

City Council Meeting

May 18, 2009



Dinner will be provided by:

Dragon Inn

Sesame Chicken

Mixed Vegetables

Sweet and Sour Shrimp

Beef and Broccoli

**COUNCIL COMMITTEE
May 18, 2009
6:00 p.m.
Council Chamber**

AGENDA

MICHAEL KELLY, COUNCIL PRESIDENT

CONSENT AGENDA

AGENDA ITEMS FOR DISCUSSION

**COU2009-56 Parks Master Plan Presentation and Discussion
Indigo Group and Parks Master Plan Committee**

**2010 Budget Discussion
Karen Kindle and Quinn Bennion**

***COU2009-55 Consider Bid Award to Purchase Swimming Pool Chemicals
Bob Pryzby**

***COU2009-57 Consider Bid Award for Mowing Services Related to Abatement Services and
Consider Revision to 2009 Prairie Village Fee Schedule-Adding an Administrative
Fee for Mowing of Properties Related to Abatement Services
Dennis Enslinger**

**COU2009-58 Consider Revision to 2009 Prairie Village Fee Schedule - Elimination of
Administrative Court Fee
Dennis Enslinger**

COU2007-51 Village Vision

***Council Action Requested the same night**



PARK & RECREATION COMMITTEE

Council Committee Meeting Date: May 18, 2009

Council Meeting Date: June 1, 2009

COU2009-56: Consider Resolution adopting Parks and Recreation Master Plan

RECOMMENDATION

Staff recommends the approval of a resolution adopting the Park and Recreation Master Plan.

BACKGROUND

In March 2008, an RFQ was created and Indigo Design was selected as the Parks Master Plan consultant. Indigo was highly recommended and immediately set out to ensure the process was open and inclusive. Stakeholder interviews with councilmembers, city staff and park users began immediately. A scientifically valid survey was created based upon the information gathered from the interviews and randomly mailed to 2,100 residents. Over 800 completed surveys were returned - twice as many needed to consider the survey valid.

In October 2008, a Public Presentation was held at City Hall to present the initial findings to the public as well as discuss some preliminary park plans that had been created. After the public's approval and general agreement with the findings, Indigo Design began to formulate a list of park and recreation enhancements. Once these recommendations were completed and affixed with cost estimates they were presented to the Park Master Plan Subcommittee for prioritization.

After prioritization was complete, a draft plan was presented and thoroughly reviewed by members of the subcommittee and city staff. Once approved by the subcommittee the draft plan was presented to the public in early April. The public voiced overwhelming support for the plan as did the Park and Recreation Committee when it was presented to them the following week.

Excerpt of Park and Recreation Committee minutes (4/8/2009):

Doug Pickert presented a draft Master Plan Summary document as well as a PowerPoint of visual representations of each of the suggested park enhancements. There were questions concerning the angled parking at Franklin, the craft shack at Harmon and trail widths throughout the City. Overall, the Committee was very supportive of the process and the final result. Diana mentioned the plan should go before City Council on May 18 and she hopes all Committee members will be in attendance.

Ann Bontrager made a motion to approve the Parks & Recreation Master Plan and recommend it to the City Council for approval. Kathy Peterson seconded and it passed unanimously.

FINANCIAL IMPACT

City Council approved \$56,200 for the completion of the plan out of the 2008 budget. The plan was completed within budget. Final approval of the plan does not bind the City Council to spend any further funds.

ATTACHMENTS

1. Resolution
2. Park and Recreation Master Plan.

PREPARED BY

Chris Engel
Assistant to the City Administrator
Date: 5/13/09

RESOLUTION 2009-04

WHEREAS, the Prairie Village Comprehensive Plan makes specific recommendations in Chapter Five - Civic and Park Enhancement concerning the development of existing parks and existing recreation opportunities; and

WHEREAS, the Governing Body of the City of Prairie Village formed a Parks Master Plan Steering Committee comprised of representatives of the Park and Recreation Committee, Arts Council, Governing Body and members of the community to obtain input regarding future development of the City of Prairie Village parks and or recreation opportunities and to make suggestions to be considered by the Parks and Recreation Committee and the Governing Body; and

WHEREAS, the City retained the firm of Indigo Design, Inc. to assist the Steering Committee in obtaining community input and prepared a written report entitled "Prairie Village Parks and Recreation Master Plan - 2009" which includes numerous recommendations, cost estimates, maps and conceptual renderings; and

WHEREAS, the Steering Committee sponsored multiple public meetings to obtain input from members of the community regarding their thoughts, ideas and suggestions for future development of the City of Prairie Village parks and recreation opportunities; and

WHEREAS, on April 1, 2009 the Steering Committee presented the draft "Prairie Village Parks and Recreation Master Plan - 2009" which had been prepared by Indigo Design, Inc. to the public at an open house; and

WHEREAS, on April 8, 2009, after due deliberation and study, the Parks and Recreation Committee voted unanimously to approve and submit to the Governing Body of the City of Prairie Village the "Prairie Village Parks and Recreation Master Plan - 2009" including the numerous recommendations, cost estimates, maps and conceptual renderings for final review and consideration.

