of all antennas and cables performed by a licensed professional engineer prior to every six year renewal and submit it as a part of the renewal application. This has not been done yet for this renewal application and will need to be conducted and the findings submitted to the City prior to the application being forwarded to the City Council.
7. Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
8. The Special Use Permit will be for three carriers. Additional carriers will need to apply for a Special Use Permit and submit site plans for approval prior to the installation of antennas and equipment.

9. The carriers will be allowed to erect temporary towers when the Water District is stripping and painting the tower.
10. The utility transformer will be placed on Water District property.
11. A copy of the lease with the Water District shall be submitted to the City prior to the publication of the ordinance approving the renewal of the Special Use Permit.
12. Grass tiles shall be used to provide vehicle and equipment access to the area beneath the tower.
13. The approved Site Plan, dated April 14, 1997, shall be reincorporated as the Site Plan for approval of this application.
14. The applicant shall submit a new landscape plan for Staff approval indicating the existing plants and those that will be installed to replace the ones that have died. The plan shall be submitted and approved prior to the City Council meeting and the applicant shall guarantee the installation and maintenance.
15. The applicant may change out equipment boxes, cable and antennas provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.

There are no changes planned for T-Mobile and Cricket.

The equipment cabinet's location was approved for the west side of the water tower and fencing and landscaping were installed to screen them. The fence and landscaping appear to be in good shape and have accomplished their purpose. There is a large tree in the north compound that the applicant has requested to trim. The branches are hanging low and touching some of the equipment boxes. The tree does a great job in the overall screening of the installation so trimming should be limited to the minimum necessary for the installation.

In accordance with the Commission's Citizen Participation Policy, a neighborhood meeting was held on September 16th with information presented on all four carriers. Three neighbors attended and expressed no opposition to the renewal. Their questions were related to the structural capacity of the tower, expansion of the equipment compound and added height to the tower. All were satisfactorily answered. A public hearing was held before the Planning Commission on October 6, 2009 with no one present to speak on this application. A complete analysis of the application can be found in the minutes from that meeting which are attached.

The Planning Commission found favorably on the findings of fact and recommends the Governing Body approve PC2009-14 the renewal of the Special Use Permit for wireless communication antenna at 7801 Delmar by T-Mobile subject to the conditions listed below:

- 1) The Special Use Permit renewal will be approved for the existing three carriers T-Mobile, Sprint and Cricket. Additional carriers may locate on the water tower subject to approval of a site plan by the Planning Commission and an amended Special Use Permit will not be required.
- 2) The approval of the Special Use Permit Renewal shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required.
- 3) The antennas and equipment cabinets shall be painted a color that matches the water tower and all wires that connect to the antennas shall be enclosed in a metal shield that is painted the same color as the water tower. The applicant shall maintain the painted surfaces and repaint as needed.
- 4) There will be no security lighting installed around the base of the tower.

- 5) The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
- 6) The equipment cabinets shall be located in the compound on the west side of the tower. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence, and landscape screening as shown on the revised landscape plan and the fence and landscaping shall be maintained in good condition by the applicant. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
- 7) The applicant shall have a structural inspection of all antennas and cables performed by a licensed professional engineer prior to every ten year renewal and submit it as a part of the renewal application. This has not been done yet for this renewal application and will need to be conducted and the findings submitted to the City prior to the application being forwarded to the City Council.
- 8) Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
- 9) The carriers will be allowed to erect temporary towers when the Water District is stripping and painting the tower.
- 10) The utility transformer will be placed on Water District property.
- 11) Grass tiles that provide vehicle and equipment access to the area beneath the tower shall be maintained in good condition by the applicant.
- 12) The approved Site Plan, dated April 14, 1997, and the revised Landscape Plan approved in 2003, shall be reincorporated as the Site Plan for approval of this application.
- 13) The applicant may change out equipment boxes, cable and antennas provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official or his/her designee, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
- 14) The applicant shall not prevent other users from locating on the water tower.
- 15) If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.
- 16) The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.
- 17) In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
- 18) In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
- 19) The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory

agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.

- 20) The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
- 21) A copy of the lease between the applicant and Water District #1 shall be submitted to the City and contain the following provisions:
 - a. The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.
 - b. The landowner shall be responsible for the removal of the communications facility in the event that the leaseholder fails to remove it upon abandonment.
- 22) The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
- 23) In the event that a carrier transfers its facilities to another carrier or changes its name due to merger acquisition, etc., it will notify the City within 30 days of such change and will provide a description of the service provider by that carrier. If modifications are required as a result of this change, they will be approved by Staff unless in the opinion of Staff they are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval.

Village Vision

Wireless communications are not specifically addressed in Village Vision. However it falls into two general goal areas which are maintaining and improving infrastructure and improving communications between the City and its residents.

ATTACHMENTS

PC2009-14 Staff Report
Excerpt Planning Commission Minutes - October 6, 2009
Proposed Ordinance

PREPARED BY

Joyce Hagen Mundy
Planning Commission Secretary/City Clerk

DATE:

October 12, 2009



BWR | Right in the Center

STAFF REPORT

TO: Prairie Village Planning Commission
FROM: Ron Williamson, BWR, Planning Consultant
SUBJECT: PC 2009-14 and PC 2009-18: Request to Renew a Special Use Permit for Antennas and Equipment on the Water Tower at 7801 Delmar
DATE: October 6, 2009 BWR Project # 2009-0024.01.0002

COMMENTS:

Applications PC 2009-14 and PC 2009-18 have been combined into one application so that the renewal of the carriers on the water tower can be reviewed and addressed at one time.

T-Mobile, Sprint and Cricket are the current carriers on the water tower and are requesting renewal of a Special Use Permit that allowed the installation of antennas and the associated equipment cabinets on the water tower at 7801 Delmar. The initial application was approved for three carriers in 1997 and renewed in 2003. The carriers in 2003 were T-Mobile, Nextel and at&t. Since that time, Nextel changed to Sprint and at&t has transferred its facilities to Cricket. T-Mobile is still T-Mobile.

City Staff was unaware that at&t had transferred its facilities to cricket. A condition needs to be added to the approval that if a carrier changes or a merger occurs creating a new entity, the City should be notified. If no changes occur in the installation, no approvals would be necessary.

Cricket Communications is a subsidiary of Leap Wireless and a new carrier for Prairie Village. Cricket was founded in 1999 and its initial marketing was Chattanooga, Tennessee. It has been expanding into new market areas since that time. Cricket offers broadband service but uses a flat rate month-to-month contract rather than long term service agreements.

There are no changes planned for T-Mobile and Cricket, but the Sprint antennas will be modified to allow the installation of Clearwire. Since Clearwire is an additional carrier, it will need to be approved as a separate Special Use Permit and the proposed modifications will be addressed at that time. The Clearwire application for a Special Use Permit is on this agenda also. If additional carriers want to locate on the water tower in the future, however, it is recommended that they be handled as a Site Plan Approval by the Planning Commission rather than a Special Use Permit.

The equipment cabinets location was approved for the west side of the water tower and fencing and landscaping were installed to screen them. The fence and landscaping appear to be in good shape and have accomplished their purpose. There is a large tree in the north compound that the applicant has requested to trim. The branches are hanging low and touching some of the equipment boxes. The tree does a great job in the overall screening of the installation so trimming should be limited to the minimum necessary for the installation.

BUCHER, WILLIS & RATLIFF CORPORATION

903 East 104th Street | Suite 900 | Kansas City, Missouri 64131-3451 | P 816.363.2696 | F 816.363.0027 | www.bwrcorp.com
engineering | planning | architecture

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The Special Use Permit renewal that was approved September 3, 2003 was for three carriers and subject to the following 15 conditions:

1. The renewal of the Special Use Permit shall be for a maximum of six years from the date of the ordinance approving the renewal with subsequent six year renewals.
2. The antennas and equipment cabinets shall be painted a color that matches the water tower and all wires that connect to the antennas shall be enclosed in a metal shield that is painted the same color as the water tower. The applicant shall maintain the painted surfaces and repaint as needed.
3. There will be no security lighting installed around the base of the tower.
4. The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
5. The equipment cabinets shall be located on the west side of the tower. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence, and landscape screening as shown on the revised landscape plan. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
6. The applicant shall have a structural inspection of all antennas and cables performed by a licensed professional engineer prior to every six year renewal and submit it as a part of the renewal application. This has not been done yet for this renewal application and will need to be conducted and the findings submitted to the City prior to the application being forwarded to the City Council.
7. Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
8. The Special Use Permit will be for three carriers. Additional carriers will need to apply for a Special Use Permit and submit site plans for approval prior to the installation of antennas and equipment.
9. The carriers will be allowed to erect temporary towers when the Water District is stripping and painting the tower.
10. The utility transformer will be placed on Water District property.
11. A copy of the lease with the Water District shall be submitted to the City prior to the publication of the ordinance approving the renewal of the Special Use Permit.
12. Grass tiles shall be used to provide vehicle and equipment access to the area beneath the tower.
13. The approved Site Plan, dated April 14, 1997, shall be reincorporated as the Site Plan for approval of this application.
14. The applicant shall submit a new landscape plan for Staff approval indicating the existing plants and those that will be installed to replace the ones that have died. The plan shall be submitted and approved prior to the City Council meeting and the applicant shall guarantee the installation and maintenance.
15. The applicant may change out equipment boxes, cable and antennas provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.

The original Special Use Permit approved in 1997 and the subsequent renewal in 2003 were under the Wireless Communications Policy. Under the new ordinance, the Factors for Consideration and the Application Information requirements are somewhat different than the policy and therefore a complete review is being done. This renewal request is past the six year approval time, but it could not be considered earlier because of the moratorium on Wireless Communications Facilities applications. The moratorium was rescinded by the City Council in July when the new ordinance was approved.

APPLICATION INFORMATION:

The Staff has reviewed the renewal application based on the City's new ordinance for Wireless Communication Facilities and has the following comments regarding the information submitted. It should be noted that since this is only an application for renewal of an existing antenna installation and not a tower, a number of items in the ordinance may not be applicable. The required application information, as set out in the new ordinance, is shown in bold type.

- A. A study comparing potential sites within an approximate one mile radius of the proposed application area. The study shall include the location and capacity of existing towers, alternative tower sites, a discussion of the ability or inability of each site to host the proposed communications facility and reasons why certain of these sites were excluded from consideration. The study must show what other sites are available and why the proposed location was selected over the others. It must also establish the need for the proposed facility and include a map showing the service area of the proposed facility as well as other alternative tower site and antennas.**

If the use of exiting towers, alternative tower structures, and sites are unavailable, a reason or reasons specifying why they are unavailable needs to be set out and may include one or more of the following: refusal by current tower or site owner; topographical limitations; adjacent impediments blocking transmission; site limitations to tower or facility or tower; no space on existing facility or tower; other limiting factors rendering existing facilities or towers unusable. The documentation submitted must use technological and written evidence, that these sites are inadequate to fulfill the grid needs of the wireless service provider, or that a reasonable co-location lease agreement could not be reached with the owners of said alternative sites.

The applicant shall submit an overall plan that shows the coverage gaps in service or lack of network capacity throughout the entire City and provide an indication of future needed/proposed wireless communication facilities, towers, and/or antenna.

The applicant shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall also provide documentation establishing the minimum height necessary to provide the applicant's services and the height required to provide for co-location. The study shall include coverage maps for the proposed monopole at the requested height and at ten feet descending intervals to 50 feet.

The Planning Commission or Governing Body at its discretion may require a third party analysis, at the applicant's expense, to confirm the need for the facility.

The applicant shall be responsible to provide timely updates of the above described study and information during the Special Use Permit process.

Since this is the second renewal of an existing installation, the City has not required a study of alternative locations within a one-mile radius. The City has encouraged the use of existing structures in order to minimize the impact on the surrounding neighborhoods. The applicant has indicated that this installation is an important location in the continued service for their customers.

- B. Multiple photo simulations of the proposed facility as viewed from the adjacent residential properties and public rights of way as directed by City Staff.**
Since the antennas and equipment cabinets are installed, the applicant has not been required to submit photo simulation.
- C. When possible, all wireless communication towers and alternative tower structures must be designed to accommodate multiple providers (co-location), unless after consideration of the recommendation of the Planning Commission, the City Council finds that the height or other factors required to make such an accommodation will have a more detrimental effect on the community than having multiple sites. Failure of a permit holder to negotiate in good faith to provide fairly priced co-location opportunities, based on industry standards may be grounds for denial or revocation of the Special Use Permit. A signed statement shall be submitted indicating the applicant's intention to share space on the tower with other providers.**
The agreement between the carriers and the Water District #1 will not prohibit other providers from placing antennas on the water tower.
- D. Any application for construction of a new wireless communication facility, tower, antenna or equipment compound must provide a detailed site plan of the proposed project. This properly scaled site plan will include one page (including ground contours) that portrays the layout of the site, including the proposed facility, the fall radius of any proposed monopole, as well as proposed and existing structures within 200 feet of the tower base and the identification of the specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate. Access to and from the site, as well as dimensioned proposed and existing drives, must be included on this plan. Detailed exterior elevations (from all views) of the tower, screening wall, and all proposed buildings must also be submitted. Finally, a landscape plan detailing location, size, number and species of plant materials must be included for review and approval by the Planning Commission.**
The installation is in place and the 1997 Site Plan and the revised Landscape Plan approved in 2003 will be reincorporated in the Conditions of Approval. Therefore, specific Site Plan Review and Approval is not necessary.
- E. Description of the transmission medium that will be used by the applicant to offer or to provide services and a statement that applicant will meet all federal, state and city regulations and law, including but not limited to FCC regulations.**

The applicant shall provide an engineer's statement that anticipated levels of electromagnetic radiation to be generated by facilities on the site, including the effective radiated power (ERP) of the antenna, shall be within the guidelines established by the

- FCC.** The cumulative effect of all antennas and related facilities on a site will also comply with the radio frequency radiation emission guidelines established by the FCC. An antenna radiation pattern shall be included for each antenna.
Not applicable.
- F.** Preliminary construction schedule including completion dates.
Not applicable.
- G.** The applicant shall provide a copy of its FCC license
Submitted with previous renewal.
- H.** Copies of letters sent to other wireless communication providers and their response regarding their interest to co-locate.
Not applicable since it is an existing structure.
- I.** Any other relevant information requested by City Staff.
None requested.

The applicant held a neighborhood meeting on September 16th and presented information on all four carriers. Three neighbors attended and expressed no opposition to the renewal or the addition of Clearwire. Their questions were related to the structural capacity of the tower, expansion of the equipment compound and added height to the tower. All were satisfactorily answered.

FACTORS FOR CONSIDERATION:

The Planning Commission shall make Findings of Fact to support its recommendation to approve, conditionally approve, or disapprove this Special Use Permit. It is not necessary that a Finding of Fact be made for each factor described herein. However, there should be a conclusion that the request should be approved or denied based upon consideration of as many factors as are applicable. The factors to be considered in approving or disapproving a Special Use Permit for a wireless facility shall include, but not be limited to the following:

- A. The character of the neighborhood.**
The water tower is located in a predominately public use area. Harmon Park, the YMCA, City Hall Campus, Shawnee Mission East High School, and churches are found to the north, east and south. Single-family residents are located to the west.
- B. The zoning and uses of property nearby.**
The property to the west is zoned R-1B and is developed for single-family residences; the property to the north and east is zoned R-1A Single-family and is occupied by Harmon Park; and the property to the south is Zoned R-1A Single-family Residential and is occupied by the Park and YMCA.
- C. The extent that a change will detrimentally affect neighboring property**
This is the renewal of an existing Special Use Permit that will not have a detrimental affect on neighboring property.
- D. The relative gain to public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners.**

This is an existing installation which will not create any hardship on adjacent landowners.

- E. **The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.**
The proposed antenna installation meets all the setback, height and area regulations contained in the Zoning Ordinance.
- F. **The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.**
This application will have no adverse affect on the welfare or convenience of the public. The City has not received any complaints regarding this installation.
- G. **The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such as the special use will not cause substantial injury to the value of the property in the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will cause substantial injury to the value of property in the immediate neighborhood, consideration shall be given to:**
 - 1. The location, size, nature and height of buildings, structures, walls, and fences on the site; and**
 - 2. The nature and extent of landscaping and screening on the site.**The installation of the antennas on the water tower has had relatively little impact and has not dominated the immediate neighborhood as to hinder development. It also should be pointed out that the neighborhood is totally developed and fencing and landscaping have been installed to screen the equipment compound from the residents to the west.
- H. **Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.**
Off street parking will not be necessary for this particular use other than a parking space currently available for service people to maintain equipment. The parking that is provided on the site will be adequate for this need.
- I. **Adequate utility, drainage, and other such necessary facilities have been or will be provided.**
Since the improvements have already been made on the site, existing utility, drainage, and other facilities appear to be adequate.
- J. **Adequate access roads or entrance and exist drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.**
The site and the equipment should require only service vehicles for installation and periodic maintenance. The traffic generated by the use is so minimal that it will not create any additional congestion on the streets.

- K. Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors or unnecessarily intrusive noises.**
The antennas and equipment do not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that would affect the general public.
- L. Architectural design and building materials are compatible with such design and materials used in the neighborhood in which the proposed facility is to be built or located.**
The antennas are mounted on the water tower and their design is consistent with the design of the water tower. All cables have been required to be covered with a cap compatible with the water tower construction and painting. The equipment cabinets are enclosed by a seven foot high wood fence and landscaping. The plant materials have matured to the point that they provide good screening.
- M. City Staff recommendations.**
It is the opinion of Staff that the proposed renewal of the Special Use Permit for three existing carriers favorably meets the Factors for Consideration and recommends that it be approved subject to the pertinent conditions of the renewal in 2003 and the new conditions contained in the new wireless communications facilities ordinance. Under the new ordinance, the Special Use Permit Renewal may be extended for ten years rather than five and it is recommended that this be done.

RECOMMENDATION:

After a review of the proposed application and making its findings in relation to the thirteen Factors for Consideration previously outlined, the Planning Commission may either recommend approval of the Special Use Permit with or without conditions, recommend denial, or continue it to another meeting. In granting this Special Use Permit, however, the Planning Commission may impose such conditions, safeguards, and restrictions upon the premises benefited by approval of the Special Use Permit as may be necessary to reduce or minimize any potentially injurious affect on other property in the neighborhood. If the Planning Commission recommends approval to the Governing Body, it is recommended that the following conditions be included:

- 1) The Special Use Permit renewal will be approved for the existing three carriers T-Mobile, Sprint and Cricket. Additional carriers may locate on the water tower subject to approval of a site plan by the Planning Commission and an amended Special Use Permit will not be required.
- 2) The approval of the Special Use Permit Renewal shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required.
- 3) The antennas and equipment cabinets shall be painted a color that matches the water tower and all wires that connect to the antennas shall be enclosed in a metal shield that is painted the same color as the water tower. The applicant shall maintain the painted surfaces and repaint as needed.

- 4) There will be no security lighting installed around the base of the tower.
- 5) The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
- 6) The equipment cabinets shall be located in the compound on the west side of the tower. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence, and landscape screening as shown on the revised landscape plan and the fence and landscaping shall be maintained in good condition by the applicant. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
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- 8) Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
- 9) The carriers will be allowed to erect temporary towers when the Water District is stripping and painting the tower.
- 10) The utility transformer will be placed on Water District property.
- 11) Grass tiles that provide vehicle and equipment access to the area beneath the tower shall be maintained in good condition by the applicant.
- 12) The approved Site Plan, dated April 14, 1997, and the revised Landscape Plan approved in 2003, shall be reincorporated as the Site Plan for approval of this application.
- 13) The applicant may change out equipment boxes, cable and antennas provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official or his/her designee, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
- 14) The applicant shall not prevent other users from locating on the water tower.
- 15) If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.
- 16) The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the

Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.

- 17) In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
- 18) In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
- 19) The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
- 20) The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
- 21) A copy of the lease between the applicant and Water District #1 shall be submitted to the City and contain the following provisions:
 1. The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.
 2. The landowner shall be responsible for the removal of the communications facility in the event that the leaseholder fails to remove it upon abandonment.
- 22) The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
- 23) In the event that a carrier transfers its facilities to another carrier or changes its name due to merger acquisition, etc., it will notify the City within 30 days of such change and will provide a description of the service provider by that carrier. If modifications are required as a result of this change, they will be approved by Staff unless in the opinion of Staff they are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval.

**EXCERPT
PLANNING COMMISSION MINUTES
OCTOBER 6, 2009**

**PC2009-14 Renewal of Special Use Permit for Wireless Communications on the water tower
PC2009-18 at 7801 Delmar**

Ron Williamson noted these two applications are renewals of existing Special Use Permits on the water tower at 7801 Delmar and both carriers are being represented by Selective Site Consultants. Therefore, they will be discussed together; however, separate motions will need to be made on each application.

Trevor Wood, with Selective Site Consultants, 8500 West 110th Street, Suite 300, Overland Park, addressed the Commission representing Sprint/Nextel. He noted this installation has been in place for more than a decade. They have presented information documenting there continues to be a need for service from this location. The applicant has an agreement with Water District #1 for the use of their tower. No change is proposed to the antenna or the related ground equipment with the request for renewal.

Chairman Ken Vaughn asked if there was anyone wishing to address the Commission regarding application PC2009-14. Seeing none, he closed the public hearing at 7:10p.m.

Ron Williamson provided background information on this communication site. T-Mobile, Sprint and Cricket are the current carriers on the water tower and are requesting renewal of a Special Use Permit that allowed the installation of antennas and the associated equipment cabinets on the water tower at 7801 Delmar. The initial application was approved for three carriers in 1997 and renewed in 2003. The carriers in 2003 were T-Mobile, Nextel and at&t. Since that time, Nextel changed to Sprint and at&t has transferred its facilities to Cricket. T-Mobile is still operating as T-Mobile.

City Staff was unaware that AT&T had transferred its facilities to Cricket, therefore, staff has added a condition to the approval that if a carrier changes or a merger occurs creating a new entity, the City should be notified. If no changes occur in the installation, no approvals would be necessary.

Cricket Communications is a subsidiary of Leap Wireless and a new carrier for Prairie Village. Cricket was founded in 1999 and its initial marketing was Chattanooga, Tennessee. It has been expanding into new market areas since that time. Cricket offers broadband service but uses a flat rate month-to-month contract rather than long term service agreements.

There are no changes planned for T-Mobile and Cricket, but the Sprint antennas will be modified to allow the installation of Clearwire.

The equipment cabinet's location was approved for the west side of the water tower and fencing and landscaping were installed to screen them. The fence and landscaping appear to be in good shape and have accomplished their purpose. There is a large tree in the north compound that the applicant has requested to trim. The branches are hanging low and touching some of the equipment boxes. The tree does a great job in the overall screening of the installation so trimming should be limited to the minimum necessary for the installation.

The Special Use Permit renewal that was approved September 3, 2003 was for three carriers and subject to the following 15 conditions:

16. The renewal of the Special Use Permit shall be for a maximum of six years from the date of the ordinance approving the renewal with subsequent six year renewals.
17. The antennas and equipment cabinets shall be painted a color that matches the water tower and all wires that connect to the antennas shall be enclosed in a metal shield that is painted the same color as the water tower. The applicant shall maintain the painted surfaces and repaint as needed.
18. There will be no security lighting installed around the base of the tower.
19. The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
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26. A copy of the lease with the Water District shall be submitted to the City prior to the publication of the ordinance approving the renewal of the Special Use Permit.
27. Grass tiles shall be used to provide vehicle and equipment access to the area beneath the tower.
28. The approved Site Plan, dated April 14, 1997, shall be reincorporated as the Site Plan for approval of this application.
29. The applicant shall submit a new landscape plan for Staff approval indicating the existing plants and those that will be installed to replace the ones that have died. The plan shall be submitted and approved prior to the City Council meeting and the applicant shall guarantee the installation and maintenance.
30. The applicant may change out equipment boxes, cable and antennas provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.

The original Special Use Permit approved in 1997 and the subsequent renewal in 2003 was under the Wireless Communications Policy. Under the new ordinance, the Factors for Consideration and the Application Information requirements are somewhat different than the policy and therefore a complete review is being done. Mr. Williamson noted this renewal request is past the

six year approval time, but it could not be considered earlier because of the moratorium on Wireless Communications Facilities applications. The moratorium was rescinded by the City Council in July when the new ordinance was approved.

Ron Williamson led the Commission through the review of the application based on the new wireless communications ordinance, noting that since the application is for the renewal of an existing antenna installation and not a tower, a number of items in the ordinance may not be applicable. The required application information, as set out in the new ordinance, is shown in bold type.

- A. **A study comparing potential sites within an approximate one mile radius of the proposed application area. The study shall include the location and capacity of existing towers, alternative tower sites, a discussion of the ability or inability of each site to host the proposed communications facility and reasons why certain of these sites were excluded from consideration. The study must show what other sites are available and why the proposed location was selected over the others. It must also establish the need for the proposed facility and include a map showing the service area of the proposed facility as well as other alternative tower site and antennas.**

If the use of existing towers, alternative tower structures, and sites are unavailable, a reason or reasons specifying why they are unavailable needs to be set out and may include one or more of the following: refusal by current tower or site owner; topographical limitations; adjacent impediments blocking transmission; site limitations to tower or facility or tower; no space on existing facility or tower; other limiting factors rendering existing facilities or towers unusable. The documentation submitted must use technological and written evidence, that these sites are inadequate to fulfill the grid needs of the wireless service provider, or that a reasonable co-location lease agreement could not be reached with the owners of said alternative sites.

The applicant shall submit an overall plan that shows the coverage gaps in service or lack of network capacity throughout the entire City and provide an indication of future needed/proposed wireless communication facilities, towers, and/or antenna.

The applicant shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall also provide documentation establishing the minimum height necessary to provide the applicant's services and the height required to provide for co-location. The study shall include coverage maps for the proposed monopole at the requested height and at ten feet descending intervals to 50 feet.

The Planning Commission or Governing Body at its discretion may require a third party analysis, at the applicant's expense, to confirm the need for the facility.

The applicant shall be responsible to provide timely updates of the above described study and information during the Special Use Permit process.

Since this is the second renewal of an existing installation, the City has not required a study of alternative locations within a one-mile radius. The City has encouraged the use of existing

structures in order to minimize the impact on the surrounding neighborhoods. The applicant has indicated that this installation is an important location in the continued service for their customers.

- B. Multiple photo simulations of the proposed facility as viewed from the adjacent residential properties and public rights of way as directed by City Staff.**

Since the antennas and equipment cabinets are installed, the applicant has not been required to submit photo simulation.

- C. When possible, all wireless communication towers and alternative tower structures must be designed to accommodate multiple providers (co-location), unless after consideration of the recommendation of the Planning Commission, the City Council finds that the height or other factors required to make such an accommodation will have a more detrimental effect on the community than having multiple sites. Failure of a permit holder to negotiate in good faith to provide fairly priced co-location opportunities, based on industry standards may be grounds for denial or revocation of the Special Use Permit. A signed statement shall be submitted indicating the applicant's intention to share space on the tower with other providers.**

The agreement between the carriers and the Water District #1 will not prohibit other providers from placing antennas on the water tower.

- D. Any application for construction of a new wireless communication facility, tower, and antenna or equipment compound must provide a detailed site plan of the proposed project. This properly scaled site plan will include one page (including ground contours) that portrays the layout of the site, including the proposed facility, the fall radius of any proposed monopole, as well as proposed and existing structures within 200 feet of the tower base and the identification of the specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate. Access to and from the site, as well as dimensioned proposed and existing drives, must be included on this plan. Detailed exterior elevations (from all views) of the tower, screening wall, and all proposed buildings must also be submitted. Finally, a landscape plan detailing location, size, number and species of plant materials must be included for review and approval by the Planning Commission.**

The installation is in place and the 1997 Site Plan and the revised Landscape Plan approved in 2003 will be reincorporated in the Conditions of Approval. Therefore, specific Site Plan Review and Approval is not necessary.

- E. Description of the transmission medium that will be used by the applicant to offer or to provide services and a statement that applicant will meet all federal, state and city regulations and law, including but not limited to FCC regulations.**

The applicant shall provide an engineer's statement that anticipated levels of electromagnetic radiation to be generated by facilities on the site, including the effective radiated power (ERP) of the antenna, shall be within the guidelines established by the FCC. The cumulative effect of all antennas and related facilities on a site will also comply with the radio frequency radiation emission guidelines established by the FCC. An antenna radiation pattern shall be included for each antenna.

Not applicable.

- F. Preliminary construction schedule including completion dates.**

Not applicable.

- G. The applicant shall provide a copy of its FCC license**

Submitted with previous renewal.

H. Copies of letters sent to other wireless communication providers and their response regarding their interest to co-locate.

Not applicable since it is an existing structure.

I. Any other relevant information requested by City Staff.

None requested.

The applicant held a neighborhood meeting on September 16th and presented information on all four carriers. Three neighbors attended and expressed no opposition to the renewal or the addition of Clearwire. Their questions were related to the structural capacity of the tower, expansion of the equipment compound and added height to the tower. All were satisfactorily answered.

The Planning Commission reviewed the Findings of Fact on this application as follows:

A. The character of the neighborhood.

The water tower is located in a predominately public use area. Harmon Park, the YMCA, City Hall Campus, Shawnee Mission East High School, and churches are found to the north, east and south. Single-family residents are located to the west.

B. The zoning and uses of property nearby.

The property to the west is zoned R-1B and is developed for single-family residences; the property to the north and east is zoned R-1A Single-family and is occupied by Harmon Park; and the property to the south is Zoned R-1A Single-family Residential and is occupied by the Park and YMCA.

C. The extent that a change will detrimentally affect neighboring property

This is the renewal of an existing Special Use Permit that will not have a detrimental affect on neighboring property.

D. The relative gain to public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners.

This is an existing installation and will not create any hardship on adjacent landowners.

E. The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.

The proposed antenna installation meets all the setback, height and area regulations contained in the Zoning Ordinance.

F. The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.

This application will have no adverse affect on the welfare or convenience of the public. The City has not received any complaints regarding this installation.

G. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such as the special use will not cause substantial injury to the value of the property in the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will cause substantial injury to the value of property in the immediate neighborhood, consideration shall be given to:

1. **The location, size, nature and height of buildings, structures, walls, and fences on the site; and**
2. **The nature and extent of landscaping and screening on the site.**

The installation of the antennas on the water tower has had relatively little impact and has not dominated the immediate neighborhood as to hinder development. It also should be pointed out that the neighborhood is totally developed and fencing and landscaping have been installed to screen the equipment compound from the residents to the west.

- H. **Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.**

Off street parking will not be necessary for this particular use other than a parking space currently available for service people to maintain equipment. The parking that is provided on the site will be adequate for this need.

- I. **Adequate utility, drainage, and other such necessary facilities have been or will be provided.**

Since the improvements have already been made on the site, existing utility, drainage, and other facilities appear to be adequate.

- J. **Adequate access roads or entrance and exist drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.**

The site and the equipment should require only service vehicles for installation and periodic maintenance. The traffic generated by the use is so minimal that it will not create any additional congestion on the streets.

- K. **Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors or unnecessarily intrusive noises.**

The antennas and equipment do not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that would affect the general public.

- L. **Architectural design and building materials are compatible with such design and materials used in the neighborhood in which the proposed facility is to be built or located.**

The antennas are mounted on the water tower and their design is consistent with the design of the water tower. All cables have been required to be covered with a cap compatible with the water tower construction and painting. The equipment cabinets are enclosed by a seven foot high wood fence and landscaping. The plant materials have matured to the point that they provide good screening.

- M. **City Staff recommendations.**

It is the opinion of Staff that the proposed renewal of the Special Use Permit for three existing carriers favorably meets the Factors for Consideration and recommends that it be approved subject to the pertinent conditions of the renewal in 2003 and the new conditions contained in the new wireless communications facilities ordinance. Under the new ordinance, the Special Use Permit Renewal may be extended for ten years rather than five and it is recommended that this be done.

Ken Vaughn asked how the City would keep track of changes on the towers from mergers. Trevor Wood replied that as this has become more common, communications companies have become more diligent at notifying cities of changes. He was confident that the City would be notified of any changes in the future.

Bob Lindeblad moved the Planning Commission find favorably on the findings of fact and recommend the Governing Body approve PC2009-18 the renewal of the Special Use Permit for wireless communication antenna at 7801 Delmar by Sprint/Nextel subject to the conditions listed below:

- 24) The Special Use Permit renewal will be approved for the existing three carriers T-Mobile, Sprint and Cricket. Additional carriers may locate on the water tower subject to approval of a site plan by the Planning Commission and an amended Special Use Permit will not be required.
- 25) The approval of the Special Use Permit Renewal shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required.
- 26) The antennas and equipment cabinets shall be painted a color that matches the water tower and all wires that connect to the antennas shall be enclosed in a metal shield that is painted the same color as the water tower. The applicant shall maintain the painted surfaces and repaint as needed.
- 27) There will be no security lighting installed around the base of the tower.
- 28) The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
- 29) The equipment cabinets shall be located in the compound on the west side of the tower. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence, and landscape screening as shown on the revised landscape plan and the fence and landscaping shall be maintained in good condition by the applicant. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
- 30) The applicant shall have a structural inspection of all antennas and cables performed by a licensed professional engineer prior to every ten year renewal and submit it as a part of the renewal application. This has not been done yet for this renewal application and will need to be conducted and the findings submitted to the City prior to the application being forwarded to the City Council.
- 31) Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
- 32) The carriers will be allowed to erect temporary towers when the Water District is stripping and painting the tower.
- 33) The utility transformer will be placed on Water District property.
- 34) Grass tiles that provide vehicle and equipment access to the area beneath the tower shall be maintained in good condition by the applicant.
- 35) The approved Site Plan, dated April 14, 1997, and the revised Landscape Plan approved in 2003, shall be reincorporated as the Site Plan for approval of this application.
- 36) The applicant may change out equipment boxes, cable and antennas provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official or his/her designee, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
- 37) The applicant shall not prevent other users from locating on the water tower.
- 38) If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall

- remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.
- 39) The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.
 - 40) In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
 - 41) In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
 - 42) The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
 - 43) The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
 - 44) A copy of the lease between the applicant and Water District #1 shall be submitted to the City and contain the following provisions:
 - c. The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.
 - d. The landowner shall be responsible for the removal of the communications facility in the event that the leaseholder fails to remove it upon abandonment.
 - 45) The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
 - 46) In the event that a carrier transfers its facilities to another carrier or changes its name due to merger acquisition, etc., it will notify the City within 30 days of such change and will provide a description of the service provider by that carrier. If modifications are required as a result of this change, they will be approved by Staff unless in the opinion of Staff they are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval.

The motion was seconded by Nancy Vennard.

Marlene Nagel questioned condition number 15 which allows an antenna installation to not operate for a continuous 12 month period before abandonment, stating she felt that was a long time. Ron Williamson responded this issue was discussed at great length during the creation of the ordinance and the Commission agreed to 12 months. This condition is specifically set out in the Wireless Communications Ordinance.

The motion was voted on and passed by a vote of 6 to 0.

PC2009-14

Randy Kronblad moved the Planning Commission find favorably on the findings of fact and recommend the Governing Body approve PC2009-14, the renewal of the Special Use Permit for wireless communication antenna at 7801 Delmar by T-Mobile subject to the conditions listed below:

- 1) The Special Use Permit renewal will be approved for the existing three carriers T-Mobile, Sprint and Cricket. Additional carriers may locate on the water tower subject to approval of a site plan by the Planning Commission and an amended Special Use Permit will not be required.
- 2) The approval of the Special Use Permit Renewal shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required.
- 3) The antennas and equipment cabinets shall be painted a color that matches the water tower and all wires that connect to the antennas shall be enclosed in a metal shield that is painted the same color as the water tower. The applicant shall maintain the painted surfaces and repaint as needed.
- 4) There will be no security lighting installed around the base of the tower.
- 5) The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
- 6) The equipment cabinets shall be located in the compound on the west side of the tower. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence, and landscape screening as shown on the revised landscape plan and the fence and landscaping shall be maintained in good condition by the applicant. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
- 7) The applicant shall have a structural inspection of all antennas and cables performed by a licensed professional engineer prior to every ten year renewal and submit it as a part of the renewal application. This has not been done yet for this renewal application and will need to be conducted and the findings submitted to the City prior to the application being forwarded to the City Council.
- 8) Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
- 9) The carriers will be allowed to erect temporary towers when the Water District is stripping and painting the tower.
- 10) The utility transformer will be placed on Water District property.
- 11) Grass tiles that provide vehicle and equipment access to the area beneath the tower shall be maintained in good condition by the applicant.
- 12) The approved Site Plan, dated April 14, 1997, and the revised Landscape Plan approved in 2003, shall be reincorporated as the Site Plan for approval of this application.
- 13) The applicant may change out equipment boxes, cable and antennas provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official or his/her designee, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
- 14) The applicant shall not prevent other users from locating on the water tower.
- 15) If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall

- remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.
- 16) The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.
 - 17) In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
 - 18) In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
 - 19) The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
 - 20) The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
 - 21) A copy of the lease between the applicant and Water District #1 shall be submitted to the City and contain the following provisions:
 - a. The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.
 - b. The landowner shall be responsible for the removal of the communications facility in the event that the leaseholder fails to remove it upon abandonment.
 - 22) The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
 - 23) In the event that a carrier transfers its facilities to another carrier or changes its name due to merger acquisition, etc., it will notify the City within 30 days of such change and will provide a description of the service provider by that carrier. If modifications are required as a result of this change, they will be approved by Staff unless in the opinion of Staff they are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval.

The motion was seconded by Marlene Nagel and passed by a vote of 6 to 0.

PC2009-14

Randy Kronblad moved the Planning Commission find favorably on the findings of fact and recommend the Governing Body approve PC2009-14, the renewal of the Special Use Permit for wireless communication antenna at 7801 Delmar by T-Mobile subject to the conditions listed below:

- 1) The Special Use Permit renewal will be approved for the existing three carriers T-Mobile, Sprint and Cricket. Additional carriers may locate on the water tower subject to approval of a site plan by the Planning Commission and an amended Special Use Permit will not be required.

- 2) The approval of the Special Use Permit Renewal shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required.
- 3) The antennas and equipment cabinets shall be painted a color that matches the water tower and all wires that connect to the antennas shall be enclosed in a metal shield that is painted the same color as the water tower. The applicant shall maintain the painted surfaces and repaint as needed.
- 4) There will be no security lighting installed around the base of the tower.
- 5) The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
- 6) The equipment cabinets shall be located in the compound on the west side of the tower. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence, and landscape screening as shown on the revised landscape plan and the fence and landscaping shall be maintained in good condition by the applicant. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
- 7) The applicant shall have a structural inspection of all antennas and cables performed by a licensed professional engineer prior to every ten year renewal and submit it as a part of the renewal application. This has not been done yet for this renewal application and will need to be conducted and the findings submitted to the City prior to the application being forwarded to the City Council.
- 8) Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
- 9) The carriers will be allowed to erect temporary towers when the Water District is stripping and painting the tower.
- 10) The utility transformer will be placed on Water District property.
- 11) Grass tiles that provide vehicle and equipment access to the area beneath the tower shall be maintained in good condition by the applicant.
- 12) The approved Site Plan, dated April 14, 1997, and the revised Landscape Plan approved in 2003, shall be reincorporated as the Site Plan for approval of this application.
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- 14) The applicant shall not prevent other users from locating on the water tower.
- 15) If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.
- 16) The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void,

the applicant will remove the installation and all appurtenances and restore the site to its original condition.

- 17) In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
- 18) In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
- 19) The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
- 20) The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
- 21) A copy of the lease between the applicant and Water District #1 shall be submitted to the City and contain the following provisions:
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- 23) In the event that a carrier transfers its facilities to another carrier or changes its name due to merger acquisition, etc., it will notify the City within 30 days of such change and will provide a description of the service provider by that carrier. If modifications are required as a result of this change, they will be approved by Staff unless in the opinion of Staff they are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval.

The motion was seconded by Marlene Nagel and passed by a vote of 6 to 0.

ORDINANCE 2216

AN ORDINANCE RENEWING A SPECIAL USE PERMIT FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF COMMUNICATION ANTENNAE AND RELATED EQUIPMENT BY T-MOBILE ON THE PROPERTY DESCRIBED AS 7801 DELMAR, PRAIRIE VILLAGE, KANSAS

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE:

Section I. Planning Commission Recommendation. At its regular meeting on October 6, 2009, the Prairie Village Planning Commission held a public hearing, found the findings of fact to be favorable and recommended that the Governing Body approve PC2009-14 the renewal of a Special Use Permit for the installation, operation and maintenance of antennae by T-Mobile at 7801 Delmar subject to the following conditions:

- 1) The Special Use Permit renewal will be approved for the existing three carriers T-Mobile, Sprint and Cricket. Additional carriers may locate on the water tower subject to approval of a site plan by the Planning Commission and an amended Special Use Permit will not be required.
- 2) The approval of the Special Use Permit Renewal shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required.
- 3) The antennas and equipment cabinets shall be painted a color that matches the water tower and all wires that connect to the antennas shall be enclosed in a metal shield that is painted the same color as the water tower. The applicant shall maintain the painted surfaces and repaint as needed.
- 4) There will be no security lighting installed around the base of the tower.
- 5) The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
- 6) The equipment cabinets shall be located in the compound on the west side of the tower. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence, and landscape screening as shown on the revised landscape plan and the fence and landscaping shall be maintained in good condition by the applicant. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
- 7) The applicant shall have a structural inspection of all antennas and cables performed by a licensed professional engineer prior to every ten year renewal and submit it as a part of the renewal application. This has not been done yet for this renewal application and will need to be conducted and the findings submitted to the City prior to the application being forwarded to the City Council.
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- 13) The applicant may change out equipment boxes, cable and antennas provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official or his/her designee, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
- 14) The applicant shall not prevent other users from locating on the water tower.
- 15) If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall remove the same

within 90 days after receiving notice from the City. If the installation is not removed within that 90 day period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.

- 16) The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.
- 17) In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
- 18) In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
- 19) The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
- 20) The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
- 21) A copy of the lease between the applicant and Water District #1 shall be submitted to the City and contain the following provisions:
 - a. The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.
 - b. The landowner shall be responsible for the removal of the communications facility in the event that the leaseholder fails to remove it upon abandonment.
- 22) The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
- 23) In the event that a carrier transfers its facilities to another carrier or changes its name due to merger acquisition, etc., it will notify the City within 30 days of such change and will provide a description of the service provider by that carrier. If modifications are required as a result of this change, they will be approved by Staff unless in the opinion of Staff they are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval.

Section II. Findings of the Governing Body. The Governing Body hereby adopts by specific reference the findings of fact on application PC2009-14 as contained in the minutes of the Planning Commission meeting of October 6, 2009, and the recommendations of the Planning Commission.

Section III. Granting of the Special Use Permit. Be it therefore ordained that the City of Prairie Village grant a Special Use Permit to Sprint/Nextel for antennae at 7801 Delmar, Prairie Village, Kansas subject to the twenty-three specific conditions listed above.

Section IV. Take Effect. That this ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper as provided by law.

PASSED AND ADOPTED THIS ___th DAY OF OCTOBER, 2009.

CITY OF PRAIRIE VILLAGE, KANSAS

By: /s/ Ronald L. Shaffer
Ronald L. Shaffer, Mayor

ATTEST:

/s/ Joyce Hagen Mundy
Joyce Hagen Mundy, City Clerk

APPROVED AS TO FORM:

/s/ Catherine P. Logan
Catherine P. Logan, City Attorney



Council Meeting Date: October 19, 2009

Consider PC2009-15 Request for a Special Use Permit for the installation of wireless communication antenna at 7801 Delmar - Clearwire Wireless

RECOMMENDATION

Governing Body adopt Ordinance 2217 approving a Special Use Permit for the installation, operation and maintenance of communication antenna and equipment by Clearwire Wireless on the property described as 7801 Delmar, Prairie Village, Kansas.

BACKGROUND

Clearwire is an additional carrier seeking to place antenna on the water tower, although it has a relationship with Sprint. Sprint owns a controlling interest in Clearwire and shares sites when it is practical. The specific request by Clearwire is to install six antennas, three of which are small microwave dish antenna (approximately 26 inches in diameter) on the water tower walkway and a small equipment box in the north compound. The equipment box is approximately 3 feet x 6 feet x 4 feet in height according to the plans. Therefore, it will be shorter than the fence and will be screened. However, the tree north of the compound will need to be trimmed to protect the equipment and prevent interference.

Clearwire provides wireless high speed broadband service to deliver its new WiMax network. Sprint and Clearwire are partners and in the merger combined their wireless broadband networks. Clearwire launched its service in Portland, Oregon on January 6, 2009 and has expanded to new metropolitan markets since that time. Clearwire is currently in the process of obtaining approval for 225 sites in the Kansas City Metro area. It is their desire to deploy all sites at once in 2010.

In accordance with the Commission's Citizen Participation Policy, a neighborhood meeting was held on September 16th with information presented on all four carriers. Three neighbors attended and expressed no opposition to the renewal. Their questions were related to the structural capacity of the tower, expansion of the equipment compound and added height to the tower. All were satisfactorily answered. A structural study was submitted by the applicant documenting the tower's ability to accommodate another installation. A public hearing was held before the Planning Commission on October 6, 2009 with no one present to speak on this application. A complete review of this application can be found in the attached minutes of that meeting.

The Planning Commission found favorably on the findings of fact and recommends the Governing Body approve PC2009-15, the issuance of the Special Use Permit for wireless communication antenna at 7801 Delmar by Clearwire Wireless Communications subject to the conditions listed below:

- 1) The Special Use Permit will be approved to allow four carriers (the three existing carriers T-Mobile, Sprint and Cricket plus Clearwire). In the future, additional carriers may locate on the water tower subject to approval of a Site Plan by the Planning Commission and an amended Special Use Permit will not be required.
- 2) The approval of the Special Use Permit shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall

resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required.

- 3) The antennas and equipment cabinets shall be painted a color that matches the water tower and all wires that connect to the antennas shall be enclosed in a metal shield that is painted the same color as the water tower. The applicant shall maintain the painted surfaces and repaint as needed.
- 4) There will be no security lighting installed around the base of the tower.
- 5) The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
- 6) The equipment cabinet shall be located in the compound on the west side of the tower. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence, and landscape screening as shown on the revised Landscape Plan and the fence and landscaping shall be maintained in good condition by the applicant. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
- 7) The applicant shall have a structural inspection of all antennas and cables performed by a licensed profession engineer prior to every ten year renewal and submit it as a part of the renewal application.
- 8) Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
- 9) The carrier will be allowed to erect a temporary tower when the Water District is stripping and painting the tower.
- 10) The utility transformer will be placed on Water District property.
- 11) Grass tiles that provide vehicle and equipment access to the area beneath the tower shall be maintained in good condition by the applicant.
- 12) The Site Plan submitted with this application, the approved Site Plan, dated April 14, 1987 and the revised Landscape Plan approved in 2003 shall be reincorporated as the Site Plan for approval of this application.
- 13) The applicant may change out equipment boxes, cable and antennas subject to the Staff approval provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official or his/her designee, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
- 14) The applicant shall not prevent other users from locating on the water tower.
- 15) If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.
- 16) The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.

- 17) In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
- 18) In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
- 19) The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
- 20) The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
- 21) A copy of the lease between the applicant and Water District #1 shall be submitted to the City and contain the following provisions:
 - a. The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.
 - b. The landowner shall be responsible for the removal of the communications facility in the event that the leaseholder fails to remove it upon abandonment.
- 22) The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
- 23) If Clearwire changes its name through merger, acquisition, etc. or sells or transfers its installation to another carrier, it shall notify the City within 30 days of such change and provide a description of the service provided by that carrier. If modifications are required as a result of this change they will be approved by Staff unless in the opinion of Staff are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval.

Village Vision

Wireless communications are not specifically addressed in Village Vision. However it falls into two general goal areas which are maintaining and improving infrastructure and improving communications between the City and its residents.

ATTACHMENTS

PC2009-15 Staff Report
Excerpt Planning Commission Minutes - October 6, 2009
Photo Simulation & Site Plan
Proposed Ordinance

PREPARED BY

Joyce Hagen Mundy
Planning Commission Secretary/City Clerk

DATE:

October 12, 2009



BWR | Right in the Center

STAFF REPORT

TO: Prairie Village Planning Commission
FROM: Ron Williamson, BWR, Planning Consultant
SUBJECT: PC 2009-15: Request by Clearwire Wireless for approval of a Special Use Permit to Install Antennas and Equipment on the Water Tower at 7801 Delmar
DATE: October 6, 2009 BWR Project # 2009-0024.01.0002

COMMENTS:

Currently there are three carriers on the water tower; Sprint, T-Mobile and Cricket. The original Special Use Permit granted for the Water Tower in 1997 was for three carriers and the conditions stipulated that additional carriers would be required to obtain a Special Use Permit. Clearwire is an additional carrier although it has a relationship with Sprint. Sprint owns a controlling interest in Clearwire and shares sites when it is practical. The specific request by Clearwire is to install six antennas, two of which are small microwave dish antenna (approximately 26 inches in diameter) on the water tower walkway and a small equipment box in the north compound. The equipment box is approximately 3 feet x 6 feet x 4 feet in height according to the plans. Therefore, it will be shorter than the fence and will be screened.

Clearwire provides wireless high speed broadband service to deliver its new WiMax network. Sprint and Clearwire are partners and in the merger combined their wireless broadband networks. Clearwire launched its service in Portland, Oregon on January 6, 2009 and has expanded to new metropolitan markets since that time.

This is the first application for a new Special Use Permit under the new Wireless Communications Facilities ordinance. Therefore, the Factors for Consideration and the Application Information requirements will be somewhat different than in the past and Site Plan Approval will also be required.

APPLICATION INFORMATION:

The Staff has reviewed the application based on the City's new ordinance for Wireless Communication Facilities and has the following comments regarding the information submitted. It should be noted that since this is an application to co-locate an antenna installation on an existing site, a number of items in the ordinance may not be applicable. The required application information as set out in the new ordinance is shown in bold type.

- A. **A study comparing potential sites within an approximate one mile radius of the proposed application area. The study shall include the location and capacity of existing towers, alternative tower sites, a discussion of the ability or inability of each site to host the proposed communications facility and reasons why certain of these sites were excluded from consideration. The study must show what other sites are available and why the proposed location was selected over the others. It must also establish the need for the**

BUCHER, WILLIS & RATLIFF CORPORATION

903 East 104th Street | Suite 900 | Kansas City, Missouri 64131-3451 | P 816.363.2696 | F 816.363.0027 | www.bwrcorp.com
engineering | planning | architecture

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proposed facility and include a map showing the service area of the proposed facility as well as other alternative tower site and antennas.

If the use of exiting towers, alternative tower structures, and sites are unavailable, a reason or reasons specifying why they are unavailable needs to be set out and may include one or more of the following: refusal by current tower or site owner; topographical limitations; adjacent impediments blocking transmission; site limitations to tower or facility or tower; no space on existing facility or tower; other limiting factors rendering existing facilities or towers unusable. The documentation submitted must use technological and written evidence, that these sites are inadequate to fulfill the grid needs of the wireless service provider, or that a reasonable co-location lease agreement could not be reached with the owners of said alternative sites.

The applicant shall submit an overall plan that shows the coverage gaps in service or lack of network capacity throughout the entire City and provide an indication of future needed/proposed wireless communication facilities, towers, and/or antenna.

The applicant shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall also provide documentation establishing the minimum height necessary to provide the applicant's services and the height required to provide for co-location. The study shall include coverage maps for the proposed monopole at the requested height and at ten feet descending intervals to 50 feet.

The Planning Commission or Governing Body at its discretion may require a third party analysis, at the applicant's expense, to confirm the need for the facility.

The applicant shall be responsible to provide timely updates of the above described study and information during the Special Use Permit process.

Since this is a co-location request, much of the information setout in this section is not needed, for example; a study of alternative location within a one-mile radius was not required. The Water Tower has been approved for three carriers and this is a request for a fourth. The City has strongly encouraged co-location and use existing structures in order to minimize the negative impacts on surrounding neighborhoods. The coverage maps prepared by the applicant show that Prairie Village will be reasonably well covered by Clearwire when installations are also added to St. Ann's and the fire station locations.

- B. Multiple photo simulations of the proposed facility as viewed from the adjacent residential properties and public rights of way as directed by City Staff.
The applicant has submitted photo simulation of the proposed installation which indicates very little change in the appearance.
- C. When possible, all wireless communication towers and alternative tower structures must be designed to accommodate multiple providers (co-location), unless after consideration of the recommendation of the Planning Commission, the City Council finds that the height or other factors required to make such an accommodation will have a more

detrimental effect on the community than having multiple sites. Failure of a permit holder to negotiate in good faith to provide fairly priced co-location opportunities, based on industry standards may be grounds for denial or revocation of the Special Use Permit. A signed statement shall be submitted indicating the applicant's intention to share space on the tower with other providers.

The applicant has provided a copy of its agreement with Water District #1 which allows co-location.

- D. Any application for construction of a new wireless communication facility, tower, antenna or equipment compound must provide a detailed site plan of the proposed project. This properly scaled site plan will include one page (including ground contours) that portrays the layout of the site, including the proposed facility, the fall radius of any proposed monopole, as well as proposed and existing structures within 200 feet of the tower base and the identification of the specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate. Access to and from the site, as well as dimensioned proposed and existing drives, must be included on this plan. Detailed exterior elevations (from all views) of the tower, screening wall, and all proposed buildings must also be submitted. Finally, a landscape plan detailing location, size, number and species of plant materials must be included for review and approval by the Planning Commission.

Since this is the addition of a proposed carrier to an existing approved Site Plan, a new detailed Site Plan was not required. The proposed plan submitted shows the equipment cabinet located in the north compound. No changes are needed and the screening fence and landscaping is already in place. The 1997 Site Plan will be reincorporated into the conditions of approval along with the revised Landscape Plan that was approved in 2003.

- E. Description of the transmission medium that will be used by the applicant to offer or to provide services and a statement that applicant will meet all federal, state and city regulations and law, including but not limited to FCC regulations.

The applicant shall provide an engineer's statement that anticipated levels of electromagnetic radiation to be generated by facilities on the site, including the effective radiated power (ERP) of the antenna, shall be within the guidelines established by the FCC. The cumulative effect of all antennas and related facilities on a site will also comply with the radio frequency radiation emission guidelines established by the FCC. An antenna radiation pattern shall be included for each antenna.

The applicant will use six panels two of which will be small microwave dish antennas. Approximately 26 inches in diameter.

The applicant needs to submit a letter stating they will meet all federal, state and local regulation and laws and a statement regarding the electromagnetic radiation.

- F. Preliminary construction schedule including completion dates.
Clearwire intends to launch service in 2010.

- G. The applicant shall provide a copy of its FCC license
A copy has been submitted.

- H. Copies of letters sent to other wireless communication providers and their response regarding their interest to co-locate.

Not applicable since it is a proposed co-location of a fourth carrier on an existing structure.

- I. **Any other relevant information requested by City Staff.**
None requested.

The applicant held a neighborhood meeting on September 16th and presented information on all four carriers. Three neighbors attended and expressed no opposition to the renewal or the addition of Clearwire. Their questions were related to the structural capacity of the tower, expansion of the equipment compound and added height to the tower. All were satisfactorily answered.

FACTORS FOR CONSIDERATION:

The Planning Commission shall make Findings of Fact to support its recommendation to approve, conditionally approve, or disapprove this Special Use Permit. It is not necessary that a Finding of Fact be made for each factor described herein. However, there should be a conclusion that the request should be approved or denied based upon consideration of as many factors as are applicable. The factors to be considered in approving or disapproving a Special Use Permit for a wireless facility shall include, but not be limited to the following:

- A. **The character of the neighborhood.**
The water tower is located in a predominately public use area. Harmon Park, the YMCA, City Hall Campus, Shawnee Mission East High School, and churches are found to the north, east and south. Single-family residents are located to the west. Currently there are three carriers on the water tower.
- B. **The zoning and uses of property nearby.**
The property to the west is zoned R-1B and is developed for single-family residences; the property to the north and east is zoned R-1A Single-family and is occupied by Harmon Park; and the property to the south is Zoned R-1A Single-family Residential and is occupied by Park and the YMCA.
- C. **The extent that a change will detrimentally affect neighboring property**
This is the request from a fourth carrier on an approved location. The proposed installation is minimal and will not have a detrimental affect on neighboring property. The proposed equipment cabinet will be installed within the north compound which is fenced and landscaped and the antennas will be mounted on the catwalk similarly to the others.
- D. **The relative gain to public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners.**
This is a minor expansion of an existing installation which will not create any hardship on adjacent landowners.
- E. **The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.**
The proposed antenna installation meets all the setback, height and area regulations contained in the Zoning Ordinance.

- F. The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.**
This application will have no adverse affect on the welfare or convenience of the public. The applicant held a public meeting and three neighbors appeared. The City has not received any complaints regarding the existing installation. When the proposed installation was explained and it was pointed out that the tower height and compound would not be increased, the neighbors did not express any opposition.
- G. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such as the special use will not cause substantial injury to the value of the property in the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will cause substantial injury to the value of property in the immediate neighborhood, consideration shall be given to:**
- 1. The location, size, nature and height of buildings, structures, walls, and fences on the site; and**
 - 2. The nature and extent of landscaping and screening on the site.**
- The proposed installation of the antennas on the water tower will have relatively little impact on and will not dominate the immediate neighborhood as to hinder development. Three carriers are already located on the tower and they have had a minimal impact. It also should be pointed out that the neighborhood is totally developed and fencing and landscaping have been installed to screen the equipment compound from the residents to the west.
- H. Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.**
Off street parking will not be necessary for this particular use other than a parking space currently available for service people to maintain equipment. The parking that is provided on the site will be adequate for this need.
- I. Adequate utility, drainage, and other such necessary facilities have been or will be provided.**
Since the improvements have already been made on the site, to accommodate existing carriers, existing utility, drainage, and other facilities appear to be adequate.
- J. Adequate access roads or entrance and exist drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.**
The site and the equipment should require only service vehicles for installation and periodic maintenance. The traffic generated by the use is so minimal that it will not create any additional congestion on the streets.
- K. Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors or unnecessarily intrusive noises.**
The antennas and equipment do not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that would affect the general public.

- L. Architectural design and building materials are compatible with such design and materials used in the neighborhood in which the proposed facility is to be built or located.**

The antennas are mounted on the water tower and their design is consistent with the design of the water tower. All cables are required to be covered with a cap compatible with the water tower construction and painted a matching color. The equipment compounds are enclosed by a seven foot high wood fence and landscaping. The plant materials have matured to the point that they provide good screening.

- M. City Staff recommendations.**

It is the opinion of Staff that the proposed request for approval of the Special Use Permit for an additional carrier favorably meets the Factors for Consideration and recommends that it be approved subject to the pertinent conditions set out in case PC 2009-14. It is also recommended that this application be approved for ten years so that it is consistent in timeframe with the other three carriers.

RECOMMENDATION:

After a review of the proposed application and making its findings in relation to the thirteen Factors for Consideration previously outlined, the Planning Commission may either recommend approval of the Special Use Permit with or without conditions, recommend denial, or continue it to another meeting. In granting this Special Use Permit, however, the Planning Commission may impose such conditions, safeguards, and restrictions upon the premises benefited by approval of the Special Use Permit as may be necessary to reduce or minimize any potentially injurious affect on other property in the neighborhood. If the Planning Commission recommends approval to the Governing Body, it is recommended that the following conditions be included:

- 1) The Special Use Permit will be approved to allow four carriers (the three existing carriers T-Mobile, Sprint and Cricket plus Clearwire). In the future, additional carriers may locate on the water tower subject to approval of a Site Plan by the Planning Commission and an amended Special Use Permit will not be required.
- 2) The approval of the Special Use Permit shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required.
- 3) The antennas and equipment cabinets shall be painted a color that matches the water tower and all wires that connect to the antennas shall be enclosed in a metal shield that is painted the same color as the water tower. The applicant shall maintain the painted surfaces and repaint as needed.
- 4) There will be no security lighting installed around the base of the tower.
- 5) The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.

- 6) The equipment cabinet shall be located in the compound on the west side of the tower. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence, and landscape screening as shown on the revised Landscape Plan and the fence and landscaping shall be maintained in good condition by the applicant. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
- 7) The applicant shall have a structural inspection of all antennas and cables performed by a licensed professional engineer prior to every ten year renewal and submit it as a part of the renewal application.
- 8) Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
- 9) The carrier will be allowed to erect a temporary tower when the Water District is stripping and painting the tower.
- 10) The utility transformer will be placed on Water District property.
- 11) Grass tiles that provide vehicle and equipment access to the area beneath the tower shall be maintained in good condition by the applicant.
- 12) The Site Plan submitted with this application, the approved Site Plan, dated April 14, 1997 and the revised Landscape Plan approved in 2003 shall be reincorporated as the Site Plan for approval of this application.
- 13) The applicant may change out equipment boxes, cable and antennas subject to the Staff approval provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official or his/her designee, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
- 14) The applicant shall not prevent other users from locating on the water tower.
- 15) If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.
- 16) The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.

- 17) In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
- 18) In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
- 19) The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
- 20) The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
- 21) A copy of the lease between the applicant and Water District #1 shall be submitted to the City and contain the following provisions:
 1. The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.
 2. The landowner shall be responsible for the removal of the communications facility in the event that the leaseholder fails to remove it upon abandonment.
- 22) The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
- 23) If Clearwire changes its name through merger, acquisition, etc. or sells or transfers its installation to another carrier, it shall notify the City within 30 days of such change and provide a description of the service provided by that carrier. If modifications are required as a result of this change they will be approved by Staff unless in the opinion of Staff are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval.

SITE PLAN APPROVAL

Since this is the request for the initial approval of the Special Use Permit for Clearwire, Site Plan Approval in accordance with Chapter 19.32 Site Plan Approval is required.

The proposed installation is a very minor project and will have a minimal impact on the existing installation on the site. The equipment cabinet is approximately 3 feet x 6 feet x 4 feet in height and will be located within the north compound. No changes to the fencing or landscaping will be required. The antenna installation will include four panels approximately 13 inches x 42 inches and two dish antennas approximately 26 inches in diameter. All the antennas will be mounted on the catwalk on the tower.

- A. **The site is capable of accommodating the building, parking areas and drives with appropriate open space and landscape.**
The location has already been approved for three carriers and the site is capable of accommodating them plus this fourth carrier. The equipment cabinet for Clearwire will be within the existing compound and can be easily accommodated with the existing improvements.
- B. **Utilities are available with adequate capacity to serve the proposed development.**
Utilities are currently in place serving the existing installation and are adequate to serve this minor expansion.
- C. **The plan provides for adequate management of stormwater runoff.**
There will be no increase in impervious surface so stormwater is not an issue.
- D. **The plan provides for safe and easy ingress, egress and internal traffic circulation.**
The proposed site will utilize existing streets and parking lot for circulation which will adequately serve the proposed use.
- E. **The plan is consistent with good land planning and good site engineering design principles.**
This is a minor expansion of an existing installation and land planning and site engineering are not relevant concerns. The proposed installation will be within the existing facility and will have very little impact.
- F. **An appropriate degree of compatibility will prevail between the architectural quality of the proposed building and the surrounding neighborhood.**
The proposed installation of the antennas will be compatible with the existing antennas that are currently in place. The only difference is that two dish antennas will be added which are different in design than the more typical panel design.
- G. **The plan represents an overall development pattern that is consistent with the comprehensive plan (Village Vision) and other adopted planning polices**
Wireless communications are not specifically addressed in Village Vision. However it falls into two general goal areas which are maintaining and improving infrastructure and improving communications between the City and its residents.

RECOMMENDATION:

It is the recommendation of the Staff that the Planning Commission approve this Site Plan for Clearwire Wireless Communications subject to the following condition.

1. That the Site Plan Approval be conditional upon the approval of the Special Use Permit.

**PLANNING COMMISSION MINUTES
OCTOBER 6, 2009**

**PC2009-15 Request for Special Use Permit for Wireless Communications
7801 Delmar**

Trevor Wood, with Selective Site Consultants, 8500 West 110th Street, Suite 300, Overland Park, addressed the Commission representing Clearwire Wireless. Clearwire is an additional carrier although it has a relationship with Sprint. Sprint owns a controlling interest in Clearwire and shares sites when it is practical. The specific request by Clearwire is to install six antennas, three of which are small microwave dish antenna (approximately 26 inches in diameter) on the water tower walkway and a small equipment box in the north compound. The equipment box is approximately 3 feet x 6 feet x 4 feet in height according to the plans. Therefore, it will be shorter than the fence and will be screened.

Clearwire provides wireless high speed broadband service to deliver its new WiMax network. Sprint and Clearwire are partners and in the merger combined their wireless broadband networks. Clearwire launched its service in Portland, Oregon on January 6, 2009 and has expanded to new metropolitan markets since that time.

The tree north of the compound will need to be trimmed to protect the equipment and prevent interference.

Nancy Vennard asked when this service would be available in Prairie Village. Trevor Wood responded Clearwire is currently in the process of obtaining approval for 225 sites in the Kansas City Metro area. It is their desire to deploy all sites at once in 2010.

Nancy Vennard asked for clarification on the coverage maps submitted, noting they appear to be the same before and after. The Water Tower is incorrectly numbered on the drawing. The water tower site is incorrectly numbered on the drawing of the RF Coverage Map should be labeled coverage without 5436.

Ron Williamson asked Mr. Wood to explain the use of both panels and small dishes. This application will use four panel antenna and three dish antennas, 26 inches in diameter.

Chairman Ken Vaughn asked if there was anyone wishing to address the Commission regarding application PC2009-15. Seeing none, he closed the public hearing at 7:30p.m.

Ron Williamson reviewed the application for this new carrier and the proposed site plan noting that since this is an application to co-locate an antenna installation on an existing site, a number of items in the ordinance may not be applicable.

- A. A study comparing potential sites within an approximate one mile radius of the proposed application area. The study shall include the location and capacity of existing towers, alternative tower sites, a discussion of the ability or inability of each site to host the proposed communications facility and reasons why certain of these sites were excluded from consideration. The study must show what other sites are available and why the proposed location was selected over the others. It must also establish the need for the proposed facility and include a map showing the service area of the proposed facility as well as other alternative tower site and antennas.**

If the use of existing towers, alternative tower structures, and sites are unavailable, a reason or reasons specifying why they are unavailable needs to be set out and may

include one or more of the following: refusal by current tower or site owner; topographical limitations; adjacent impediments blocking transmission; site limitations to tower or facility or tower; no space on existing facility or tower; other limiting factors rendering existing facilities or towers unusable. The documentation submitted must use technological and written evidence, that these sites are inadequate to fulfill the grid needs of the wireless service provider, or that a reasonable co-location lease agreement could not be reached with the owners of said alternative sites.

The applicant shall submit an overall plan that shows the coverage gaps in service or lack of network capacity throughout the entire City and provide an indication of future needed/proposed wireless communication facilities, towers, and/or antenna.

The applicant shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall also provide documentation establishing the minimum height necessary to provide the applicant's services and the height required to provide for co-location. The study shall include coverage maps for the proposed monopole at the requested height and at ten feet descending intervals to 50 feet.

The Planning Commission or Governing Body at its discretion may require a third party analysis, at the applicant's expense, to confirm the need for the facility.

The applicant shall be responsible to provide timely updates of the above described study and information during the Special Use Permit process.

Since this is a co-location request, much of the information setout in this section is not needed, for example; a study of alternative location within a one-mile radius was not required. The Water Tower has been approved for three carriers and this is a request for a fourth. The City has strongly encouraged co-location and use existing structures in order to minimize the negative impacts on surrounding neighborhoods. The coverage maps prepared by the applicant show that Prairie Village will be reasonably well covered by Clearwire when installations are also added to St. Ann's and the fire station locations.

B. Multiple photo simulations of the proposed facility as viewed from the adjacent residential properties and public rights of way as directed by City Staff.

The applicant has submitted photo simulation of the proposed installation which indicates very little change in the appearance.

C. When possible, all wireless communication towers and alternative tower structures must be designed to accommodate multiple providers (co-location), unless after consideration of the recommendation of the Planning Commission, the City Council finds that the height or other factors required to make such an accommodation will have a more detrimental effect on the community than having multiple sites. Failure of a permit holder to negotiate in good faith to provide fairly priced co-location opportunities, based on industry standards may be grounds for denial or revocation of the Special Use Permit. A signed statement shall be submitted indicating the applicant's intention to share space on the tower with other providers.

The applicant has provided a copy of its agreement with Water District #1 which allows co-location.

- D. Any application for construction of a new wireless communication facility, tower, and antenna or equipment compound must provide a detailed site plan of the proposed project. This properly scaled site plan will include one page (including ground contours) that portrays the layout of the site, including the proposed facility, the fall radius of any proposed monopole, as well as proposed and existing structures within 200 feet of the tower base and the identification of the specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate. Access to and from the site, as well as dimensioned proposed and existing drives, must be included on this plan. Detailed exterior elevations (from all views) of the tower, screening wall, and all proposed buildings must also be submitted. Finally, a landscape plan detailing location, size, number and species of plant materials must be included for review and approval by the Planning Commission.**

Since this is the addition of a proposed carrier to an existing approved Site Plan, a new detailed Site Plan was not required. The proposed plan submitted shows the equipment cabinet located in the north compound. No changes are needed and the screening fence and landscaping is already in place. The 1997 Site Plan will be reincorporated into the conditions of approval along with the revised Landscape Plan that was approved in 2003.

- E. Description of the transmission medium that will be used by the applicant to offer or to provide services and a statement that applicant will meet all federal, state and city regulations and law, including but not limited to FCC regulations.**

The applicant shall provide an engineer's statement that anticipated levels of electromagnetic radiation to be generated by facilities on the site, including the effective radiated power (ERP) of the antenna, shall be within the guidelines established by the FCC. The cumulative effect of all antennas and related facilities on a site will also comply with the radio frequency radiation emission guidelines established by the FCC. An antenna radiation pattern shall be included for each antenna.

The applicant will use six panels three of which will be small microwave dish antennas. Approximately 26 inches in diameter.

The applicant needs to submit a letter stating they will meet all federal, state and local regulation and laws and a statement regarding the electromagnetic radiation.

- F. Preliminary construction schedule including completion dates.**
Clearwire intends to launch service in 2010.

- G. The applicant shall provide a copy of its FCC license**
A copy has been submitted.

- H. Copies of letters sent to other wireless communication providers and their response regarding their interest to co-locate.**
Not applicable since it is a proposed co-location of a fourth carrier on an existing structure.

- I. Any other relevant information requested by City Staff.**
None requested.

The applicant held a neighborhood meeting on September 16th and presented information on all four carriers. Three neighbors attended and expressed no opposition to the renewal or the addition of Clearwire. Their questions were related to the structural capacity of the tower, expansion of the equipment compound and added height to the tower. All were satisfactorily answered.

The Planning Commission made the following review of the Findings of Fact on application PC2009-15 requesting a Special Use Permit for wireless communication antenna.

A. The character of the neighborhood.

The water tower is located in a predominately public use area. Harmon Park, the YMCA, City Hall Campus, Shawnee Mission East High School, and churches are found to the north, east and south. Single-family residents are located to the west. Currently there are three carriers on the water tower.

B. The zoning and uses of property nearby.

The property to the west is zoned R-1B and is developed for single-family residences; the property to the north and east is zoned R-1A Single-family and is occupied by Harmon Park; and the property to the south is Zoned R-1A Single-family Residential and is occupied by Park and the YMCA.

C. The extent that a change will detrimentally affect neighboring property

This is the request from a fourth carrier on an approved location. The proposed installation is minimal and will not have a detrimental affect on neighboring property. The proposed equipment cabinet will be installed within the north compound which is fenced and landscaped and the antennas will be mounted on the catwalk similarly to the others.

D. The relative gain to public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners.

This is a minor expansion of an existing installation which will not create any hardship on adjacent landowners.

E. The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.

The proposed antenna installation meets all the setback, height and area regulations contained in the Zoning Ordinance.

F. The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.

This application will have no adverse affect on the welfare or convenience of the public. The applicant held a public meeting and three neighbors appeared. The City has not received any complaints regarding the existing installation. When the proposed installation was explained and it was pointed out that the tower height and compound would not be increased, the neighbors did not express any opposition.

G. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such as the special use will not cause substantial injury to the value of the property in the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will cause substantial injury to the value of property in the immediate neighborhood, consideration shall be given to:

a. The location, size, nature and height of buildings, structures, walls, and fences on the site; and

b. The nature and extent of landscaping and screening on the site.

The proposed installation of the antennas on the water tower will have relatively little impact on and will not dominate the immediate neighborhood as to hinder development. Three carriers are already located on the tower and they have had a minimal impact. It also should be pointed out that the neighborhood is totally developed and fencing and landscaping have been installed to screen the equipment compound from the residents to the west.

- H. **Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.**

Off street parking will not be necessary for this particular use other than a parking space currently available for service people to maintain equipment. The parking that is provided on the site will be adequate for this need.

- I. **Adequate utility, drainage, and other such necessary facilities have been or will be provided.**

Since the improvements have already been made on the site, to accommodate existing carriers, existing utility, drainage, and other facilities appear to be adequate.

- J. **Adequate access roads or entrance and exist drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.**

The site and the equipment should require only service vehicles for installation and periodic maintenance. The traffic generated by the use is so minimal that it will not create any additional congestion on the streets.

- K. **Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors or unnecessarily intrusive noises.**

The antennas and equipment do not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that would affect the general public.

- L. **Architectural design and building materials are compatible with such design and materials used in the neighborhood in which the proposed facility is to be built or located.**

The antennas are mounted on the water tower and their design is consistent with the design of the water tower. All cables are required to be covered with a cap compatible with the water tower construction and painted a matching color. The equipment compounds are enclosed by a seven foot high wood fence and landscaping. The plant materials have matured to the point that they provide good screening.

- M. **City Staff recommendations.**

It is the opinion of Staff that the proposed request for approval of the Special Use Permit for an additional carrier favorably meets the Factors for Consideration and recommends that it be approved subject to the pertinent conditions setout in case PC 2009-15. It is also recommended that this application be approved for ten years so that it is consistent in timeframe with the other three carriers.

Site Plan Approval

Ron Williamson noted the proposed installation is a very minor project and will have a minimal impact on the existing installation on the site. The equipment cabinet is approximately 3 feet x 6 feet x 4 feet in height and will be located within the north compound. No changes to the fencing or landscaping will be required. The antenna installation will include four panels approximately 13 inches x 42 inches and two dish antennas approximately 26 inches in diameter. All the antennas will be mounted on the catwalk on the tower.

The Planning Commission conducted the following review of the site plan criteria:

- a. **The site is capable of accommodating the building, parking areas and drives with appropriate open space and landscape.**

The location has already been approved for three carriers and the site is capable of accommodating them plus this fourth carrier. The equipment cabinet for Clearwire will be within the existing compound and can be easily accommodated with the existing improvements.

b. Utilities are available with adequate capacity to serve the proposed development.

Utilities are currently in place serving the existing installation and are adequate to serve this minor expansion.

c. The plan provides for adequate management of stormwater runoff.

There will be no increase in impervious surface so stormwater is not an issue.

d. The plan provides for safe and easy ingress, egress and internal traffic circulation.

The proposed site will utilize existing streets and parking lot for circulation which will adequately serve the proposed use.

e. The plan is consistent with good land planning and good site engineering design principles.

This is a minor expansion of an existing installation and land planning and site engineering is not relevant concerns. The proposed installation will be within the existing facility and will have very little impact.

f. An appropriate degree of compatibility will prevail between the architectural quality of the proposed building and the surrounding neighborhood.

The proposed installation of the antennas will be compatible with the existing antennas that are currently in place. The only difference is that two dish antennas will be added which are different in design than the more typical panel design.

g. The plan represents an overall development pattern that is consistent with the comprehensive plan (Village Vision) and other adopted planning policies

Wireless communications are not specifically addressed in Village Vision. However it falls into two general goal areas which are maintaining and improving infrastructure and improving communications between the City and its residents.

Dirk Schafer moved the Planning Commission find favorably on the findings of fact and recommend the Governing Body approve PC2009-15, the issuance of the Special Use Permit for wireless communication antenna at 7801 Delmar by Clearwire Wireless Communications subject to the conditions listed below with the site plan approved upon the issuance of the Special Use Permit:

- 1) The Special Use Permit will be approved to allow four carriers (the three existing carriers T-Mobile, Sprint and Cricket plus Clearwire). In the future, additional carriers may locate on the water tower subject to approval of a Site Plan by the Planning Commission and an amended Special Use Permit will not be required.
- 2) The approval of the Special Use Permit shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required.
- 3) The antennas and equipment cabinets shall be painted a color that matches the water tower and all wires that connect to the antennas shall be enclosed in a metal shield that is painted the same color as the water tower. The applicant shall maintain the painted surfaces and repaint as needed.
- 4) There will be no security lighting installed around the base of the tower.
- 5) The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
- 6) The equipment cabinet shall be located in the compound on the west side of the tower. Adequate screening of the equipment cabinets located at the tower base shall be

provided by a solid or semi-solid wall or fence, and landscape screening as shown on the revised Landscape Plan and the fence and landscaping shall be maintained in good condition by the applicant. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.

- 7) The applicant shall have a structural inspection of all antennas and cables performed by a licensed profession engineer prior to every ten year renewal and submit it as a part of the renewal application.
- 8) Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
- 9) The carrier will be allowed to erect a temporary tower when the Water District is stripping and painting the tower.
- 10) The utility transformer will be placed on Water District property.
- 11) Grass tiles that provide vehicle and equipment access to the area beneath the tower shall be maintained in good condition by the applicant.
- 12) The Site Plan submitted with this application, the approved Site Plan, dated April 14, 1987 and the revised Landscape Plan approved in 2003 shall be reincorporated as the Site Plan for approval of this application.
- 13) The applicant may change out equipment boxes, cable and antennas subject to the Staff approval provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official or his/her designee, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
- 14) The applicant shall not prevent other users from locating on the water tower.
- 15) If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.
- 16) The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.
- 17) In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
- 18) In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
- 19) The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
- 20) The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.

- 21) A copy of the lease between the applicant and Water District #1 shall be submitted to the City and contain the following provisions:
 - c. The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.
 - d. The landowner shall be responsible for the removal of the communications facility in the event that the leaseholder fails to remove it upon abandonment.
- 22) The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
- 23) If Clearwire changes its name through merger, acquisition, etc. or sells or transfers its installation to another carrier, it shall notify the City within 30 days of such change and provide a description of the service provided by that carrier. If modifications are required as a result of this change they will be approved by Staff unless in the opinion of Staff are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval.

The motion was seconded by Randy Kronblad and passed unanimously.

clearwire
Site #: KS-KCY5436
Delmar Water Tower
Prairie Village, Kansas 66208



8500 W 110th St Overland Park, KS 66210
913.438.7700

Proposed Clearwire
Microwave Antenna

Proposed Clearwire antenna

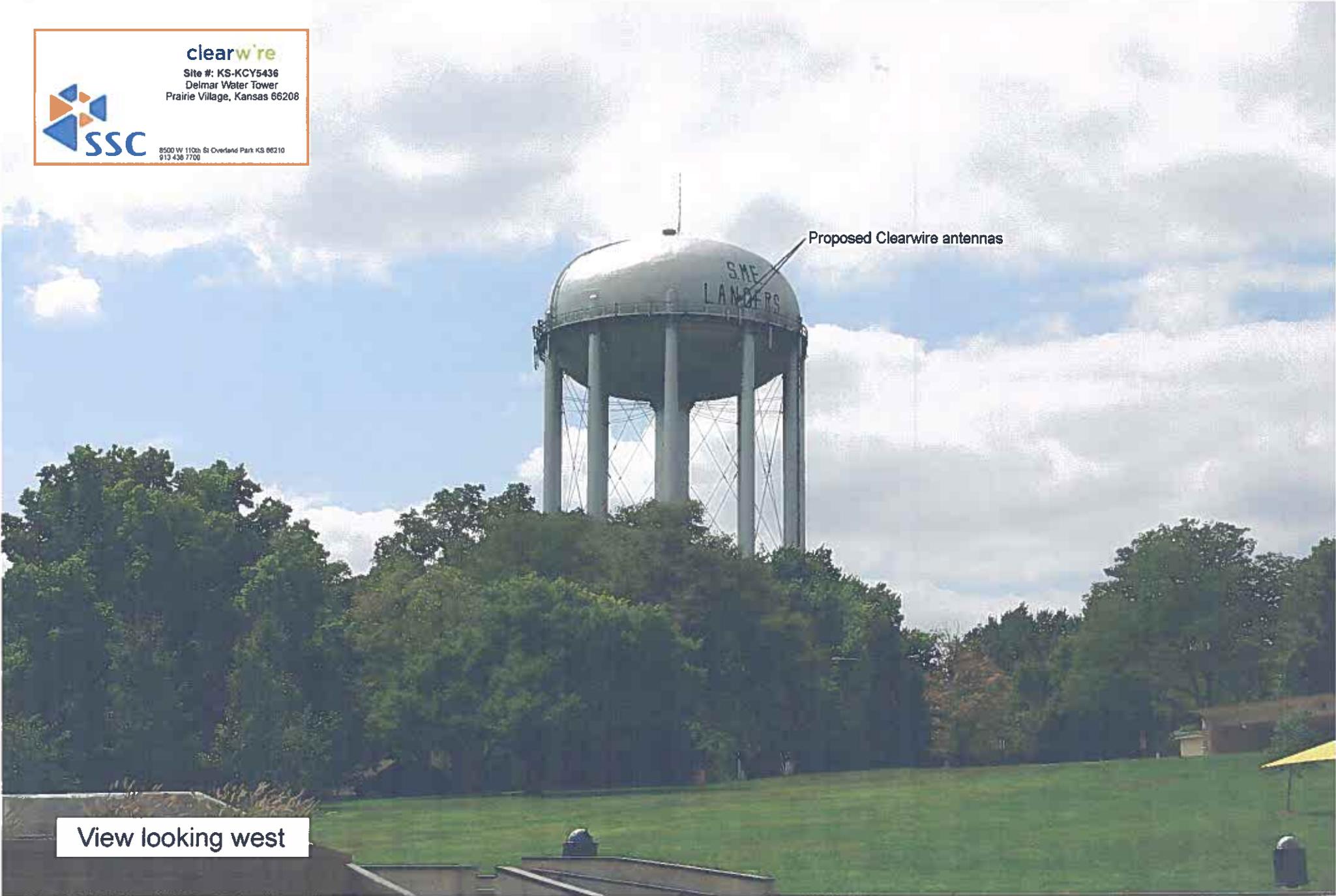


View looking east

clearwire
Site #: KS-KCY5436
Delmar Water Tower
Prairie Village, Kansas 66208



8500 W 110th St Overland Park KS 66210
913 438 7700



Proposed Clearwire antennas

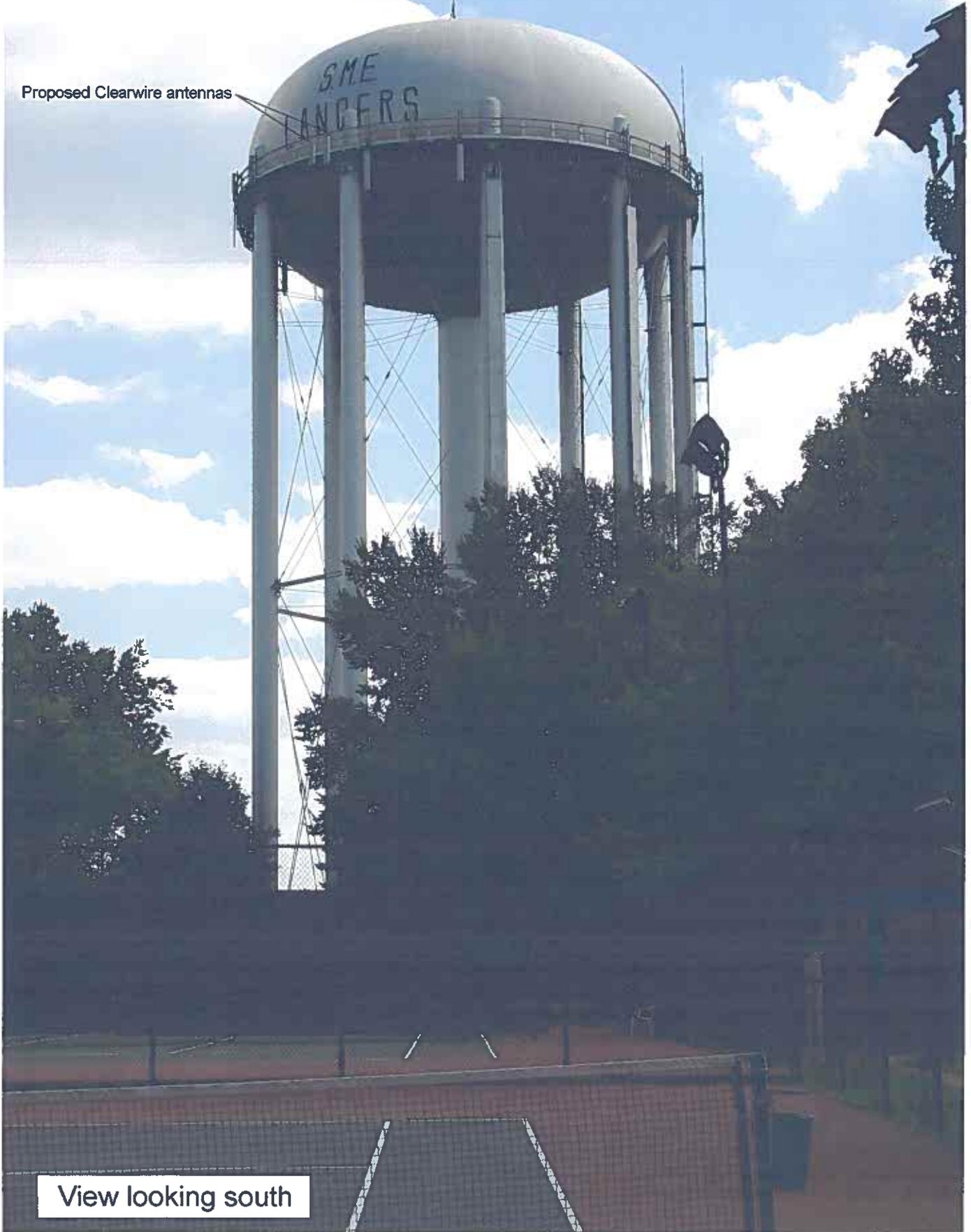
View looking west



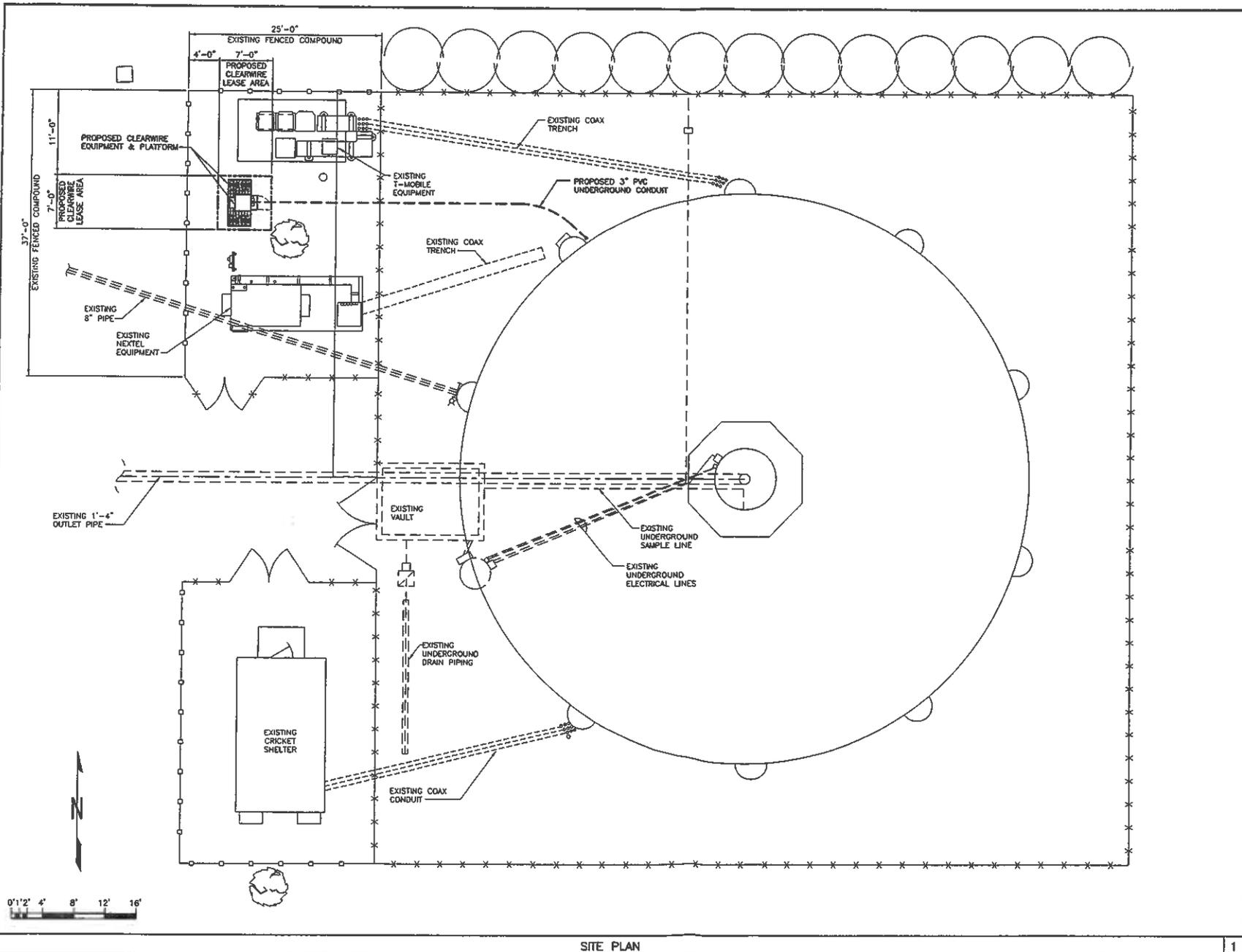
clearw're
Site #: KS-KCY5436
Deimar Water Tower
Prairie Village, Kansas 66208

8500 W 110th St Overland Park KS 66210
913 438 7700

Proposed Clearwire antennas



View looking south



SITE PLAN

clearw're[®]
wireless broadband

4400 CARLEIGH POINT
JORKLAND, WASHINGTON 98033
TEL: (425) 216-7600
FAX: (425) 216-7900



8500 W. 110th Street, Suite 300
Overland Park, Kansas 66210
Phone: 913-438-7700 Fax: 913-438-7777

DESIGNER: T.E. STOREY

LEAD EE: S.D. KEISLING

LEAD CE/SE: M.L. OWENS

SUBMITTALS			
NO.	DATE	DESCRIPTION	BY
A	06/04/08	ISSUED FOR 2008	TES

THE INFORMATION CONTAINED IN THIS SET OF DOCUMENTS IS PROPRIETARY BY NATURE. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH RELATES TO CLEARWIRE IS STRICTLY PROHIBITED.