NOW, THEREFORE, BE IT RESOLVED, the Governing Body hereby adopts as written the attached "Prairie Village Parks and Recreation Master Plan - 2009" to guide the development and funding of future parks and recreation enhancements.

ADOPTED AND PASSED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS, THIS ____ DAY OF _____, 2009.

By: _____
Ronald L. Shaffer, Mayor

ATTEST:

Joyce Hagen Mundy, City Clerk

COU2009-56 Consider Resolution Adopting Parks Master Plan

**Attachment #2. Park & Recreation Master Plan
Separate PDF due to File Size**



ADMINISTRATION

2nd Committee Meeting Date: May 18, 2009
1st Committee Meeting Date: May 4, 2009

2010 Budget Presentation and Discussion

RECOMMENDATION

Council adopt staff's recommendations for reducing the 2010 budget gap.

BACKGROUND

As discussed during the April budget work session, a gap exists in the 2010 budget due to decreases in revenue as a result of the economy, housing market and State budget cuts.

Attached is the list of 2010 Budget Gap Reduction Strategies. These are the strategies that staff recommends be implemented to reduce the 2010 budget gap. The list was reviewed by the Finance Committee at their April 27th meeting. The Council began discussing this list at the May 4th Council Committee of the Whole meeting. The discussion at the May 18th Council Committee of the Whole meeting will be a continuation of the discussion held at the May 4th Council Committee of the Whole meeting.

Also attached is a worksheet that shows how the budget gap was calculated. The worksheet compares the 2009 Budget as adopted by the Council to the estimates for 2010. Revenue estimates for 2010 are based on historical trends, information from the League of Kansas Municipalities regarding the State budget cuts, information provided by the County Appraiser and the County Treasurer. The only difference since the April budget work session is that Liquor Tax revenue has been restored.

Significant expenditure assumptions include:

- Employee salary increases = 2%
- Health insurance cost increase = 3%
- Police Pension contribution = \$450,000
- KPERs employer contribution rate increase = 0.600 (total rate = 7.14%)
- Contract Services increase = 2%
- Commodities increase = 2%
- Capital Outlay increase = 0%
- Transfer to the Capital Projects Fund is based on the 2010 projects as listed in the CIP adopted for the 2009 Budget

ATTACHMENTS:

2010 Budget Gap Worksheet
2010 Budget Gap Reduction Strategies List

Prepared By:
Karen Kindle
Finance Director
Date: May 14, 2009

**City of Prairie Village
Comparison of 2009 Budget vs. 2010 Estimated Budget
General Fund
As of 5-18-09**

General Fund			
	2009	2010	Difference
	Budget	Budget	Increase (Decrease)
Revenues			
Property Taxes	\$ 4,940,230	\$ 4,993,889	\$ 53,659
Sales Taxes	4,395,876	4,478,000	82,124
Use Tax	755,000	850,000	95,000
Motor Vehicle Tax	507,944	524,650	16,706
Liquor Tax	86,000	86,000	-
Franchise Fees	1,724,000	1,725,000	1,000
Licenses & Permits	456,700	456,700	-
Intergovernmental	-	-	-
Charges for Services	1,698,485	1,736,990	38,505
Fines & Fees	1,117,500	1,098,500	(19,000)
Recreational Fees	467,500	467,500	-
Interest on Investments	250,000	150,000	(100,000)
Miscellaneous	55,500	58,000	2,500
Transfer from Stormwater Utility Fund	338,624	338,624	-
Total Revenues	\$ 16,793,359	\$ 16,963,852	\$ 170,493
Expenditures			
Personal Services	\$ 8,174,711	\$ 8,527,043	\$ 352,332
Contract Services	3,840,262	3,917,067	76,805
Commodities	965,610	984,922	19,312
Capital Outlay	291,650	291,650	-
Contingency	700,000	700,000	-
Transfers to Other Funds:			
Transfer to Capital Projects Fund	2,146,126	3,101,500	955,374
Transfer to Capital Projects Fund - cover shortfall in Gas Tax	-	76,540	76,540
Transfer to Risk Management Fund	35,000	35,000	-
Transfer to Economic Development Fund	-	-	-
Transfer to Equipment Reserve Fund	642,000	642,000	-
Total Expenditures	\$ 16,795,359	\$ 18,275,722	\$ 1,480,363
Gap - Revenues Over(Under) Expenditures	\$ (2,000)	\$ (1,311,870)	\$ (1,313,870)