SITE NAME
DELMAR WATER TOWER

SITE NUMBER
KS-KCY5436

SITE ADDRESS
**7801 DELMAR STREET
PRAIRIE VILLAGE, KS
66208**

SHEET TITLE
SITE PLAN

SHEET NUMBER
A-1

clearwire®
wireless broadband

4100 CABLOCH POINT
KIRKLAND, WASHINGTON 98033
TEL: (425) 216-7900
FAX: (425) 216-7900



8500 W. 110th Street, Suite 300
Overland Park, Kansas 66210
Phone: 913-438-7700 Fax: 913-438-7777

DESIGNER: I.E. STOREY

LEAD EE: S.D. KEISLING

LEAD CE/SE: M.L. OWENS

SUBMITTALS			
NO.	DATE	DESCRIPTION	BY
A	09/24/08	ISSUED FOR 2008	IES

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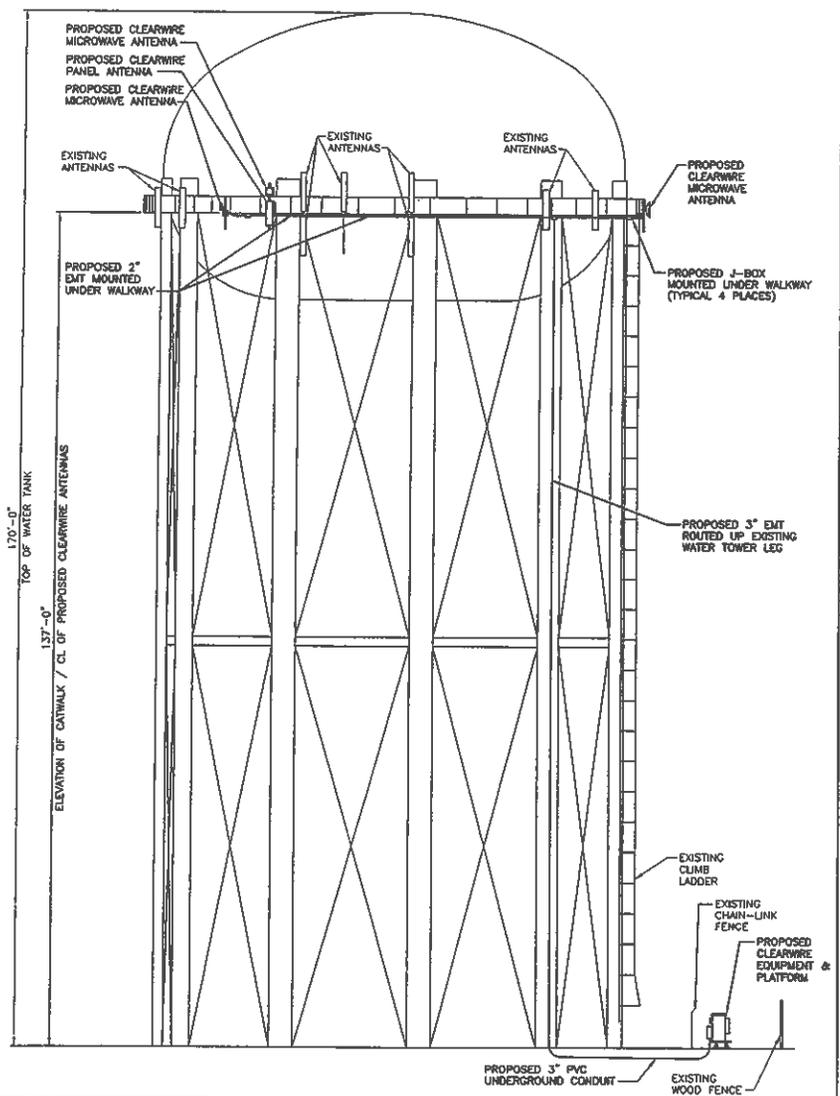
SITE NAME
DELMAR WATER TOWER

SITE NUMBER
KS-KCY5436

SITE ADDRESS
**7801 DELMAR STREET
PRAIRIE VILLAGE, KS
66208**

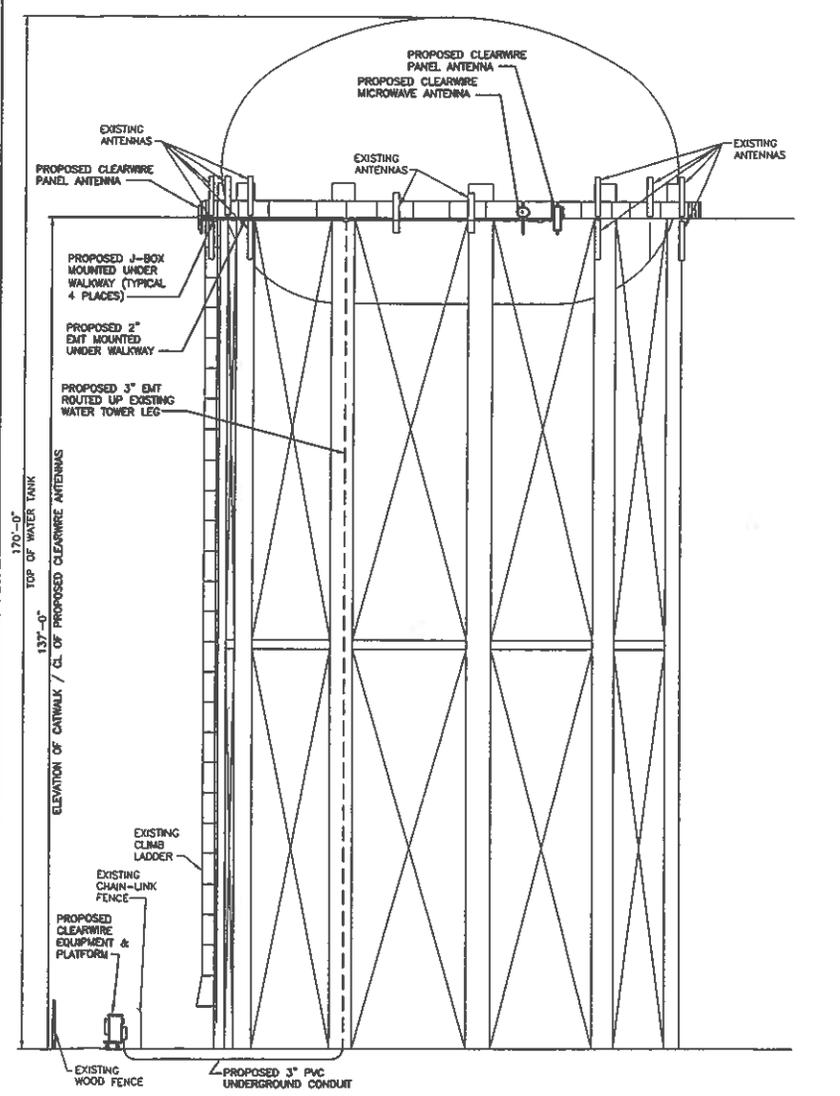
SHEET TITLE
TOWER ELEVATION

SHEET NUMBER
A-3



NORTH TOWER ELEVATION

2



SOUTH TOWER ELEVATION

1

EQUIPMENT SPECIFICATION SHEET

	ANTENNA	TOWER BTS	GPS	MW PANEL	MW PANEL	MW DISH	MW DISH
TRANSMIT OR RECEIVE	TX/RX	TX/RX	TX/RX	TX/RX	TX/RX	TX/RX	TX/RX
MANUFACTURER	KATHREIN	MOTOROLA	PCTEL	MOTOROLA	MOTOROLA	ANDREW	ANDREW
TYPES OF ANTENNAS	PANEL	BTS/RF MODULE	GPS TIMING REF.	MW PANEL	MW PANEL	MW DISH	MW DISH
MODEL #	840 10054	DAP Vx	GPS TMG-26N	OS-GEMINI	OS-GEMINI	VHLP2-18	VHLP2-23
AZIMUTH	0°,120°,240°			18.2°	84.8°	280.3°	189.7°
ANTENNA WEIGHT (PER ANTENNA)	35 LBS.	26.5 LBS.	0.8 LBS	12.1 LBS.	12.1 LBS.	12.28 LBS.	12.28 LBS.
ANTENNA DIMENSION (HxWxD)	42" X 12.7" X 2.8"	25.2" X 7.6" X 5.5"	5"H X 3.2"D	14 1/2" SQ. X 3 3/4"	14 1/2" SQ. X 3 3/4"	26.1" X 13.2"	26.1" X 13.2"
MOUNT TYPE (FLUSH PLATFORM, PIPE, T-FRAME, ETC.)	3-1/2" OD PIPE	ATTACHED TO PIPE	N/A	3-1/2" OD PIPE	3-1/2" OD PIPE	3-1/2" OD PIPE	3-1/2" OD PIPE
MOUNT WEIGHT	APPROX. 213 LBS.	N/A	N/A	INCL.	INCL.	INCL.	INCL.
TX FREQUENCY	2495-2690 MHz	2.5 GHz	N/A	5.725-5.850 GHz	5.725-5.850 GHz	17.7-19.7 GHz	21.2-23.8 GHz
RX FREQUENCY	2495-2690 MHz	N/A	1575.42 MHz	5.725-5.850 GHz	5.725-5.850 GHz	17.7-19.7 GHz	21.2-23.8 GHz
ERP (dB)		10 WATTS	N/A	41.0	41.0	54.2	55.5
ANTENNA GAIN	2 X 16 dbi	N/A	N/A	23 dbi	23 dbi	38.3-39.1 dbi	39.8-41.0 dbi
# OF LINES PER ANTENNAS	1	N/A	1	1	1	1	1
LINE TYPE	COAX	N/A	COAX	COAX	COAX	COAX	COAX
LINE DIAMETER	1/2"	N/A	1/2"	1/2"	1/2"	1/2"	1/2"

ETHERNET CABLE
DETAILS FOR GLOBAL
SIGNAL APPS ONLY

ETHERNET/PLENUM CABLE
5/16"-BELODEN-ETH-P-
TQ-12-OR-TK-R-BED

LMR600 1/2" COAX

ODU UNITS ARE MOUNTED DIRECTLY ON MW
BRACKET AND CONNECT TO THE MW WITH A
12" JUMPER

GROUND CABINET SPECS:

MODEL: DDB UNLIMITED R7-S40XCW
CABINET: 54" X 25" X 25" (H X W X L)
PLATFORM: 8' X 3' PRE-FAB PLATFORM
LEASE SPACE: 7' X 7'
ELECTRICAL: 240V AC, 40A MAIN, 25A AVERAGE CONSUMPTION

STANDARD RACK SPACE FOR COLOCATION IN EXISTING SHELTER/BUILDING:

19" WIDE
25" DEEP (+12" FROM FRONT RAIL, -13 FROM FROM RAIL) INCLUDES OUR CABLES BUT NOT ACCESS SPACE
4SU RACK SPACE-A STANDARD 7' RACK

CABLE SPECS:

PANEL ANTENNA TO TOWER BTS:
TYPE: ANDREW LDF4 - 1/2" HELIAX

TOWER BTS TO CABINET:
TYPE: ETHERNET CABLE PART NUMBER 597-6013-0100X

BATTERIES: TEL 12-70, QTY. 4

GPS: PCTEL, 1575.42 MHz, 5"H X 3.2"D, .6 LBS.

TX FREQUENCY: 1575.42 ± 10 MHz
RX FREQUENCY: 1575.42 ± 10 MHz
MODULATION TYPE:
BANDWIDTH: ≥ 6000 @ ± 50 MHz OFF CENTER FREQUENCY

clearwire®
wireless broadband

4100 CARLETON POINT
KORLAND, WASHINGTON 98033
TEL: (425) 216-7600
FAX: (425) 216-7900



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SUBMITTALS

NO.	DATE	DESCRIPTION	BY
A	09/04/09	ISSUED FOR REVIEW	MS

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THIS SET OF DOCUMENTS IS
PROPRIETARY BY NATURE. ANY USE
OR DISCLOSURE OTHER THAN THAT
WHICH RELATES TO CLEARWIRE IS
STRICTLY PROHIBITED.

SITE NAME

DELMAR
WATER TOWER

SITE NUMBER

KS-KCY5436

SITE ADDRESS

7801 DELMAR STREET
PRAIRIE VILLAGE, KS
66208

SHEET TITLE

MATERIAL LIST

SHEET NUMBER

A-4

COLLOCATION APPLICATION

1

ORDINANCE 2217

AN ORDINANCE GRANTING A SPECIAL USE PERMIT FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF COMMUNICATION ANTENNAE AND RELATED EQUIPMENT BY CLEARWIRE WIRELESS ON THE PROPERTY DESCRIBED AS 7801 DELMAR, PRAIRIE VILLAGE, KANSAS

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE:

Section I. Planning Commission Recommendation. At its regular meeting on October 6, 2009, the Prairie Village Planning Commission held a public hearing, found the findings of fact to be favorable and recommended that the Governing Body approve PC2009-15 the granting of a Special Use Permit for the installation, operation and maintenance of antennae and related equipment by Clearwire Wireless at 7801 Delmar subject to the following conditions:

- 1) The Special Use Permit will be approved to allow four carriers (the three existing carriers T-Mobile, Sprint and Cricket plus Clearwire). In the future, additional carriers may locate on the water tower subject to approval of a Site Plan by the Planning Commission and an amended Special Use Permit will not be required.
- 2) The approval of the Special Use Permit shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required.
- 3) The antennas and equipment cabinets shall be painted a color that matches the water tower and all wires that connect to the antennas shall be enclosed in a metal shield that is painted the same color as the water tower. The applicant shall maintain the painted surfaces and repaint as needed.
- 4) There will be no security lighting installed around the base of the tower.
- 5) The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
- 6) The equipment cabinet shall be located in the compound on the west side of the tower. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence, and landscape screening as shown on the revised Landscape Plan and the fence and landscaping shall be maintained in good condition by the applicant. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
- 7) The applicant shall have a structural inspection of all antennas and cables performed by a licensed profession engineer prior to every ten year renewal and submit it as a part of the renewal application.
- 8) Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
- 9) The carrier will be allowed to erect a temporary tower when the Water District is stripping and painting the tower.
- 10) The utility transformer will be placed on Water District property.
- 11) Grass tiles that provide vehicle and equipment access to the area beneath the tower shall be maintained in good condition by the applicant.
- 12) The Site Plan submitted with this application, the approved Site Plan, dated April 14, 1987 and the revised Landscape Plan approved in 2003 shall be reincorporated as the Site Plan for approval of this application.
- 13) The applicant may change out equipment boxes, cable and antennas subject to the Staff approval provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official or his/her designee, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
- 14) The applicant shall not prevent other users from locating on the water tower.
- 15) If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90

days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.

- 16) The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.
- 17) In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
- 18) In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
- 19) The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
- 20) The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
- 21) A copy of the lease between the applicant and Water District #1 shall be submitted to the City and contain the following provisions:
 - a. The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.
 - b. The landowner shall be responsible for the removal of the communications facility in the event that the leaseholder fails to remove it upon abandonment.
- 22) The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
- 23) If Clearwire changes its name through merger, acquisition, etc. or sells or transfers its installation to another carrier, it shall notify the City within 30 days of such change and provide a description of the service provided by that carrier. If modifications are required as a result of this change they will be approved by Staff unless in the opinion of Staff are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval

Section II. Findings of the Governing Body. The Governing Body adopts by specific reference the findings of fact on application PC2009-15 as contained in the minutes of the Planning Commission meeting of October 6, 2009, and approves the recommendations of the Planning Commission.

Section III. Granting of the Special Use Permit. Be it therefore ordained that the City of Prairie Village grant a Special Use Permit to Sprint/Nextel for antennae at 7801 Delmar, Prairie Village, Kansas subject to the twenty-three specific conditions listed above.

Section IV. Take Effect. That this ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper as provided by law.

PASSED AND ADOPTED THIS __th DAY OF OCTOBER, 2009.

CITY OF PRAIRIE VILLAGE, KANSAS

By: /s/ Ronald L. Shaffer

Ronald L. Shaffer, Mayor

ATTEST:

/s/ Joyce Hagen Mundy
Joyce Hagen Mundy, City Clerk

APPROVED AS TO FORM:

/s/ Catherine P. Logan
Catherine P. Logan, City Attorney



Council Meeting Date: October 19, 2009

Consider PC2009-16 Request for a Special Use Permit for the installation of wireless communication antenna at 9011 Roe Avenue - Clearwire Wireless

RECOMMENDATION

Governing Body adopt Ordinance 2218 approving a Special Use Permit for the installation, operation and maintenance of communication antenna and equipment by Clearwire Wireless on the property described as 9011 Roe Avenue, Prairie Village, Kansas.

BACKGROUND

This tower was originally approved in 1996 and it was the first tower installation approved by the City. The tower was approved for a height of 100 feet plus eight feet for lightening arrestors. Sprint was the original occupant of the tower. In 2004, Cingular Wireless requested approval to co-locate on the tower and it was approved. Cingular has since merged with AT&T so the current two carriers on the tower are Sprint and AT&T.

The original application was approved in 1996 as a Conditional Use with the following conditions:

1. That the telecommunications towers be used only for general communications purposes;
2. That the telecommunication tower not exceed the dimensions of 100 feet for the monopole plus eight feet for the lightening arrestors.
3. That the screen fence be a solid wood privacy fence of six feet in height, painted or stained in a color that blends with the existing structure;
4. That adequate landscaping, subject to approval of the Fire District, be provided at the base of the tower;
5. That the applicant permit additional communications services to utilize the tower in order to minimize the number of towers needed to serve the area with any co-locater returning to the Planning Commission for compatibility review;
6. That plans be prepared by a structural engineer for submission to the City for a permit;
7. That if the tower is abandoned for communication uses, it will be removed by the applicant unless the applicant obtains a conditional use permit for another use; and
8. That the pole be constructed of a galvanized or other permanent surface.

The Cingular application in 2004 was approved as a Special Use Permit subject to the following conditions:

1. All equipment cabinets shall be contained within the existing fenced area and all wiring shall be inside the pole.
2. The antennas and the frames for mounting them shall be painted a color that blends with the other antennas and the tower so the visibility is minimized.
3. If the applicant is found to be in non-compliance with the conditions of the Special Use Permit, the permit will become null and void within 90 days of notification of non-compliance, unless the non-compliance is corrected. If a Special Use Permit becomes null and void, the applicant shall remove the antennas, equipment cabinets, and all other appurtenances, and shall restore the site to its original condition.
4. The applicant shall comply with all state and federal regulations.
5. The applicant shall have a structural inspection of the antennas performed by a licensed professional engineer every five years and submit it to the City for its review.

6. The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas with construction observation provided by a design engineer that is not an employee of the tower's owner.
7. The applicant shall comply with all conditions of approval that were required of the original tower approval.

Clearwire is requesting approval to install antennas and an equipment cabinet at the existing Cellular Tower located at the Fire Station at 9011 Roe Avenue. Sprint is a majority owner of Clearwire and will sublease space on the Tower. The Sprint installation includes three two-panel antennas. The proposal is to change out three existing Sprint panels to Clearwire panels. Sprint will remove a panel from each of the three sheaths and they will be replaced with Clearwire panels. In addition, Clearwire will add two small microwave dish antennas (26 inches in diameter) at the top of the tower initially and a possible third microwave dish antenna in the northwest sector if needed at a future time. The equipment cabinet for Clearwire will be placed in the existing fenced compound which will not be enlarged or increased in size.

An engineering study was conducted on the tower to document the structural integrity of the structure to accommodate the additional antenna.

Clearwire provides wireless high speed broadband service to deliver its new WiMax network. Sprint and Clearwire are partners and in the merger combined their wireless broadband networks. Clearwire launched its service in Portland, Oregon on January 6, 2009 and has expanded to new metropolitan markets since that time. Clearwire is currently in the process of obtaining approval for 225 sites in the Kansas City Metro area. It is their desire to deploy all sites at once in 2010.

In accordance with the Commission's Citizen Participation Policy, a neighborhood meeting was held on September 21st attended only by Fire District Chief. A public hearing was held before the Planning Commission on October 6, 2009 with no one present to speak on this application. A complete analysis of this application can be found in the attached minutes from that meeting.

The equipment compound meets the setback requirements; however, the tower does not. According to the new ordinance, non stealth monopoles shall setback a minimum distance from all property lines equal to the height of the tower unless a reduction or waiver is granted by the City Council. Based on the AIMS maps, it appears that the tower is approximately 120 feet from Roe Avenue and 110 feet from West 90th Terrace, however, it is only 35 feet from the east property line and 80 feet from the north property line. The Planning Commission considered the following criteria for a setback waiver in order to approve this Special Use Permit:

- a. **That there are special circumstances or conditions affecting the proposed cell tower installation;**
This cell tower was approved in 1996 and is already in existence, but it is nonconforming and cannot be increased or enlarged without approval of a waiver. This means that no new carriers and no additional equipment can be put on the tower. It should be pointed out that this is a business area and is the type of location that the Planning Commission and City Council would prefer towers to locate.
- b. **That the setback waiver is necessary for reasonable development of the cell tower installation or the landowners property;**
Because this is a developed site for a fire station, this is the only suitable location for a tower that would not interfere with the fire station operation.
- c. **That the granting of the setback waiver will not be detrimental to the public welfare or cause substantial injury to the value of the adjacent property or other property in the vicinity in which the particular property is situated.**

This waiver is for an existing facility in a business area and the City has received no complaints from surrounding neighbors since it was built in 1996. Also no neighbors appeared at the neighborhood meeting.

The Planning Commission found the application meets the requirements for a setback waiver and unanimously granted a waiver for the setback on the east and north side of the tower.

The Planning Commission found favorably on the findings of fact and recommends the Governing Body approve PC2009-16, the issuance of the Special Use Permit for wireless communication antenna and related equipment at 9011 Roe Avenue by Clearwire Wireless Communications subject to the following conditions:

- 1) The Special Use Permit will be approved and in the future, additional carriers may locate on the tower subject to approval of a Site Plan by the Planning Commission and an amended Special Use Permit will not be required.
- 2) The approval of the Special Use Permit shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the Governing Body that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required. At that time the tower will be replaced with a monopole that is of slim line design or its equivalent which is more aesthetically compatible with the community.
- 3) The antennas and equipment cabinets shall be painted a color that matches the tower and all wires that connect to the antennas shall be enclosed within the monopole.
- 4) There will be no security lighting installed around the base of the tower.
- 5) The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
- 6) The equipment cabinet shall be located within the existing compound. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence and the fence shall be maintained in good condition by the applicant. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
- 7) The applicant shall have a structural inspection of the all antennas and cables performed by a licensed professional engineer prior to every ten year renewal and submit it as a part of the renewal application.
- 8) Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
- 9) The applicant may change out equipment boxes, cable and antennas subject to the Staff approval provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
- 10) The applicant shall not prevent other users from locating on the tower.
- 11) If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.
- 12) The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance,

- regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.
- 13) In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
 - 14) In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
 - 15) The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
 - 16) The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
 - 17) A copy of the lease between the applicant and property owner shall be submitted to the City and contain the following provisions:
 - a) The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.
 - b) The landowner shall be responsible for the removal of the communications facility in the event that the leaseholder fails to remove it upon abandonment.
 - 18) The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
 - 19) If Clearwire changes its name through merger, acquisition, etc. or sells or transfers its installation to another carrier, it shall notify the City within 30 days of such change and provide a description of the service provided by that carrier. If modifications are required as a result of this change they will be approved by Staff unless in the opinion of Staff are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval.
 - 20) A setback waiver is granted for the tower from the east and north property lines to reduce the setback requirement from 100 feet to the actual distance from the tower to the property lines.

Village Vision

Wireless communications are not specifically addressed in Village Vision. However it falls into two general goal areas which are maintaining and improving infrastructure and improving communications between the City and its residents.

ATTACHMENTS

PC2009-16 Staff Report
Excerpt Planning Commission Minutes - October 6, 2009
Photo Simulations & Site Plan
Proposed Ordinance

PREPARED BY

Joyce Hagen Mundy
Planning Commission Secretary/City Clerk

DATE:

October 12, 2009



BWR | Right in the Center

STAFF REPORT

TO: Prairie Village Planning Commission
FROM: Ron Williamson, BWR, Planning Consultant
SUBJECT: PC 2009-16: Request by Clearwire Wireless for approval of a Special Use Permit to Install Antennas and Equipment on the Tower at 9011 Roe Avenue
DATE: October 6, 2009

COMMENTS:

Clearwire is requesting approval to install antennas and an equipment cabinet at the existing Cellular Tower located at the Fire Station at 9011 Roe Avenue. Sprint is a majority owner of Clearwire and will sublease space on the Tower. The Sprint installation includes three two-panel antennas. The proposal is to change out three existing Sprint panels to Clearwire panels. Sprint will remove a panel from each of the three sheaths and they will be replaced with Clearwire panels. In addition, Clearwire will add two small microwave dish antennas (26 inches in diameter) at the top of the tower. The equipment cabinet for Clearwire will be placed in the existing fenced compound which will not be enlarged or increased in size.

Clearwire provides wireless high speed broadband service to deliver its new WiMax network. Sprint and Clearwire are partners and have combined their wireless broadband networks. Clearwire launched its service in Portland, Oregon on January 6, 2009; has expanded to new metropolitan markets since that time and plans to launch its service here in 2010.

This tower was originally approved in 1996 and it was the first tower installation approved by the City. The tower was approved for a height of 100 feet plus eight feet for lightening arrestors. Sprint was the original occupant of the tower. In 2004, Cingular Wireless requested approval to co-locate on the tower and it was approved. Cingular has since merged with at&t so the current two carriers on the tower are Sprint and at&t.

The original application was approved in 1996 as a Conditional Use with the following conditions:

1. That the telecommunications towers be used only for general communications purposes;
2. That the telecommunication tower not exceed the dimensions of 100 feet for the monopole plus eight feet for the lightening arrestors.
3. That the screen fence be a solid wood privacy fence of six feet in height, painted or stained in a color that blends with the existing structure;
4. That adequate landscaping, subject to approval of the Fire District, be provided at the base of the tower;
5. That the applicant permit additional communications services to utilize the tower in order to minimize the number of towers needed to serve the area with any co-locater returning to the Planning Commission for compatibility review;
6. That plans be prepared by a structural engineer for submission to the City for a permit;

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903 East 104th Street | Suite 900 | Kansas City, Missouri 64131-3451 | P 816.363.2696 | F 816.363.0027 | www.bwrcorp.com
engineering | planning | architecture

7. That if the tower is abandoned for communication uses, it will be removed by the applicant unless the applicant obtains a conditional use permit for another use; and
8. That the pole be constructed of a galvanized or other permanent surface.

The Cingular application in 2004 was approved as a Special Use Permit subject to the following conditions:

- 1) All equipment cabinets shall be contained within the existing fenced area and all wiring shall be inside the pole.
- 2) The antennas and the frames for mounting them shall be painted a color that blends with the other antennas and the tower so the visibility is minimized.
- 3) If the applicant is found to be in non-compliance with the conditions of the Special Use Permit, the permit will become null and void within 90 days of notification of non-compliance, unless the non-compliance is corrected. If a Special Use Permit becomes null and void, the applicant shall remove the antennas, equipment cabinets, and all other appurtenances, and shall restore the site to its original condition.
- 4) The applicant shall comply with all state and federal regulations.
- 5) The applicant shall have a structural inspection of the antennas performed by a licensed professional engineer every five years and submit it to the City for its review.
- 6) The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas with construction observation provided by a design engineer that is not an employee of the tower's owner.
- 7) The applicant shall comply with all conditions of approval that were required of the original tower approval.

This application is for a new Special Use Permit for Clearwire, new carrier, under the new Wireless Communications Facilities ordinance. Therefore the Factors for Consideration and the Application Information requirements will be somewhat different than in the past and Site Plan Approval will also be required.

APPLICATION INFORMATION:

The Staff has reviewed the application based on the City's new ordinance for Wireless Communication Facilities and has the following comments regarding the information submitted. It should be noted that since this is an application to co-locate an antenna installation on an existing site, a number of items in the ordinance may not be applicable or required. The required application information as set out in the new ordinance is shown in bold type.

- A. **A study comparing potential sites within an approximate one mile radius of the proposed application area. The study shall include the location and capacity of existing towers, alternative tower sites, a discussion of the ability or inability of each site to host the proposed communications facility and reasons why certain of these sites were excluded from consideration. The study must show what other sites are available and why the proposed location was selected over the others. It must also establish the need for the proposed facility and include a map showing the service area of the proposed facility as well as other alternative tower site and antennas.**

If the use of exiting towers, alternative tower structures, and sites are unavailable, a reason or reasons specifying why they are unavailable needs to be set out and may include one or more of the following: refusal by current tower or site owner; topographical limitations; adjacent impediments blocking transmission; site limitations to

tower or facility or tower; no space on existing facility or tower; other limiting factors rendering existing facilities or towers unusable. The documentation submitted must use technological and written evidence, that these sites are inadequate to fulfill the grid needs of the wireless service provider, or that a reasonable co-location lease agreement could not be reached with the owners of said alternative sites.

The applicant shall submit an overall plan that shows the coverage gaps in service or lack of network capacity throughout the entire City and provide an indication of future needed/proposed wireless communication facilities, towers, and/or antenna.

The applicant shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall also provide documentation establishing the minimum height necessary to provide the applicant's services and the height required to provide for co-location. The study shall include coverage maps for the proposed monopole at the requested height and at ten feet descending intervals to 50 feet.

The Planning Commission or Governing Body at its discretion may require a third party analysis, at the applicant's expense, to confirm the need for the facility.

The applicant shall be responsible to provide timely updates of the above described study and information during the Special Use Permit process.

Since this is a co-location request, much of the information setout in this section is not needed, for example; a study of alternative locations within a one-mile radius was not required. The Tower has been approved for two carriers and this is a request for a third. The City has strongly encouraged co-location and using existing structures in order to minimize the negative impacts on surrounding neighborhoods. The coverage maps prepared by the applicant show that Prairie Village will be reasonably well covered when installations are also added to St. Ann's and the Delmar Water Tower locations.

B. Multiple photo simulations of the proposed facility as viewed from the adjacent residential properties and public rights of way as directed by City Staff.

The applicant has submitted photo simulations of the proposed installation which indicates very little change in the appearance primarily because Clearwire will be using three of Sprints existing panel sheaths. The two 26 inch diameter microwave dishes will be new equipment and they will be installed at the top of the tower. They appear to blend with the rest of the antennas.

C. When possible, all wireless communication towers and alternative tower structures must be designed to accommodate multiple providers (co-location), unless after consideration of the recommendation of the Planning Commission, the City Council finds that the height or other factors required to make such an accommodation will have a more detrimental effect on the community than having multiple sites. Failure of a permit holder to negotiate in good faith to provide fairly priced co-location opportunities, based on industry standards may be grounds for denial or revocation of the Special Use Permit. A signed statement shall be submitted indicating the applicant's intention to share space on the tower with other providers.

The agreement between carriers and the tower owner will not prohibit other providers from placing antennas on the tower. A copy of that agreement needs to be submitted.

- D. Any application for construction of a new wireless communication facility, tower, antenna or equipment compound must provide a detailed site plan of the proposed project. This properly scaled site plan will include one page (including ground contours) that portrays the layout of the site, including the proposed facility, the fall radius of any proposed monopole, as well as proposed and existing structures within 200 feet of the tower base and the identification of the specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate. Access to and from the site, as well as dimensioned proposed and existing drives, must be included on this plan. Detailed exterior elevations (from all views) of the tower, screening wall, and all proposed buildings must also be submitted. Finally, a landscape plan detailing location, size, number and species of plant materials must be included for review and approval by the Planning Commission.**

Since this is the addition of a proposed carrier to an existing approved site plan, a new detailed site plan was not required. The proposed equipment cabinet will be located with the existing compound and therefore it will not need to be expanded or enlarged. The compound is located within a paved area and landscaping has not been required.

- E. Description of the transmission medium that will be used by the applicant to offer or to provide services and a statement that applicant will meet all federal, state and city regulations and law, including but not limited to FCC regulations.**

The applicant shall provide an engineer's statement that anticipated levels of electromagnetic radiation to be generated by facilities on the site, including the effective radiated power (ERP) of the antenna, shall be within the guidelines established by the FCC. The cumulative effect of all antennas and related facilities on a site will also comply with the radio frequency radiation emission guidelines established by the FCC. An antenna radiation pattern shall be included for each antenna.

The applicant will use three panels and two small microwave dish antennas which are approximately 26 inches in diameter.

The applicant needs to submit a letter stating they will meet all federal, state and local regulation and laws and a statement regarding the electromagnetic radiation.

- F. Preliminary construction schedule including completion dates.**
Clearwire intends to launch service in 2010.

- G. The applicant shall provide a copy of its FCC license**
A copy has been submitted.

- H. Copies of letters sent to other wireless communication providers and their response regarding their interest to co-locate.**
Not applicable since it is a proposed co-location of a third carrier on an existing structure.

- I. Any other relevant information requested by City Staff.**
None requested.

The applicant held a neighborhood meeting in accordance with the Planning Commission Citizen Participation Policy September 21, 2009. No residents appeared at the meeting.

FACTORS FOR CONSIDERATION:

The Planning Commission shall make Findings of Fact to support its recommendation to approve, conditionally approve, or disapprove this Special Use Permit. It is not necessary that a Finding of Fact be made for each factor described herein. However, there should be a conclusion that the request should be approved or denied based upon consideration of as many factors as are applicable. The factors to be considered in approving or disapproving a Special Use Permit for a wireless facility shall include, but not be limited to the following:

- A. The character of the neighborhood.**
The immediate area is office, business and public uses. There are residential dwellings further to the east, west and north.
- B. The zoning and uses of property nearby.**
The existing property is zoned C-1 Restricted Business District and is occupied by Consolidated Fire District No. 2 Fire Station. The property to the north is zoned C-2 General Business District and is occupied by a multi-tenant office building. The property to the east is zoned C-1 Restricted Business District and is occupied by an office building. The property to the south is zoned R-1A Single-Family Residential and is occupied by a KCP&L substation. The property to the west is zoned R-1A Single-Family Residential and is occupied by Single-Family dwellings.
- C. The extent that a change will detrimentally affect neighboring property**
There will be very little impact on neighboring property from what exists now. Clearwire will be using three of the existing Sprint sheaths for its antennas and the equipment cabinet will be placed within the existing compound. The only new equipment(s) that will be visible are the two 26 inch diameter microwave dish antennas.
- D. The relative gain to public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners.**
This is a minor expansion of an existing installation which will not create any hardship on adjacent landowners.
- E. The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.**
The equipment compound meets the setback requirements; however, the tower does not. According to the new ordinance, non stealth monopoles shall setback a minimum distance from all property lines equal to the height of the tower unless a reduction or waiver is granted by the City Council. Based on the AIMS maps, it appears that the tower is approximately 120 feet from Roe Avenue and 110 feet from West 90th Terrace, however, it is only 35 feet from the east property line and 80 feet from the north property line. Therefore, it will be necessary to grant a setback waiver in order to approve this Special Use Permit. In order to approve a reduction or waiver, the Planning Commission and City Council must consider the following:

 - a. That there are special circumstances or conditions affecting the proposed cell tower installation;**
This cell tower was approved in 1996 and is already in existence, but it is nonconforming and cannot be increased or enlarged without approval of a waiver. This means that no new carriers and no additional equipment can be put on the tower. It should be pointed out that this is a business area

and is the type of location that the Planning Commission and City Council would prefer towers to locate.

- b. **That the setback waiver is necessary for reasonable development of the cell tower installation on the landowners property;**

Because this is a developed site for a fire station, this is the only suitable location for a tower that would not interfere with the fire station operation.

- c. **That the granting of the setback waiver will not be detrimental to the public welfare or cause substantial injury to the value of the adjacent property or other property in the vicinity in which the particular property is situated.**

This waiver is for an existing facility in a business area and the City has received no complaints from surrounding neighbors since it was built in 1996. Also no neighbors appeared at the neighborhood meeting.

- F. **The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.**

This monopole has been in place since 1996 and the City has received no complaints. Also no neighbors appeared at the neighborhood meeting.

- G. **The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such as the special use will not cause substantial injury to the value of the property in the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will cause substantial injury to the value of property in the immediate neighborhood, consideration shall be given to:**

1. **The location, size, nature and height of buildings, structures, walls, and fences on the site; and**
2. **The nature and extent of landscaping and screening on the site.**

The neighborhood is fully developed and is predominately a business area. There is a large KCP&L substation across the street to the south and the tower seems to blend with it. The equipment cabinets are screened by a fence and no landscaping is required.

- H. **Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.**

Off street parking will not be necessary for this particular use other than what is required for parking people to maintain equipment. The parking that is provided on the site will be adequate for this need.

- I. **Adequate utility, drainage, and other such necessary facilities have been or will be provided.**

Since the improvements have already been made on the site to accommodate existing carriers, existing utility, drainage, and other facilities appear to be adequate.

- J. Adequate access roads or entrance and exist drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.**

The site and the equipment should require only service vehicles for installation and periodic maintenance. The traffic generated by the use is so minimal that it will not create any additional congestion on the streets.

- K. Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors or unnecessarily intrusive noises.**

The antennas and equipment do not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that would affect the general public.

- L. Architectural design and building materials are compatible with such design and materials used in the neighborhood in which the proposed facility is to be built or located.**

The antenna installation will change very little by the addition of the new carrier, Clearwire Communications. Antenna panels from three of the existing Sprint sheaths will be removed and replaced with panel antennas for Clearwire. In addition, two 26 inch diameter microwave dish antennas will be installed on the top of the tower. The tower is a utility and is similar in character to the adjacent substation.

This tower should be replaced with the new slim line design that has the antenna panels built into the tower rather than having them mounted on arms extending from the tower. In 1996, slim line technology was not available, but it would make a significant improvement in the appearance of the tower. This should be accomplished prior to the next renewal.

- M. City Staff recommendations.**

It is the opinion of Staff that the proposed request for approval of the Special Use Permit for an additional carrier favorably meets the Factors for Consideration and recommends that it be approved including the setback waiver subject to the pertinent conditions. Perhaps an additional condition should be added so that the towers can be replaced by a slim line monopole or whatever the new design standard is at the time of the next renewal.

RECOMMENDATION:

After a review of the proposed application and making its findings in relation to the thirteen Factors for Consideration previously outlined, the Planning Commission may either recommend approval of the Special Use Permit with or without conditions, recommend denial, or continue it to another meeting. In granting this Special Use Permit, however, the Planning Commission may impose such conditions, safeguards, and restrictions upon the premises benefited by approval of the Special Use Permit as may be necessary to reduce or minimize any potentially injurious affect on other property in the neighborhood. If the Planning Commission recommends approval to the Governing Body, it is recommended that the following conditions be included:

- 1) The Special Use Permit will be approved and in the future, additional carriers may locate on the tower subject to approval of a Site Plan by the Planning Commission and an amended Special Use Permit will not be required.

- 2) The approval of the Special Use Permit shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the Governing Body that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required. At that time the tower will be replaced with a monopole that is of slim line design or its equivalent which is more aesthetically compatible with the community.
- 3) The antennas and equipment cabinets shall be painted a color that matches the tower and all wires that connect to the antennas shall be enclosed within the monopole.
- 4) There will be no security lighting installed around the base of the tower.
- 5) The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
- 6) The equipment cabinet shall be located within the existing compound. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence and the fence shall be maintained in good condition by the applicant. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
- 7) The applicant shall have a structural inspection of the all antennas and cables performed by a licensed professional engineer prior to every ten year renewal and submit it as a part of the renewal application.
- 8) Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
- 9) The applicant may change out equipment boxes, cable and antennas subject to the Staff approval provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
- 10) The applicant shall not prevent other users from locating on the tower.
- 11) If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.
- 12) The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of

- noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.
- 13) In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
 - 14) In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
 - 15) The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
 - 16) The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
 - 17) A copy of the lease between the applicant and property owner shall be submitted to the City and contain the following provisions:
 1. The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.
 2. The landowner shall be responsible for the removal of the communications facility in the event that the leaseholder fails to remove it upon abandonment.
 - 18) The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
 - 19) If Clearwire changes its name through merger, acquisition, etc. or sells or transfers its installation to another carrier, it shall notify the City within 30 days of such change and provide a description of the service provided by that carrier. If modifications are required as a result of this change they will be approved by Staff unless in the opinion of Staff are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval.
 - 20) A setback waiver is granted for the tower from the east and north property lines to reduce the setback requirement from 100 feet to the actual distance from the tower to the property lines.
 - 21) Prior to the next renewal, the tower shall be replaced with a monopole of slim line design or its equivalent so that it is more compatible with the aesthetic character of the community.

SITE PLAN APPROVAL

Since this is the request for the initial approval of the Special Use Permit for Clearwire, Site Plan Approval is required in accordance with Chapter 19.32 Site Plan Approval.

The proposed installation will involve minor changes and will have a minimal impact on the existing installation. Three of the Sprint panel antennas will be replaced by three Clearwire antenna panels which will result in no visual change. Two microwave dish antennas, approximately 26 inches in diameter, will be added to the top of the tower and that will be the major change. The equipment cabinet will be located within the existing fenced compound.

- A. The site is capable of accommodating the building, parking areas and drives with appropriate open space and landscape.**
The location has already been approved for two carriers and the site is capable of accommodating a third. The equipment cabinet for Clearwire will be within the existing compound and can be easily accommodated within the existing improvements.
- B. Utilities are available with adequate capacity to serve the proposed development.**
Utilities are currently in place serving the existing installation and are adequate to serve this minor expansion.
- C. The plan provides for adequate management of stormwater runoff.**
There will be no increase in impervious surface so stormwater is not an issue.
- D. The plan provides for safe and easy ingress, egress and internal traffic circulation.**
The proposed site will utilize the existing driveway and parking lot for circulation which will adequately serve the proposed use.
- E. The plan is consistent with good land planning and good site engineering design principles.**
This is a minor expansion of an existing installation and land planning and site engineering are not relevant concerns. The proposed equipment cabinet will be within the existing compound and will have very little impact.
- F. An appropriate degree of compatibility will prevail between the architectural quality of the proposed building and the surrounding neighborhood.**
The proposed installation of the antennas will be compatible with the existing antennas that are currently in place. The only difference is that two 26 inch diameter dish antennas will be added to the top of the tower which are different in design than the more typical panel design.
- It should be pointed out that the design of the tower was typical of what was available in the mid- nineties. The new slim line monopoles are a significant improvement in the aesthetics design of towers and this tower should be upgraded to the more current design at some point in the future.
- G. The plan represents an overall development pattern that is consistent with the comprehensive plan (Village Vision) and other adopted planning polices**
Wireless communications are not specifically addressed in Village Vision. Perhaps it falls into two goal areas which are maintaining and improving infrastructure and improving communications between the City and its residents.

RECOMMENDATION:

It is the recommendation of the Staff that the Planning Commission approve this Site Plan for Clearwire Wireless Communication subject to the following condition.