Fund Balance - General Fund		
	2009	2010
Fund Balance estimate, Jan. 1st	\$ 4,431,766	\$ 4,429,766
Revenues	16,793,359	16,963,852
Expenditures	(16,795,359)	(18,275,722)
Fund Balance estimate, Dec. 31st	\$ 4,429,766	\$ 3,117,896
Reserve (25% of Revenues, excluding transfers)	\$ 4,113,684	\$ 4,156,307
Available Fund Balance	\$ 316,082	\$ (1,038,411)

City of Prairie Village
Possible Budget Gap Reduction Strategies
As of 5-4-09

Prepared by: Karen Kindie, Finance Director

Item	Dept	Description	Reduction in the 2010 Budget Gap	Comments
2010 Strategies				
1	PW	Reduce Tree Trimming Program - reduce contract amount	\$ (50,000)	2009 Budget = \$100,000
2	PD	Delay purchase of one marked and one unmarked Patrol car	\$ (50,000)	This is a one-time savings.
3	Admin	Wholesale natural gas transport fee - 28 buyers of gas wholesale transport gas within PV that are not paying franchise fees.	\$ (30,000)	Estimate is based on Westwood's experience
4	PD	Remove JIAC funding from the budget	\$ (17,250)	2009 Budget = \$17,250
5	all	Reduce travel expenses	\$ (20,000)	
6	Court	Pay to stay - bill some or all of the jail board fee we pay - regardless of conviction.	\$ (15,000)	2009 Budget for the expenditures = \$35,000
7	PD	Establish an alarm license fee and false alarm fees	\$ (7,000)	This is a one-time increase in revenue.
8	PW	Tree lighting at the holidays - reduce number of trees under contract	\$ (5,000)	2009 Budget = \$13,000
9	Parks	Raise park shelter rental fees and review the exemptions for tennis court use	\$ (10,000)	5% inc
10	Admin	Evaluate the Arts Council budget	\$ (3,500)	2009 Budget = \$13,500
11	PD	Tow service company license fee	\$ (2,000)	Presuming fee would be \$250 per tow company
12	Parks/PW	Evaluate the VillageFest employee costs; use of volunteers	\$ (2,000)	OT costs in PW, PD
13	Admin	Evaluate the Environmental Committee budget	\$ (2,000)	2009 Budget = \$8,000
14	Admin	Evaluate the Sister City budget	\$ (1,000)	2009 Budget = \$4,000
15	Admin	Evaluate and reduce outside planning services; perform more services in-house	\$ (5,000)	Needs further discussion with Council
16	PW	Defer further funding of the Traffic Calming Program	\$ (40,000)	2009 Budget = \$47,000 Available balance in project at 3/31/09 = \$113,273
17	PW	Review and reduce CIP	\$ (400,000)	
18	All	Salary increase reduction/employee raises	unknown	Needs further discussion with Council Staff recommends a range of 1% - 2% for employees not on the step system. For employees on the step system, Staff recommends freezing the steps - the officers would stay on their current step and receive the same percent increase as other employees.
19	all	Retirement incentive	unknown	Further research underway
20	All	Elimination of positions - 2 FTE	\$ (85,000)	Estimated savings includes salary and benefits
21	Admin	Expanded use of Economic Development Fund	unknown	Fund Balance at 3/31/09 = \$2,260,000

City of Prairie Village
Possible Budget Gap Reduction Strategies
As of 5-4-09

Prepared by: Karen Kindle, Finance Director

Item	Dept	Description	Reduction in the 2010 Budget Gap	Comments
22	Admin	Use of fund balance - less reserves	\$ (428,000)	Fund Balance at 12/31/08 = \$4,551,929 which is 27.6%. Staff recommends maintaining fund balance at 25% of budgeted revenues. 2.6% of 2009 budgeted revenues = \$428,000.
23	Admin	Decrease Contingency Budget	\$ (200,000)	2009 Budget = \$700,000 2010 Rec Budget = \$500,000
24	Admin	Use some or all of the Jail Sales Tax 2 proceeds. In 2009 all of the proceeds funded one-time technology upgrades. In 2010, Staff recommends using \$250,000 to fund the E-ticketing/Court Software and other IT initiatives and use the remaining \$200,000 estimated proceeds to fund the 2010 payment for the Police Radio System reserve (instead of money from the General Fund)	\$ (200,000)	2010 Estimated Revenue = \$450,000 2009 - dollars used for technology upgrades (\$462,000)
			\$ (1,172,750)	Total

Implement Immediately

25	PD	Extended Service - CALEA - withdraw from program immediately - administrative costs	\$ (10,500)	Savings in 2009 = \$6,500
26	PD	Extended Service - CALEA - withdraw from program immediately - elimination of 1 FTE (Police Officer)	\$ (60,000)	In the future, a Sergeant position would be eliminated and the Police Officer position would be restored, creating an incremental savings in that budget year.
27	Court	Amnesty day for outstanding court fines	\$ -	This is a one-time increase in revenue for 2009. Staff expects \$20,000 additional revenue.
28	PW	Reclassifying PW Engineering (PE) position to a CIP manager	\$ (10,000)	
29	Admin	Gift Card program	\$ (3,000)	Approved by Council on 4/20/09
30	All	Reduce overtime/increase use of flex time	unknown	2009 Budget for all overtime = \$351,000
31	PD	Selling used city vehicles ourselves vs. use auction service	unknown	
32	All	Implement the new travel expense policy	unknown	
			\$ (83,500)	Total

Grand Total \$ (1,256,250)

City of Prairie Village
Possible Budget Gap Reduction Strategies
 As of 5-4-09

Prepared by: Karen Kindle, Finance Director

Item	Dept	Description	Reduction in the 2010 Budget Gap	Comments
2010 Budget Reduction Strategies Previously Considered				
33	PD/Court	Implement E-tickets	\$ -	Would require the purchase of software and hardware in 2010 Cost savings would probably not be until 2011
34	Admin	Review IT consultant arrangement	\$ -	Possible competitive bid process in 2009 2009 Budget for IT Consulting = \$89,500 Staff recommends leaving the budget at the 2009 amount.
35	Council	Reduce/eliminate City contribution to the UCS Human Service Fund	unknown	Needs further discussion with Council 2009 Budget = \$6,500
36	PD	Evaluate crossing guard program - min number of students using the crossing, policy, etc. Ten (10) locations currently.	unknown	Needs further discussion with Council 2009 Budget = \$4,000 per guard
37	PW	Rental of portion of Public Works G Building or outside sheds to Mission Hills	unknown	City is currently saving the \$22,000 in lease payments made in the past.
38	Admin	Sales tax referendum for a dedicate purpose	Depends on the tax rate	1/4 cent = \$500,000 1/2 cent = \$1,000,000 (based on 2008 revenue from the 1 cent local sales tax)
39	Parks/PW	Evaluate the VillageFest Committee Budget	\$ (2,000)	

Note: Staff and Council identified other strategies which are not included on this list due to priority and budget impact.



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: May 18, 2009

Council Meeting Date: May 18, 2009

***COU2009-55: CONSIDER BID AWARD TO PURCHASE SWIMMING POOL CHEMICALS**

RECOMMENDATION

Staff recommends the City Council approve the bid award to Edwards Chemical, Inc., for swimming pool chemicals.

COUNCIL ACTION REQUESTED ON MAY 18, 2009

BACKGROUND

Attached is a summary of bids opened by the City Clerk on May 1, 2009, for swimming pool chemicals. This is the first year that Public Works has advertised a bid for swimming pool chemicals. Three bids were received. The basis of award was the sum of the bid items, which results in Edwards Chemical, Inc., being the lowest aggregate cost. Edwards Chemicals, Inc., has been the supplier of these chemicals to the City for over fifteen years.

FUNDING SOURCE

Funds are available in the Public Works Swimming Pool Operating Budget.