1. That the Site Plan Approval be conditional upon the approval of the Special Use Permit.
2. That the tower be replaced with a slim line monopole or its equivalent prior to the next ten year renewal.

**EXCERPT
PLANNING COMMISSION MINUTES
OCTOBER 6, 2009**

**PC2009-16 Request for Special Use Permit for Wireless Communications
9011 Roe Avenue**

Trevor Wood, with Selective Site Consultants, 8500 West 110th Street, Suite 300, Overland Park, addressed the Commission representing Clearwire Wireless. Clearwire is requesting approval to install antennas and an equipment cabinet at the existing Cellular Tower located at the Fire Station at 9011 Roe Avenue. Sprint is a majority owner of Clearwire and will sublease space on the Tower. The Sprint installation includes three two-panel antennas. The proposal is to change out three existing Sprint panels to Clearwire panels. Sprint will remove a panel from each of the three sheaths and they will be replaced with Clearwire panels. In addition, Clearwire will add two small microwave dish antennas (26 inches in diameter) at the top of the tower. The equipment cabinet for Clearwire will be placed in the existing fenced compound which will not be enlarged or increased in size.

Mr. Wood asked to Commission to consider approval of the addition of a third microwave dish antenna in the northwest sector if needed at a future time. Dirk Schafer confirmed the all three dishes would be the same size and relatively the same location.

Dirk Schafer asked why an engineering study was conducted on the tower. Mr. Wood responded to document the structural integrity of the structure to accommodate the additional antenna.

Clearwire provides wireless high speed broadband service to deliver its new WiMax network. Sprint and Clearwire are partners and have combined their wireless broadband networks. Clearwire launched its service in Portland, Oregon on January 6, 2009; has expanded to new metropolitan markets since that time and plans to launch its service here in 2010.

Chairman Ken Vaughn asked if there was anyone wishing to address the Commission regarding application PC2009-16 Seeing none, he closed the public hearing at 7:35 p.m.

Ron Williamson stated this tower was originally approved in 1996 and it was the first tower installation approved by the City. The tower was approved for a height of 100 feet plus eight feet for lightening arrestors. Sprint was the original occupant of the tower. In 2004, Cingular Wireless requested approval to co-locate on the tower and it was approved. Cingular has since merged with at&t so the current two carriers on the tower are Sprint and at&t.

The original application was approved in 1996 as a Conditional Use with the following conditions:

1. That the telecommunications towers be used only for general communications purposes;
2. That the telecommunication tower not exceed the dimensions of 100 feet for the monopole plus eight feet for the lightening arrestors.
3. That the screen fence be a solid wood privacy fence of six feet in height, painted or stained in a color that blends with the existing structure;
4. That adequate landscaping, subject to approval of the Fire District, be provided at the base of the tower;
5. That the applicant permit additional communications services to utilize the tower in order to minimize the number of towers needed to serve the area with any co-locater returning to the Planning Commission for compatibility review;
6. That plans be prepared by a structural engineer for submission to the City for a permit;

15. That if the tower is abandoned for communication uses, it will be removed by the applicant unless the applicant obtains a conditional use permit for another use; and
16. That the pole be constructed of a galvanized or other permanent surface.

The Cingular application in 2004 was approved as a Special Use Permit subject to the following conditions:

8. All equipment cabinets shall be contained within the existing fenced area and all wiring shall be inside the pole.
9. The antennas and the frames for mounting them shall be painted a color that blends with the other antennas and the tower so the visibility is minimized.
10. If the applicant is found to be in non-compliance with the conditions of the Special Use Permit, the permit will become null and void within 90 days of notification of non-compliance, unless the non-compliance is corrected. If a Special Use Permit becomes null and void, the applicant shall remove the antennas, equipment cabinets, and all other appurtenances, and shall restore the site to its original condition.
11. The applicant shall comply with all state and federal regulations.
12. The applicant shall have a structural inspection of the antennas performed by a licensed professional engineer every five years and submit it to the City for its review.
13. The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas with construction observation provided by a design engineer that is not an employee of the tower's owner.
14. The applicant shall comply with all conditions of approval that were required of the original tower approval.

Ron Williamson reviewed the application for this new carrier and the proposed site plan noting that since this is a new application requirements will be somewhat different than in the past and Site Plan Approval will also be required.

- A. A study comparing potential sites within an approximate one mile radius of the proposed application area. The study shall include the location and capacity of existing towers, alternative tower sites, a discussion of the ability or inability of each site to host the proposed communications facility and reasons why certain of these sites were excluded from consideration. The study must show what other sites are available and why the proposed location was selected over the others. It must also establish the need for the proposed facility and include a map showing the service area of the proposed facility as well as other alternative tower site and antennas.

If the use of existing towers, alternative tower structures, and sites are unavailable, a reason or reasons specifying why they are unavailable needs to be set out and may include one or more of the following: refusal by current tower or site owner; topographical limitations; adjacent impediments blocking transmission; site limitations to tower or facility or tower; no space on existing facility or tower; other limiting factors rendering existing facilities or towers unusable. The documentation submitted must use technological and written evidence, that these sites are inadequate to fulfill the grid needs of the wireless service provider, or that a reasonable co-location lease agreement could not be reached with the owners of said alternative sites.

The applicant shall submit an overall plan that shows the coverage gaps in service or lack of network capacity throughout the entire City and provide an indication of future needed/proposed wireless communication facilities, towers, and/or antenna.

The applicant shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall also provide documentation establishing the minimum height necessary to provide the applicant's services and the height required to provide for co-location. The study shall include coverage maps for the proposed monopole at the requested height and at ten feet descending intervals to 50 feet.

The Planning Commission or Governing Body at its discretion may require a third party analysis, at the applicant's expense, to confirm the need for the facility.

The applicant shall be responsible to provide timely updates of the above described study and information during the Special Use Permit process.

Since this is a co-location request, much of the information setout in this section is not needed, for example; a study of alternative locations within a one-mile radius was not required. The Tower has been approved for two carriers and this is a request for a third. The City has strongly encouraged co-location and using existing structures in order to minimize the negative impacts on surrounding neighborhoods. The coverage maps prepared by the applicant show that Prairie Village will be reasonably well covered when installations are also added to St. Ann's and the Delmar Water Tower locations.

B. Multiple photo simulations of the proposed facility as viewed from the adjacent residential properties and public rights of way as directed by City Staff.

The applicant has submitted photo simulations of the proposed installation which indicates very little change in the appearance primarily because Clearwire will be using three of Sprints existing panel sheaths. The two 26 inch diameter microwave dishes will be new equipment and they will be installed at the top of the tower. They appear to blend with the rest of the antennas.

C. When possible, all wireless communication towers and alternative tower structures must be designed to accommodate multiple providers (co-location), unless after consideration of the recommendation of the Planning Commission, the City Council finds that the height or other factors required to make such an accommodation will have a more detrimental effect on the community than having multiple sites. Failure of a permit holder to negotiate in good faith to provide fairly priced co-location opportunities, based on industry standards may be grounds for denial or revocation of the Special Use Permit. A signed statement shall be submitted indicating the applicant's intention to share space on the tower with other providers.

The agreement between carriers and the tower owner will not prohibit other providers from placing antennas on the tower. A copy of that agreement needs to be submitted.

D. Any application for construction of a new wireless communication facility, tower, and antenna or equipment compound must provide a detailed site plan of the proposed project. This properly scaled site plan will include one page (including ground contours) that portrays the layout of the site, including the proposed facility, the fall radius of any proposed monopole, as well as proposed and existing structures within 200 feet of the tower base and the identification of the specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate. Access to and from the site, as well as dimensioned proposed and existing drives, must be included on this plan. Detailed exterior elevations (from all views) of the tower, screening wall, and all proposed buildings must also be submitted. Finally, a landscape plan detailing location, size, number and species of plant materials must be included for review and approval by the Planning Commission.

Since this is the addition of a proposed carrier to an existing approved site plan, a new detailed site plan was not required. The proposed equipment cabinet will be located with the existing compound and therefore it will not need to be expanded or enlarged. The compound is located within a paved area and landscaping has not been required.

- E. Description of the transmission medium that will be used by the applicant to offer or to provide services and a statement that applicant will meet all federal, state and city regulations and law, including but not limited to FCC regulations.**

The applicant shall provide an engineer's statement that anticipated levels of electromagnetic radiation to be generated by facilities on the site, including the effective radiated power (ERP) of the antenna, shall be within the guidelines established by the FCC. The cumulative effect of all antennas and related facilities on a site will also comply with the radio frequency radiation emission guidelines established by the FCC. An antenna radiation pattern shall be included for each antenna.

The applicant will use three panels and two small microwave dish antennas which are approximately 26 inches in diameter.

The applicant needs to submit a letter stating they will meet all federal, state and local regulation and laws and a statement regarding the electromagnetic radiation.

- F. Preliminary construction schedule including completion dates.**
Clearwire intends to launch service in 2010.

- G. The applicant shall provide a copy of its FCC license**
A copy has been submitted.

- H. Copies of letters sent to other wireless communication providers and their response regarding their interest to co-locate.**
Not applicable since it is a proposed co-location of a third carrier on an existing structure.

- I. Any other relevant information requested by City Staff.**
None requested.

The applicant held a neighborhood meeting in accordance with the Planning Commission Citizen Participation Policy September 21, 2009. No residents appeared at the meeting.

The Planning Commission made the following review of the Findings of Fact on application PC2009-16 requesting a Special Use Permit for wireless communication antenna at 9011 Roe Avenue.

- A. The character of the neighborhood.**

The immediate area is office, business and public uses. There are residential dwellings further to the east, west and north.

- B. The zoning and uses of property nearby.**

The existing property is zoned C-1 Restricted Business District and is occupied by Consolidated Fire District No. 2 Fire Station. The property to the north is zoned C-2 General Business District and is occupied by a multi-tenant office building. The property to the east is zoned C-1 Restricted Business District and is occupied by an office building. The property to the south is zoned R-1A Single-Family Residential and is occupied by a KCP&L substation. The property to the west is zoned R-1A Single-Family Residential and is occupied by Single-Family dwellings.

- C. The extent that a change will detrimentally affect neighboring property**

There will be very little impact on neighboring property from what exists now. Clearwire will be using three of the existing Sprint sheaths for its antennas and the equipment cabinet will be placed within the existing compound. The only new equipment(s) that will be visible are the two 26 inch diameter microwave dish antennas.

D. The relative gain to public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners.

This is a minor expansion of an existing installation which will not create any hardship on adjacent landowners.

E. The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.

The equipment compound meets the setback requirements; however, the tower does not. According to the new ordinance, non stealth monopoles shall setback a minimum distance from all property lines equal to the height of the tower unless a reduction or waiver is granted by the City Council. Based on the AIMS maps, it appears that the tower is approximately 120 feet from Roe Avenue and 110 feet from West 90th Terrace, however, it is only 35 feet from the east property line and 80 feet from the north property line. Therefore, it will be necessary to grant a setback waiver in order to approve this Special Use Permit. In order to approve a reduction or waiver, the Planning Commission and City Council must consider the following:

d. That there are special circumstances or conditions affecting the proposed cell tower installation;

This cell tower was approved in 1996 and is already in existence, but it is nonconforming and cannot be increased or enlarged without approval of a waiver. This means that no new carriers and no additional equipment can be put on the tower. It should be pointed out that this is a business area and is the type of location that the Planning Commission and City Council would prefer towers to locate.

e. That the setback waiver is necessary for reasonable development of the cell tower installation or the landowners property;

Because this is a developed site for a fire station, this is the only suitable location for a tower that would not interfere with the fire station operation.

f. That the granting of the setback waiver will not be detrimental to the public welfare or cause substantial injury to the value of the adjacent property or other property in the vicinity in which the particular property is situated.

This waiver is for an existing facility in a business area and the City has received no complaints from surrounding neighbors since it was built in 1996. Also no neighbors appeared at the neighborhood meeting.

F. The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.

This monopole has been in place since 1996 and the City has received no complaints. Also no neighbors appeared at the neighborhood meeting.

G. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such as the special use will not cause substantial injury to the value of the property in the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will cause substantial injury to the value of property in the immediate neighborhood, consideration shall be given to:

a. The location, size, nature and height of buildings, structures, walls, and fences on the site; and

b. The nature and extent of landscaping and screening on the site.

The neighborhood is fully developed and is predominately a business area. There is a large KCP&L substation across the street to the south and the tower seems to blend with it. The equipment cabinets are screened by a fence and no landscaping is required.

- H. Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.**

Off street parking will not be necessary for this particular use other than what is required for service people to maintain equipment. The parking that is provided on the site will be adequate for this need.

- I. Adequate utility, drainage, and other such necessary facilities have been or will be provided.**

Since the improvements have already been made on the site to accommodate existing carriers, existing utility, drainage, and other facilities appear to be adequate.

- J. Adequate access roads or entrance and exist drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.**

The site and the equipment should require only service vehicles for installation and periodic maintenance. The traffic generated by the use is so minimal that it will not create any additional congestion on the streets.

- K. Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors or unnecessarily intrusive noises.**

The antennas and equipment do not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that would affect the general public.

- L. Architectural design and building materials are compatible with such design and materials used in the neighborhood in which the proposed facility is to be built or located.**

The antenna installation will change very little by the addition of the new carrier, Clearwire Communications. Antenna panels from three of the existing Sprint sheaths will be removed and replaced with panel antennas for Clearwire. In addition, two 26 inch diameter microwave dish antennas will be installed on the top of the tower with a possible third dish added later. The tower is a utility and is similar in character to the adjacent substation.

- M. City Staff recommendations.**

It is the opinion of Staff that the proposed request for approval of the Special Use Permit for an additional carrier favorably meets the Factors for Consideration and recommends that it be approved including the setback waiver subject to the pertinent conditions. Perhaps an additional condition should be added so that the towers can be replaced by a slim line monopole or whatever the new design standard is at the time of the next renewal.

Bob Lindeblad questioned the staff recommendation that the existing tower be replaced by a slim line monopole or the new design standard at the time of the next renewal. He asked if dish antennas could be added to slim line monopoles. Trevor Wood responded the industry currently avoids using slim line monopoles for dish antenna installations. Mr. Wood noted there has not been any complaints from the neighborhood regarding the existing tower and would rather not have to replace it. Ken Vaughn stated it would be better to leave the existing structure than to place a dish antenna on a monopole.

Ron Williamson stated the recommendation was made noting the existing structure would have been in place for 23 years at the time of the next renewal and he felt it would be in the City's best interest to move toward the newer technology.

Bob Lindeblad confirmed a taller pole would be necessary to provide the same coverage as is provided by the existing structure.

Nancy Vennard noted it is unknown what the technology will be in ten years and she does not feel it is appropriate to state now what type of installation would be required. Bob Lindeblad suggested the condition be removed and that the Planning Commission deal with the issue at the time of renewal. Commission members agreed.

Ron Williamson noted under the new wireless communication regulations the tower does not meet the required setback and the Commission will need to take action on approving a waiver to the setback. This should be a separate motion prior to consideration of the findings and taking action on the application.

Randy Kronblad moved the Planning Commission find this application meets the requirements for a setback waiver and grant a waiver for the setback on the east and north side of the tower. The motion was seconded by Dirk Schafer and passed unanimously.

Dennis Enslinger suggested the Commission ask the applicant to submit new drawings showing the location of the possible third dish antenna and approve all three at this time.

Bob Lindeblad moved the Planning Commission find favorably on the findings of fact and recommend the Governing Body approve PC2009-16, the issuance of the Special Use Permit for wireless communication antenna at 9011 Roe Avenue by Clearwire Wireless Communications subject to the following conditions:

- 21) The Special Use Permit will be approved and in the future, additional carriers may locate on the tower subject to approval of a Site Plan by the Planning Commission and an amended Special Use Permit will not be required.
- 22) The approval of the Special Use Permit shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the Governing Body that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required. At that time the tower will be replaced with a monopole that is of slim line design or its equivalent which is more aesthetically compatible with the community.
- 23) The antennas and equipment cabinets shall be painted a color that matches the tower and all wires that connect to the antennas shall be enclosed within the monopole.
- 24) There will be no security lighting installed around the base of the tower.
- 25) The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
- 26) The equipment cabinet shall be located within the existing compound. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence and the fence shall be maintained in good condition by the applicant. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
- 27) The applicant shall have a structural inspection of the all antennas and cables performed by a licensed professional engineer prior to every ten year renewal and submit it as a part of the renewal application.

- 28) Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
- 29) The applicant may change out equipment boxes, cable and antennas subject to the Staff approval provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
- 30) The applicant shall not prevent other users from locating on the tower.
- 31) If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.
- 32) The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.
- 33) In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
- 34) In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
- 35) The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
- 36) The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
- 37) A copy of the lease between the applicant and property owner shall be submitted to the City and contain the following provisions:
 - c) The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.
 - d) The landowner shall be responsible for the removal of the communications facility in the event that the leaseholder fails to remove it upon abandonment.
- 38) The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
- 39) If Clearwire changes its name through merger, acquisition, etc. or sells or transfers its installation to another carrier, it shall notify the City within 30 days of such change and provide a description of the service provided by that carrier. If modifications are required as a result of this change they will be approved by Staff unless in the opinion of

Staff are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval.

- 40) A setback waiver is granted for the tower from the east and north property lines to reduce the setback requirement from 100 feet to the actual distance from the tower to the property lines.

The motion was seconded by Marlene Nagel and passed unanimously.

The applicant was directed by the Commission to submit revised site plan drawings prior to Council approval, indicating the potential location of the future third dish antenna requested.

Site Plan Approval

The proposed installation will involve minor changes and will have a minimal impact on the existing installation. Three of the Sprint panel antennas will be replaced by three Clearwire antenna panels which will result in no visual change. Initially two microwave dish antennas, approximately 26 inches in diameter, will be added to the top of the tower and that will be the major change, with a possible third dish antenna added in the future. The equipment cabinet will be located within the existing fenced compound.

The Planning Commission made the following review of the findings of fact on the proposed site plan for this installation.

- a. The site is capable of accommodating the building, parking areas and drives with appropriate open space and landscape.**

The location has already been approved for two carriers and the site is capable of accommodating a third. The equipment cabinet for Clearwire will be within the existing compound and can be easily accommodated within the existing improvements.

- b. Utilities are available with adequate capacity to serve the proposed development.**

Utilities are currently in place serving the existing installation and are adequate to serve this minor expansion.

- c. The plan provides for adequate management of stormwater runoff.**

There will be no increase in impervious surface so stormwater is not an issue.

- d. The plan provides for safe and easy ingress, egress and internal traffic circulation.**

The proposed site will utilize the existing driveway and parking lot for circulation which will adequately serve the proposed use.

- e. The plan is consistent with good land planning and good site engineering design principles.**

This is a minor expansion of an existing installation and land planning and site engineering are not relevant concerns. The proposed equipment cabinet will be within the existing compound and will have very little impact.

- f. An appropriate degree of compatibility will prevail between the architectural quality of the proposed building and the surrounding neighborhood.**

The proposed installation of the antennas will be compatible with the existing antennas that are currently in place. The only difference is that two 26 inch diameter dish antennas will be added to the top of the tower which are different in design than the more typical panel design.

It should be pointed out that the design of the tower was typical of what was available in the mid-nineties. The new slim line monopoles are a significant improvement in the aesthetics design of towers and this tower should be upgraded to the more current design at some point in the future.

g. The plan represents an overall development pattern that is consistent with the comprehensive plan (Village Vision) and other adopted planning polices

Wireless communications are not specifically addressed in Village Vision. Perhaps it falls into two goal areas which are maintaining and improving infrastructure and improving communications between the City and its residents.

Bob Lindeblad moved the Planning Commission approve the Site Plan for Clearwire Wireless Communication with the applicant resubmitting revisions prior to the City Council meeting reflecting the location of the future third dish antenna and that the Site Plan Approval be conditional upon the approval of the Special Use Permit. The motion was seconded by Randy Kronblad and passed unanimously.

clearwire
Site #: KS - KCY5444
Prairie Village Fire Station
Prairie Village, Ks



8500 W 110th St Overland Park, KS 66210
913 438 7700





clearwire

Site #: KS - KCY5444
Prairie Village Fire Station
Prairie Village, Ks

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Overland Park, Kansas 66210
Phone: 913-438-1700 Fax: 913-438-1777

DESIGNER: J.M. BRISCOE

LEAD DE: S.D. KESLING

LEAD CE/SE: M.L. OWENS

SUBMITTALS

NO.	DATE	DESCRIPTION	BY
A	04/19/08	LEASE ORBIT	JMB
B	04/24/08	LEASE ORBIT	JMB
C	04/25/08	LEASE ORBIT	JMB
D	07/24/08	LEASE ORBIT	MS
E	07/24/08	LEASE ORBIT	MS
F	07/24/08	LEASE ORBIT	MS

THE INFORMATION CONTAINED IN THIS SET OF DOCUMENTS IS PROPRIETARY BY NATURE. ANY USE OR DISCLOSURE OTHER THAN THAT WHICH RELATES TO CLEARWRE IS STRICTLY PROHIBITED.

SITE NAME

**PRAIRIE VILLAGE
FIRE STATION**

SITE NUMBER

KS-KCY5444
SPRINT #KC03XC183

SITE ADDRESS

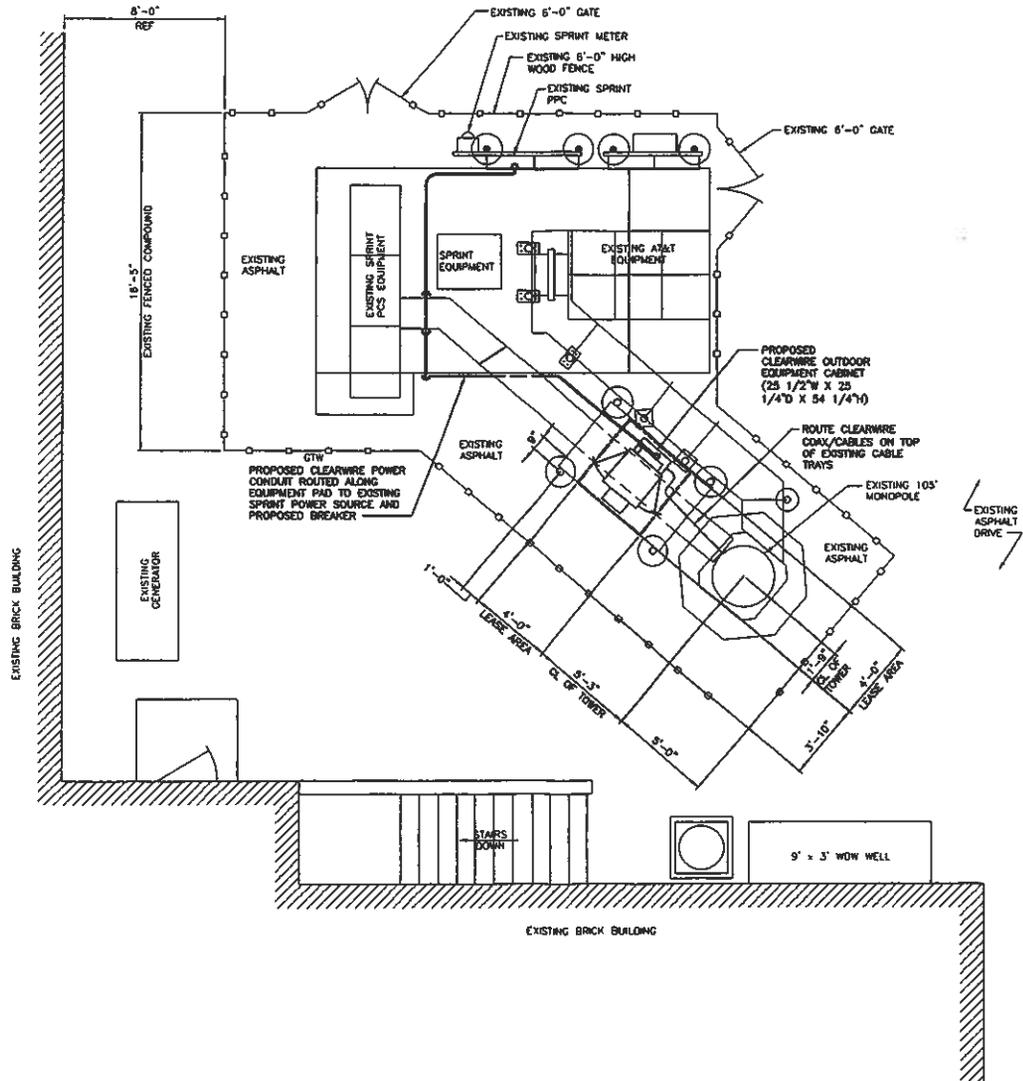
9011 ROE AVE
PRAIRIE VILLAGE, KANSAS
CCI #877791

SHEET TITLE

SITE PLAN

SHEET NUMBER

A-1



SITE PLAN



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Overland Park, Kansas 66210
Phone: 913-438-7700 Fax: 913-438-7777

DESIGNER: J.M. BRUSCOE

LEAD EE: S.D. WEXLING

LEAD CE/SE: M.L. OWENS

SUBMITTALS

NO.	DATE	DESCRIPTION	BY
A	01/16/09	LEASE DRAFT	JMB
B	01/16/09	LEASE DRAFT	JMB
C	01/16/09	LEASE DRAFT	JMB
D	02/11/09	LEASE DRAFT	MS
E	02/23/09	LEASE DRAFT	MS
F	02/23/09	LEASE DRAFT	MS

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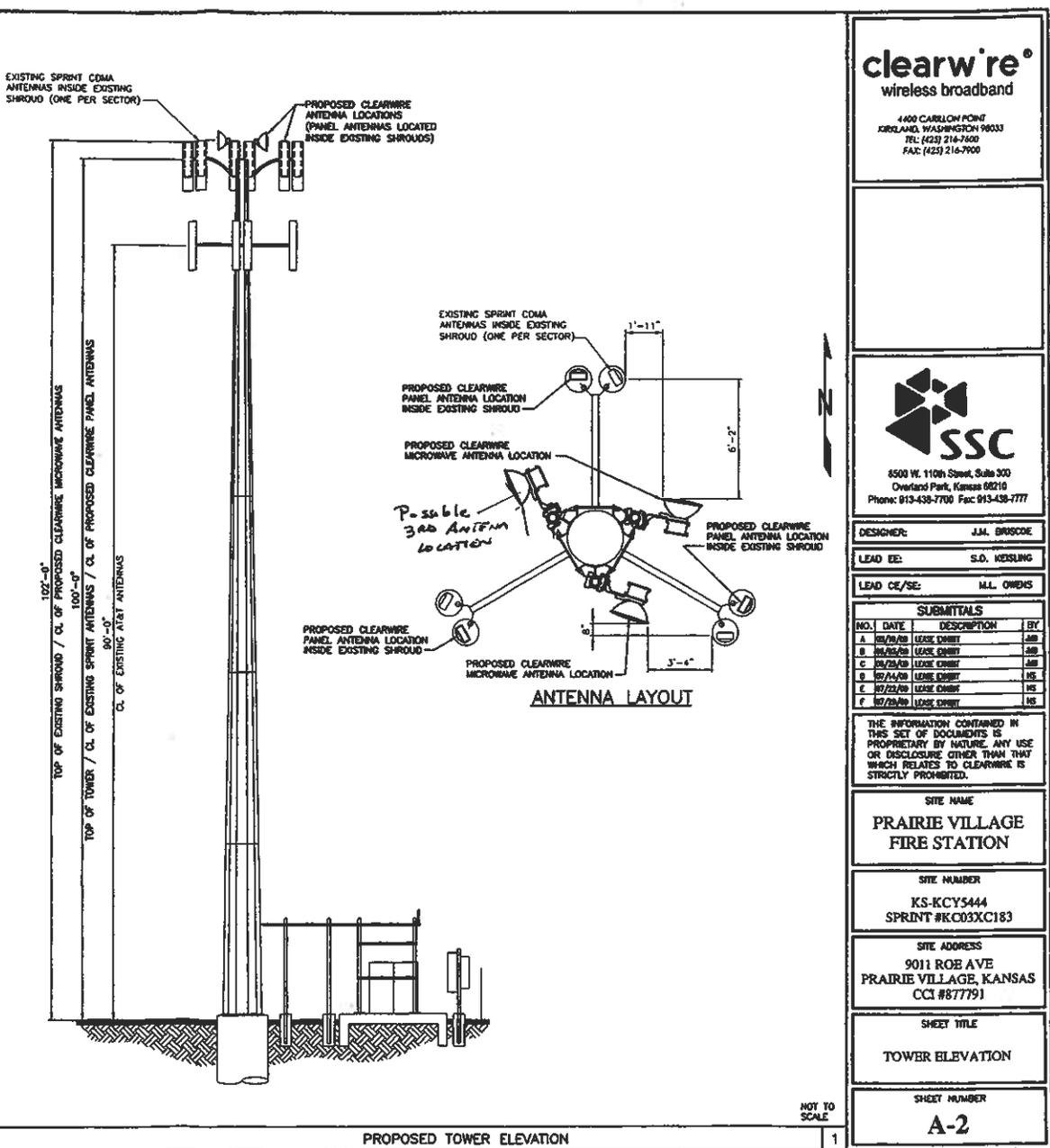
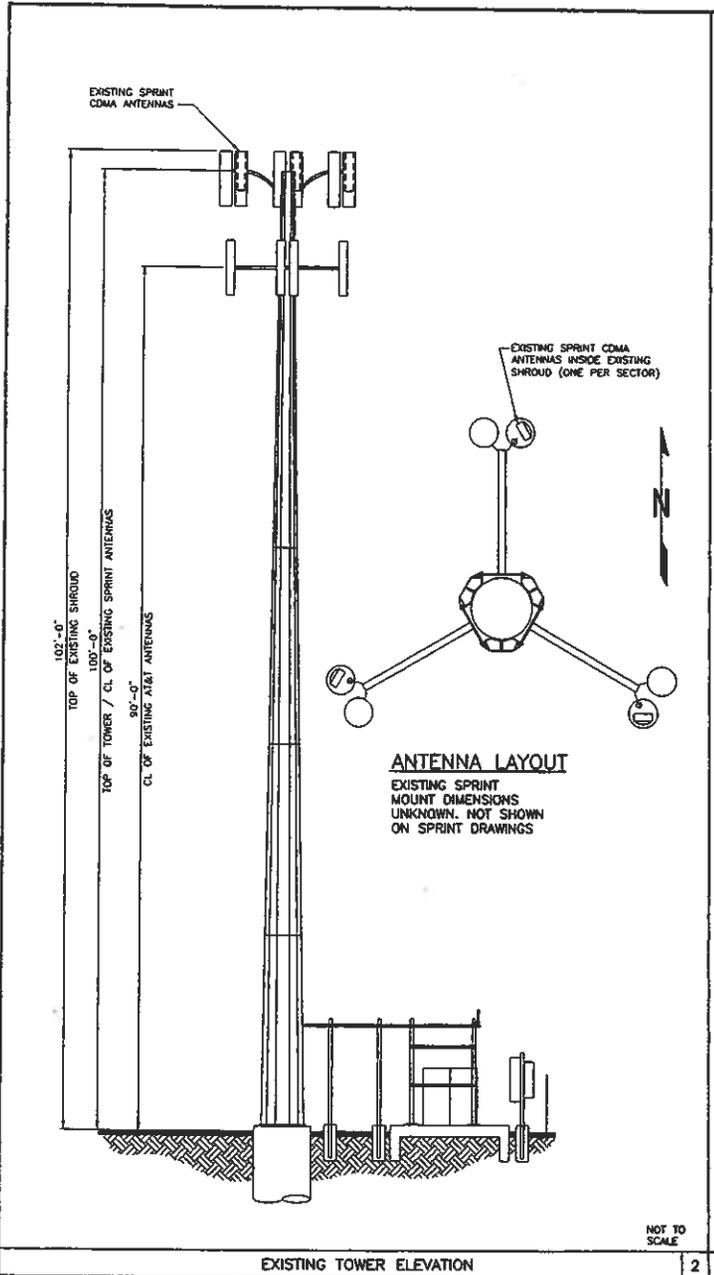
SITE NAME
**PRAIRIE VILLAGE
FIRE STATION**

SITE NUMBER
KS-KCY5444
SPRINT #KC03XC183

SITE ADDRESS
9011 ROE AVE
PRAIRIE VILLAGE, KANSAS
CCI #877791

SHEET TITLE
TOWER ELEVATION

SHEET NUMBER
A-2



EXISTING TOWER ELEVATION

PROPOSED TOWER ELEVATION

ORDINANCE 2218

AN ORDINANCE GRANTING A SPECIAL USE PERMIT FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF COMMUNICATION ANTENNAE AND RELATED EQUIPMENT BY CLEARWIRE WIRELESS ON THE PROPERTY DESCRIBED AS 9011 ROE AVENUE, PRAIRIE VILLAGE, KANSAS

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE:

Section I. Planning Commission Recommendation. At its regular meeting on October 6, 2009, the Prairie Village Planning Commission held a public hearing, found the findings of fact to be favorable and recommended that the Governing Body approve PC2009-16 granting of a Special Use Permit for the installation, operation and maintenance of antennae and related equipment by Clearwire Wireless Communications at 9011 Roe Avenue subject to the following conditions:

- 1) The Special Use Permit will be approved and in the future, additional carriers may locate on the tower subject to approval of a Site Plan by the Planning Commission and an amended Special Use Permit will not be required.
- 2) The approval of the Special Use Permit shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the Governing Body that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required. At that time the tower will be replaced with a monopole that is of slim line design or its equivalent which is more aesthetically compatible with the community.
- 3) The antennas and equipment cabinets shall be painted a color that matches the tower and all wires that connect to the antennas shall be enclosed within the monopole.
- 4) There will be no security lighting installed around the base of the tower.
- 5) The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the State of Kansas, with construction observation provided by a design engineer that is not an employee of the tower's owner.
- 6) The equipment cabinet shall be located within the existing compound. Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence and the fence shall be maintained in good condition by the applicant. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
- 7) The applicant shall have a structural inspection of the all antennas and cables performed by a licensed professional engineer prior to every ten year renewal and submit it as a part of the renewal application.
- 8) Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
- 9) The applicant may change out equipment boxes, cable and antennas subject to the Staff approval provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
- 10) The applicant shall not prevent other users from locating on the tower.
- 11) If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.
- 12) The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.

- 13) In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
- 14) In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
- 15) The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
- 16) The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
- 17) A copy of the lease between the applicant and property owner shall be submitted to the City and contain the following provisions:
 - a. The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.
 - b. The landowner shall be responsible for the removal of the communications facility in the event that the leaseholder fails to remove it upon abandonment.
- 18) The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
- 19) If Clearwire changes its name through merger, acquisition, etc. or sells or transfers its installation to another carrier, it shall notify the City within 30 days of such change and provide a description of the service provided by that carrier. If modifications are required as a result of this change they will be approved by Staff unless in the opinion of Staff are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval.
- 20) A setback waiver is granted for the tower from the east and north property lines to reduce the setback requirement from 100 feet to the actual distance from the tower to the property lines.

Section II. Findings of the Governing Body. The Governing Body adopts by specific reference the findings of fact on application PC2009-16 as contained in the minutes of the Planning Commission meeting of October 6, 2009, and approves the recommendations of the Planning Commission.

Section III. Granting of the Special Use Permit. Be it therefore ordained that the City of Prairie Village grant a Special Use Permit to Clearwire Wireless Communications for communication antennae and related equipment at 9011 Roe Avenue, Prairie Village, Kansas subject to the twenty specific conditions listed above.

Section IV. Take Effect. That this ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper as provided by law.

PASSED AND ADOPTED THIS __th DAY OF OCTOBER, 2009.

CITY OF PRAIRIE VILLAGE, KANSAS

By: /s/ Ronald L. Shaffer

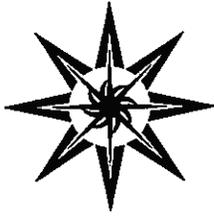
Ronald L. Shaffer, Mayor

ATTEST:

/s/ Joyce Hagen Mundy
Joyce Hagen Mundy, City Clerk

APPROVED AS TO FORM:

/s/ Catherine P. Logan
Catherine P. Logan, City Attorney



Council Meeting Date: October 19, 2009

Consider PC2009-17 Renewal of a Special Use Permit for the installation of wireless communication antenna at 7700 Mission Road - Sprint/Nextel

RECOMMENDATION:

Governing Body adopt Ordinance 2219 approving the renewal of a Special Use Permit for the installation, operation and maintenance of communication antenna and related equipment by Sprint/Nextel on the property described as 7700 Mission Road, Prairie Village, Kansas.

BACKGROUND:

Sprint is requesting renewal of its Special Use Permit that was originally approved in 2004 for a period of five years. This renewal request is past the five year approval time, but it could not be considered earlier because of the moratorium on Wireless Communications Facilities applications. The City tower is 150 feet tall and accommodates several carriers including AT&T, Verizon, the City and Sprint. This is the tallest tower in Prairie Village and it was designed to accommodate multiple carriers.

Sprint was the last carrier approved which was in 2004 and a new equipment compound was added in order to accommodate its equipment cabinets. The original application was approve in September, 2004 with the following conditions:

1. The initial approval of the Special Use Permit shall be for a maximum of five years. At the end of the five-year period, and any subsequent five-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional five years and new conditions may be required.
2. All equipment cabinets and wiring shall be contained within the expanded walled area which shall be built out of a brick that matches the existing wall and is capped with concrete or stone. The power line serving the cabinet shall be relocated around the north side rather than the south side as proposed.
3. The antennas and the frames for mounting them shall be painted a color that blends with the other antennas and the tower so the visibility is minimized.
4. If the applicant is found to be in non-compliance with the conditions of the Special Use Permit will become null and void within 90 days of notification of non-compliance, unless the non-compliance is corrected. If a Special Use Permit becomes null and void, the applicant shall remove the antennas, equipment cabinets, and all other appurtenances, and shall restore the site to its original condition.
5. The applicant shall comply with all state and federal regulations.
6. The applicant shall have a structural inspection of the antennas performed by a licensed professional engineer prior to every five-year renewal and submit it as a part of the renewal application.
7. The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the state of Kansas with construction observation provided by a design engineer that is not an employee of the tower's owner.
8. The applicant shall plant eight to ten foot pine trees on the north and west sides to fill in a complete screening of the compound.

9. The coaxial cable serving the antennas shall be placed inside the monopole.

Sprint continues to need this location to provide service to its customers, but has not proposed any changes to its existing installation. The applicant held a neighborhood meeting on September 21, 2009, and no one attended.

The new Wireless Communication Facilities ordinance requires that equipment compounds meet the minimum setbacks for principal structures in the district in which it is located and that towers setback from all property lines a distance equal to the tower height.

The side yard setback in the R-1A District is five feet and it appears that the compounds meet that requirement. The tower sets back more than 150 feet from the west, south and east property lines but is only about 22 feet from the north property line. The Planning Commission reviewed the following criteria in consideration of granting a waiver from the north property line setback.

1. **That there are special circumstances or conditions affecting the proposed cell tower installation;**

This cell tower was constructed in 1991 prior to any cell tower standards and it is nonconforming and cannot be increased or enlarged without approval of a waiver. This means that no new carriers and no additional equipment can be put on the tower and therefore technical modifications could be a problem.

This is a large public use area and is the type of location that the Planning Commission and City Council would prefer towers to locate.

2. **That the setback waiver is necessary for reasonable development of the cell tower installation or the landowners property;**

Because the cell tower facility and equipment compounds have already been developed, this is the best location for a tower that would not interfere with the other uses of the site.

3. **That the granting of the setback waiver will not be detrimental to the public welfare or cause substantial injury to the value of the adjacent property or other property in the vicinity in which the particular property is situated.**

This waiver is for an existing facility in a large public use area and the City has received no complaints since it was built in 1991. Also no neighbors appeared at the neighborhood meeting. The use to the north is a parking lot for Shawnee Mission East High School.

The Planning Commission found the application meets the requirements for a setback waiver and granted a waiver for the setback on the east and north side of the tower.

The Planning Commission found favorably on the findings of fact and recommends the Governing Body approve PC2009-17, the renewal of the Special Use Permit for wireless communication antenna at 7700 Mission Road by Sprint/Nextel subject to the following conditions:

1. The Special Use Permit renewal will be approved for Sprint. Additional carriers may locate on the tower subject to approval of a Site Plan by the Planning Commission and an amended Special Use Permit will not be required.
2. The approval of the Special Use Permit renewal shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required.

3. The antennas shall be painted a color that matches the tower and all wires that connect to the antennas shall be inside the tower.
4. There will be no security lighting installed around the base of the tower.
5. The applicant shall have a structural inspection of all the antennas and cables performed by a licensed professional engineer prior to every ten year renewal and submit it as a part of the renewal application. This has not been done yet for this renewal application and will need to be conducted and the findings submitted to the City prior to the application being forwarded to the City Council.
6. Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
7. The approved Site Plan, dated October 14, 2004 shall be reincorporated as the site plan for approval of this application.
8. The applicant may change out equipment boxes, cable and antennas provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official or his/her designee, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
9. The applicant shall not prevent other users from locating on the tower.
10. If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.
11. The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.
12. In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
13. In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
14. The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
15. The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
16. The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.

17. In the event that a carrier transfers its facilities to another carrier or changes its name due to merger acquisition, etc., it will notify the City within 30 days of such change and will provide a description of the service provider by that carrier. If modifications are required as a result of this change they will be approved by Staff unless in the opinion of Staff they are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval.
18. A setback waiver is hereby granted for the tower from the north property line to reduce the required setback from 150 feet to the actual distance between the existing tower and the property line which is approximately 22 feet.
19. The applicant shall maintain the pine trees that have been planted on the north and west sides of the equipment compound and if they die, shall replace them with a variety as approved by the Tree Board.

ATTACHMENTS

PC2009-17 Staff Report
Planning Commission Minutes - October 6, 2009
Proposed Ordinance

PREPARED BY

Joyce Hagen Mundy
Planning Commission Secretary/City Clerk

DATE:

October 12, 2009



BWR | Right in the Center

STAFF REPORT

TO: Prairie Village Planning Commission
FROM: Ron Williamson, BWR, Planning Consultant
SUBJECT: PC 2009-17: Request to Renew a Special Use Permit for Antennas and Equipment on the Tower at City Hall, 7700 Mission Road
DATE: October 6, 2009

COMMENTS:

Sprint is requesting renewal of its Special Use Permit that was originally approved in 2004 for a period of five years. The city tower is 150 feet tall and accommodates several carriers including at&t, Verizon, the City and Sprint. This is the tallest tower in Prairie Village and it was designed to accommodate multiple carriers.

Sprint was the last carrier approved which was in 2004 and a new equipment compound was added in order to accommodate its equipment cabinets. Sprint continues to need this location to provide service to its customers, but has not proposed any changes to its existing installation.

The condition of approval in September 2004 were as follows:

1. The initial approval of the Special Use Permit shall be for a maximum of five years. At the end of the five-year period, and any subsequent five-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional five years and new conditions may be required.
2. All equipment cabinets and wiring shall be contained within the expanded walled area which shall be built out of a brick that matches the existing wall and is capped with concrete or stone. The power line serving the cabinet shall be relocated around the north side rather than the south side as proposed.
3. The antennas and the frames for mounting them shall be painted a color that blends with the other antennas and the tower so the visibility is minimized.
4. If the applicant is found to be in non-compliance with the conditions of the Special Use Permit will become null and void within 90 days of notification of non-compliance, unless the non-compliance is corrected. If a Special Use Permit becomes null and void, the applicant shall remove the antennas, equipment cabinets, and all other appurtenances, and shall restore the site to its original condition.
5. The applicant shall comply with all state and federal regulations.
6. The applicant shall have a structural inspection of the antennas performed by a licensed professional engineer prior to every five-year renewal and submit it as a part of the renewal application.
7. The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the state of Kansas with construction observation provided by a design engineer that is not an employee of the tower's owner.

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8. The applicant shall plant eight to ten foot pine trees on the north and west sides to fill in a complete screening of the compound.
9. The coaxial cable serving the antennas shall be placed inside the monopole.

The original Special Use Permit approved in 2004 was under the Wireless Communications Policy. Under the new ordinance, the Factors for Consideration and the Application Information requirements are somewhat different than the policy and therefore a complete review is being done. This renewal request is past the five year approval time, but it could not be considered earlier because of the moratorium on Wireless Communications Facilities applications. The moratorium was rescinded by the City Council in July when the new ordinance was approved.

APPLICATION INFORMATION:

The Staff has reviewed the renewal application based on the City's new ordinance for Wireless Communication Facilities and has the following comments regarding the information submitted. It should be noted that since this is an application for renewal of an existing tower, a number of items in the ordinance may not be applicable. The required application information as setout in the new ordinance is shown in bold type.

- A. A study comparing potential sites within an approximate one mile radius of the proposed application area. The study shall include the location and capacity of existing towers, alternative tower sites, a discussion of the ability or inability of each site to host the proposed communications facility and reasons why certain of these sites were excluded from consideration. The study must show what other sites are available and why the proposed location was selected over the others. It must also establish the need for the proposed facility and include a map showing the service area of the proposed facility as well as other alternative tower site and antennas.**

If the use of exiting towers, alternative tower structures, and sites are unavailable, a reason or reasons specifying why they are unavailable needs to be set out and may include one or more of the following: refusal by current tower or site owner; topographical limitations; adjacent impediments blocking transmission; site limitations to tower or facility or tower; no space on existing facility or tower; other limiting factors rendering existing facilities or towers unusable. The documentation submitted must use technological and written evidence, that these sites are inadequate to fulfill the grid needs of the wireless service provider, or that a reasonable co-location lease agreement could not be reached with the owners of said alternative sites.

The applicant shall submit an overall plan that shows the coverage gaps in service or lack of network capacity throughout the entire City and provide an indication of future needed/proposed wireless communication facilities, towers, and/or antenna.

The applicant shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall also provide documentation establishing the minimum height necessary to provide the applicant's services and the height required to provide for co-location. The study shall include coverage maps for the proposed monopole at the requested height and at ten feet descending intervals to 50 feet.

The Planning Commission or Governing Body at its discretion may require a third party analysis, at the applicant's expense, to confirm the need for the facility.

The applicant shall be responsible to provide timely updates of the above described study and information during the Special Use Permit process.

Since this is the renewal of an existing installation, the City has not required a study of alternative locations within a one-mile radius. The City has encouraged the use of existing structures in order to minimize the impact on the surrounding neighborhoods. The applicant has indicated that this installation is an important location in the continued service for its customers.

- B. Multiple photo simulations of the proposed facility as viewed from the adjacent residential properties and public rights of way as directed by City Staff.**

Since the antennas and equipment cabinets are currently installed, the applicant has not been required to submit photo simulation.

- C. When possible, all wireless communication towers and alternative tower structures must be designed to accommodate multiple providers (co-location), unless after consideration of the recommendation of the Planning Commission, the City Council finds that the height or other factors required to make such an accommodation will have a more detrimental effect on the community than having multiple sites. Failure of a permit holder to negotiate in good faith to provide fairly priced co-location opportunities, based on industry standards may be grounds for denial or revocation of the Special Use Permit. A signed statement shall be submitted indicating the applicant's intention to share space on the tower with other providers.**

The agreement between the carrier and the City will not prohibit other providers from placing antennas on the tower.

- D. Any application for construction of a new wireless communication facility, tower, antenna or equipment compound must provide a detailed site plan of the proposed project. This properly scaled site plan will include one page (including ground contours) that portrays the layout of the site, including the proposed facility, the fall radius of any proposed monopole, as well as proposed and existing structures within 200 feet of the tower base and the identification of the specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate. Access to and from the site, as well as dimensioned proposed and existing drives, must be included on this plan. Detailed exterior elevations (from all views) of the tower, screening wall, and all proposed buildings must also be submitted. Finally, a landscape plan detailing location, size, number and species of plant materials must be included for review and approval by the Planning Commission.**

The installation is in place and the 2004 Site Plan will be reincorporated in the Conditions of Approval. Therefore, specific Site Plan review and approval is not necessary. It should be noted that a new equipment compound was constructed and additional plantings were installed as a part of the original approval in 2004.

- E. Description of the transmission medium that will be used by the applicant to offer or to provide services and a statement that applicant will meet all federal, state and city regulations and law, including but not limited to FCC regulations.**

The applicant shall provide an engineer's statement that anticipated levels of electromagnetic radiation to be generated by facilities on the site, including the effective radiated power (ERP) of the antenna, shall be within the guidelines established by the FCC. The cumulative effect of all antennas and related facilities on a site will also comply with the radio frequency radiation emission guidelines established by the FCC. An antenna radiation pattern shall be included for each antenna.

Not applicable. The facility is already installed.

F. Preliminary construction schedule including completion dates.

Not applicable. The facility is already installed.

G. The applicant shall provide a copy of its FCC license

Submitted with previous renewal.

H. Copies of letters sent to other wireless communication providers and their response regarding their interest to co-locate.

Not applicable since it is an existing structure with multiple carriers.

I. Any other relevant information requested by City Staff.

None requested.

The applicant held a neighborhood meeting on September 21, 2009, and no one attended.

FACTORS FOR CONSIDERATION:

The Planning Commission shall make Findings of Fact to support its recommendation to approve, conditionally approve, or disapprove this Special Use Permit. It is not necessary that a finding of fact be made for each factor described herein. However, there should be a conclusion that the request should be approved or denied based upon consideration of as many factors as are applicable. The factors to be considered in approving or disapproving a Special Use Permit for a wireless facility shall include, but not be limited to the following:

A. The character of the neighborhood.

The tower is located behind City Hall and is surrounded by public uses. Shawnee Mission East High School is to the north and the Municipal Complex is on the east, south and west sides.

B. The zoning and uses of property nearby.

The City Hall site and all surrounding property is zoned R-1a Single-Family Residential. Shawnee Mission East High School is located to the north, Harmon Park is to the west and the Municipal Complex is located to the south and east.

C. The extent that a change will detrimentally affect neighboring property.

This is the renewal of an existing Special Use Permit that will not have a detrimental affect on neighboring property because the tower is entirely surrounded by public uses.

D. The relative gain to public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners.

This is an existing installation which will not create any hardship on adjacent landowners.

E. The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.

The new Wireless Communication Facilities ordinance requires that equipment compounds meet the minimum setbacks for principal structures in the district in which it is located and that towers setback from all property lines a distance equal to the tower height.

The side yard setback in the R-1A District is five feet and it appears that the compounds meet that requirement. The tower sets back more than 150 feet from the west, south and east property lines but is only about 22 feet from the north property line. Therefore, it will be necessary to grant setback waiver from the north property line in order to approve the renewal of this Special Use Permit. In order to approve a reduction or waiver, the Planning Commission and City Council must consider the following:

a. That there are special circumstances or conditions affecting the proposed cell tower installation;

This cell tower was constructed in 1991 prior to any cell tower standards and it is nonconforming and cannot be increased or enlarged without approval of a waiver. This means that no new carriers and no additional equipment can be put on the tower and therefore technical modifications could be a problem.

It should be pointed out that this is a large public use area and is the type of location that the Planning Commission and City Council would prefer towers to locate.

b. That the setback waiver is necessary for reasonable development of the cell tower installation or the landowners property;

Because the cell tower facility and equipment compounds have already been developed, this is the best location for a tower that would not interfere with the other uses of the site.

c. That the granting of the setback waiver will not be detrimental to the public welfare or cause substantial injury to the value of the adjacent property or other property in the vicinity in which the particular property is situated.

This waiver is for an existing facility in a large public use area and the City has received no complaints since it was built in 1991. Also no neighbors appeared at the neighborhood meeting. The use to the north is a parking lot for Shawnee Mission East High School.

F. The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.

This existing installation is located on a large publicly owned property and will have no adverse affect on the welfare or convenience of the public. The City has not received any complaints regarding this installation.

- G. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such as the special use will not cause substantial injury to the value of the property in the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will cause substantial injury to the value of property in the immediate neighborhood, consideration shall be given to:**
- 1. The location, size, nature and height of buildings, structures, walls, and fences on the site; and**
 - 2. The nature and extent of landscaping and screening on the site.**

The facility already exists and no modifications are proposed as a part of this application. Landscaping and screening are already in place. The facility does not have an impact on residential development because there is none close by.

- H. Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.**

Off street parking will not be necessary for this particular use other than a parking space currently available for service people to maintain equipment. The parking that is provided on the site will be adequate for this need.

- I. Adequate utility, drainage, and other such necessary facilities have been or will be provided.**

Since the improvements have already been made on the site, existing utility, drainage, and other facilities appear to be adequate.

- J. Adequate access roads or entrance and exist drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.**

The site and the equipment should require only service vehicles for installation and periodic maintenance and a service derive to the complex is adequate to meet this need.

- K. Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors or unnecessarily intrusive noises.**

The antennas and equipment do not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that would affect the general public.

- L. Architectural design and building materials are compatible with such design and materials used in the neighborhood in which the proposed facility is to be built or located.**

The tower is tall and industrial in appearance, but is typical of a type of facility that would be found on a municipal complex. The equipment compounds have been screened by a wall constructed of a brick that matches City Hall and landscaping has been provided to break up the wall façade.

- M. City Staff recommendations.**

It is the opinion of Staff that the proposed renewal of the Special Use Permit for Sprint favorably meets the Factors for Consideration and recommends that it be approved including the setback waiver subject to the pertinent conditions of the approval in 2004 and the new conditions contained in the new wireless communications facilities ordinance. Under the new ordinance, the Special Use Permit Renewal may be extended for ten years rather than five and it is recommended that this be done.

RECOMMENDATION:

After a review of the proposed application and making its findings in relation to the thirteen Factors for Consideration previously outlined, the Planning Commission may either recommend approval of the Special Use Permit with or without conditions, recommend denial, or continue it to another meeting. In granting this Special Use Permit, however, the Planning Commission may impose such conditions, safeguards, and restrictions upon the premises benefited by approval of the Special Use Permit as may be necessary to reduce or minimize any potentially injurious affect on other property in the neighborhood. If the Planning Commission recommends approval to the Governing Body, it is recommended that the following conditions be included:

- 1) The Special Use Permit renewal will be approved for Sprint. Additional carriers may locate on the tower subject to approval of a Site Plan by the Planning Commission and an amended Special Use Permit will not be required.
- 2) The approval of the Special Use Permit Renewal shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required.
- 3) The antennas shall be painted a color that matches the tower and all wires that connect to the antennas shall be inside the tower.
- 4) There will be no security lighting installed around the base of the tower.
- 5) The applicant shall have a structural inspection of the all antennas and cables performed by a licensed professional engineer prior to every ten year renewal and submit it as a part of the renewal application. This has not been done yet for this renewal application and will need to be conducted and the findings submitted to the City prior to the application being forwarded to the City Council.
- 6) Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
- 7) The approved Site Plan, dated October 14, 2004 shall be reincorporated as the site plan for approval of this application.
- 8) The applicant may change out equipment boxes, cable and antennas provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official or his/her designee, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
- 9) The applicant shall not prevent other users from locating on the tower.

- 10) If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.
- 11) The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.
- 12) In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
- 13) In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
- 14) The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
- 15) The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
- 16) The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
- 17) In the event that a carrier transfers its facilities to another carrier or changes its name due to merger acquisition, etc., it will notify the City within 30 days of such change and will provide a description of the service provider by that carrier. If modifications are required as a result of this change they will be approved by Staff unless in the opinion of Staff they are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval.
- 18) A setback waiver is hereby granted for the tower from the north property line to reduce the required setback from 150 feet to the actual distance between the existing tower and the property line which is approximately 22 feet.
- 19) The applicant shall maintain the pine trees that have been planted on the north and west sides of the equipment compound and if they die, shall replace them with a variety as approved by the Tree Board.

**EXCERPT
PLANNING COMMISSION MINUTES
OCTOBER 6, 2009**

**PC2009-17 Renewal of Special Use Permit for Wireless Communications
7700 Mission Road**

Trevor Wood, with Selective Site Consultants, 8500 West 110th Street, Suite 300, Overland Park, addressed the Commission representing Sprint. Sprint is requesting renewal of its Special Use Permit that was originally approved in 2004 for a period of five years. The City tower is 150 feet tall and accommodates several carriers including at&t, Verizon, the City and Sprint. This is the tallest tower in Prairie Village and it was designed to accommodate multiple carriers.

Sprint was the last carrier approved which was in 2004 and a new equipment compound was added in order to accommodate its equipment cabinets. Sprint continues to need this location to provide service to its customers, but has not proposed any changes to its existing installation. The applicant held a neighborhood meeting on September 21, 2009, and no one attended.

Mr. Wood stated he is working with Sprint to get an updated tower plan and site plan reflecting the upgraded antennas added since the initial installation.

Chairman Ken Vaughn asked if there was anyone wishing to address the Commission regarding the proposed revisions. Seeing none, he closed the public hearing at 7:50 p.m.

Ron Williamson reviewed the conditions for approval in September, 2004 which were as follows:

10. The initial approval of the Special Use Permit shall be for a maximum of five years. At the end of the five-year period, and any subsequent five-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas and that all the conditions of approval have been met. The permit may then be extended for an additional five years and new conditions may be required.
11. All equipment cabinets and wiring shall be contained within the expanded walled area which shall be built out of a brick that matches the existing wall and is capped with concrete or stone. The power line serving the cabinet shall be relocated around the north side rather than the south side as proposed.
12. The antennas and the frames for mounting them shall be painted a color that blends with the other antennas and the tower so the visibility is minimized.
13. If the applicant is found to be in non-compliance with the conditions of the Special Use Permit will become null and void within 90 days of notification of non-compliance, unless the non-compliance is corrected. If a Special Use Permit becomes null and void, the applicant shall remove the antennas, equipment cabinets, and all other appurtenances, and shall restore the site to its original condition.
14. The applicant shall comply with all state and federal regulations.
15. The applicant shall have a structural inspection of the antennas performed by a licensed professional engineer prior to every five-year renewal and submit it as a part of the renewal application.
16. The plans for the antenna connections shall be prepared and sealed by a structural engineer licensed in the state of Kansas with construction observation provided by a design engineer that is not an employee of the tower's owner.

17. The applicant shall plant eight to ten foot pine trees on the north and west sides to fill in a complete screening of the compound.
18. The coaxial cable serving the antennas shall be placed inside the monopole.

The original Special Use Permit approved in 2004 was under the Wireless Communications Policy. Under the new ordinance, the Factors for Consideration and the Application Information requirements are somewhat different than the policy and therefore a complete review is being done. This renewal request is past the five year approval time, but it could not be considered earlier because of the moratorium on Wireless Communications Facilities applications. The moratorium was rescinded by the City Council in July when the new ordinance was approved.

Ron Williamson led the Commission through the review of the application based on the new wireless communications ordinance, noting that since the application is for the renewal of an existing antenna installation and not a tower, a number of items in the ordinance may not be applicable. The required application information, as set out in the new ordinance, is shown in bold type.

- A. **A study comparing potential sites within an approximate one mile radius of the proposed application area. The study shall include the location and capacity of existing towers, alternative tower sites, a discussion of the ability or inability of each site to host the proposed communications facility and reasons why certain of these sites were excluded from consideration. The study must show what other sites are available and why the proposed location was selected over the others. It must also establish the need for the proposed facility and include a map showing the service area of the proposed facility as well as other alternative tower site and antennas.**

If the use of exiting towers, alternative tower structures, and sites are unavailable, a reason or reasons specifying why they are unavailable needs to be set out and may include one or more of the following: refusal by current tower or site owner; topographical limitations; adjacent impediments blocking transmission; site limitations to tower or facility or tower; no space on existing facility or tower; other limiting factors rendering existing facilities or towers unusable. The documentation submitted must use technological and written evidence, that these sites are inadequate to fulfill the grid needs of the wireless service provider, or that a reasonable co-location lease agreement could not be reached with the owners of said alternative sites.

The applicant shall submit an overall plan that shows the coverage gaps in service or lack of network capacity throughout the entire City and provide an indication of future needed/proposed wireless communication facilities, towers, and/or antenna.

The applicant shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall also provide documentation establishing the minimum height necessary to provide the applicant's services and the height required to provide for co-location. The study shall include coverage maps for the proposed monopole at the requested height and at ten feet descending intervals to 50 feet.

The Planning Commission or Governing Body at its discretion may require a third party analysis, at the applicant's expense, to confirm the need for the facility.

The applicant shall be responsible to provide timely updates of the above described study and information during the Special Use Permit process.

Since this is the renewal of an existing installation, the City has not required a study of alternative locations within a one-mile radius. The City has encouraged the use of existing structures in order to minimize the impact on the surrounding neighborhoods. The applicant has indicated that this installation is an important location in the continued service for its customers.

B. Multiple photo simulations of the proposed facility as viewed from the adjacent residential properties and public rights of way as directed by City Staff.

Since the antennas and equipment cabinets are currently installed, the applicant has not been required to submit photo simulation.

C. When possible, all wireless communication towers and alternative tower structures must be designed to accommodate multiple providers (co-location), unless after consideration of the recommendation of the Planning Commission, the City Council finds that the height or other factors required to make such an accommodation will have a more detrimental effect on the community than having multiple sites. Failure of a permit holder to negotiate in good faith to provide fairly priced co-location opportunities, based on industry standards may be grounds for denial or revocation of the Special Use Permit. A signed statement shall be submitted indicating the applicant's intention to share space on the tower with other providers.

The agreement between the carrier and the City will not prohibit other providers from placing antennas on the tower.

D. Any application for construction of a new wireless communication facility, tower, and antenna or equipment compound must provide a detailed site plan of the proposed project. This properly scaled site plan will include one page (including ground contours) that portrays the layout of the site, including the proposed facility, the fall radius of any proposed monopole, as well as proposed and existing structures within 200 feet of the tower base and the identification of the specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate. Access to and from the site, as well as dimensioned proposed and existing drives, must be included on this plan. Detailed exterior elevations (from all views) of the tower, screening wall, and all proposed buildings must also be submitted. Finally, a landscape plan detailing location, size, number and species of plant materials must be included for review and approval by the Planning Commission.

The installation is in place and the 2004 Site Plan will be reincorporated in the Conditions of Approval. Therefore, specific Site Plan review and approval is not necessary. It should be noted that a new equipment compound was constructed and additional plantings were installed as a part of the original approval in 2004.

E. Description of the transmission medium that will be used by the applicant to offer or to provide services and a statement that applicant will meet all federal, state and city regulations and law, including but not limited to FCC regulations.

The applicant shall provide an engineer's statement that anticipated levels of electromagnetic radiation to be generated by facilities on the site, including the effective radiated power (ERP) of the antenna, shall be within the guidelines established by the FCC. The cumulative effect of all antennas and related facilities on a site will also comply

with the radio frequency radiation emission guidelines established by the FCC. An antenna radiation pattern shall be included for each antenna.
Not applicable. The facility is already installed.

F. Preliminary construction schedule including completion dates.
Not applicable. The facility is already installed.

G. The applicant shall provide a copy of its FCC license
Submitted with previous renewal.

H. Copies of letters sent to other wireless communication providers and their response regarding their interest to co-locate.
Not applicable since it is an existing structure with multiple carriers.

I. Any other relevant information requested by City Staff.
None requested.

Site Plan Approval

The Planning Commission conducted the following review of the site plan criteria:

A. The character of the neighborhood.

The tower is located behind City Hall and is surrounded by public uses. Shawnee Mission East High School is to the north and the Municipal Complex is on the east, south and west sides.

B. The zoning and uses of property nearby.

The City Hall site and all surrounding property is zoned R-1a Single-Family Residential. Shawnee Mission East High School is located to the north, Harmon Park is to the west and the Municipal Complex is located to the south and east.

C. The extent that a change will detrimentally affect neighboring property.

This is the renewal of an existing Special Use Permit that will not have a detrimental affect on neighboring property because the tower is entirely surrounded by public uses.

D. The relative gain to public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners.

This is an existing installation which will not create any hardship on adjacent landowners.

E. The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.

The new Wireless Communication Facilities ordinance requires that equipment compounds meet the minimum setbacks for principal structures in the district in which it is located and that towers setback from all property lines a distance equal to the tower height.

The side yard setback in the R-1A District is five feet and it appears that the compounds meet that requirement. The tower sets back more than 150 feet from the west, south and east property lines but is only about 22 feet from the north property line. Therefore, it will be necessary to grant setback waiver from the north property line in order to approve the renewal of this Special Use Permit. In order to approve a reduction or waiver, the Planning Commission and City Council must consider the following:

4. That there are special circumstances or conditions affecting the proposed cell tower installation;

This cell tower was constructed in 1991 prior to any cell tower standards and it is nonconforming and cannot be increased or enlarged without approval of a waiver.

This means that no new carriers and no additional equipment can be put on the tower and therefore technical modifications could be a problem.

It should be pointed out that this is a large public use area and is the type of location that the Planning Commission and City Council would prefer towers to locate.

5. **That the setback waiver is necessary for reasonable development of the cell tower installation or the landowners property;**
Because the cell tower facility and equipment compounds have already been developed, this is the best location for a tower that would not interfere with the other uses of the site.

6. **That the granting of the setback waiver will not be detrimental to the public welfare or cause substantial injury to the value of the adjacent property or other property in the vicinity in which the particular property is situated.**
This waiver is for an existing facility in a large public use area and the City has received no complaints since it was built in 1991. Also no neighbors appeared at the neighborhood meeting. The use to the north is a parking lot for Shawnee Mission East High School.

- F. **The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.**

This existing installation is located on a large publicly owned property and will have no adverse affect on the welfare or convenience of the public. The City has not received any complaints regarding this installation.

- G. **The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such as the special use will not cause substantial injury to the value of the property in the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will cause substantial injury to the value of property in the immediate neighborhood, consideration shall be given to:**

- a. **The location, size, nature and height of buildings, structures, walls, and fences on the site; and**
b. **The nature and extent of landscaping and screening on the site.**

The facility already exists and no modifications are proposed as a part of this application. Landscaping and screening are already in place. The facility does not have an impact on residential development because there is none close by.

- H. **Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.**

Off street parking will not be necessary for this particular use other than a parking space currently available for service people to maintain equipment. The parking that is provided on the site will be adequate for this need.

- I. **Adequate utility, drainage, and other such necessary facilities have been or will be provided.**

Since the improvements have already been made on the site, existing utility, drainage, and other facilities appear to be adequate.

- J. Adequate access roads or entrance and exist drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.**

The site and the equipment should require only service vehicles for installation and periodic maintenance and a service derive to the complex is adequate to meet this need.

- K. Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors or unnecessarily intrusive noises.**

The antennas and equipment do not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that would affect the general public.

- L. Architectural design and building materials are compatible with such design and materials used in the neighborhood in which the proposed facility is to be built or located.**

The tower is tall and industrial in appearance, but is typical of a type of facility that would be found on a municipal complex. The equipment compounds have been screened by a wall constructed of a brick that matches City Hall and landscaping has been provided to break up the wall façade.

- M. City Staff recommendations.**

It is the opinion of Staff that the proposed renewal of the Special Use Permit for Sprint favorably meets the Factors for Consideration and recommends that it be approved including the setback waiver subject to the pertinent conditions of the approval in 2004 and the new conditions contained in the new wireless communications facilities ordinance. Under the new ordinance, the Special Use Permit Renewal may be extended for ten years rather than five and it is recommended that this be done. Mr. Williamson added some of the initial trees have died need to be replaced and others added.

Trevor Wood stated the applicant would work with staff on the replacement and addition of trees as desired by the City.

Ron Williamson pointed out that the setback waiver should be addressed in a separate motion prior to consideration of the findings and action by the Planning Commission.

Dirk Schafer moved the Planning Commission find this application meets the requirements for a setback waiver and grant a waive for the tower from the north property line to reduce the required setback from 150 feet to the actual distance between the existing tower and the property line. The motion was seconded by Randy Kronblad and passed unanimously.

Marlene Nagel moved the Planning Commission find favorably on the findings of fact and recommend the Governing Body approve PC2009-17, the renewal of the Special Use Permit for wireless communication antenna at 7700 Mission Road by Sprint/Nextel subject to the following conditions:

1. The Special Use Permit renewal will be approved for Sprint. Additional carriers may locate on the tower subject to approval of a Site Plan by the Planning Commission and an amended Special Use Permit will not be required.
2. The approval of the Special Use Permit renewal shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas that that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required.
3. The antennas shall be painted a color that matches the tower and all wires that connect to the antennas shall be inside the tower.

4. There will be no security lighting installed around the base of the tower.
5. The applicant shall have a structural inspection of all the antennas and cables performed by a licensed professional engineer prior to every ten year renewal and submit it as a part of the renewal application. This has not been done yet for this renewal application and will need to be conducted and the findings submitted to the City prior to the application being forwarded to the City Council.
6. Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
7. The approved Site Plan, dated October 14, 2004 shall be reincorporated as the site plan for approval of this application.
8. The applicant may change out equipment boxes, cable and antennas provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official or his/her designee, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
9. The applicant shall not prevent other users from locating on the tower.
10. If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.
11. The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.
12. In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
13. In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
14. The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
15. The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
16. The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
17. In the event that a carrier transfers its facilities to another carrier or changes its name due to merger acquisition, etc., it will notify the City within 30 days of such change and

will provide a description of the service provider by that carrier. If modifications are required as a result of this change they will be approved by Staff unless in the opinion of Staff they are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval.

18. A setback waiver is hereby granted for the tower from the north property line to reduce the required setback from 150 feet to the actual distance between the existing tower and the property line which is approximately 22 feet.
19. The applicant shall maintain the pine trees that have been planted on the north and west sides of the equipment compound and if they die, shall replace them with a variety as approved by the Tree Board.

The motion was seconded by Dirk Schafer and passed unanimously

ORDINANCE 2219

AN ORDINANCE RENEWING A SPECIAL USE PERMIT FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF COMMUNICATION ANTENNAE AND RELATED EQUIPMENT BY SPRINT/NEXTEL ON THE PROPERTY DESCRIBED AS 7700 MISSION ROAD, PRAIRIE VILLAGE, KANSAS

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE:

Section I. Planning Commission Recommendation. At its regular meeting on October 6, 2009, the Prairie Village Planning Commission held a public hearing on PC2009-17, found the findings of fact to be favorable and recommended that the Governing Body approve the renewal of a Special Use Permit for the installation, operation and maintenance of antennae by Sprint/Nextel at 7700 Mission Road subject to the following conditions:

1. The Special Use Permit renewal will be approved for Sprint. Additional carriers may locate on the tower subject to approval of a Site Plan by the Planning Commission and an amended Special Use Permit will not be required.
2. The approval of the Special Use Permit renewal shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas that all the conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required.
3. The antennas shall be painted a color that matches the tower and all wires that connect to the antennas shall be inside the tower.
4. There will be no security lighting installed around the base of the tower.
5. The applicant shall have a structural inspection of all the antennas and cables performed by a licensed professional engineer prior to every ten year renewal and submit it as a part of the renewal application. This has not been done yet for this renewal application and will need to be conducted and the findings submitted to the City prior to the application being forwarded to the City Council.
6. Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of the notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the antennas, equipment cabinets and all appurtenances and restore the site to its original condition.
7. The approved Site Plan, dated October 14, 2004 shall be reincorporated as the site plan for approval of this application.
8. The applicant may change out equipment boxes, cable and antennas provided that the replacements are generally consistent with the approved plan. If change-outs are significantly different, as determined by the Building Official or his/her designee, a revised Site Plan shall be submitted to the Planning Commission for its review and approval.
9. The applicant shall not prevent other users from locating on the tower.
10. If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.
11. The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.
12. In the future, should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.

13. In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
14. The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
15. The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
16. The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
17. In the event that a carrier transfers its facilities to another carrier or changes its name due to merger acquisition, etc., it will notify the City within 30 days of such change and will provide a description of the service provider by that carrier. If modifications are required as a result of this change they will be approved by Staff unless in the opinion of Staff they are significant changes, then they will be submitted to the Planning Commission for Site Plan Approval.
18. A setback waiver is hereby granted for the tower from the north property line to reduce the required setback from 150 feet to the actual distance between the existing tower and the property line which is approximately 22 feet.
19. The applicant shall maintain the pine trees that have been planted on the north and west sides of the equipment compound and if they die, shall replace them with a variety as approved by the Tree Board.

Section II. Findings of the Governing Body. The Governing Body adopts by specific reference the findings of fact on PC2009-17 as contained in the minutes of the Planning Commission meeting of October 6, 2009, and approves the recommendations of the Planning Commission.

Section III. Granting of the Special Use Permit. Be it therefore ordained that the City of Prairie Village grant a Special Use Permit to Sprint/Nextel for antennae and related equipment at 7700 Mission Road, Prairie Village, Kansas subject to the nineteen specific conditions listed above.

Section IV. Take Effect. That this ordinance shall take effect and be in force from and after its passage, approval and publication in the official City newspaper as provided by law.

PASSED AND ADOPTED THIS __th DAY OF OCTOBER, 2009.

CITY OF PRAIRIE VILLAGE, KANSAS

By: /s/ Ronald L. Shaffer
Ronald L. Shaffer, Mayor

ATTEST:

/s/ Joyce Hagen Mundy
Joyce Hagen Mundy, City Clerk

APPROVED AS TO FORM:

/s/ Catherine P. Logan
Catherine P. Logan, City Attorney



PARKS & RECREATION COMMITTEE

Council Meeting Date: October 19, 2009

Committee Report: 2010 Parks Projects Prioritization Discussion

RECOMMENDATION

The Parks & Recreation Committee recommends the following 2010 park improvements subject to funding availability - to Franklin Park totaling \$1,510,600(est.): add parking to the existing lot, reconfigure parking along Roe by possibly installing pipe, new shelter, interpretive park history signs, new patio area with Gazebo, new grill, widen walking paths to 8 feet, new nature play area play stream, naturalize creek along Roe, spray area, develop tree replacement plan, more lighting, tuck point stone around rose garden, new restrooms, nature play area, field irrigation and art work;

To Weltner Park totaling \$350,500(est.) and contingent on the completion of the Cambridge Street realignment: new perimeter trail, relocate shelter, new play area, interpretive park history sign, develop tree replacement plan, more lighting, new park entry, more benches and trash receptacles and art work;

To Schliffke Park totaling \$212,500(est.): remove parking area, add 10ft trail with benches, new cantilevered outlook over bank at north end of Brush Creek, interpretive park history signs, develop tree replacement plan, more lighting and art work.

BACKGROUND

At the conclusion of the recent Parks Master Plan process the Parks & Recreation Committee approved a list of immediate park priorities. In order, those parks were - Franklin Park, Porter Park, Weltner Park, Schliffke Park and Bennett Park. Those priorities were based strictly on the quality of the improvements assuming only one park would be completed at a time and not based on the availability of funds.

When City Council approved the bonding of projects for 2010 to include \$2,000,000 for parks the Committee revisited their parks priorities and restructured them to fit the funding being made available. Due to the estimated cost of completing Franklin Park (\$1,510,600), the inclusion of Porter Park (\$852,700) in the 2010 projects would not be possible. Instead, the Committee voted to move up Weltner Park when they heard the street realignment of Cambridge (\$587,000) was scheduled into the list of bonded street projects. This also allowed Schliffke Park improvements to be moved up on the priority list for inclusion in the 2010 parks projects. At their October 14, 2009 meeting, the Parks & Recreation Committee unanimously approved the motion listed above.

DISCUSSION

The Parks & Recreation Committee is only a recommending body. City Council should discuss if they would like to amend or approve the committee's recommendations.

FINANCIAL IMPACT

The recommended items total \$2,073,600 which is \$73,600 over budget. The Committee recognizes this estimate will change once the projects go to design/bid and some items may need to be removed to bring project total within budget.

RELATED TO VILLAGE VISION

2. I. Enhancing Parks and Open Space

- CFS2.a. Preserve and protect natural areas.
- CFS2.b. Enhance parks for active and passive recreation through capital improvements such as landscaping, tree and flower planting, shelters picnic facilities, athletic fields, etc.

ATTACHMENTS

Individual park plans of Franklin, Schliffke and Weltner Parks. Copy of cost estimates for individual improvements in recommended parks.

PREPARED BY

Chris Engel

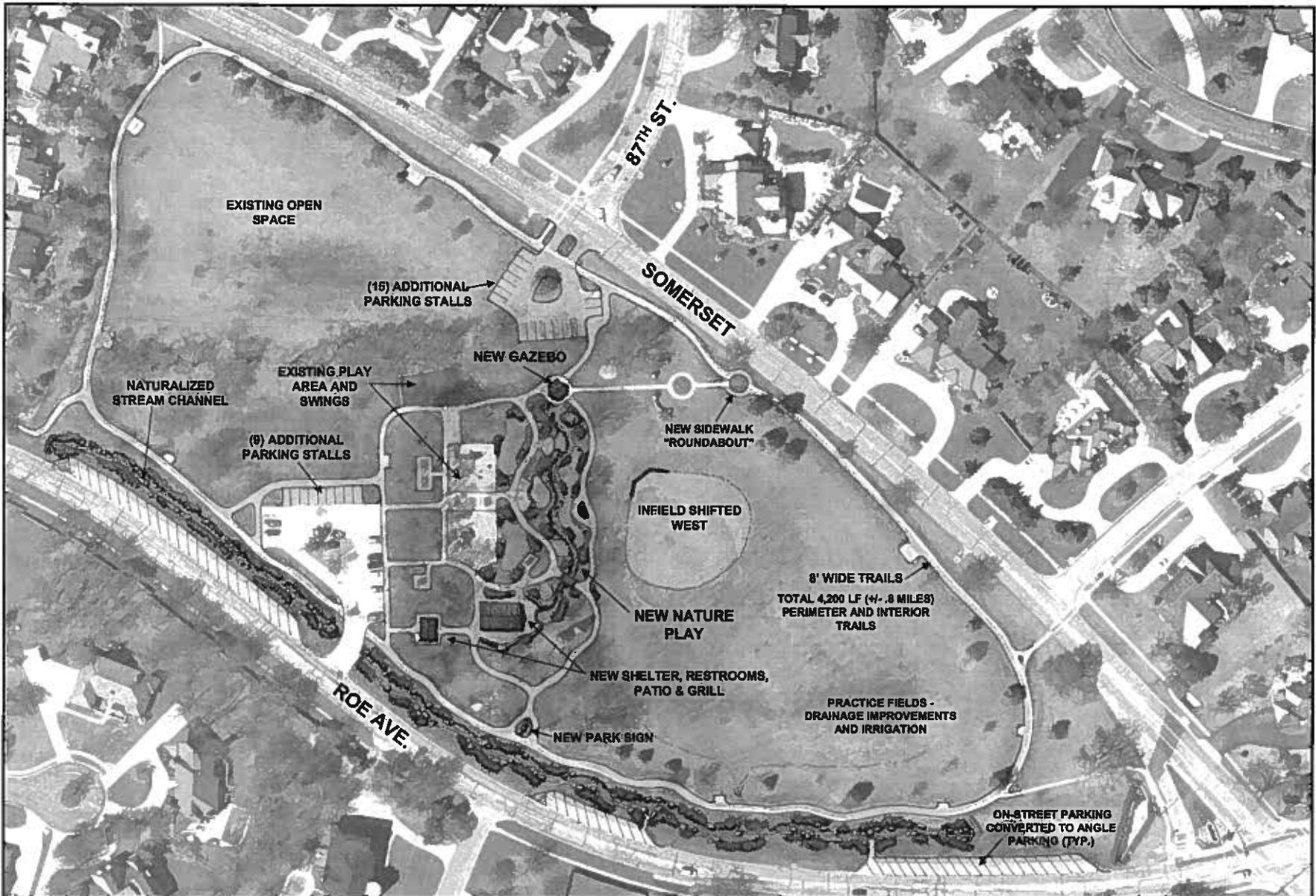
October 15, 2009

Individual Park Plans and Details

FRANKLIN PARK

FRANKLIN PARK

1. Add nine new parking stalls to the west side of the existing parking lot to maximize the usefulness of this parking area.
 - This addition should not adversely affect the open field/practice area to the west.
2. Convert Roe Blvd. on-street parallel parking to angle parking.
 - The parking count increase would be substantial, with no impact on the internal functions of the park.
 - May need to build a short wall (in some places) to extend the curb line 6-8' and raise the grade on east side of the creek channel.
3. Renovate the drainage channel/creek along the east edge of the park to a "naturalized" channel with vegetated banks and trees.
 - This will serve to improve the look of the park and also improve the storm water quality by filtering water as it moves down the creek.
4. Widen walking trails to 8', especially perimeter trails.
 - Approximate total length: 4,200', including perimeter and interior trails.
5. Install new large shelter, permanent restrooms, patio area, and grill to the east end of the play area.
 - This will greatly enhance the usefulness of the park for family and group gatherings and provide a useable area on rainier days.
 - Consider a pre-cast, pit-type facility for the restroom.
6. Develop a new play stream and nature play area between ball field and existing play equipment within the "north woods".
 - The play stream can be push button activated to provide water from a water source at the south pedestrian "roundabout" (south of rose garden).
7. Install a new gazebo at the south pedestrian "roundabout".
8. Add a 3rd sidewalk "roundabout" where rose garden path intersects the perimeter trail.
9. Move toddler/bucket swings closer to toddler play area (farthest east play structure). Add two more belt swings where existing buckets are, then move bucket swings to east side of play area.
10. Add two more drinking fountains in the central area of the park.
11. Shift the existing ball field about 15-20' west to maximize open play area and re-grade some areas for improved drainage.
12. Install drain system for low, wet spot @ far SE corner of park, inside walking trail.
13. Widen sidewalk coming into southwest corner of park and curve walk, in lieu of square corner.
14. Tuck-point the stone walls/columns at rose garden, especially tops.
15. Install an irrigation system for roses, and consider irrigation for open play areas to help with turf maintenance. The open play areas are under constant stress from heavy use.
16. Additional parking area possible at Somerset and 87th. A small lot would not interfere with open play areas.
17. Add more perimeter trail benches in south areas of the park to complement the new benches along the north sections of the trail.



EXISTING OPEN SPACE

(16) ADDITIONAL PARKING STALLS

NATURALIZED STREAM CHANNEL

EXISTING PLAY AREA AND SWINGS

(9) ADDITIONAL PARKING STALLS

NEW GAZEBO

87TH ST.

SOMERSET

NEW SIDEWALK "ROUNDBOAT"

INFIELD SHIFTED WEST

NEW NATURE PLAY

8' WIDE TRAILS
TOTAL 4,200 LF (+/- .8 MILES)
PERIMETER AND INTERIOR TRAILS

NEW SHELTER, RESTROOMS,
PATIO & GRILL

ROE AVE.

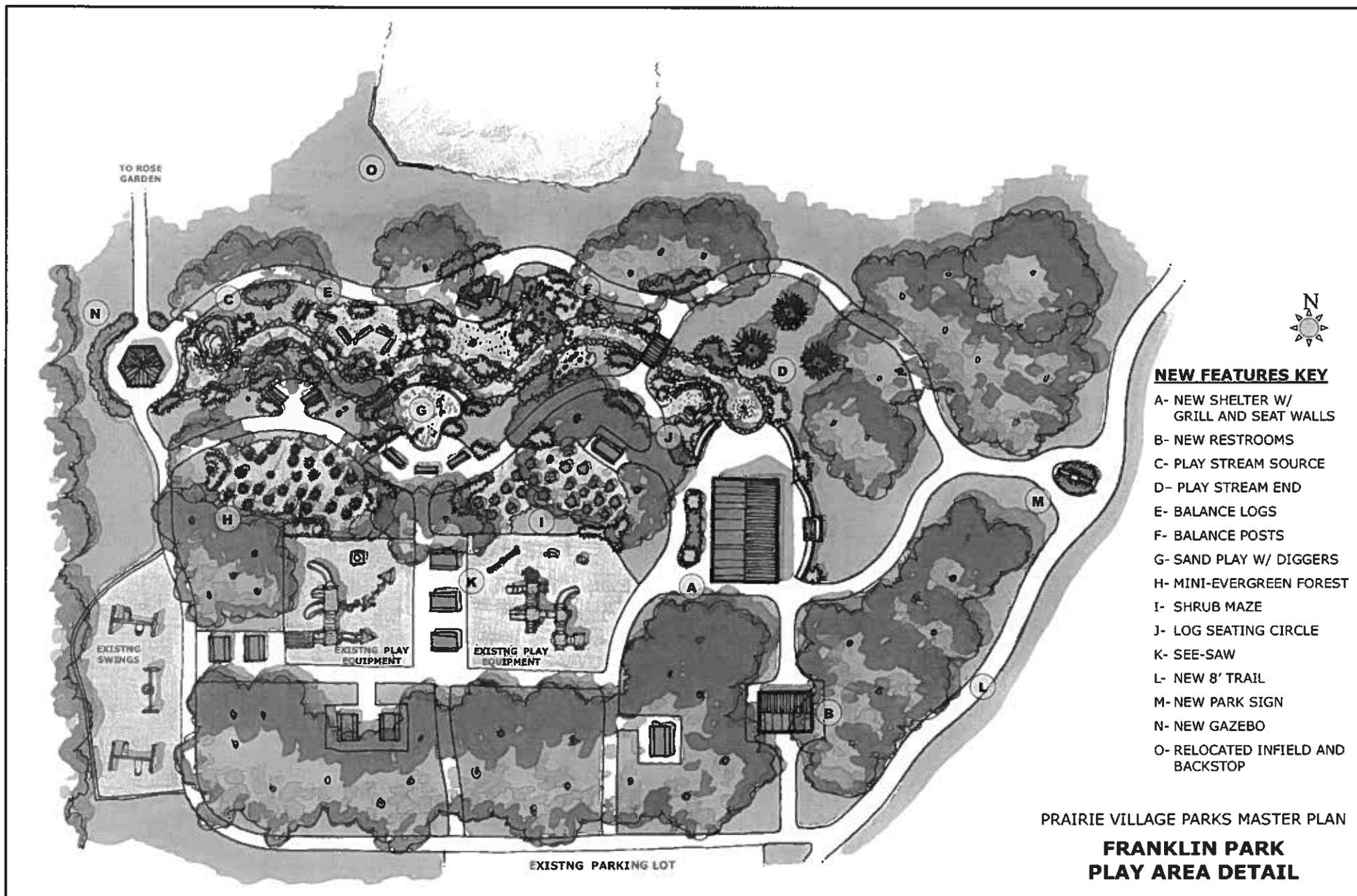
NEW PARK SIGN

PRACTICE FIELDS -
DRAINAGE IMPROVEMENTS
AND IRRIGATION

ON-STREET PARKING
CONVERTED TO ANGLE
PARKING (TYP.)



PRAIRIE VILLAGE PARKS MASTER PLAN **FRANKLIN PARK**



NEW FEATURES KEY

- A- NEW SHELTER W/
GRILL AND SEAT WALLS
- B- NEW RESTROOMS
- C- PLAY STREAM SOURCE
- D- PLAY STREAM END
- E- BALANCE LOGS
- F- BALANCE POSTS
- G- SAND PLAY W/ DIGGERS
- H- MINI-EVERGREEN FOREST
- I- SHRUB MAZE
- J- LOG SEATING CIRCLE
- K- SEE-SAW
- L- NEW 8' TRAIL
- M- NEW PARK SIGN
- N- NEW GAZEBO
- O- RELOCATED INFIELD AND
BACKSTOP

PRAIRIE VILLAGE PARKS MASTER PLAN
**FRANKLIN PARK
 PLAY AREA DETAIL**

SCHLIFFKE PARK

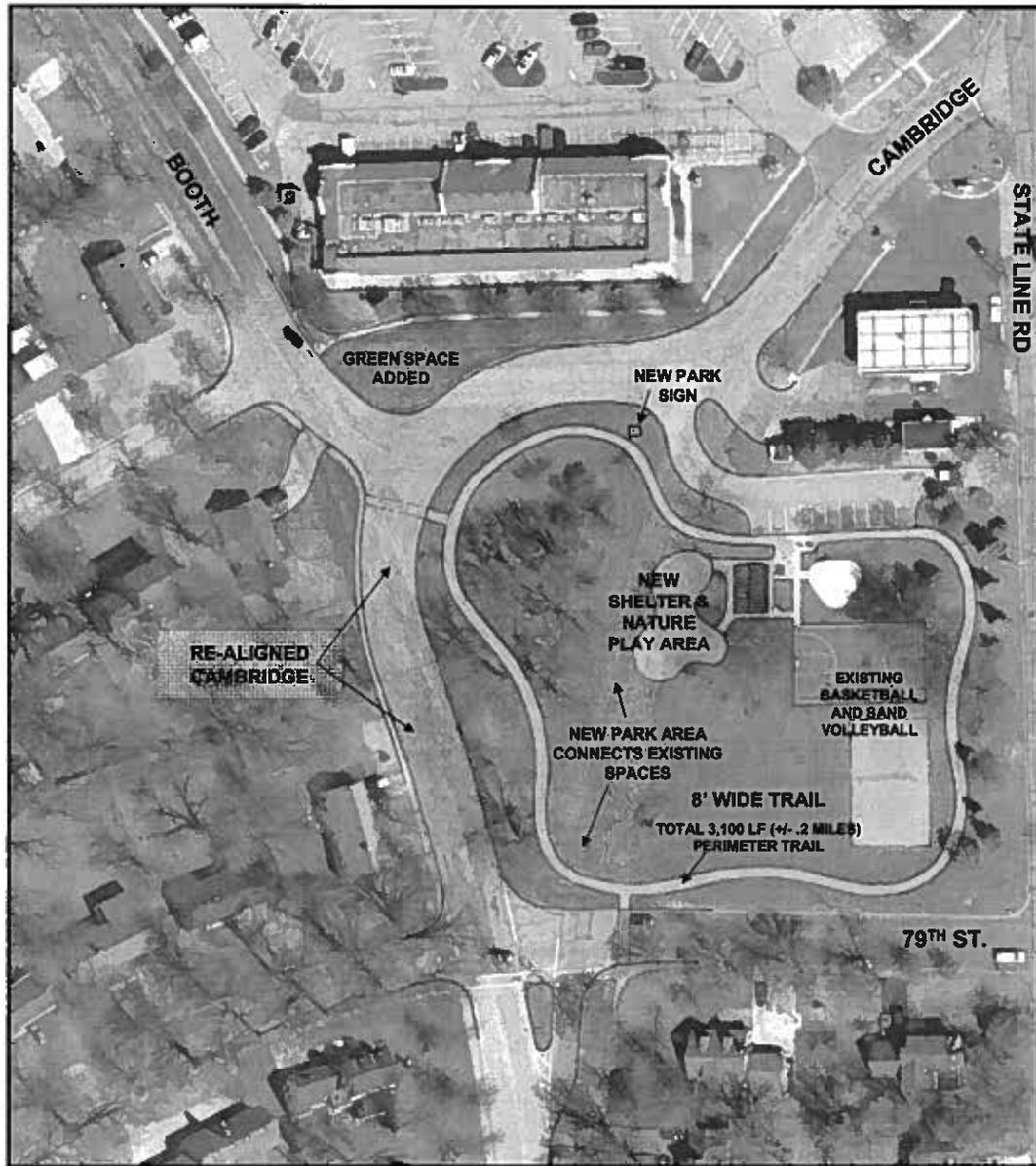
1. Remove parking lot and convert this park space to a trail corridor.
 - Approximate total length: 700'
2. Add benches along the trail.
3. Install a scenic overlook by cantilevering deck over creek bank at north end creek bend near Presbyterian church, allowing for views to the south and northeast.