RELATION TO VILLAGE VISION

None

PUBLIC NOTICE

None

ATTACHMENTS

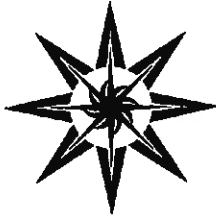
2009 Bid Summary

PREPARED BY

S Robert Pryzby, Director of Public Works

Date May 6, 2009

Item	Description	Units	Qty	Unit Price United Industries	Total Amount	Unit Price Edwards Chemicals	Total Amount	Unit Price Commercial Aquatics	Total Amount
1	Calcium Chloride (50 pound bags)	Pound	2,500	\$0.33	\$825.00	\$0.3202	\$800.50	\$0.33	\$825.00
2	Sodium Hypochloride (Chlorine)	Gallons	14,500	\$1.98	\$28,710.00	\$1.2800	\$18,560.00		\$0.00
3	Soda Ash (50 pound bags)	Pounds	250	\$0.33	\$82.50	\$0.2878	\$71.95	\$0.35	\$86.50
4	Sodium Bicarbonate (50 pound bags)	Pounds	2,500	\$0.35	\$875.00	\$0.2510	\$627.50	\$0.37	\$925.00
5	Sulfuric Acid (55 gallon drums)	Gallons	220	\$0.43	\$94.60	\$2.8400	\$624.80	\$2.18	\$480.00
6	Sodium Thiosulfate (50 pound bags)	Pounds	200	\$0.81	\$162.00	\$0.8700	\$174.00	\$0.83	\$166.00
7	Delivery Charge	Each	1	\$0.00	\$0.00	\$27.7500	\$27.75	\$30.00	\$30.00
Total Cost					\$30,749.10		\$20,886.50		\$2,512.50
	Sodium Hypochloride (Chlorine)	Gallons	14,500	\$1.58	\$22,910.00				
					\$24,949.10				



ADMINISTRATION

Council Committee Date: May 18, 2009
City Council Meeting Date: May 18, 2009

COU2009-57: Consider Bid Award For Mowing Services Related to Abatement Services and Consider Revision to 2009 Prairie Village Fee Schedule-Adding an Administrative Fee for Mowing of Properties Related to Abatement Services

RECOMMENDATION:

- Staff recommends the City Council approve the bid award to BIG GREEN, INC. to abate properties found to be in violation of the City Weed and Grass Ordinance.
- Staff recommends the City Council approve a revision to the 2009 Prairie Village Fee Schedule to include a \$50.00 per occurrence Administrative Fee, for properties in violation of the City Weeds & Grass ordinance and abated by the City.

COUNCIL ACTION REQUESTED ON MAY 18, 2009

SUGGESTED MOTION:

I hereby move that the City Council award the bid for mowing services related to abatement services and establish a \$50.00 per occurrence Administrative Mowing Fee Related to Abatement Services.

BACKGROUND:

Over the last several years, the Prairie Village Public Works Department has been mowing properties which have been found to be in violation of the City Weeds and Grass ordinance. Given the limited amount of staff resources, staff has determined that utilizing an outside contractor for abatement mowing services would be more cost-effective.

The City received five (5) bids from contractors for mowing services. BIG GREEN, INC. submitted the lowest aggregate cost bid and has done weed abatement for the last four (4) years for the City of Fairway with satisfactory references. BIG GREEN, INC. has all equipment needed to perform abatements and has provided proof of required insurance.

In addition to awarding of the bid for mowing services, staff is requesting that the City Council establish an administrative fee associated with providing abatement mowing services. The fee will help defray some of the costs associated with contractor coordination and staff time associated with the abatement process.

The mowing costs and administrative fee are assessed to the property owner. In reviewing surrounding communities, a fee of \$50 is being recommended by staff. Currently, the cities of Mission and Merriam assess a fee of \$50 and the City of Overland Park assesses a \$100 administration fee.

FUNDING SOURCE:

Because mowing abatement services have been provided by the Public Works Department, contract mowing services have not been individually budgeted for 2009. The Codes budget does include some funds related to abatement but these may not be sufficient to cover the anticipated costs. If additional funding is necessary staff will request contingency funds.

ATTACHMENT:

Bid Summary

PREPARED BY:

Marcia Gradinger

Code Enforcement Officer

Date: May 13, 2009

Request for Proposals

Weed Abatement services

Bid Close: Thursday, April 30, 2009

Company Name	Machine Mowing	Hand Mowing	Trimming /Weed eater	Clean-up	Work Documenta tion	Removal & Disposal of Debris
Unique Water Features & Landscaping	\$85/hr	\$59/hr	\$49/hr.	\$49/hr	\$15	\$90 – full load, plus hourly to unload \$45 ½ load
Big Green, Inc. 8004 W. 80th Street Overland Park, KS 66204	\$30 per man per hr w/1 hr. min	\$30 per man per hr w/1 hr. min	\$30 per man per hr w/1 hr. min	\$30 per man per hr w/1 hr. min.	0.00	\$30 – ¼ truck \$30 per man per hour w/1 hr. min.
Verholst & Sons 19190 West 122nd Street Olathe, KS 66061	\$30/hr	\$30/hr	\$40/hr.	\$30.hr.	\$10	\$50
Custom Mowing Lawn & Gardens	\$40/hr	\$35/hr	\$35/hr	\$35/hr	\$10	\$35 (if bobcat needed \$45)
Diamond Cut Lawn & Landscape 302 North Monroe Olathe, KS 66061	\$30/hr	\$40/hr.	\$30/hr	\$30/hr	\$5.00	\$25.00



ADMINISTRATION

Council Committee Date: May 18, 2009
City Council Meeting Date: June 1, 2009

COU2009 -58: Consider Revision to 2009 Prairie Village Fee Schedule - Elimination of Administrative Court Fee

RECOMMENDATION

Staff recommends the City Council approve a revision to the 2009 Prairie Village Fee Schedule to eliminate the Administrative Court Fee of \$15.00.

SUGGESTED MOTION

I hereby move that the City Council eliminate the Administrative Court Fee of \$15.00 beginning on July 1, 2009.

BACKGROUND

In November of 1997, the City Council approved Charter Ordinance No. 18 which allows for the city to collect costs associated with administration of the Municipal Court. Since 1998, the city has collected a fee on court cases in which a plea of guilty is entered or resulting in a conviction. The current Administrative Court Fee is \$15.00.

Over the years, there have been some logistical issues in collecting the Administrative Court Fee, especially when individuals mail in their fines. Staff often has to send a follow-up letter requesting payment of the Administrative Court Fee which results in additional costs and staff time.

To remedy this situation, staff is proposing to increase the fine schedule to compensate for the elimination of the Administrative Court Fee. The Municipal Judges have agreed with this approach. Staff is proposing to keep the Charter Ordinance in place to allow for evaluation of the revised process to ensure that the results are revenue neutral.

FUNDING SOURCE

N/A

PREPARED BY

Dennis J. Enslinger
Assistant City Administrator
Date: May 13, 2009

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
May 18, 2009
7:30 p.m.**

- I. CALL TO ORDER**
- II. PLEDGE OF ALLEGIANCE**
- III. ROLL CALL**
- IV. PUBLIC PARTICIPATION**
- V. PUBLIC HEARING – Community Development Block Grant Application**
- VI. 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 – May 4, 2009
- 2. Approve Claims Ordinance 2859.
- 3. Approve two VillageFest 2009 contracts.

By Committee:

- 4. Approve a contract with First Choice Associates & Communications, LLC for three bi-monthly issues of the Village Voice. (Council Committee of the Whole Minutes – May 4, 2009)
- 5. Adopt Resolution 2009-03 adopting the Johnson County Multi-Hazard Mitigation Plan. (Council Committee of the Whole Minutes – May 4, 2009)
- 6. Adopt Ordinance 2193 amending Chapter One of the Prairie Village Municipal Code entitled “Administration” by amending Article 8 entitled “Committees” by amending subsection (a) of Section 1-804 entitled “Council Committee of the Whole; Membership, Duties and Meetings.” (Council Committee of the Whole Minutes – May 4, 2009)

- VII. MAYOR’S REPORT**
Citizens Police Academy Graduation

- VIII. COMMITTEE REPORTS**

- Council Committee of the Whole**

- COU2009-55 Consider Bid Award to purchase swimming pool chemicals
– Michael Kelly**

- COU2009-57 Consider Bid Award for Mowing Services related to Abatement Services and Consider Revision to 2009 Prairie Village Fee Schedule-Adding and Administrative fee for mowing of properties related to Abatement Services – Michael Kelly**

- COU2009-35 Consider New Zoning Chapter 19.33 entitled Wireless Communications Facilities, deleting Section 19.28.070(s) and amending Section 19.02.449 entitled “Utility Box” – Ron Williamson and Dennis Enslinger**

Park and Recreation Committee – Diana Ewy Sharp

VillageFest Committee – Diana Ewy Sharp

IX. STAFF REPORTS

X. OLD BUSINESS

Consider request from Curtis M. Holland on behalf of T-Mobile to reconsider vote regarding wireless communication tower and compound at 4805 W. 67th Street.

Consider record of denial for wireless communication tower and compound at 4805 W. 67th Street.