PRAIRIE VILLAGE PARKS MASTER PLAN **PRAIRIE & SCHLIFFKE PARKS**

WELTNER PARK

1. Combine two halves of the park by re-aligning Cambridge Street around the west and north side of the park. This will allow the bisecting street to be vacated into green space and make the park land significantly more useable and accessible.
2. Once the park is consolidated, move the shelter to a location closer to the parking and other park features, which will increase its use.
3. Then, install a small play area, including some nature play features, near the shelter.
4. Install a new 8' wide perimeter trail around the new, combined park site.
 - Approximate total length: 1,100' for perimeter trail.



PRAIRIE VILLAGE PARKS MASTER PLAN **WELTNER PARK**

Park Master Plan Suggested Funding (Bold Italic numbers are PW estimate)

Park	2010
Total Projects (<i>italic dollars are Public Works estimate</i>)	2,073,600
Franklin Park	1,510,600
Add parking to existing lot	14,900
Reconfigure parking along Roe Avenue by possibly installing pipe	93,900
New shelter	255,200
Interpretative park history signs	4,000
New patio area with Gazebo	54,000
New grill	3,000
Widen walking paths to 8 feet	225,200
New nature play area to enhance play experience by building play stream	125,000
Naturalize creek along Roe Avenue	21,300
Ball field improvements	0
Spray area	125,000
Need new park signs with standards	0
Develop tree replacement plan in anticipation of losses due to tree age	12,000
More lighting	42,000
Tuck point stone walks and columns at rose garden	5,000
New parking area opposite 87 th Street	0
New restrooms	101,300
Field Irrigation	50,000
Nature play area	114,800
Art Work	12,000
Design and Construction Administration	252,000
Weltner Park	350,500
Re-align Cambridge Street and combine two halves of park	0
New perimeter trail	59,400
Relocate shelter	101,300
New play area	67,500
Interpretative park history signs	4,000
Need new park signs with standards	
Develop tree replacement plan in anticipation of losses due to tree age	6,000
More lighting	20,000
New park entry	24,300
More benches and trash receptacles	7,000
Art Work	3,000
Design and Construction Administration	58,000
Schliffke Park	212,500
Remove parking area that is used by commuters	35,400
Add 10 foot trail with benches	30,000
New scenic overlook of Brush Creek – cantilever over bank at north end bend	89,100
Need new park signs with standards	0
Interpretative park history signs	4,000
Develop tree replacement plan in anticipation of losses due to tree age	2,000
More lighting	15,000
Art Work	2,000
Design and Construction Administration	35,000



CODES DEPARTMENT

City Council Meeting Date: October 19, 2009

COU2009-103: Consider Resolution No. #2009-19 declaring that a Nuisance, pursuant to K.S.A. 12-1617e and Sections 4-503 of the Prairie Village Municipal Code, exists at 7578 High Drive and ordering the nuisance be abated by the property owner of record, Mark Birnbaum.

RECOMMENDATION

Staff recommends the Governing Body approve Resolution No. #2009-19 declaring that a Nuisance, pursuant to K.S.A. 12-1617e and Sections 4-503 of the Prairie Village Municipal Code, exists at 7578 High Drive and ordering the nuisance be abated by the property owner of record, Mark Birnbaum.

SUGGESTED MOTION

I hereby move that the Governing Body approve Resolution No. #2009-19

BACKGROUND

In May of 2003 the property owner, Mark Birnbaum, began collecting large quantities of miscellaneous items. These items were placed all around the front and back of his property. A Violation Notice was issued followed by two tickets for Debris and Storage in May 2003 with subsequent Court Proceedings through October of 2005. The items were placed in an inadequately constructed screening enclosure within the back yard.

The owner vacated the property in approximately 10/2005. The City staff has been in contact with him via e-mail, regular mail and telephone since 2006 with regards to subsequent violations on his property. Violation Notices and tickets along with pictures of the violations have been sent to the owner and delivery confirmed.

May of 2009 the Codes Department received complaints about the property due to the continued deterioration of conditions at the property. Tickets were again issued to the owner. Subsequent conversations took place between Mr. Birnbaum and Code Enforcement Officer Marcia Gradinger on July 17th, 24th, 28th, and August 17, 2009 regarding all violation issues at the property. On July 28, 2009 a certified letter was sent to Mr. Birnbaum outlining all violations and possible abatement proceedings.

The items left in the yard area, and the screening enclosure, have continued to deteriorate, in addition to the uncontrolled vegetation on the property. Such conditions are conducive to blight, rodent and insect infestation, and are a menace and dangerous to the health of the inhabitants of the surrounding properties within the neighborhood.

*Prairie Village Municipal Code 4-503, as defined in 4-502 (g)
"nuisance" allows the City to abate such violations with all costs assessed to the property owner and against the property as a lien if not paid by the owner. Such violations include but are not limited to; rank vegetation, unkempt trash, refuse, brush and limbs, debris or building material, and any other condition which is determined to present a dangerous or harmful condition to the public.*

It is therefore recommended by the Codes Department that the property be declared a Nuisance pursuant to PVMC Chapter 4 Article 5.

Staff has attached the applicable Municipal Code sections which outline the various individual violations along with applicable photographs for the Governing Body's information. Should the Governing Body decide to move forward, the following is the process to resolve the nuisance issues on the property.

PROCESS

- Governing Body reviews the information submitted and determines if a nuisance exists. Council would approve the attached resolution declaring the property a nuisance and ordering the property to be abated.
- Notice of Resolution of Nuisance is mailed to property owner, by certified mail.
- Owner has 10 days from the date of receipt of the Resolution to correct and remove/abate all nuisances on the property. All corrections/abatement by the owner must be in compliance with City Codes and approved by the Codes Department.
- Alternatively, the owner may within 10 days from the date of receipt of the Resolution, request, in writing to the City Clerk, a hearing before the Governing Body. If such request is filled then the hearing will be scheduled for the next regular meeting of the Governing Body.
- If owner fails to correct/abate nuisances or to request a hearing within the 10 days then the city will proceed with removal/abatement procedures.
- The City will take bids for removal/abatement of said nuisances from the property.

- After receipt of bids and approval of contractor and costs, the City will proceed to have all Nuisance violations removed from the property.
- Total costs for the removal/abatement of all nuisances on the property, including fees as provided in Section 4-504 and 4-505 of the Code of the City of Prairie Village will be assessed to the owner(s) or agent(s) of the property or as a tax lien against the property.

HISTORICAL TIMELINE OF EVENTS AND COMMENTS

04/25/03

Violation Notice issued by personal service
Debris and Storage of items.

05/14/03

Two tickets issued for Debris and Storage of items on the property.

06/03/03

PV Court
Plead Not Guilty

09/11/03

Prairie Village Court Trial
Guilty
\$500 Fine/ \$250 each count

Compliance

All items were placed within an enclosure built by Mr. Birnbaum and approved under conditions existing at that time/date.

09/29/03

Appeal Filed with County Court

03/08/04

District Appeal Court

Disposition

Guilty \$1000 Fine/ \$500 each count

- From the time of the original Violation Notice being issued on 04/25/03 to the final District Court disposition on 03/08/04 numerous, detailed conversations took place between Mr. Birnbaum, Code Officer Marcia Grading, and Doug Luther regarding the details of the violations, and correction requirements. Mr. Birnbaum also received copies of all applicable City ordinances.

09/19/05

Ticket posted at property / Storage

Additional miscellaneous items had been added into the enclosure and to the top of items already within the enclosure making them visible to adjacent properties and in violation of City Storage Ordinance.

10/04/05

PV Court—Guilty \$250 Fine

Compliance

Items relocated within structure to not be visible from the top.

10/2005

At approximately the end of October 2005 Mr. Birnbaum vacated the property spending the majority of his time out of state and returning on occasion for short periods.

06/06/06

Unauthorized Storage ticket issued via certified mail

- During the period from 10/2005 to 06/06/06, the original items stored and the original screening structure deteriorated. At some point in this time period more items were added to be stored on the property and screening materials were added to the original screening structure.

On 06/16/06 an e-mail was received from Mr. Birnbaum confirming receipt of the Court Citation, and indicating he had at some point been at the property but departed on 05/04/06.

07/2006

Failed to Appear in Prairie Village Municipal Court
Warrant Issued

- Between 06/06/06 and 07/25/06 there were 14 e-mails between myself, Doug Luther and Mr. Birnbaum regarding, violations, correction requirements and court appearances.
- On 1/25/07 an e-mail was sent to Mr. Birnbaum inquiring of his intent to return and take care of violations. No response.

07/08/09

Complaint filed with the Codes Department regarding conditions at 7578 High Dr.

07/10/09

3 Tickets issued via certified mail

- Inoperable Vehicle. Flat tire and expired 03/07 tag.
- Deteriorated Roof
- Trash & Debris (Items in back yard and in “storage” area.)

07/17/09

Mr. Birnbaum contacted me by phone regarding the 3 tickets he received. I explained the conditions of the property, related violations and correction requirements. He requested I meet with his lawn person at the property to review what needed to be done with the overgrown vegetation.

07/23/09

Property perimeter vegetation cut to code and some vegetation within the screening enclosure, however, most vegetation within the screening enclosure was unable to be cut due to the amount of deteriorated items stored within which impeded mowing.

07/24/09

Codes Officer s/w Mr. Birnbaum by phone and discussed the remaining vegetation violation and the nature of the items preventing the removal of the vegetation. Violations of Trash & Debris of all deteriorated items in back yard and within the enclosure, the condition of the roof and the inoperable vehicle in the driveway as well as the tickets/warrant pending in Municipal Court were once again discussed with Mr. Birnbaum. Mr. Birnbaum stated he did not know when he could make arraignments to return and take care of but he might be back in October.

Between 07/17/09 and 08/17/09 Codes Officer had 5 phone conversations with Mr. Birnbaum regarding the conditions at his property in violations of City Codes, and all correction requirements and possible City action. Pictures of the property were also sent to him by the codes Department.

07/28/09

A letter was sent to Mr. Birnbaum by certified mail and e-mail (enclosed) outlining the discussion with him on 7/24/09 regarding the violations at his property and possible City action to be taken.

08/18/09

Fail to Appear Warrants issued for tickets issued on 07/10/09

10/15/09

No further correction action has been taken by property owner to remove/abate nuisances.

ATTACHMENTS

- Photos
- Municipal Code, PVMC Article 5, Nuisances
- Resolution 2009-19

PREPARED BY

Marcia Gradinger, Code Enforcement Officer

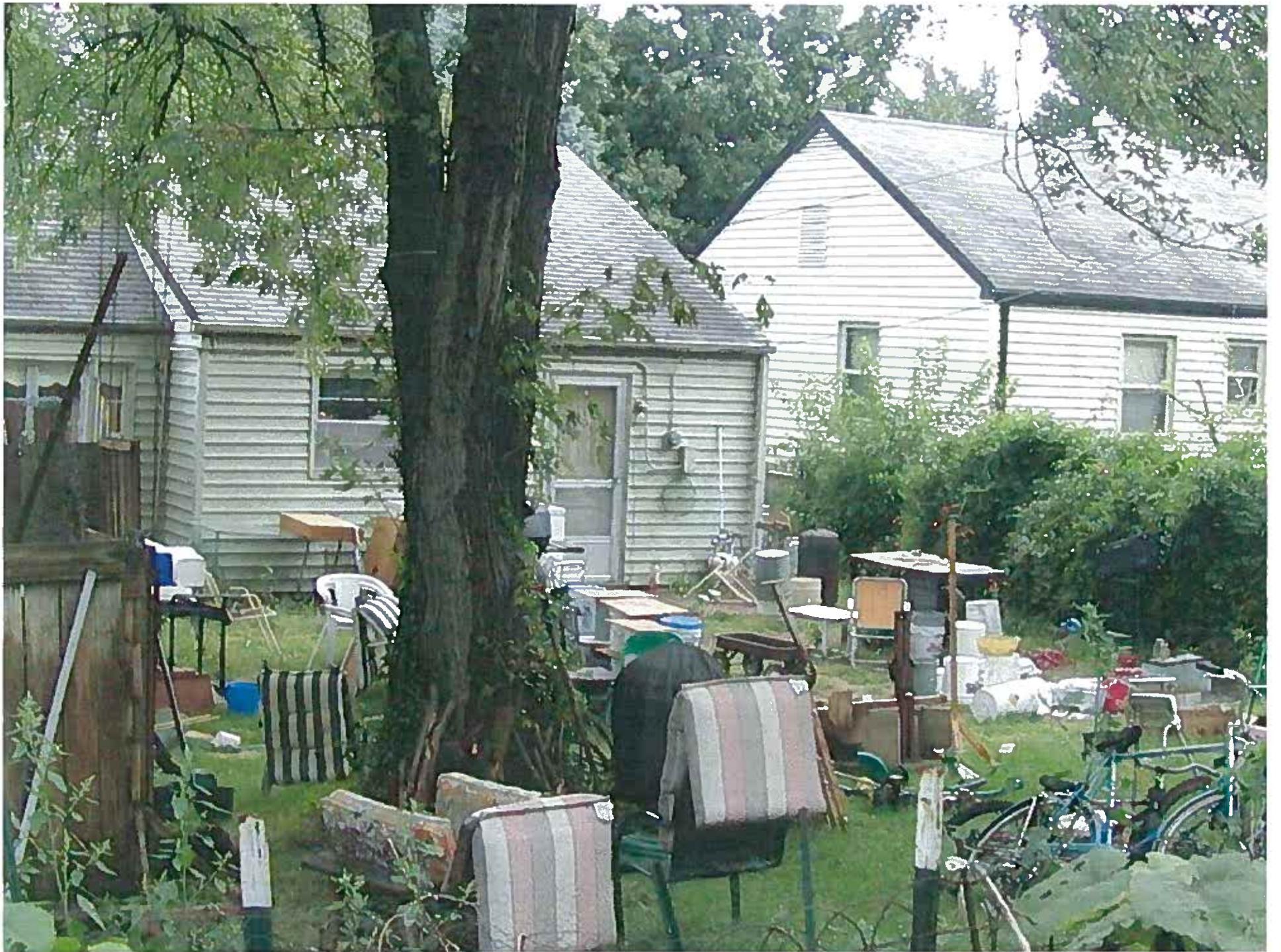
Jim Brown, Building Official

Date: October 15, 2009

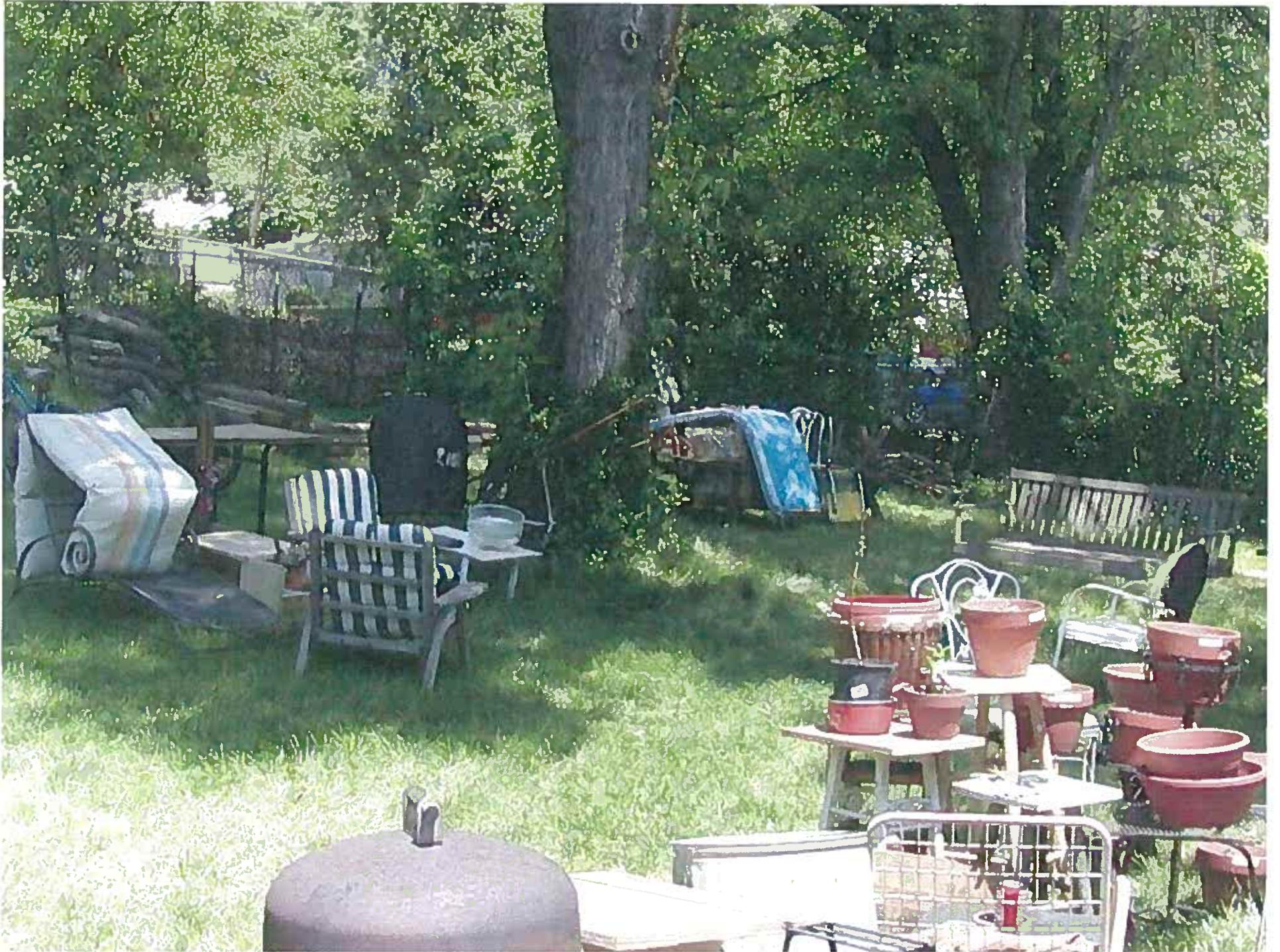
7578 High Dr

Court Date

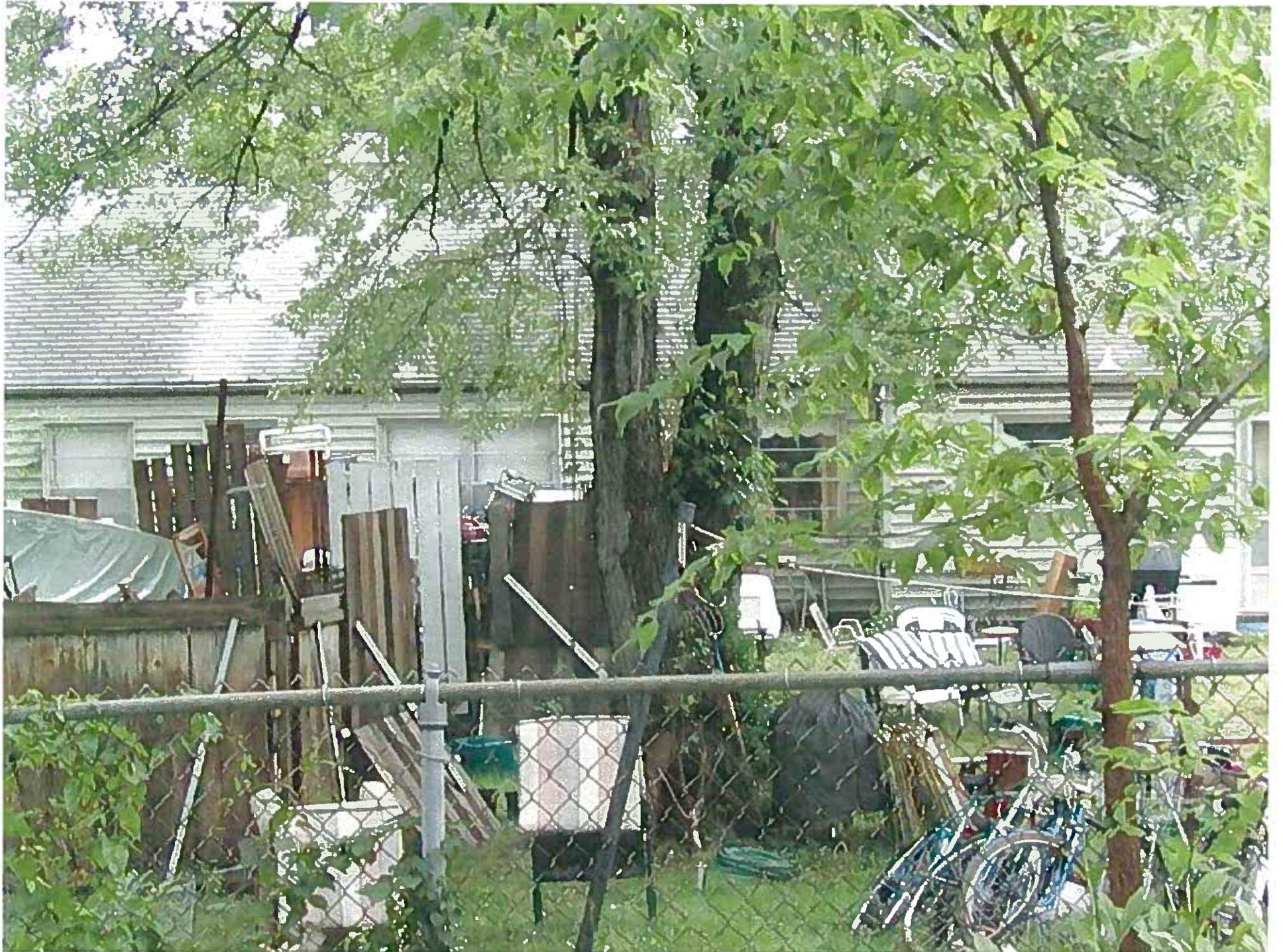
Condition of Property June 2003





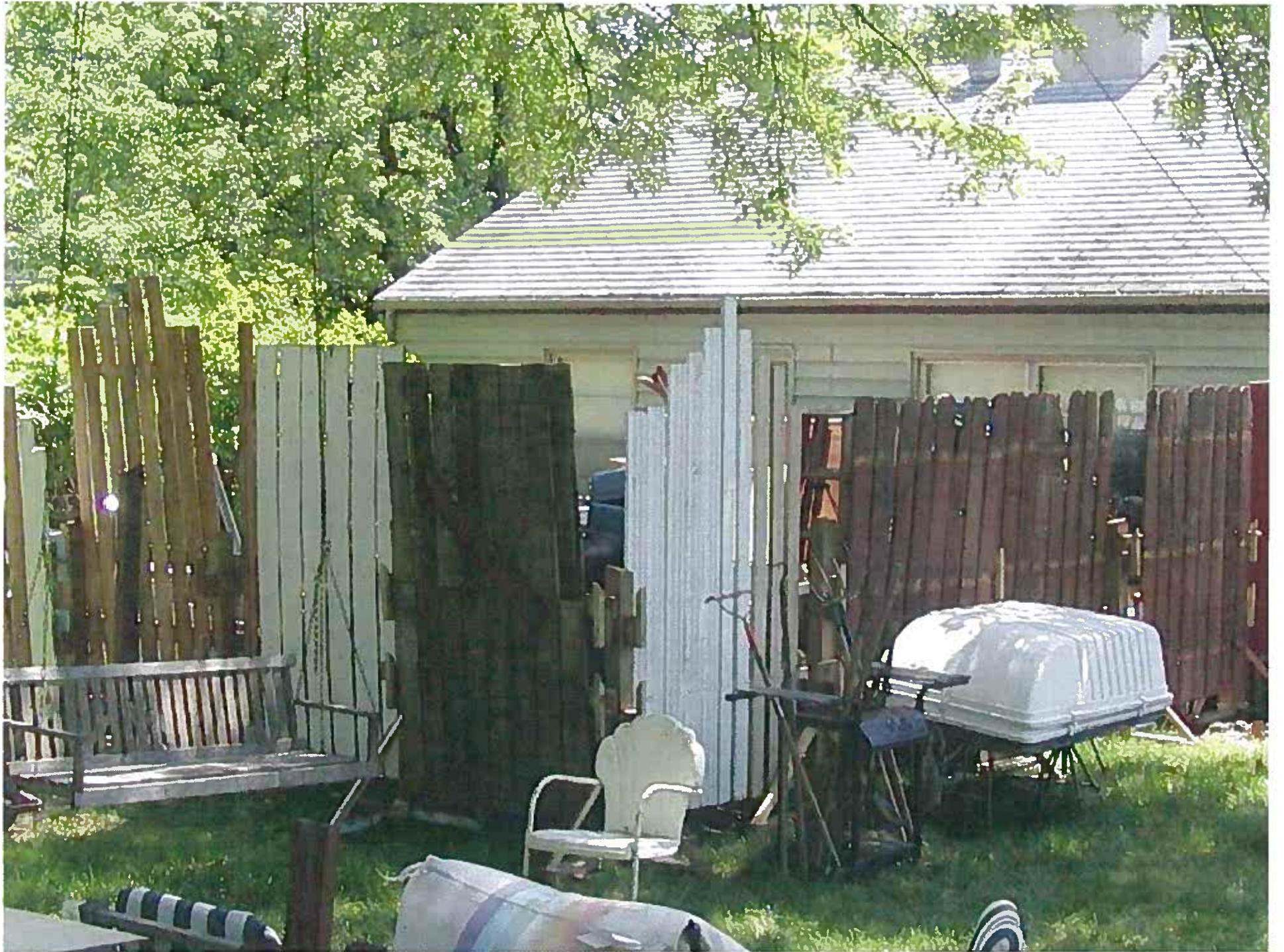










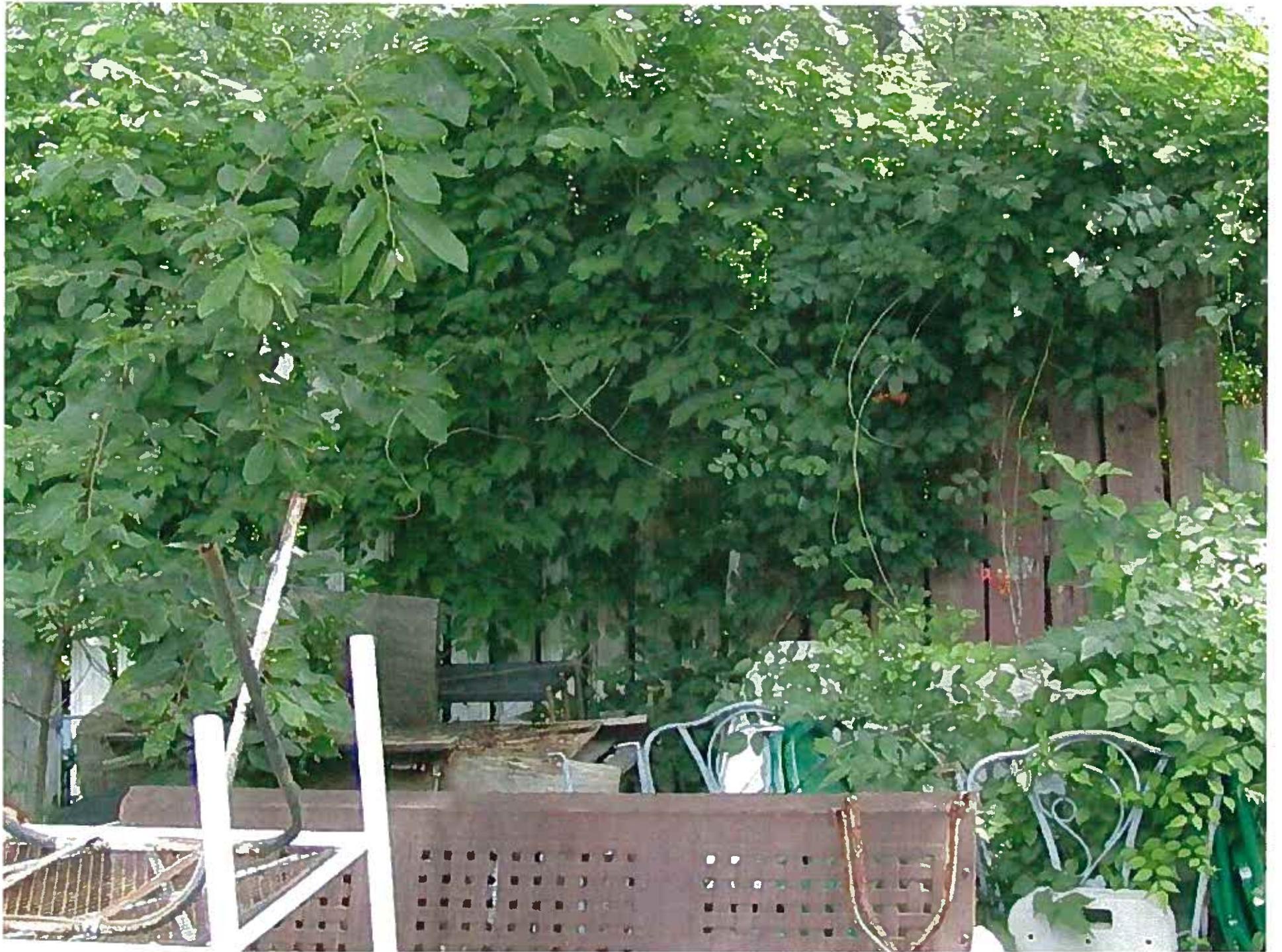


7578 High Dr

July 2009

- 3 Tickets Issued
- Weed Violation Notice was served via Certified mail.







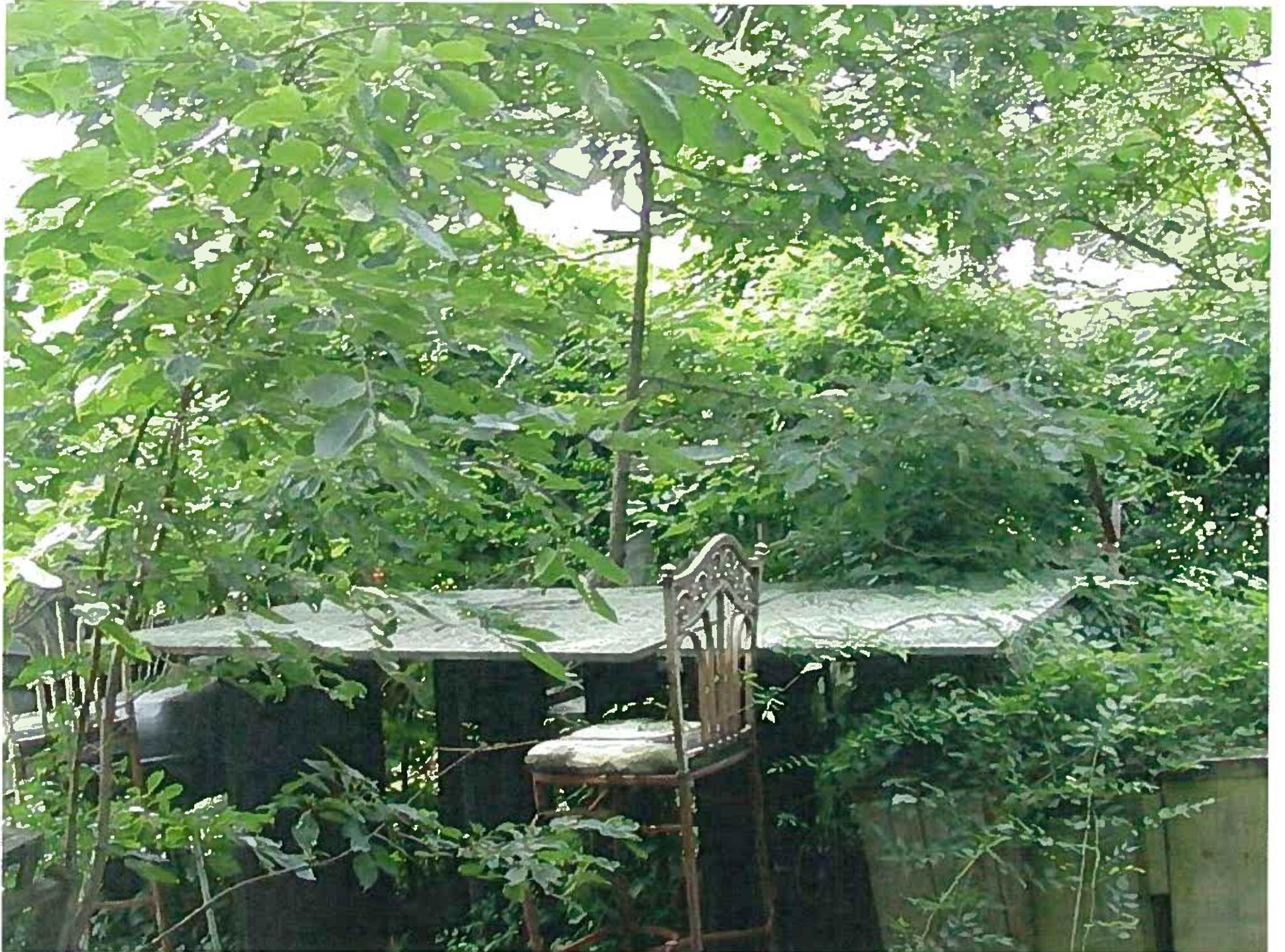














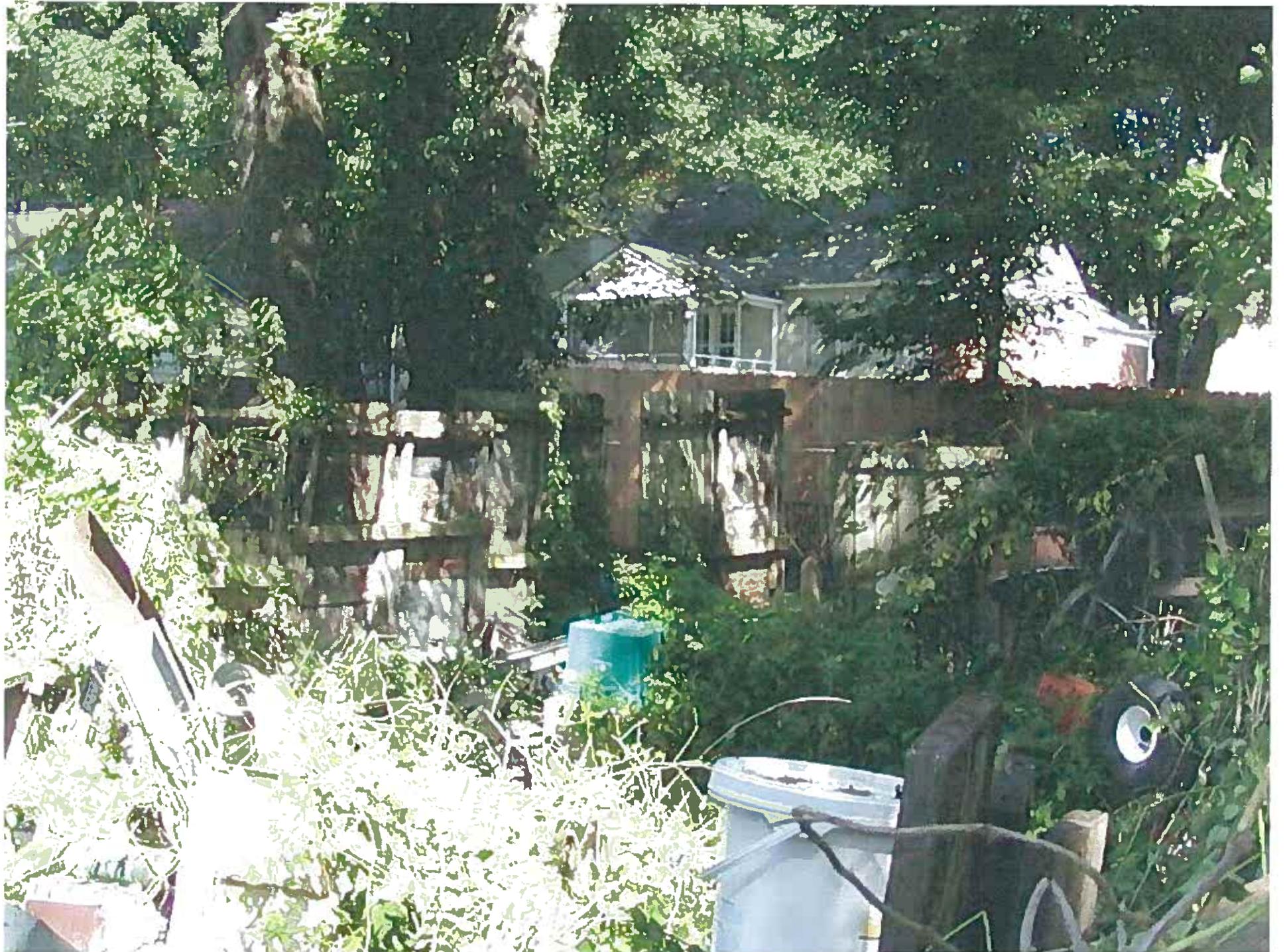
7578 High Dr

7/22/09

Condition of Property After owner hired contractor to cut weeds & overgrowth of vegetation.

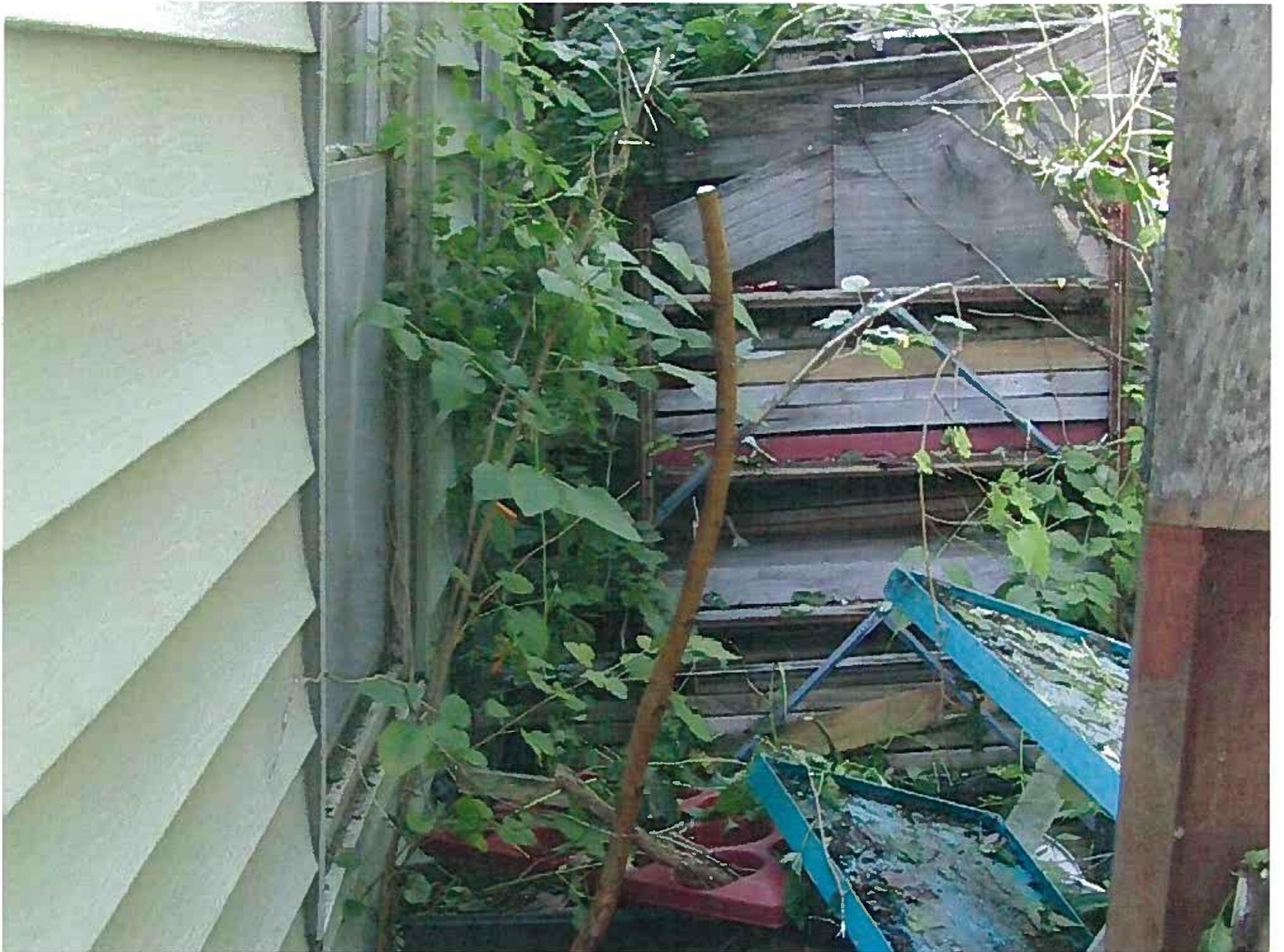
(Contractor unable to remove all overgrowth and weeds due to debris.)