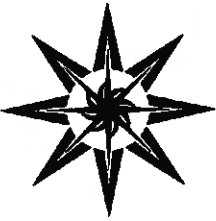
XI. NEW BUSINESS

XII. ANNOUNCEMENTS

XIII. 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



ADMINISTRATION

Council Meeting Date: May 18, 2009

PUBLIC HEARING - 2010 Community Development Block Grant

BACKGROUND

City staff is considering an application to Johnson County for Community Development Block Grant (CDBG) funds for Fiscal Year 2010. The Johnson County program allows cities to apply for either \$100,000 or \$200,000 in CDBG funds. If the \$200,000 amount is awarded the grantee can not apply again the following year. There is no match requirement by the applicant but matching funds do improve the proposed project score. Typical match amounts fall in the range of 20% - 30% depending on total project cost.

The purpose of the public hearing is to obtain citizen input and funding proposals from the public on the possible uses of CDBG funds in resolving local community development and housing needs. CDBG grant funds may be used to carry out eligible activities including, but not limited to, housing rehabilitation, public improvements, economic development and public services. All CDBG projects must address one of three national objectives: benefit low and moderate income persons; aid in the prevention or elimination of slums or blight; or meet other community development needs having particular urgency.

Below are three projects (with cost estimates) staff has identified that fit at least one of the required criteria:

Project #1 - 75th Place - \$250,000

75th Place between Booth Drive and Belinder Avenue is a 1,000 foot long residential street. The street has standing water in the gutter for long periods after the wet season. The construction will replace all curb and gutter on both sides of the street and include mill and overlay. Replacing the curb and gutter will necessitate the replacement of the driveway aprons to meet the new gutter profile.

Project #2 - 83rd Street from East City Line to Mission Road - \$270,000

83rd Street is 1,366 feet long with sidewalks and curbing on both sides. 500 feet of sidewalk is in need of replacement. 15 ADA sidewalk ramps do not meet ADA standards. 1,600 feet of curbing is showing signs of rapid concrete deterioration. The pavement has a 77 out of 100 rating. At the intersection with Mission Road the pavement exhibits extensive shoving due to the traffic starting and stopping.

The construction will remove and replace the failed curbing and sidewalk. The new sidewalk and ADA sidewalk ramps will meet the ADA standards. A concrete 8-inch thick concrete pad will be constructed where the shoving of the pavement has occurred. The balance of the pavement will be milled and overlaid. Deep depth reconstruction will be provided where base failure is found, and a new 2-inch bituminous pavement will be laid.

The construction will result in a street meeting the latest City and ADA requirements that serves the medical office building, school and apartments.

Project #3 - Booth Street and 77th Street - \$611,000

Booth Street is 2,386 feet long with a pavement width of 34 feet. Curbing is found on both sides of the street, full length. Sidewalk is the full length on the east side of the street.

It is proposed to remove and install new Type B curbing on both sides of the street; remove and install new five foot wide sidewalk on both sides; narrow the street from 34 feet to 26 measured from back of curb to back of curb; and construct a five foot wide green belt between the new curb and sidewalk.

The present sidewalk has nearly 2,000 feet of sidewalk the does not meet the American with Disabilities Act (ADA) cross slope requirement of 2%, is broken; has curbing that is higher than the sidewalk creating a tripping hazard, has street light pole in the middle of the sidewalk consequently not meeting the ADA minimum sidewalk width and none of the eighteen ADA sidewalk ramps at the intersections comply with the ADA standards; and several trees are growing in the into more than 50% of the sidewalk.

The present curbing is the low back style constructed of concrete. Approximately 3,000 feet of curbing is in advance deterioration due to typical concrete failures.

FINANCIAL IMPACT

Funding of the City share will be from the C.I.P. budget in an amount that provides the best opportunity to receive project funding.

PREPARED BY

Chris Engel

Assistant to the City Administrator

Date: 5/13/09

CONSENT AGENDA

CITY OF PRAIRIE VILLAGE, KS

May 18, 2009

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
May 4, 2009**

The City Council of Prairie Village, Kansas, met in regular session on Monday, May 4, 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, Bill Griffith, Ruth Hopkins, 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; Wes Jordan, Chief of Police; Bob Pryzby, Director of Public Works; Dennis Enslinger, Assistant City Administrator; Chris Engel, Assistant to the City Administrator; Steve Horner, Assistant City Attorney and Joyce Hagen Mundy, City Clerk.

Mayor Shaffer led all those present in the Pledge of Allegiance. The Mayor distributed Council paychecks in the amount of \$1 to Council members Al Herrera, Bill Griffith, Dale Beckerman and Charles Clark and thanked them for the past service to the City.