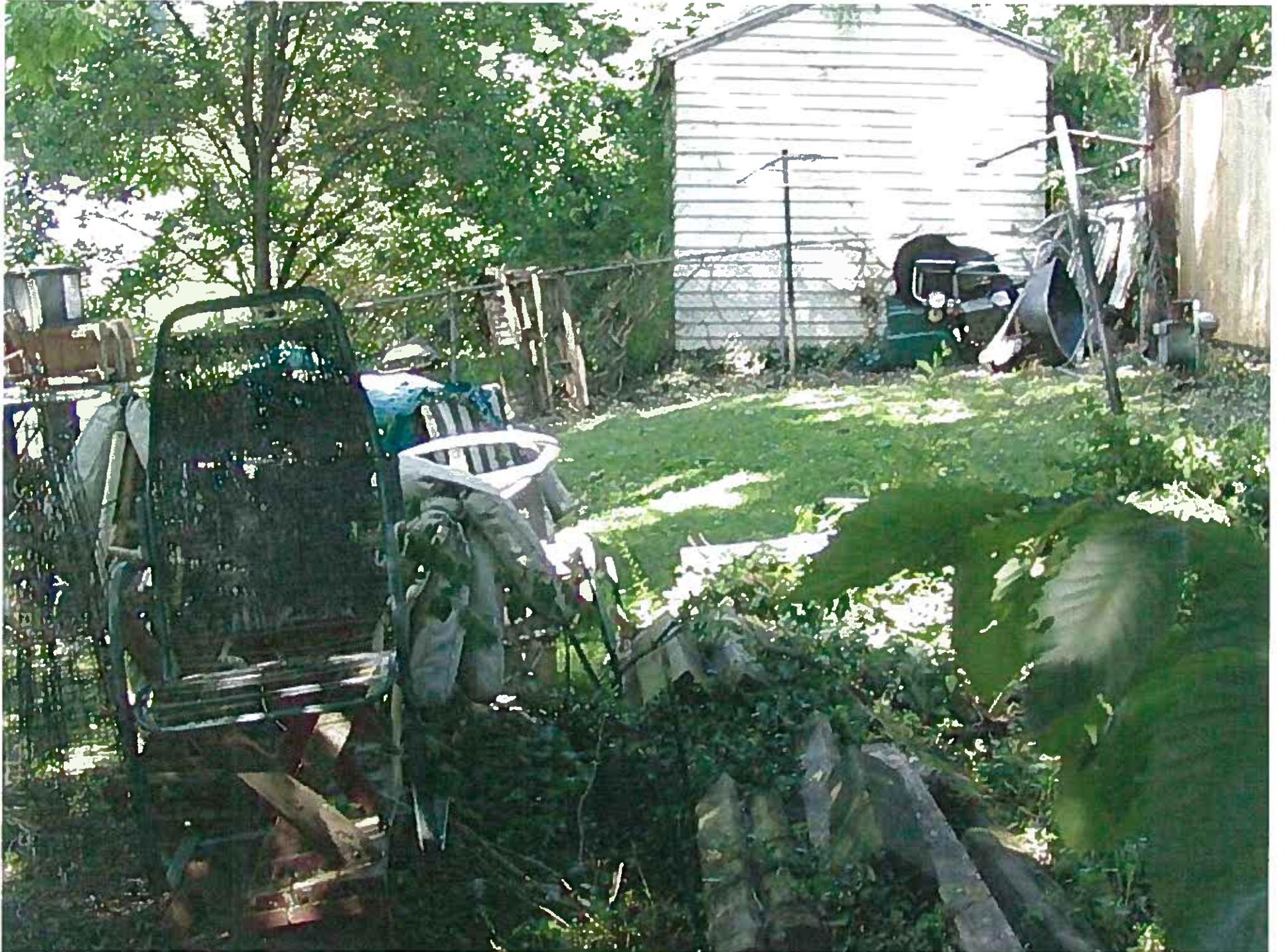














ARTICLE 5. NUISANCES AND UNSAFE STRUCTURES

4-501. LEGISLATIVE FINDINGS.

- a) The purpose of this Article is to provide reasonable controls restricting and prohibiting the allowance of nuisances and unsafe structures to exist on property within the City; to declare that certain conditions constitute public nuisances or structures, which are unsightly, are a menace and dangerous to the health of the inhabitants of the City, or of any residential or commercial area and the residents thereof, and are offensive to the general public health, safety and welfare of the community; to provide a method of enforcement of this article; to provide procedures to notify property owners or those in control of real property that a violation exists and to allow for self-abatement by such person; to provide property owners, or those in control of real property, notification and an opportunity to be heard concerning violations of this article; to provide administrative procedures to allow the City to direct the abatement of violations; to provide a method of assessment or collection of costs for abatement by the City; to declare that the existence of such violations are unlawful; and to provide penalties for enforcement through the municipal court system.
- (b) The Governing Body of the City hereby finds that the allowances of nuisances and unsafe or dangerous structures, as defined herein, on private property or adjacent rights-of-way or easements are public nuisances which are unsightly, a menace dangerous to the health of the inhabitants of the City, of the residential or commercial area and the residents thereof, and are offensive to the general public health, safety, and welfare of the community. Such nuisances or unsafe structures promote conditions which may cause disease; pollution; proliferation of rats, vermin, mosquitoes and snakes; the spread of fire a harmful environment for transients and to the community as a result of transient use; harmful attractions for children; creates short and long-term impacts on the area including the diminution of property values and the integrity of the neighborhood; and interferes with the orderly development of property in the City. (Ord. 1845, Sec. 1, 1994)

4-502. DEFINITIONS. For purposes of this article, the following definitions shall apply:

- (a) City -- The City of Prairie Village, Kansas.
- (b) Property Owner -- The named property owner as indicated by the Register of Deeds or Appraiser's Office in Johnson County, Kansas.
- (c) Representative -- Any person or entity listed in the Johnson County, Kansas Appraiser's Office or Treasurer's Office for the purposes of paying taxes; a registered agent with the Kansas Secretary of State's Office for corporate or partnership ownership; an agent or manager directed by the property owner, estate, or court order to represent the interests of the property or to otherwise control activities on the real property; or a corporate officer;
- (d) Person -- Any individual; individuals' partnership; corporation; unincorporated association; other business organization; committee; board; trustee; receiver; agent; or any representative who has charge, care or responsibility of maintenance of any property, lot or parcel of land regardless of status of owner, tenant or lessee and regardless of whether such person has possession;
- (e) Tenant -- Any person who has a severable or nonseverable interest in the real property either oral or written lease or covenant or by other methods of conveying a limited interest in such lands; or by any person who occupies or has possession of such real property;

- (f) Perennial Violator -- Any person who shows an annual pattern of failing to comply with this article which may be shown by repeated notices of abatement, notices of costs, or previous violations of this article;
- (g) Nuisance -- Any condition which causes or creates an unreasonable interference with the rights of the general public and shall include, but not be limited to graffiti, rank vegetation; rank or infested compost heaps; dense smoke; excessive dust, ash or fine articles in the air; rank ponds or standing water including swimming pools, water receptacles and undrained areas; cesspools creating on or rising to the surface; rank odors; unkempt trash, refuse, brush and limbs, debris or building materials; rank sewage or septic system; excessive accumulation of animal waste; exposed animal carcasses after death; sheds, garages or other outbuildings allowing infestation of rodents or insects or left unsecured to allow the entry of animals, humans or the natural elements such as rain, hail and snow, or otherwise left unkempt or unsightly, except for outdoor dog or pet houses maintained in a clean and reasonable manner; trees, shrubs or plants which are dead, diseased or infested which present a harmful or dangerous condition to the public; exposed refrigerators or freezers or other appliances left unsecured; and any other condition which is determined to present a dangerous or harmful condition to the public;
- (h) Unsafe Structure -- Any structure or part of a structure which remains or is damaged to present a dangerous or unsafe condition to the public including, but not limited to, structures damaged by fires, damaged by natural events or elements such as wind, tornadoes, earthquakes, flooding or settling of the ground; damaged by insect infestation; damaged due to the failure to provide reasonable maintenance; structures occupied or unoccupied which have broken windows, missing boards or siding, unsecured doors, or unsecured openings which allow the harboring of animals, insects, transients or create an attraction to children; structures which, due to the opinion of qualified experts or inspectors, including but not limited to, fire, engineering, or architectural experts, present an unsafe or dangerous condition to those on or near the property; unfinished structures where no occupancy permit has been issued, and any building permit has lapsed for more than 30 days; structures which remain unfinished, or without an occupancy permit, after 18 months from the date of the first building permit and where no inspection for newly completed work has been requested from the city within the last 45 days;
- (i) Qualified Expert -- A person who is regularly employed to conduct structural inspections to comply with life, safety, mechanical, health and building codes or a licensed professional in the field of engineering or architecture.
- (j) Graffiti -- Any drawing, painting, writing, inscription, figure or mark, regardless of its content, of the type which is commonly known and referred to as graffiti, which is written, drawn, painted, sprayed, scratched or otherwise placed or affixed, regardless of the nature of the material used, on any wall, window, rock, building portion thereof, fence, gate, sign, other structure, tree or other real or personal property, either publicly or privately owned, and that is visible from any adjacent public or private property or public or private right-of-way.

(Ord. 1845, Sec. 1, 1994)

4-503.

NUISANCES OR UNSAFE STRUCTURES UNLAWFUL; RESPONSIBILITY TO ABATE. It shall be unlawful for any property owner, owner's agent or tenant of real property to allow or maintain a nuisance or unsafe structure on any lot or parcel of ground within the City, including any areas between the property lines of said

property and the center line of any adjacent street or alley including sidewalks, streets, alleys, easements and rights-of-way. The property owner, owner's agent or tenant shall be responsible for the removal or abatement of any nuisance or unsafe structure. (Ord. 1845, Sec. 1, 1994; Ord. 2076, Sec. 1, 2004)

4-504. ENFORCEMENT AGAINST NUISANCES; DESIGNATION OF OFFICER; NOTICE TO APPEAR; NOTICE OF ABATEMENT; HEARING.

- (a) The Building Official shall assist the Governing Body with the administration and enforcement of this article with regard to nuisances. The Building Official shall authorize the investigation of nuisances by his or her designated agents. If it is determined that a nuisance exists, then the Building Official shall file a written report with the Governing Body describing the situation, its location, and the circumstances supporting the determination that the matter is a nuisance. If the Governing Body concurs with the Building Official's report, it shall issue an Order of Abatement directing the property owner, owner's agent or tenant to remove and abate the nuisance within ten days.
- (b) The Order of Abatement shall state:
- (1) A common or legal description of the property, or both;
 - (2) That the property is in violation of this article;
 - (3) The nature of the nuisance, including relevant ordinances or statute, with sufficient information to reasonably enable the recipient to determine the nature of the violation to allow for self-abatement;
 - (4) That the recipient should remove and abate the nuisance within ten days of receipt of the order;
 - (5) That the recipient, upon written request, may obtain a hearing before the Governing Body or its designated representative, provided that such request is received by the City Clerk within the ten day period;
 - (6) That failure to comply with the order shall result in the city's right to remove and abate the nuisance with assessment of the City's costs being made against the property and the recipient;
 - (7) That failure to pay such assessment within 30 days of the City's notice of costs of such removal and abatement shall result in the filing of a tax lien against the property, or the filing for a personal judgment against the recipient, or both;
 - (8) That such violations are subject to prosecution, and that such prosecution shall be independent of the order of any enforcement of the order.
- (c) The Order of Abatement shall be served on the property owner, owner's agent or tenant by certified mail, return receipt requested, or by personal service; provided, any order served on a tenant shall also be served on the owner or owner's agent. If the property is unoccupied and the owner is a nonresident, then the order will be mailed by certified mail, return receipt requested, to the owner's last known address. If during the preceding twenty-four (24) month period the owner, owner's agent or tenant has failed to accept delivery or to otherwise effectuate receipt of a notice or order sent pursuant to this article, in addition to the methods of service described above, the Governing Body may serve on such person any further order by other methods, including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail; provided, if the property is unoccupied and the owner is a nonresident, any alternative notice provided for this paragraph shall be given by telephone communication or first class mail.

- (d) If a recipient of an order of Abatement makes a written request for a hearing within the ten day period, a hearing shall be immediately scheduled before the Governing Body or its designated representative. At such hearing, all relevant parties, interest holders and City officials shall be allowed to present evidence concerning the status of the property and the conditions creating the nuisance. Thereafter, the Governing Body or its designated representative may rescind, modify or uphold the Order of Abatement. In making such determination the Governing Body or its designated representative shall describe the relevant facts and specific statute or Code provisions being relied upon, and state any such other stipulations, methods of removal and abatement or orders as deemed necessary. If the Order of Abatement is either modified or upheld, the property owner, owner's agent or tenant shall be given a reasonable time to remove and abate the nuisance, not to exceed ten days.
- (e) If an authorized public officer determines that a violation of this article exists, he or she may issue a notice to appear in municipal court for such violation. No other procedures are required as a prerequisite to the issuance of a notice to appear. The imposition of any removal and abatement action described herein shall not preclude any appropriate prosecution or penalties. Likewise, the imposition of any prosecution or penalties shall not preclude any appropriate action described herein to remove or abate a nuisance or to collect removal and abatement costs. (Ord. 1845, Sec. 1, 1994; Ord. 2076, Sec. 1, 2004)

4-505. ABATEMENT OF NUISANCE BY CITY; NOTICE OF COSTS; ASSESSMENT AND COLLECTION.

- (a) If the recipient of the notice of abatement fails to comply with the Order of Abatement or, if appropriate, with any order after a hearing on the matter, then the City shall have the right to go onto the property to remove and abate the nuisance in a reasonable manner. It shall be unlawful for any person to interfere with or attempt to prevent the City or its agents from such action. The City and its agents shall not be responsible for damage to any real or personal property due to reasonable methods of gaining entrance onto the property or for damages to any real or personal property in the reasonable exercise of the removal and abatement of the nuisance. The City may use its own employees or contract for services to remove and abate the nuisance.
- (b) If the City removes and abates the nuisance, the City shall give a Notice of Costs to the property owner, owner's agent or tenant by certified mail, return receipt requested, stating the costs of such removal and abatement incurred by the City; provided, any notice served on a tenant shall also be served on the owner or owner's agent. The costs shall include the City's cost of providing the notice, including any postage. The recipient shall have thirty (30) days from the date of receipt of such notice to make full payment. The Notice of Costs shall state:
 - (1) The common or legal description of the property, or both;
 - (2) The nature of the nuisance, including relevant ordinances;
 - (3) The nature of the work performed to remove and abate the nuisance;
 - (4) The costs incurred for the abatement of the nuisance in either a lump sum or in an itemized form (including the cost of the notice);
 - (5) That payment is due and payable within thirty (30) days of receipt of the notice;
 - (6) That payment should be made payable to the City of Prairie Village, Kansas, by check or money order with no post-dating of the check, and



submitted to the City Clerk at City Hall with a written indication of the purpose of the payment and the address of the property where the nuisance occurred;

- (7) That failure to pay the entire amount within the 30 day period shall allow the City to file a tax lien against the property or to pursue litigation for recovery of the costs, or both; and
 - (8) That such additional remedies to recovery costs shall include additional amounts, including interest, court costs, attorney's fees, and administrative costs.
- (c) If the costs are not paid within the 30 day period, the costs shall be collected in the manner provided by K.S.A. 12-1,115 as amended, or shall be assessed as a special assessment against the property. The City Clerk at the time of certifying other City taxes, shall certify the unpaid portion of the costs, and the County Clerk shall extend the same on the tax roll of the county against the property, and it shall be collected by the County Treasurer and paid to the City as other City taxes are collected and paid. The City may pursue collection both by levying a special assessment, and in the manner provided by K.S.A. 12-1,115, as amended, but only until the full costs, including applicable interest, court costs, attorneys' fees, and administrative costs have been paid in full (Ord. 1845, Sec. 1, 1994; Ord. 2076, Sec. 1, 2004.)

RESOLUTION NO. 2009-19

A RESOLUTION DETERMINING THAT A NUISANCE EXISTS AT 7578 HIGH DRIVE IN THE CITY OF PRAIRIE VILLAGE, KANSAS AND THAT SUCH NUISANCE IS A MENACE, INTERFERES WITH THE RIGHTS OF THE GENERAL PUBLIC AND IS DANGEROUS TO THE HEALTH OF THE INHABITANTS OF THE CITY OF PRAIRIE VILLAGE, OR OF ANY NEIGHBORHOOD, FAMILY OR RESIDENT OF THE CITY PURSUANT TO SECTION 4-503 OF THE CODE OF THE CITY OF PRAIRIE VILLAGE, KANSAS AND K.S.A. 12-1617E

WHEREAS, on October 19, 2009, the Governing Body of the City of Prairie Village, Kansas (the "City") received information and evidence from staff members indicating that nuisance conditions may exist on real property commonly known as 7578 High Dr, Prairie Village, Kansas (the "property"); and

WHEREAS, the City desires to protect the public health, safety and welfare of its community and residents.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS:

Section 1. That it has been determined that the following conditions exist on the Property which is legally described as MEADOW LAKE LOT 16 BLK 20 PVC-0589 0136, Prairie Village, Johnson County, Kansas, Parcel ID# OP25000020 0016, and commonly know as 7578 High Drive, Prairie Village, Kansas, and that such conditions constitute a nuisance:

Conditions on the Property which constitute a nuisance include but are not necessarily limited to : the accumulation unkempt trash, excessive accumulation of items including but not limited to lawn equipment, building materials, lumber, buckets, bicycles, yard tools, wood, bricks, windows, doors, lawn furniture, chairs and chair padding, boards, fencing, and other assorted deteriorated miscellaneous items; inoperable vehicles, overgrown thickets of vegetation; rodent and mosquito infestation and generally unsightly, unsafe and unsanitary conditions of the Property for an unreasonably extended period of time.

Section 2. That it has been determined that he nuisance described herein is a menace and is dangerous to the health of the in habitants of the City, or of any neighborhood, family or resident of the City.

Section3. That the owner(s) of the Property, or agent(s) thereof, is hereby ordered to remove and abate from the Property the things herein described as a nuisance not later than ten (10) days from the date of service of a copy of this Resolution on such owner(s) or agent(s). This resolution shall serve as the Order of Abatement.

Section 4. That prior to the expiration of the ten (10) day period specified herein, the owner(s) of the Property, or agent(s) thereof, may request a hearing before the Governing Body by delivering a written request for hearing to the City Clerk. If a written request for hearing is made within such ten (10) day period, such hearing will immediately be scheduled at its next regularly scheduled meeting in the Prairie Village City Council Chambers, 7700 Mission Road, Prairie Village, Kansas.

Section 5. That in the event the owner(s) of the Property, or agent(s) thereof, fails to remove and abate from the Property the things herein described as a nuisance, by not later than the last day of the ten (10) day period specified herein, and in the event that no request is made for a hearing by such date pursuant to Section 4 hereof, the City may proceed to have the items described herein as a nuisance removed and abated from the Property.

Section 6. That in the event the City abates or removes the nuisance, the City shall give notice to the owner(s) or agent(s) thereof, the total cost for the abatement or removal incurred by the City. Such notice and the method of recovery of costs for the abatement or removal of the nuisance described herein shall be in compliance with the provisions of Section 4-504 ad 4-505 of the Code of the City of Prairie Village, Kansas and K.S.A. 12-1617e.

Section 7. The owner(s) of the Property, or agent(s) thereof, shall also be placed on notice that violations under the nuisance provisions are subject to prosecution, and that such prosecution shall be independent of this Order to Abate or any enforcement of this Order to Abate.

Section 8. That this resolution shall be served on upon the owner(s) of the Property or agent(s) thereof by certified mail, return receipt requested, or by personal service. If the property is unoccupied and the owner is a nonresident, then service shall be made by mailing this Resolution by certified mail, return receipt requested, to the last know address of the owner(s) of the Property.

Section 9. This resolution shall be in full force and effect after its adoption by the Governing Body of the City.

Adopted this day of October____, _____

Ronald L Shaffer
Mayor

ATTEST:

Joyce Hagen Mundy
City Clerk

APPROVED AS TO FORM:

Catherine P. Logan
City Attorney

MAYOR'S ANNOUNCEMENTS

Monday, October 19, 2009

Committee meetings scheduled for the next two weeks include:

Arts Council	10/21/2009	7:00 p.m.
Environment/Recycle Committee	10/28/2009	7:00 p.m.
Council Committee of the Whole	11/02/2009	6:00 p.m.
City Council	11/02/2009	7:30 p.m.

The Prairie Village Arts Council is pleased to announce the annual State of the Arts exhibit in the R. G. Endres Gallery for the month of October.

Flu shots have been rescheduled for **November 18, 2009** from 7:30 - 9:00 am at Public Works or 2:00 - 4:00 pm at City Hall. Flu Shots are available to Council Members for \$10.

The National League of Cities conference is November 10-14 in San Antonio, TX.

The Northeast Johnson County Chamber of Commerce Annual dinner is November 21st at 6:00 pm.

The Municipal Foundation will be hosting the annual Mayor's Holiday Tree Lighting on Monday, November 30th at Corinth Square from 6:00 - 7:30 pm.

The Johnson and Wyandotte Counties Council of Mayor Annual Holiday Social Dinner is December 2, 2009 at 5:30 pm at The Lodge at Ironwoods Park.

The Mayor's Holiday Volunteer Party is December 4, 2009 at 6:30 pm at Homestead Country Club.

The Municipal Foundation will be hosting a Gingerbread House Decorating Party on Sunday, December 13th at the Community Center at 2:00pm and 4:00 pm.

The 50th Anniversary books, **Prairie Village Our Story**, are being sold to the public.

INFORMATIONAL ITEMS
October 19, 2009

1. Planning Commission Minutes -September 1, 2009
2. Communications Committee Minutes - September 8, 2009
3. Park and Recreation Committee Minutes - September 9, 2009
4. Sister City Committee Minutes - September 14, 2009
5. Sister City Committee Minutes - September 21, 2009
6. Petition from citizens at 90th St. and Roe Ave - storm drainage
7. Letter of Appreciation
8. Joyce DiDonato article
9. Mark Your Calendars
10. Committee Agenda

PLANNING COMMISSION MINUTES SEPTEMBER 1, 2009

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, September 1, 2009 in the Council Chambers, 7700 Mission Road. Chairman Ken Vaughn called the meeting to order at 7:00 p.m. with the following members present: Bob Lindeblad, Dirk Schafer; Randy Kronblad and Marlene Nagel.

The following persons were present in their advisory capacity to the Planning Commission: Ron Williamson, Planning Consultant; Dennis Enslinger, Assistant City Administrator; Jim Brown, City Building Official; and Joyce Hagen Mundy, City Clerk/Planning Commission Secretary.

APPROVAL OF MINUTES

Dirk Schafer moved the approval of the minutes of July 7, 2009 as submitted. The motion was seconded by Marlene Nagel and passed unanimously.

PUBLIC HEARINGS

Chairman Ken Vaughn stated there would be two public hearings and reviewed the rules of procedure to be followed for the public hearings.

PC2009-11 Renewal of Special Use Permit for Wireless Communications Antenna & Related Equipment 5000 West 95th Street

Trevor Wood, with Selective Site Consultants 8500 West 110th St, Suite 300, represented Verizon Wireless in their request for renewal of the Special Use Permit for the installation of four whip antennas on the roof of the office building at 5000 West 05th Street. The original application filed by Cellular One, which has been acquired by Verizon Wireless, was approved in August, 1999 for a period of five years and renewed in 2004.

The initial application was for the installation of four whip antennas and in 2004, approval was granted to add panels to each of the whip antennas. All the equipment is located within the building. In 2005, Verizon designed modifications to this location for their new technology known as Long Term Evolution. This technology will require a third panel on each frame which will be located on the frame between the two existing whip/panel antennas.

The primary function of the added panels was to provide for what is referred to as "4th Generation Technology," or moving into the increased use of non-voice "Broadband" wireless services. Such technology primarily targets data transmission and manipulation with special emphasis on not only business and institutional functions, but private as well.

A neighborhood meeting was held on August 12, 2009 with no one attending. It was noted the City has not received any complaints on the installation since it was originally installed in 1999.

Randy Kronblad confirmed the photo simulation in the packet included the additional panel antenna.

Ron Williamson asked what the size of the new panel antenna was in relation to the existing antenna. Mr. Wood responded the existing antennae are slightly shorter at six inches and narrowed than the new antenna.

Ron Williamson noted the conditions of approval for the Special Use Permit renewed in 2004 were as follows:

1. The approval of the Special Use Permit shall be for a maximum of five years. At the end of the five-year period, and any subsequent five-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennae and that all the conditions of approval have been met. The permit may then be extended for an additional five years and new conditions may be required.
2. All equipment cabinets and wiring shall be contained within the building.
3. The whip and panel antenna and frames for mounting them shall be painted a color that blends with the sky so their visibility is minimized.
4. The applicant shall not prevent other users from locating on the building.
5. Any permit granted which is found to be in non-compliance with the terms of the special use permit will become null and void within 90 days of notification of non-compliance, unless the non-compliance is corrected. If the special use permit becomes null and void, the applicant will remove the antennae, equipment cabinets, and all other appurtenances and shall restore the site to its original condition.
6. The applicant shall provide a copy of the lease agreement to the City prior to obtaining a building permit.
7. The applicant shall comply with all state and federal regulations.

Mr. Williamson reviewed the application under the new Wireless Communications Facilities Ordinance, noting however, that since this was a renewal and was not a tower that a number of items in the ordinance are not application.

- A. **A study comparing potential sites within an approximate one mile radius of the proposed application area. The study shall include the location and capacity of existing towers, alternative tower sites, a discussion of the ability or inability of each site to host the proposed communications facility and reasons why certain of these sites were excluded from consideration. The study must show what other sites are available and why the proposed location was selected over the others. It must also establish the need for the proposed facility and include a map showing the service area of the proposed facility as well as other alternative tower site and antennas.**

If the use of exiting towers, alternative tower structures, and sites are unavailable, a reason or reasons specifying why they are unavailable needs to be set out and may include one or more of the following: refusal by current tower or site owner; topographical limitations; adjacent impediments blocking transmission; site limitations to tower or facility or tower; no space on existing facility or tower; other limiting factors rendering existing facilities or towers unusable. The documentation submitted must use

technological and written evidence, that these sites are inadequate to fulfill the grid needs of the wireless service provider, or that a reasonable co-location lease agreement could not be reached with the owners of said alternative sites.

The applicant shall submit an overall plan that shows the coverage gaps in service or lack of network capacity throughout the entire City and provide an indication of future needed/proposed wireless communication facilities, towers, and/or antenna.

The applicant shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall demonstrate how the proposed communication facility, will impact its overall network within the City of Prairie Village and adjacent cities on both sides of the state line.

The study shall also provide documentation establishing the minimum height necessary to provide the applicant's services and the height required to provide for co-location. The study shall include coverage maps for the proposed monopole at the requested height and at ten feet descending intervals to 50 feet.

The Planning Commission or Governing Body at its discretion may require a third party analysis, at the applicant's expense, to confirm the need for the facility.

The applicant shall be responsible to provide timely updates of the above described study and information during the Special Use Permit process.

Since this is the second renewal of an existing installation, the City has not required a study of alternative locations within a one-mile radius. The City has encouraged the use of existing buildings in order to minimize the impact on the surrounding neighborhood. The applicant has indicated that this installation is an important location in servicing their customers and has modified it to provide better services.

B. Multiple photo simulations of the proposed facility as viewed from the adjacent residential properties and public rights of way as directed by City Staff.

Since the antennas are installed, the applicant has submitted photos of the actual installation with the proposed third panel added to the photo. The photos show both the installations on the east and west ends of the building.

C. When possible, all wireless communication towers and alternative tower structures must be designed to accommodate multiple providers (co-location), unless after consideration of the recommendation of the Planning Commission, the City Council finds that the height or other factors required to make such an accommodation will have a more detrimental effect on the community than having multiple sites. Failure of a permit holder to negotiate in good faith to provide fairly priced co-location opportunities, based on industry standards may be grounds for denial or revocation of the Special Use Permit. A signed statement shall be submitted indicating the applicant's intention to share space on the tower with other providers.

The agreement between Verizon Wireless and the building owner will not prohibit other providers from placing antennas on the building.

- D. **Any application for construction of a new wireless communication facility, tower, antennae or equipment compound must provide a detailed site plan of the proposed project. This properly scaled site plan will include one page (including ground contours) that portrays the layout of the site, including the proposed facility, the fall radius of any proposed monopole, as well as proposed and existing structures within 200 feet of the tower base and the identification of the specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate. Access to and from the site, as well as dimensioned proposed and existing drives, must be included on this plan. Detailed exterior elevations (from all views) of the tower, screening wall, and all proposed buildings must also be submitted. Finally, a landscape plan detailing location, size, number and species of plant materials must be included for review and approval by the Planning Commission.**
Not applicable.

- E. **Description of the transmission medium that will be used by the applicant to offer or to provide services and a statement that applicant will meet all federal, state and city regulations and law, including but not limited to FCC regulations.**

The applicant shall provide an engineer's statement that anticipated levels of electromagnetic radiation to be generated by facilities on the site, including the effective radiated power (ERP) of the antenna, shall be within the guidelines established by the FCC. The cumulative effect of all antennas and related facilities on a site will also comply with the radio frequency radiation emission guidelines established by the FCC. An antenna radiation pattern shall be included for each antenna.
Not applicable.

- F. **Preliminary construction schedule including completion dates.**
Not applicable.

- G. **The applicant shall provide a copy of its FCC license**
Submitted with previous renewal.

- H. **Copies of letters sent to other wireless communication providers and their response regarding their interest to co-locate.**
Not applicable since it is a building and not a tower.

- I. **Any other relevant information requested by City Staff.**
None requested.

The Planning Commission reviewed the following factors in consideration of the application for renewal of the Special Use Permit for wireless communication antenna by Verizon Wireless at 5000 West 95th Street:

- A. **The character of the neighborhood.**
This building is located on the east edge of a commercial office complex at the intersection of 95th Street and Nall. Residences, an elementary school and a golf course surround the building on three sides.

- B. **The zoning and uses of property nearby.**
The property to the west is zoned CP-1 Planned Commercial and is occupied by a bank and offices; the property to the north and east is zoned R-1A Single-family and

is occupied by Meadowbrook Country Club; and the property to the south is in Overland Park, Zoned R-1 Residential and is occupied by Trailwood Elementary School and residences.

- C. The extent that a change will detrimentally affect neighboring property**
This is the renewal of an existing Special Use Permit that will not have a detrimental affect on neighboring property.
- D. The relative gain to public health, safety and welfare by destruction of value of the applicant's property as compared to the hardship on other individual landowners.**
This is an existing installation with a minor modification which will not create any hardship on adjacent landowners.
- E. The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.**
The proposed antenna installation meets all the setback, height and area regulations contained in the Zoning Ordinance.
- F. The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.**
This application will have no adverse affect on the welfare or convenience of the public. The applicant held a public meeting and no one appeared. The City has not received any complaints regarding this installation.
- G. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such as the special use will not cause substantial injury to the value of the property in the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will cause substantial injury to the value of property in the immediate neighborhood, consideration shall be given to:**
- 1. The location, size, nature and height of buildings, structures, walls, and fences on the site; and**
 - 2. The nature and extent of landscaping and screening on the site.**
- The installation of the antennas on this building has had relatively little impact and has not dominated the immediate neighborhood as to hinder development. It also should be pointed out that the neighborhood is totally developed and the only equipment that will be visible from the exterior are the whip and panel antennas. No landscaping or screening on the site is necessary.
- H. Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.**
Off street parking will not be necessary for this particular use other than a parking space currently available for service people entering the building to maintain equipment. The parking that is provided on the site will be adequate for this need.

- I. **Adequate utility, drainage, and other such necessary facilities have been or will be provided.**
Since there are not external improvements on the site, existing utility, drainage, and other facilities should be adequate.
- J. **Adequate access roads or entrance and exist drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.**
The site and the equipment should require only service vehicles for installation and periodic maintenance. The traffic generated by the use is so minimal that it will not create any additional congestion on the streets.
- K. **Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing processes, obnoxious odors or unnecessarily intrusive noises.**
The antennas and equipment do not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that would affect the general public.
- L. **Architectural design and building materials are compatible with such design and materials used in the neighborhood in which the proposed facility is to be built or located.**
The equipment that is utilized for this installation is contained within the building itself, and therefore does not create any issues of compatibility. The whip and panel antennas and the mounting frame do not blend architecturally with the building, but are typical of roof installations throughout the metropolitan area. They have been painted with a color to blend as well as possible with the sky.
- M. **City Staff recommendations.**
It is the opinion of Staff that the proposed renewal of the Special Use Permit favorably meets the Factors for Consideration and recommends that it be approved subject to the conditions of the renewal in 2004 and the new conditions contained in the ordinance. Under the new ordinance, the Special Use Permit Renewal may be extended for ten years rather than five and it is recommended that this be done.

Mr. Williamson also stated staff is recommending an additional condition that would allow for future renewals and new carrier applications to be handled as a site plan approval, not requiring an amendment to the Special Use Permit.

Chairman Ken Vaughn asked if there was anyone present to speak on this application; being none, he closed the public hearing at 7:07 p.m.

Randy Kronblad moved the Planning Commission upon finding favorably on the required findings of fact recommend the Governing Body approve the renewal of the Special Use Permit by Verizon Wireless for the installation at 5000 West 95th Street subject to the following conditions:

- 1) The approval of the Special Use Permit Renewal shall be for a maximum of ten years. At the end of the ten-year period, and any subsequent ten-year renewal periods, the applicant shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a need still exists for the antennas and that all the

conditions of approval have been met. The permit may then be extended for an additional ten years and new conditions may be required.

- 2) The installation includes two frames with two whip antennas and three panel antennas on each frame.
- 3) All equipment cabinets and wiring shall be contained within the building.
- 4) The antennas and the frames for mounting them shall be painted a color that blends with the sky so that their visibility is minimized.
- 5) The applicant shall not prevent other users from locating on the building.
- 6) If the antenna and equipment installation is not operated for a continuous period of twelve (12) months, it shall be considered abandoned and the owner of the installation shall remove the same within 90 days after receiving notice from the City. If the installation is not removed within that 90 days period, the Governing Body may order the installation removed and may authorize the removal of the same at the permittee's expense.
- 7) The installation shall be structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) and if it is found not to be in compliance with the terms of the Special Use Permit, it will become null and void within 90 days of notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the installation and all appurtenances and restore the site to its original condition.
- 8) In the future should the levels of radio frequency radiation emitted be determined to be a threat to human health or safety, the wireless communication installation shall be rectified or removed as provided for herein. This finding must be either mandated by any applicable law, by federal legislative action, or based upon regulatory guidelines established by the FCC.
- 9) In order to ensure structural integrity, the antennas shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such antennas that are published by the Electronic Industries Alliance.
- 10) The installation shall meet or exceed all minimum structural and operational standards and regulations as established by the FCC, FAA, EPA and other applicable federal regulatory agencies. If such standards and regulations are changed, then the installation shall be brought into compliance within six (6) months of the effective date of the new standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency.
- 11) The permit holder shall promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
- 12) A copy of the lease between the applicant and the landowner containing the following provisions:
 1. The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.
 2. The landowner shall be responsible for the removal of the communications facility in the event that the leaseholder fails to remove it upon abandonment.
- 13) The applicant shall obtain all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
- 14) Future renewals and additional carriers may locate on the building subject to the approval of a site plan by the Planning Commission and an amended Special Use Permit will not be required.

The motion was seconded by Bob Lindeblad and passed unanimously.

**PC2009-12 Revisions to the Prairie Village Zoning Regulations
Chapter 19.34 entitled "Accessory Uses"**

Ron Williamson stated at its regular meeting on July 7, 2007, the Planning Commission authorized the Staff to publish a notice to amend the Sections of the Zoning Ordinance relating to licensing of home occupations and home day care. The Planning Commission also directed the Staff to be sure that adult day care was addressed and it has been included in the proposed amendments. Kansas Statute limits the number of adults in day care homes to two.

Chapter 19.34 has lengthy and detailed requirements for licensing Home Occupations and Child Care Facilities. The problem is that regulations and procedures change and the Zoning Ordinance must be amended. Also, these requirements may be in conflict with the city licensing code and who actually issues the licenses. To simplify this situation, Staff would like to delete the text relating to the administrative process of licensing and just require that they be licensed. The administrative requirements would be contained in the licensing regulations. Text to be deleted is lined out and new text is shown in bold italics.

In order to accomplish this, Sections 19.34.010.C, D and E relating to Home Occupations would be deleted and replaced by a new Section 19.34.010.C that reads as follows:

19.34.010 Home Occupations as Accessory Uses; When Permitted in Districts R-1a, R-1b, R-2, R-3, RP-1, & RP-2, RP-3 and RP-4.

- A. Purpose and Intent. It is the purpose and intent of this section to:
 - 1. Maintain neighborhood integrity and preserve the residential character of neighborhoods by encouraging compatible land uses;
 - 2. Provide residents of the City with an option to utilize their residences as places to enhance or fulfill personal economic goals as long as the choice of home occupations does not infringe on the residential rights of neighbors;
 - 3. Establish criteria for establishing home occupations in dwelling units within residential districts;
 - 4. Assure that public and private services such as street, sewer, water or electrical systems are not burdened by home occupations to the extent that usage exceeds that which is normally associated with the residence;

- B. Standards for determining whether a home occupation will be permitted. Home occupations are permitted as an accessory use to a residence only when all of the following performance standards are met:
 - 1. Area of Use. Home occupations shall be entirely contained within the interior of a residence and shall not be located in garages or accessory structures on the site. No visible evidence of the home occupation shall be apparent from the street or surrounding area. A home occupation shall use no more than 20% of the total dwelling unit floor area, which does not include the floor area of the garage. Those home occupations which require occasional meetings using more than 20% of the floor space may be permitted, providing such meetings do not occur more frequently than once per month;
 - 2. Authorized Participants in the Home Occupation. The home occupation shall be conducted by family members residing on the premises with no assistance from other individuals or groups. The home occupation shall have no other employees, independent contractors, or any other entity working on or dispatched from the premises;

3. **Exterior Alterations of Residence; Storage of Equipment; Vehicles Used in Business:**
 - a. No home occupation shall require external alterations of the residence and its surrounding property or other visible evidence of the conduct of such home occupation, except for visitations, which are in compliance with the terms of 19.34.10. B. 8 and other provisions of the P.V. Municipal Code.
 - b. No storage or display of materials, goods, supplies, or equipment related to the operation of the home occupation shall be visible from the outside of the residence in which the home occupation is conducted.
4. **Advertising.** The home occupation shall not involve the use of advertising signs on the premises which call attention to the fact that the home is being used for business purposes;
5. **Sales, Repairs, Leasing:**
 - a. The commercial exchange of tangible goods or other items constituting a sale between the proprietor of a home occupation and a member of the general public shall not be permitted on the premises of a home occupation. Members of the general public shall not include persons in the home by prior individualized invitation. Visitations by such person must be in accordance with the limitations set out in 19.34.010. B. 8.
 - b. Visitations generated to or from a home occupation by customers with items to be, or which have been repaired, must be in accordance with the limitations set out in 19.34.010.B. 8.
 - c. Exchange of items in a lease agreement between the proprietor of a home occupation or an authorized participant shall not occur on the premises of a home occupation.
6. **Traffic and Parking.** If parking, deliveries or visitations for a home occupation occur in a manner or frequency causing disturbance to the normal traffic flow for the neighborhood the occupation shall be discontinued at that location;
7. **Regulation of Nuisances.** A home occupation shall not create excessive noise, dust or dirt, heat, smoke, odors, vibration and glare or bright lighting, which would be over and above that created by a single family residential dwelling. The production, dumping or storage of combustible or toxic substances shall not be permitted on the premises of the home occupation, except for the incidental storage of items such as paint, paper, and other household goods, which might, under certain circumstances, be toxic or combustible. Additionally, a home occupation shall not create interference or fluctuations of radio or television transmission;
8. **Visitations.** A home occupation may attract patrons, students or any business related individuals only between the hours of 7:00 a.m. and 9:00 p.m., weekdays. The home occupation shall generate no more than one (1) visitation at any given time, except in those instances where a home occupation consists of teaching, instructing or tutoring, in which event, no more than three (3) students shall be taught at one time and there will be no more than ten visitations (ten (10) arrivals and ten (10) departures) per day. All other home occupations shall also not generate more than ten (10) business-related visitations per day, which shall constitute ten (10) arrivals and ten (10) departures. These standards shall not be construed so as to prohibit occasional group gatherings, recitals, or demonstrations. However, such gathering shall not occur more frequently than once per month and must be held within the visitation hours specified in this chapter;

9. Compliance with Federal, State and Local Laws. Home occupations shall comply with all other local, state, and federal laws and regulations. The requirements for, and licensing of a home occupation under this section shall not be construed as an exemption from such regulations.
- ~~C. Application for a Home Occupation License; Inspection of the Premises.~~
- ~~1. Permitted home occupations shall be licensed with the City of Prairie Village. The applicant for a home occupation license shall submit to the Building Official a floor plan for the home occupation, as well as completed license application, on forms provided by the Building Official and the license fee as established by City Council. The applicant and owner will be required to complete an affidavit certifying that he or she understands the City performance standards with respect to the operation of home occupations. The applicant will also be required to agree to comply with such standards.~~
 - ~~2. The Building Official shall review the application for a home occupation license and shall, within ten (10) days from the date such application determine whether the proposed home occupation complies with the requirements and performance standards of this section. Any finding of noncompliance shall be set forth in writing and sent to the applicant.~~
 - ~~3. Any application for a home occupation license containing false information shall void the license from the date of the application.~~
 - ~~4. Upon approval of an application for a home occupation license and appropriate payment, the applicant shall be sent a home occupation license.~~
 - ~~5. Home occupation licenses, once having been granted under the terms of this section, may be renewed annually. With respect to such applications for renewal, the Building Official may require the submission of floor plans, or, in lieu thereof, may require the applicant for renewal to state that no change in the floor plan is anticipated from the plans submitted with the original application. On any application for renewal, the Building Official shall make the same determination, in the time period and manner required for original home occupation license applications, and shall either approve or disapprove such application for renewal.~~
 - ~~6. A home occupation license is not transferable to other locations, other operators, or different types of home occupations.~~
 - ~~7. The Building Official or his/her designee may obtain a warrant to inspect the premises if the Building Official has probable cause to believe that this ordinance is being violated.~~
- ~~D. Appeal of Denial of Home Occupation Licenses to the Board of Zoning Appeals. Any applicant who is aggrieved by a decision of the Building Official may appeal that decision to the Board of Zoning Appeals. An appeal must be filed within ten (10) business days of the date of said decision, and shall provide written notice of the time and place of such hearing to the applicant. The hearing on such appeal shall take place no later than forty-five (45) days after the filing date of the appeal. The decision of the Board of Zoning Appeals shall be rendered in writing within thirty (30) days from the date of the appeal hearing.~~
- ~~E. Suspension of Home Occupation Licenses.~~
- ~~1. Upon determining that any home occupation which has been granted a license pursuant to the terms of this section has failed to meet one or more of the requirements or performance standards set forth in this section, the Building Official shall immediately suspend the license of such home occupation. The Building Official shall provide written notice of such suspension setting forth the~~

~~reasons for such suspension, and shall mail a copy of such written notice to the operator of the home occupation.~~

- ~~2. The operator of any home occupation which has had its license suspended may appeal such suspension by filing a written notice of appeal with the Building Official within fifteen (15) days after the Building Official has filed the notice of suspension. A hearing on such appeal shall be held by the Board of Zoning Appeals no more than thirty (30) days after the operator of the home occupation files such notice of appeal. The Board of Zoning Appeals, after a hearing, may, by majority vote reverse or affirm the decision of the Building Official to suspend such home occupation license.~~

New Text replacing subsections C, D and E:

- C. All home occupations shall be licensed by the City of Prairie Village. Procedures for granting and suspension of licenses shall be governed by the administrative regulations of the City. Licensing Applications may be obtained from the City Clerk. Appeals from denials or suspensions or licenses for home occupations shall be governed by Section 19.54.025 of the Zoning Ordinance.***

Also Sections 19.34.015.H, I and J relating to Child Care licensing would be deleted and replaced by a new Section 19.34015.H that reads as follows.

19.34.015 ~~Child Care~~ as *Family Day Care Home* Accessory Use; When Permitted in Districts R-1, R-2, RP-1 and RP-2.

A. Family Day Care Home Requirements

1. A "Family Day Care Home" is an acceptable accessory use only if such day care home complies with the State of Kansas requirements for family day care homes (K.S.A. 65-517 *and 39-1501*), and the following:
- a. Not more than six (6) children less than 16 years of age may be cared for in a registered family day care home. In no event, shall these limits be construed as allowing more children to be cared for in a family day care home than state laws allow;
 - b. Not more than three (3) of the children cared for in a family day care home shall be less than eighteen (18) months of age;
 - c. Any children of a person providing care in a family day care home count toward the limitations of Subsection (a) and (b) if such children are cared for in the family day care home;
 - d. ***Not more than two adults;***
 - ~~d.~~ ***e.*** A person shall not be considered to be maintaining a family day care home if only children *and adults* who are related by blood, marriage, or legal adoption to such person are cared for.

- B. Area of Use.** Family day care homes must be confined to the interior of the home and to the side setback and rear yards of such homes. Homes located on corner lots shall restrict the exterior area to the rear yard and the side setback opposite the corner side of the home.

- C. Authorized Participants in Family Day Care Homes.** This occupation shall be conducted by family members residing on the premises with no assistance from other individuals or groups. No employees or other type assistance will be allowed in the conduct of its business, except a non-family member may serve as the substitute care provider solely

for the purpose of providing a backup in the event of temporary and/or emergency absence of the child care provider in compliance with state regulations that require a substitute care provider.

- D. Exterior Alterations of Residence. No exterior alterations of the residence or other visible evidence of the conduct of such occupation is allowed.
- E. Advertising. No use of advertising on the premises which calls attention to the fact that the home is being used for business purposes shall be permitted.
- F. Traffic and Parking. If parking, deliveries or visitations for family day care homes occur in a manner of frequency causing disturbance to the normal traffic flow for the neighborhood, the use shall be discontinued at that location.
- G. Compliance with Federal, State and Local Laws. Family day care homes shall be registered or licensed by the state and shall comply with all local, state and federal laws and regulations. The requirements for, registering and/or licensing of, family day care homes under this section shall not be construed as an exemption from such regulations. Licensing or registering by a state or federal agency of a family day care home likewise shall not cause said provider to be exempted from the restrictions of this section.
- H. ~~Application for a Family Day Care Home City Occupation License; Inspection of the Premises.~~
 - 1. ~~Permitted family day care homes shall be licensed with the City of Prairie Village. The applicant for a family day care license shall submit to the Building Official a floor plan for the facility, as well as a completed license application, on forms provided by the Building Official and the application fee as established by the City Council. The applicant and owner will be required to complete an affidavit certifying that he/she understands the City performance standards with respect to the operation of a family day care home. The applicant shall be approved for fire safety by the fire inspector and will not be granted a license until violations cited by the fire inspector are corrected.~~
 - 2. ~~The Building Official shall review the application for a family day care license and shall, within ten (10) days from the date such application is filed, determine whether the proposed family day care home complies with the requirements and performance standards of this section. Any finding of noncompliance shall be set forth in writing and sent to the applicant. Applicant can reapply when any deficiency is corrected.~~
 - 3. ~~Any application for a family day care license containing false information shall be void the license from the date of the application.~~
 - 4. ~~Upon approval of an application for a family day care license and appropriate payment, the applicant shall be sent a family day care license which shall be valid for one (1) year.~~
 - 5. ~~The family day care license may be renewed in the same manner as provided in this section.~~
 - 6. ~~A family day care license is not transferable to other locations, or to other providers.~~
 - 7. ~~The Building Official or his/her designee may obtain a warrant to inspect the premises if the Building Official has probable cause to believe that this ordinance is being violated.~~

- ~~I. Appeal of Denial of Family Day Care License to the Board of Zoning Appeals. Any applicant who is aggrieved by a decision of the Building Official may appeal that decision to the Board of Zoning Appeals. An appeal must be filed within ten (10) days of the date of said decision by the Building Official. The Board of Zoning Appeals shall set a hearing on such appeal within forty five (45) days of the filing date of the same and shall provide written notice of the time and place of such hearing to the applicant. The decision of the Board of Zoning Appeals shall be rendered in writing within thirty (30) days from the date of the appeal hearing.~~
- ~~J. Suspension of Family Day Care Home License.~~
- ~~1. Upon determining that any family day care home which has been granted a license pursuant to the terms of this section has failed to meet one more of the requirements or performance standards set forth in this section, the Building Official shall immediately suspend the family day care license. The Building Official shall provide written notice of such suspension setting forth the reasons for such suspension, and shall mail a copy of such written notice to the family day care provider.~~
 - ~~2. The operator of any family day care home who has had his/her license suspended may appeal such suspension by filing a written notice of appeal with the Building Official within ten (10) days after the Clerk files the notice of suspension. A hearing on such appeal shall be held by the Board of Zoning Appeals no more than forty five (45) days after the provider of the family day care files such notice of appeal.~~

New text replacing Subsection H, I and J:

H. All family day care homes shall be licensed by the City of Prairie Village. Procedures for granting and suspension of licenses shall be governed by the administrative regulations of the City. Licensing Applications may be obtained from the City Clerk. Appeals from denials or suspensions of licenses for day care homes shall be governed by Section 19.54.025 of the Zoning Ordinance.

Mr. Williamson added that Section 19.02.160 Definitions would also change as follows:

19.02.160 Day Care Center.

"Day Care Center" means a building or place where care, supervision, custody or control is provided for more than six (6) unrelated children or ***more than two (2)*** adults for up to twelve (12) hours of any 24-hour day.

Section 19.02.165 Definition would change as follows:

19.02.165 Day Care Nursery - Family Day Care Home.

Family "Day Care Nursery Home" means ***a*** residence or building in which care, supervision, custody or control is provided for six (6) or less unrelated children or ***not more than two (2)*** adults for up to twelve (12) hours of any 24-hour day. ~~Babysitting service for four (4) or less infants shall be considered a day care nursery.~~

Chairman Ken Vaughn asked if there was anyone present to speak on this application; being none, he closed the public hearing at 7:15 p.m.

Marlene Nagel asked if "adult" was defined as over 16 years of age. Mr. Williamson stated he did not check but noted a "child" is defined by the state as 16 years of age or less; therefore, he would think that would be the case.

Marlene Nagel moved the Planning Commission forward the proposed amendments to Section 19.34.010 "Home Occupations", 19.34.015 "Family Day Care" and 19.02 Definitions be forwarded to the Governing Body as presented with recommendation for adoption. The motion was seconded by Randy Kronblad and passed unanimously.

NON-PUBLIC HEARINGS

PC2009-107 Request for Building Line Modification 7100 Mission Road

Susan Bubb, 7100 Mission Road, stated they are making several improvements to this house for which they have received permits. They are seeking to add a second garage to the house on the southwest corner of Mission Road and 71st Street. The garage bay would be located on the north side of the house and extend the dormer which would be adjacent to 71st Street. This lot is located on the southwest corner of Mission Road and 71st Street. The proposed addition would extend into a 20 foot platted setback adjacent to 71st Street reducing it to 15 feet. The lot is zoned R-1b and the side yard setback established by zoning is 15 feet. So the proposed garage would be in compliance with the zoning ordinance.

A meeting was held for property owners within 200' of the proposed improvement on August 5th with no one attending.

It was noted the Planning Commission approved a similar side yard setback modification to 15 feet for the lot immediately to the west on the southeast corner of 71st and Alhambra Streets. This was approved in April 1999 with a condition that the street trees not be removed and that they be protected during construction.

Ron Williamson noted many of the homes in Prairie Village only have one car garages while the market demand is for two or more vehicle bays. The Planning Commission in the past has looked favorably on similar applications if they are compatible with the neighborhood.

The Planning Commission to review the following factors for approval:

- 1. That there are special circumstance or conditions affecting the property;**
This is the only logical direction that can accommodate the garage expansion and the proposed expansion would still meet the side yard setback in the zoning ordinance of 15 feet. The platted setback requires 20 feet. The homes association has approved similar requests in the past.
- 2. The building line modification is necessary for reasonable and acceptable development of the property in question;**
This is a proposed expansion of an existing home rather than a tear down/rebuild and the applicant can only reasonably expand the garage to the north because of the floor plan of the home.

3. **That the granting of the building line modification will not be detrimental to the public welfare or injurious to or adversely affect adjacent property or other property in the vicinity in which the particular property is situated;**

No adjacent owners have indicated any objections. The proposed improvement will not be detrimental to the public at large but will be an improvement that adds value to the community. The proposed expansion would not create any site distance problems at the intersection because it will still setback 15 feet from 71st Street in accordance with the zoning ordinance.

Mr. Williamson noted in the approval of the building line modification on the adjacent property the applicant was required to protect the mature adjacent trees and recommended that this be a condition of approval for this application also.

Randy Kronblad moved the Planning Commission find favorably on the three factors and approve the proposed side yard building line modification for the property at 7100 Mission Road from 20 feet to 15 feet for only the proposed area for expansion as shown on the plans submitted subject to the condition that the mature trees adjacent to 71st Street be protected during construction and not be removed. The motion was seconded by Marlene Nagel and passed unanimously.

**PC2009-108 Request for Site Plan Approval - Emergency Generator
8400 Mission Road
Current Zoning: R-1a (Single Family Residential District)
Applicant: Matt McQuaid for David Cooley**

Matt Good, 7927 Bond, stated the Cooley's are requesting approval to install a Permanent Standby Emergency Generator in the side yard at the northwest corner of the dwelling. The proposed unit is 25 inches wide, 48 inches deep and 29 inches in height and it weighs 455 pounds, similar in size to an air conditioner. The sound decibel level of this proposed unit is 66 dB operating at normal load, which is similar to a normal conversational level at three to five feet and 60 dB during testing. This house was built in 1976 and the applicant is making a major renovation including expanding the floor area. Also, a complete landscape plan has been prepared for the entire lot not just the generator location. The generator will be screened with Hicks Yews which will provide year around screening. The house sets back 40 feet from Somerset Drive and has a backyard of only 35 feet in depth.

Ken Vaughn asked if the City was able to measure the decibel level. Mr. Williamson responded it can be measured if there are complaints, but generally the City accepts the manufacturer's certification of the rating.

The Planning Commission reviewed the following criteria for approval:

1. **That there are special circumstances or conditions affecting the property.**

The applicant is proposing to install the generator in the side yard at the northwest corner of the house. The gas service is at the northeast corner of the house which is close to the proposed location. The rear yard is only 35 feet deep so there is a small useable rear yard. Placing the generator in the side yard near the two air conditioning units allows the rear yard more flexible use. Also in the remodeling, floor to ceiling windows have been installed all along the rear wall of the house and the ability to locate the generator in the rear yard without adversely affecting the windows is limited.

2. **That adequate distance exists between the location and adjacent property.**
There is approximately 21 feet between the applicant's house and the house to the north. This is six feet more than required by the zoning ordinance. The south wall of the house to the north has only one window facing the proposed generator location. The applicant has prepared an extensive landscape plan to screen the generator which is only 29 inches in height.

3. **That the proposed location will be adequately screened from the street.**
The proposed landscape plan shows that the two air conditioning units and the generator will be screened with evergreens and will not be visible from Somerset Drive.

4. **That the location will not cause significant adverse impact on adjacent properties.**
The only property that would be adversely affected is the house to the north and the proposed landscape plan should mitigate any negative impact that might occur. The proposed generator is about the same size as an air conditioning unit, but it only operates when it is being tested or when power is out. The impact should be minimal on adjacent properties.

5. **That the Planning Commission may impose any conditions it deems necessary to mitigate any negative impacts on the proposed location.**
The only special condition is that the landscaping be installed as shown on the plan.

Bob Lindeblad moved the Planning Commission approve the installation of an emergency standby generator at 8400 Somerset as presented subject to the following conditions:

1. That the unit be located as shown on the drawing.
2. That the maximum noise level be 66 dB and as much noise reduction as possible be incorporated into the unit.
3. That the generator testing only occurs between the hours of 8:00 a.m. and 6:00 p.m.
4. That the generator meets all the requirements of the zoning ordinance and city codes regarding the installation which includes direct connection to a natural gas line.
5. That the landscape screening for the proposed generator be installed as shown on the landscape plan.

The motion was seconded by Marlene Nagel and passed unanimously.

**PC2009-07 Signage Approval - Mission Road Animal Clinic
9410-9420 Mission Road**

Jim Frank, 6435 Vista Drive, Shawnee, with FSG, stated when the Planning Commission approved the Rezoning and Site Plan on May 27, 2009, the Animal Clinic had indicated it would locate in the south end of the building and proposed signs on the south end east sides of the building. Since that time, the applicant has chosen to occupy the center of the old Blockbuster space and place its signage on the bump out area on the east side facing Mission Road. The sign was originally proposed to be 24.4 square feet.

Mr. Williamson stated since the Commission had previously approved smaller signs in a different location, staff felt they should review the new location and signs. The proposed square footage of the revised sign is 43.75 square feet which is less than the 50 square foot maximum

Marlene Nagel moved the Planning Commission approve the revised sign and location for the identification signs for the Mission Road Animal Clinic at 9410-9420 Mission Road as presented. The motion was seconded by Dirk Schafer and passed unanimously.

OTHER BUSINESS

Discussion on Renewable Energy Ordinances

Ron Williamson noted Prairie Village is one of the numerous cities across the country that voted to sign the U.S. Mayors Climate Protection Agreement. The overall goal of the agreement is a 7% reduction in greenhouse gas emissions from 1990 levels by 2012. Communities are addressing this in many different ways including land use policies, transportation, utilities, green buildings, renewable energy, etc. He added at some point the Planning Commission may need to add a Sustainability Chapter to the Village Vision that is all inclusive.

At this time, the concentration will be on renewable energy. In August 2008, the Board of Zoning Appeals denied a variance for the installation of solar panels based on the current ordinance and requested that the Planning Commission review the ordinance to determine if it needed to be updated. The current ordinance Chapter 19.50 Solar Energy System was adopted in 1983. The Planning Commission requested that Staff expand the review to include other energy sources such as wind turbines and geothermal.

Mr. Williamson state the major issue that emerges—particularly with solar and wind sources—is the conflict between the commitment to energy reduction and the aesthetics or appearance of the actual installation. Maintaining the quality and character of residential areas has been a priority of the Planning Commission and will be a critical factor in this discussion.

Another issue that emerges is minimizing cost and time to process permits so that people are actually encouraged to reduce energy consumption. Essentially, this means more approvals at Staff level and fewer instances of the Planning Commission and Council approval.

Solar Energy

The current ordinance only addresses solar collectors as an accessory use. Both Overland Park and Leawood ordinances address solar collectors in the accessory use chapter and not as a stand alone chapter as in Prairie Village. Because Prairie Village is a mature city and has a mature tree canopy, the potential for solar energy for residential properties is more limited than in other communities. Commercial areas on the other hand have a good potential for incorporating solar energy.

The primary concern with the ordinance as it exists today is that it requires the solar collectors to be integrated into the roof and does not permit the collectors to be installed on racks or project above the roofline. In some instances, in order to take full advantage of the sun, the collectors need to be elevated and turned rather than being integrated into the roof.

The ordinance also prohibits freestanding panels or panel racks. Some of these are small such as those used by utility companies to monitor their systems and those used for outdoor residential lighting. New ideas on how to address these installations should be considered.

Mr. Williamson stated the main questions the Planning Commission needs to consider and provide direction to Staff requiring solar energy are as follows:

1. The current ordinance requires all collectors to be roof mounted.

2. All collectors are required to be integrated into the roof which limits the opportunities to use solar panels because the angle of the dwelling and the pitch of the roof to the sun may not have the best orientation to use solar.
3. Because the current ordinance requires the collectors to be integrated into the roof they are not permitted to extend above the roofline. Some newer ordinances permit collectors to extend as much as seven feet above the roof line.
4. Utilities are currently using small solar collectors to monitor their installations. These are normally installed in easements or street rights-of-way but are not addressed in the ordinance. These are small units that should be reviewed and permitted by Staff.

Wind Energy

Currently there is a lot of discussion regarding the use of wind turbines in urban areas. The primary issues are design/aesthetics, noise and wind availability. Prior to pursuing wind energy an applicant needs to have a wind analysis to determine whether enough wind is available in a specific location and how high the unit needs to be in order to produce power. The typical windmill design used to generate commercial power probably is not acceptable in Prairie Village even in a reduced size. Fortunately there are many designs that are sculptured in appearance that would fit into a residential community. Some are very small and might generate only enough power to run individual small appliances while others may be much larger. Many units can be attached to buildings and others may require a pole mounting. The difficult part is determining whether the design is compatible in a residential area.

Mr. Williamson noted the use of smaller applications for individual urban residential use is evolving and it would be difficult to prepare a design standard that would be all inclusive and still be protective of the aesthetics. Noise has also been an issue with wind generating units, but as in aesthetic design, this has been addressed and units are now on the market that has a rating of less than 60 Db which is the level of normal conversation. The application for commercial buildings may be better because it would be easier to integrate them into the design of the buildings.

At this point in time, the request for wind energy systems will probably be negligible and since this is in the embryonic state of design for small units, either site plan approval or conditional use approval by the Planning Commission would be the recommend procedure for approval. This would apply to both residential and business uses.

Geothermal Energy

Geothermal is a below surface installation and has very little effect on the above ground aesthetics in a neighborhood. There are basically two types of installations, vertical loop and horizontal loop. Horizontal requires a large lot area and probably will be used infrequently in Prairie Village. Since most of the lots are small in Prairie Village the vertical loop system will be more common. The holes will probably be bored in the front or side yards and the only negative aspect of a geothermal system is during installation. The drilling rigs are large because the holes may need to be several hundred feet deep and the removal of the drilled out material needs to be properly removed.

There are two installations in Prairie Village now and they were handled by staff approval. It is recommended that Geothermal Energy be included in the chapter and that it remain to be approved by Staff.

Hybrid Energy

It should be noted that one energy source may not provide all that is required for a particular user and that it is becoming more common to use a combination of the energy sources rather than just one. A provision should be included in the ordinance that permits hybrid installations, i.e. solar, wind and geothermal or a combination thereof.

Ken Vaughn stated he felt it would be difficult to make a blanket approval or regulate wind and/or solar installations solely by ordinance without the considering the specifics of each installation and location. Currently, installations are too expensive for widespread residential use. He felt possibly ground-mounted solar installations up to a designated height could possibly be addressed by ordinance.

Randy Kronblad noted the products and technology have come a long way; however, it still requires an enormous number of panels to generate sufficient energy. He agreed a blanket ordinance would not be effective particularly on residential installations. Mr. Williamson responded a common use is to run smaller items and recharge electrical vehicles, or for temporary uses.

Dennis Enslinger noted the City's Environment/Recycle Committee has prepared comments on this issue that were included in the packet. It is their feeling that the City should amend its current zoning regulation to remove existing barriers that delay, complicate or disallow solar collector panel installations on residential and commercial structures and encourage the installation of solar collector panels on homes and commercial properties.

Tom O'Brien, 4410 West 89th Street, with the City's Environment/Recycle Committee stated the City's current solar regulations are very restrictive. He noted small solar installations could go a long way to provide emergency power and reduce greenhouse emissions. He would also like to see the process simplified with more emphasis on meeting the regulations of the 2008 Electrical Code while paying less attention to "taste" factors. He also stated a right to "Solar Access" should be granted to each and every building in the City. He would like to see this considered in the review of plans, particularly "rebuilt". Mr. Williamson responded solar access is an issue.

Mr. O'Brien stated in the Emergency Economic Stabilization Act of 2008, the Federal government encourages installation of alternative energy systems with a substantial tax credit and other benefits of which property owners in Prairie Village cannot easily take advantage because of the City's restrictive regulations.

Ken Vaughn asked if the committee had done a survey of Prairie Village residents on this issue. Mr. O'Brien stated it had not, but noted it would be good to do so in conjunction with the review of the proposed ordinances. Mr. Vaughn noted the required public hearing would be held on any proposed ordinance revisions, but he would like to see the survey done prior to any change being made to the ordinances to determine the level of interest in change. He noted it could be done on the City's website or through the City newsletter.

Dennis Enslinger noted another issue is the current restriction to limit panel to protrude above the ridge line.

Dirk Schafer asked what other cities were doing on this issue. Mr. Enslinger responded everyone is looking into the issue, but no one wants to be the first City to change its ordinances. There has been a lot of research on wind. Other issues include aesthetics, land covenants and solar panels above the roofline.

Bob Lindeblad noted the denial of the earlier application was impacted by the inaccurate information and photo-simulations provided. He suggested aesthetics from the rear of the property also be considered in addition to the view from the street, noting the layout of Prairie Village properties has many properties abutting in the rear with residents spending much more time in their back yards than in their front yards. Randy Kronblad agreed with Mr. Lindeblad the impact from the rear is also an important consideration based on the frequent use of rear yards by residents.

Ron Williamson noted there are now solar shingles available.

Jim Frank, 6415 Vista Drive, noted the cost of solar installations is still high and suggested that perhaps the first step for the City to take is to look at regulations for commercial and public properties. These properties generally are on larger pieces of land and have more access to direct sunlight without the interference of trees found in residential neighborhoods.

Bob Lindeblad stated that in addition to allowing ground-mounted structures, he feels commercial and public installations should be addressed. The Commission members agreed to further research of commercial installations.

Ken Vaughn stated this is an issue the City needs to monitor and research, but he does not feel the City is ready to make revisions to its regulations. He does not want to change the regulations unless it will be an improvement.

OTHER BUSINESS

The Planning Commission Secretary stated six applications are expected for the October meeting all dealing with wireless communication antennae. Sprint will be renewing their permits at 7700 Mission Road and 7801 Delmar; T-Mobile will be renewing its permit for antennae at 7801 Delmar and Clearwire will be submitting three applications for antenna on the existing structures at 7801 Delmar, 7231 Mission Road and 9011 Roe Avenue.

Dennis Enslinger reminded the Commission members of the joint meeting of the City Council and Planning Commission on Monday, September 21st at 6 p.m. He also reviewed the schedule for the housing tour to take place on Saturday, September 26th.

Permanent Emergency Generators

Randy Kronblad stated he felt permanent emergency generators in the side yard could be approved by staff. He noted three applications have come before the commission in the last month and he would expect more to be forthcoming.

Dennis Enslinger stated staff is comfortable approving requests based on the criteria established in the ordinance; however, the ordinance which currently states they shall be approved by the Planning Commission would need to be changed.

Marlene Nagel confirmed it would only apply to generators located in side yards.

Randy Kronblad moved the Planning Commission authorize a public hearing on October 6th on revisions to PVMC 19.34.040(F) "Accessory Uses" to allow approval by staff of permanent emergency generators. The motion was seconded by Bob Lindeblad and passed unanimously.

ADJOURNMENT

With no further business to come before the Planning Commission, Chairman Ken Vaughn adjourned the meeting at 8:00 p.m.

Ken Vaughn
Chairman

COMMUNICATIONS COMMITTEE
September 8, 2009
MINUTES

The Communications Committee met at 5:30 pm in the Police Department Conference Room. Members present: Michael Kelly, Chairman, John Wilinski, Nici Flinn, Heather Schrotberger, and Michael Arrandale-Arnold. Also present: Quinn Bennion, Dennis Enslinger and Jeanne Koontz.

Approve Minutes

Nici Flinn moved approval of the August 6, 2009 Minutes. Heather Schrotberger seconded the motion which passed unanimously.

Village Voice

Michael Kelly asked committee members for story ideas or people to spotlight in the newsletter. Possible resident spotlights include: Barbara Watkins, the Rodriguez family and Esther Levins.

Quinn Bennion suggested listing the new businesses in each issue. In the next issue there will be a four page budget insert, state of the arts article and a tree lighting article.

John Wilinski suggested including stories on block parties. Nici Flinn said an article on how-to coordinate a block party would be useful.

Dennis Enslinger said there will likely be an article on leaf clean-up.

Michael Kelly suggested having committee members take pictures between now and the next meeting for use in the newsletter. Nici Flinn suggested including pictures of the Dog Days event in the next issue.

Website Status

Michael Kelly said the RFQ will be sent out by the next meeting. The approach this time is broader in nature and focuses on a needs assessment first and then the build portion. Quinn Bennion said the committee would be involved in the vendor selection process. Michael Kelly said this process gives us more flexibility.

Quinn Bennion asked the committee if any of them have any expertise in website development. Nici Flinn said she works with the consumer side and understands the wants and needs of a consumer in relation to a website. She is also familiar with CRM and database management.

Michael Kelly requested the website survey results be sent to the committee.

There being no further business, the meeting adjourned at 5:45 pm.

Michael Kelly
Chairman

PARK AND RECREATION COMMITTEE
September 9, 2009

The Park and Recreation Committee met at 7.00pm. Present and presiding: Chairperson Diana Ewy Sharp. Members present: Vice Chair Al Herrera, Peggy Couch, Ann Bontrager, Kathy Peterson, Diane Mares, Clarence Munsch and Jim Bernard, Jr. Staff: Bob Pryzby, Mike Helms, Captain Wes Lovett and Chris Engel.

CONSENT AGENDA

Al moved for approval of the consent agenda. Jim seconded and it passed unanimously.

REPORTS

Public Safety Report

Capt. Lovett reported that as a result of sending the Student Resource Officer to the skate park, problems have dramatically decreased over the last six weeks. Initially it was to be the recommendation of the police department to close the skate park at dusk but with the overall improvements he believes that would send the wrong message to the patrons.

There was discussion concerning a game played on the tennis courts called 'hard-court soccer' and the potential damage it may cause. The Committee agreed if there was no damage occurring and tennis users were not prevented from using the courts then the game could continue. If PD or PW has further concerns, the committee would discuss necessary action at that time. Captain Lovett stated he had only the one complaint on file.

Nicole Proulx, Community Service Officer, reported "Dog Days in PV" was happening on Saturday, October 10 from noon to 4:00pm in Harmon Park with October 17th as the rain-out day. There will be a temporary off-leash park with snow fencing for small dogs and lattice-fencing for large dogs. There will be vendors, demonstrations and contests with ribbons. She has three volunteers but needs a minimum of five. Diana mentioned that Dan Searles had volunteered. Diane Mares may have some middle school age volunteers that Nicole thought could be helpful.

Public Works Report

Mike reported investigation of necessary repairs to the diving well would begin soon. The state of Carroll Plaza was discussed. Currently the fountain is being used as a planter box because repairs have been deferred due to the plaza falling within the scope of the 75th Street Committee project. Diana stated she has received several complaints about this park (including one from a council member) and asked the committee to think about this high visible location. Diana reminded the committee that this park was not worked into the Master Plan because the 75th Street Committee was working on it. With that committee in limbo, Bob currently has an RFQ out for 75th Street and he will try and work Carroll Plaza into that project.

Recreation Program Report

Chris reported the recreation season had ended without incident and the attendance numbers through the end of August were slightly up over 2008. He attributes the increase to the Superpass program that brought roughly 2400 additional patrons to the pool. While the

attendance numbers were up the revenues were down because concessions were drastically down and the Superpass patrons had not yet been accounted for in the revenues.

Aquatics Program

Clarence reported the dive coach would like the city to consider removing the plunge slide and adding a second dive board so that dive meets could be held in Prairie Village. In addition, one of the team parents recommended that volunteers receive free registration for their children.

NEW BUSINESS

2010 Summer Events

The Committee would like to do a summer event in June through August of 2010. There is no budget to do so but partnering with Village Shops for their movie events might make it possible. Chris will be checking with Donna Potts on a potential partnership. A committee logo and the idea of a farmer's market will be dropped from future committee agendas.

OLD BUSINESS

Bob informed the committee the El Monte Fountain repairs are out to bid and when bids are returned in late September he will report back. Diana reported that her and Bob had been still meeting with Ian Bartolos of the PVHA. Their board will be making a contribution once the bid amount is returned. Diana will take it to Council for action. Bob also reported the park signage initial drawings are in which he distributed and the cost would be \$5,000 per sign for a total budget of \$85,000. The project still has to go out to bid. Bob will get the specifications out in early October. Diana stated she would like these signs to be manufactured and installed still this year.

2010 Parks Master Plan Projects

The committee discussed what projects it would like to see completed with the projected \$2,000,000 budgeted in 2010. The Committee agreed on the priority list of Franklin, Porter and a trail from Porter to the Village Shops. **Ann recommended the Franklin Park improvements, Porter Park improvements and Porter Park-Village Shops trail as the 2010 park projects. Peggy seconded and the motion carried.** Bob told the committee he would try and include the Weltner Park street improvements (\$600,000) with the bond money which could move Weltner up in the order. Diana informed the committee she, Al and Bob had met with the Finance Committee about how to fund the parks master plan beyond the \$2M and she recommended they consider asking Council to place a ½ cent sales tax initiative on the ballot in fall 2010 which could generate \$1M each year that would be dedicated to the parks and recreation plan. She also asked the finance committee members to look for ways to continue to add the current \$500,000 from the general funds with her recommendation being the jail sales tax revenues beginning 2011.

McCrum Park Discussion

Resident Robert Wilson's letter concerning proposed improvements to McCrum was discussed. While some members felt his current concerns were valid, the item was shelved because nothing will be done in McCrum until the water tower is removed which is not currently projected to occur until 2012.

OTHER ITEMS

Jim mentioned the City of Fountains Committee in Kansas City, Mo requires an endowment be made for their fountains to pay for repairs that would otherwise not occur. He recommends the Municipal Foundation explore this program to cover the cost of repairing city statuary and fountains. Diana will ask that it be placed on a Municipal Foundation agenda.

INFORMATIONAL ITEMS

The next meeting will be October 14, 2009 at 7.00pm.

Diana Ewy Sharp
Chairperson

SISTER CITY COMMITTEE
14 September 2009
MINUTES

Call to Order

Chairperson Jim Hohensee called the meeting to order. Present: Laura Wassmer, Dick Bills, Rod Atteberry, Bob McGowan, Vera Glywa, Carole Mosher, Phil Monnig and Cindy Dwigans. Guests: Nancy Wallerstein and Hildegard Knopp. Staff: Chris Engel

Minutes

Minutes for August 10, 2009 were approved.

Tour de Prairie Village

The race has been postponed until fall 2010. Rod is currently researching routes within Prairie Village to minimize driveway crossings and allow for acceptable turning radii.

Ukrainian Art Show

Rod reported that he and Dan had met with the people at the museum in Dolyna and with the help of the Peace Corp volunteers we should be able to fill out the show. Embroidery had been sent by Larissa to also help fill out the show. There was discussion about children's art and the Nelson has a Saturday art class for children that may bring in some pieces if the right connections can be made. SMSD also has a district-wide art show and they might be able to pull out the Prairie Village art if we connect with them. Rod will contact Shelly Trewolla of PVAC.

Rod is working on getting the grant company some additional requested information. He will be getting a bio to Jim on Mark English, who will be the art lecturer for the event.

Additional discussion was had over sponsoring an art show in Dolyna to get more art for the City Hall art show. A reputable and reliable shipper has been located so getting the pieces should not be as difficult as before. The Committee agreed to expend \$700 to assist in setting up the show and awarding cash prizes and \$300 for shipping the winning pieces to Prairie Village.

Display Case Discussion

Since the Arts Council owns the display case the Committee discussed buying a new one or researching the purchase of a kiosk. A digital picture frame for the current case will be researched as a method of showcasing the recent visit.

After Action Report from Dolyna Visit

The members of the committee that visited Dolyna will be putting together a 10 - 15 minute presentation for City Council on October 5. There will also be a slideshow created to run in the background before the start of the meeting.

There was discussion over how the committee should move forward. The discussion centered on the more charitable-oriented requests that were coming from the Peace Corp volunteers vs. the exchanges between businesses, schools and governmental agencies agreed to by the two mayors. It was agreed upon that the exchanges should be the focus of the committee and assisting the Peace Corp in their initiatives should fall under the scope of the "Friends of PV Sister City."

Adjournment

The next meeting will be a special meeting of the Sister City Committee on September 21st at 7:00pm to further discuss next steps and a strategic plan for the committee.

Jim Hohensee
Chair

SISTER CITY COMMITTEE
21 September 2009
MINUTES

Call to Order

Chairperson Jim Hohensee called the meeting to order. Present: Dick Bills, Rod Atteberry, Bob McGowan, Vera Glywa, Carole Mosher, Phil Monnig and Cindy Dwigans.

Mission Statement

The committee determined that a mission statement should be drafted. Discussion ensued. Cindy cited the Sister City International mission. The following language was adopted on motion by Phil Monnig and Second by Bob McGowan:

To foster, develop and promote art, cultural, educational and civic exchanges between Dolyna, Ukraine and Prairie Village, Kansas. To explore our shared democratic ideals and common values in a spirit of international diplomacy.

This mission statement will provide a test for the efforts of the coming year.

Focus for the Coming Year

The committee discussed where to focus efforts for the coming year. A number of ideas were discussed. Four matters already in progress were noted as requiring attention. They are:

- A need for better publicity - making the city more aware
- The art show
- The bike race
- Fundraising efforts

Other efforts were discussed.

The committee focused on an effort to get an exchange student. The following goal was adopted:

Identify one or more students in Dolyna to attend Shawnee Mission East High School and reside with a Prairie Village Family beginning in August 2010

It was also agreed that the committee would make arrangements for the short term internships with a Prairie Village connection. These are proposed for January 2010.

Rod moved to adjourn. Bob seconded and the motion was carried.

Mayor and City Council

Sept 25,
August 5, 2009

City of Prairie Village

City Hall,

Prairie Village KS. 66207

PETITION

We the residents/ owners/occupants of homes and commercial properties on 90th Street East of Roe wish to bring to your attention the enormous storm water drainage problems being faced by us:

1* When ever it rains or snows, water flows from South/East sides down to our properties and sits/ponds there.

2* As a result of 40+ years of ponding, while soft grounds get saturated immediately, hard surfaces become like ponds and collect water which slowly seep into the ground. As a result of this, some occupants had to install sump pumps in their units on the ground level.

3* Since whole block of properties on South side of 90th Street East of Roe are mostly commercial properties with hard surfaces e.g. parking lots and driveways, there is virtually no down-flow of water to the Street.

We therefore request you to:

**Build storm water drains on this block of 90th Street.

**Build feeder drains on some of these properties for flow of water to main storm drain.

We would be glad to review this problem with City Engineer and Public Works Department.

W. Bajaj (Jerry Bajaj d/d/a) Agia Properties L.L.C - Owns 4501-07 W. 90th
B.A. Kh 4411 W. 90th ST.
Jet Print 4507 W 90th ST
Maria Ponce - 4507 W 90th ST
Shirley Trekin - owner of Somerset Plaza Shops, 4601-4621 West 90th St

Sept. 28, 2009

Mayor Ron L. Shaffer
City of Prairie Village
7700 Mission Rd.
Prairie Village, KS 66208

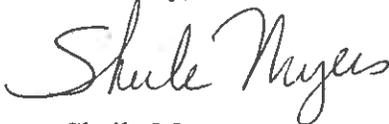
Dear Mayor Shaffer:

I am a resident of Corinth Hills in Prairie Village. This letter is long overdue. I intended to write earlier in the summer after street and sidewalk upgrades and repairs were completed at Roe and 83rd St.

The reason for my letter is to compliment the public works staff and the city for the wonderful improvements. I frequently walk in the neighborhood and find the new sidewalks on the south side of 83rd Street and the east side of Roe a major convenience. The addition of the crossing signal on the east side of 83rd and Roe makes crossing the street a pleasure.

Thank you very much for keeping the convenience of citizens in mind. I appreciate the efforts of everyone on the administrative staff and consider it a privilege to live in this fine city.

Sincerely,

A handwritten signature in cursive script that reads "Sheila Myers".

Sheila Myers
4505 W. 82nd St.

cc: Bob Pryzby, Public Works, 3535 Somerset



Enchanted-Island Opera

Joyce DiDonato and a first-rate cast of Handel singers bring theatrical richness and linguistic precision to Alan Curtis's superb new recording of Alcina.

OPERA NEWS
Critic's Choice

HANDEL: *Alcina*

□ *DiDonato, Gauvin, Cherici, Beaumont, Prina; van Rensburg, Priante; Il Complesso Barocco, Curtis. Text and translations. Deutsche Grammophon Archiv 477 7374 (3)*

Alan Curtis and his cast for *Alcina*, led by the brilliant Joyce DiDonato, bring such theatrical richness and linguistic precision to a new CD set it's hard to believe this was a studio effort and not the culmination of a lengthy performance run. Here are characterizations of astonishing range and subtlety, with confrontation scenes that sizzle. Curtis has found a way to pack all the drama — without the visual luxury of spectacular transformations, magic tricks and scenic quick-changes — into the sound, superbly recorded by Deutsche Grammophon Archiv.

Handel presented *Alcina* in 1735, as a desperate counterattack on a rival opera company that was presenting the superstar castrato Farinelli in his London debut. Handel's season took place at the newly built Covent Garden theater, where fancy new stage machinery for special effects, along with such novelties as a French dance company and a small onstage chorus added formal interest and dramatic richness to *Alcina*.

As we've come to expect from Curtis, the recitatives are packed with drama, and the vocal casting is right on the mark, with an Alcina and Morgana (the excellent Karina Gauvin) who actually sound like sisters in their sensual phrasing and tonal bite, as well as a Ruggiero (Spanish mezzo-soprano Maite Beaumont) with plenty of vocal swagger. In addition, soprano Laura Cherici's opaque sound is perfectly suited to the youthful male role of Oberto, while Sonia Prina, as Bradamante, is powerfully effective in Handel's low-lying coloratura. She even manages

to sound like a girl who spends half the opera disguised as a man. Kobie van Rensburg and Vito Priante bring vocal and stylistic authority to the roles of Oronte and Melisso.

At the center of this first-rate cast, DiDonato makes each of Alcina's arias a beautifully shaped emotional moment, from the untroubled "Di, cor mio," in which Handel's short phrases and DiDonato's perfect trill give the effect of a happily purring kitten, to the final aria, "Mi restano le lagrime," for which the singer has drained all femininity and sensuality from her voice, leaving only an intense, tormented thread to shape the jagged and harsh vocal line. In between, DiDonato relishes the character's contradictions, showing a variety of vocal colors for Alcina's sorcery scene and offering a deeply felt rendition of the great accompanied recitative before the haunted and obsessive "Ombre pallide." In the internalized, tormented "Ah! mio cor," with its palpitating and fitful accompaniment, the singer suggests outrage, hurt and bewilderment, framed by startling cadenzas for the drawn-out cry on the initial "Ah!"

In spite of its enchanted-island setting, Curtis's take on this opera is tinged with sadness, and he never goes for the obvious in his musical choices. When Alcina's spectacular palace appears (in Scene 2) amid thunder and lightning, the conductor sets the tone of languid sensuality that characterizes this fantastical world. In Ruggiero's final confrontation with Alcina, Beaumont's voice retains traces of regret and shame, while Gauvin allows junior sorceress Morgana to reveal sincerity and sorrow in the Bach-like sonorities of "Credete al mio dolore," with its exquisite solo cello. Il Complesso Barocco, the period orchestra spearheaded by concertmistress Elizabeth Blumensstock, contributes strongly to this must-have recording. JUDITH MALAFRONTÉ



DiDonato, a "brilliant" Alcina

Hear clips from this recording at www.operanews.com

**Council Members
Mark Your Calendars
October 19, 2009**

October 2009 State of the Arts exhibit in the R. G. Endres Gallery

November 2009 Mid America Pastel Society exhibit in the R. G. Endres Gallery
November 2 City Council Meeting
November 13 Artist reception in the R. G. Endres Gallery 6:30 - 8:30
November 16 City Council Meeting
November 26 City offices closed in observance of Thanksgiving
November 27 City offices closed in observance of Thanksgiving

December 2009 Mimi Pettigrew oils exhibit in the R. G. Endres Gallery
December 2 Johnson and Wyandotte County Mayor's Association Holiday Party
December 4 Mayor's 2009 Holiday Party
December 7 City Council Meeting
December 11 Artist reception in the R. G. Endres Gallery 6:30 - 8:00
December 21 City Council Meeting
December 25 City offices closed in observance of Christmas

January 2010
January 1 City offices closed in observance of the New Year holiday
January 4 City Council Meeting
January 8 Artist reception in the R. G. Endres Gallery 6:30 - 7:30
January 18 City offices closed in observance of Martin Luther King Jr. holiday
January 19(Tues.) City Council Meeting

February 2010 Student mixed media Art Show in the R. G. Endres Gallery
February 1 City Council Meeting
February 12 Artist reception in the R. G. Endres Gallery 6:30 - 7:30
February 15 City offices closed in observance of Presidents' Day holiday
February 16(Tues.) City Council Meeting

March 2010
March 1 City Council Meeting
March 12 Artist reception in the R. G. Endres Gallery 6:30 - 7:30
March 15 City Council Meeting

April 2010 Dolyna Art Exhibit in the R. G. Endres Gallery
April 5 City Council Meeting
April 9 Artist reception in the R. G. Endres Gallery 6:30 - 7:30
April 19 City Council Meeting

May 2010
May 3 City Council Meeting
May 14 Artist reception in the R. G. Endres Gallery 6:30 - 7:30
May 17 City Council Meeting
May 31 City offices closed in observance of the Memorial Day holiday

June 2010

June 7 City Council Meeting
June 11 Artist reception in the R. G. Endres Gallery 6:30 - 7:30
June 21 City Council Meeting

July 2010

July 4 VillageFest
July 5 City offices closed in observance of the Independence Day holiday
July 6 (Tuesday) City Council Meeting
July 9 Artist reception in the R. G. Endres Gallery 6:30 - 7:30
July 19 City Council Meeting

August 2010

August 2 City Council Meeting
August 13 Artist reception in the R. G. Endres Gallery 6:30 - 7:30
August 16 City Council Meeting

September 2010

September 6 City offices closed in observance of the Labor Day holiday
September 7 (Tues.) City Council Meeting
September 10 Artist reception in the R. G. Endres Gallery 6:30 - 7:30
September 20 City Council Meeting

October 2010

October 4 State of the Arts exhibit in the R. G. Endres Gallery
October 4 City Council Meeting
October 8 Artist reception in the R. G. Endres Gallery 6 - 8 p.m.
October 18 City Council Meeting

November 2010

November 1 City Council Meeting
November 12 Artist reception in the R. G. Endres Gallery 6:30 - 7:30
November 15 City Council Meeting
November 25 City offices closed in observance of the Thanksgiving holiday
November 26 City offices closed in observance of the Thanksgiving holiday

December 2010

December 6 City Council Meeting
December 10 Artist reception in the R. G. Endres Gallery 6:30 - 7:30
December 20 City Council Meeting
December 24 City offices closed in observance of the Christmas holiday

COMMITTEE AGENDA

October 19, 2009

ANIMAL CONTROL COMMITTEE

AC96-04 Consider ban the dogs from parks ordinance (assigned 7/15/96)

COMMUNICATIONS COMMITTEE

COM2008-01 Consider upgrade to City's Website (assigned 10/8/2007)

COUNCIL COMMITTEE

- COU2007-02 Consider Reducing size of Council & term limits for elected officials (assigned 1/8/2007)
- COU2007-35 Consider reactivation of Project 190709: 83rd Street/Delmar Drainage Improvements
- COU2007-40 Consider Code Enforcement - Interior Inspections (assigned 5/2/2007)
- COU2007-74 Consider reactivation of Prairie Village Development Corporation (assigned 12/3/2007)
- COU2008-21 Consider Project 190865:2009 CARS - Roe Avenue Resurfacing from Somerset Drive to 83rd Street (assigned 2/26/2008)
- COU2008-22 Consider Project 190890: 2009 Street Resurfacing Program (assigned 2/26/2008)
- COU2008-67 Consider sidewalk policy relative to sidewalks (8200 Rosewood) (assigned 8/13/2008)
- COU2008-75 Consider approval of a modification to Personnel Policy 910 regarding "comp time" (assigned 10/1/2008)
- COU2008-100 Consider approval of ordinance affirming City Boundaries (assigned 12/10/2008)
- COU2009-03 Consider Project 191023: 2009 Concrete Repair Program (assigned 12/23/2008)
- COU2009-04 Consider Project P5000: 2009 Crack Seal/Slurry Seal Program (assigned 12/23/2008)
- COU2009-05 Consider Project P5001: 2009 Street Repair Program (assigned 12/23/2008)
- COU2009-14 Consider Project 190870: 2010 Street Resurfacing Program (assigned 1/13/2009)
- COU2009-15 Consider Project 190721: 2009 Storm Drainage Repair Program (assigned 1/13/2009)
- COU2009-16 Consider Project 190876: 2010 CARS, 83rd Street Resurfacing from Nall Avenue to Roe Avenue (assigned 1/13/2009)
- COU2009-17 Consider Project 190877: 2009 CARS, 83rd Street Resurfacing: Roe Avenue to Somerset Drive (assigned 1/13/2009)
- COU2009-26 Consider Project 190722: 2010 Storm Drainage Repair Program (assigned 2/6/2009)
- COU2009-27 Consider Project 190871: Mission Lane Bridge Replacement (assigned 2/6/2009)
- COU2009-63 Consider Project 190866 - 75th Street Paving (assigned 6/10/2009)
- COU2009-87 Consider Project 190869 - 2009 Street Resurfacing Program - Construction Change Order #1 (assigned 8/12/2009)
- COU2009-88 Consider adopting Resolution Nos. 2009-07 through 2009-13 (assigned 8/27/2009)
- COU2009-97 Consider Project 190653 El Monte Fountain Improvements (assigned 10/12/2009)
- COU2009-98 Consider Project 190656 Community Center Study (assigned 10/12/2009)
- COU2009-99 Consider Project 190721: 2009 Storm Drainage Repair Program Construction Change Order #1 (Final) (assigned 10/14/2009)
- COU2009-100 Consider Project 190728: Prairie Lane Drainage Project - Design Agreement (assigned 10/14/2009)
- COU2009-101 Consider Approval of Master Franchise Code relating to Wholesale Gas Transport Fees (assigned 10/14/2009)
- COU2009-102 Consider Approval of a Kansas Gas Service Franchise (assigned 10/14/2009)
- COU2009-103 Consider Resolution No. 2009-19 declaring that a Nuisance, pursuant to K.S.A. 12-1617e and Section 4-503 of the Prairie Village Municipal Code, exists at 7578 High Drive and ordering the nuisance be abated by the property owner of record, Mark Birnbaum.

PARKS AND RECREATION COMMITTEE

PK97-26 Consider Gazebo for Franklin Park (assigned 12/1/97)

PLANNING COMMISSION

- PC2007-01 Study City zoning regulations to address those items identified by the Village Vision Strategic Investment Plan in 2007 (assigned 8/20/2007)
- PC2008-02 Consider development of ordinances to support best practices for renewable energy and for green design related to residential and commercial building design (assigned 7/7/08)

PRAIRIE VILLAGE ARTS COUNCIL

PVAC2000-01 Consider a brochure to promote permanent local art and history (assigned Strategic Plan for the 1st Quarter of 2001)