PUBLIC PARTICIPATION

Cleo Simmonds, 2902 West 71st Terrace, on behalf of the Sister City Committee welcomed Laura Wassmer as their new Council Liaison and thanked Michael Kelly for his past two years of service and the passion and energy he brought to the Committee. Mayor Shaffer acknowledged the presence of members of the Sister City Committee in

attendance and echoed their thanks to Councilman Kelly and expressed his thanks to the committee for their work on behalf of the City. Councilman Kelly responded that he appreciated working with this dedicated group of individuals and noted their passion for the City of Prairie Village.

No one else was present to address the Council on general matters.

CONSENT AGENDA

Michael Kelly moved the approval of the Consent Agenda for Monday, May 4, 2009.

1. Approve Regular Council Meeting Minutes - April 20, 2009
2. Approve four VillageFest 2009 contracts
3. Approve the Proclamation of May 10 through 16, 2009 as "Police Week"
4. Ratify the Mayor's appointment of Dan Searles to the Park & Recreation Committee to fill an unexpired term expiring April, 2010.

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

MAYOR'S REPORT

- Mayor Shaffer will be attending the Johnson County Mayor's meeting on May 6th.
- The Northeast Johnson County Mayor's will meet in two weeks hosted by Prairie Village
- The Syl Powell Community Center in Mission will be celebrating its 10th anniversary this weekend.
- Mission Hills will be holding a reception for their new Mayor on May 11th.
- Mayor Shaffer will be attending a special luncheon being held on May 9th by the League of Women Voters in Johnson County where Ruth Hopkins will become the second recipient of the "Making Democracy Work" award.

COMMITTEE REPORTS

Council Committee of the Whole

COU2009-51 Consider Municipal Code Chapter XIV Article 3 entitled "Floodplain Management" Consider Interlocal Agreement with the City of Overland Park for Project 190824: Drainage on Reeds Drive from 70th Terrace to 71st Street

On behalf of the Council Committee of the Whole, Michael Kelly moved the City Council adopt Ordinance 2194 for the City of Prairie Village, Johnson County, Kansas, amending Chapter XIV, entitled "Stormwater" by amending Article 3, entitled "Floodplain Management" establishing Floodplain management for construction, any new development or redevelopment projects. The motion was seconded by David Belz.

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

COU2009-52 Consider Project 191023: 2009 Concrete Repair Program

On behalf of the Council Committee of the Whole, Michael Kelly moved the City Council approve Construction Change Order #2 for Project 191023: 2009 Concrete Repair Program establishing a unit cost for asphalt sidewalk. The motion was seconded by Laura Wassmer and passed unanimously.

COU2009-49 Consider Special Use Permit for Wireless Communications Tower and Equipment Compound at 4805 West 67th Street

Based on the recommendation of the Council Committee of the Whole, Michael Kelly moved that the City Council override the recommendation of the Planning Commission and approve the Special Use Permit as presented subject to the 18 conditions of approval recommended in the Planning Commission Staff Report. The motion was seconded by Ruth Hopkins.

Mayor Shaffer stated comments would be allowed but asked those addressing the Council to keep their comments succinct and not repetitive. He noted the Council has already received a large volume of information on this issue. The Council will hear comments from the applicant, the residents, and staff comments and then close the public portion of the meeting.

Curtis Holland, 6001 College Blvd. with Polsinelli Shughart representing T-Mobile, stated this application was considered two weeks ago at the Council Committee of the Whole with several hours of deliberation, which he believes have been accurately reflected in the minutes of that meeting.

Thursday of last week he submitted a letter to Council members responding to the comments made at that meeting, and Casey Housley submitted a response to his letter.

Mr. Holland stated that although their application states it is for a 145-foot tower, their request two weeks ago to the Council was for an 85-foot stealth facility to serve T-Mobile only on the property. In order to facilitate co-location, which they understood to be an important goal for the City, they would agree to build a foundation that would be capable of supporting a taller structure enabling co-location at future dates subject to approval of a Special Use Permit for other carriers. Letters of interest have been submitted on behalf of all of the other major carriers in the area (Sprint, AT&T & Verizon Wireless). Verizon recently submitted a letter expressing interest to co-locate on a facility at this location at the 130-foot level. All of the major carriers in this area are looking to improve service and state they have an interest at this location. Of these four carriers, only two of them have indicated an interest at the Nall Avenue Baptist location. Mr. Holland noted that as these other carriers come forward, they will each be required

to follow the same process of securing a lease, making an application for a Special Use Permit before the City, providing notification to the neighbors, hold a public hearing before the Planning Commission and receiving approval of a Special Use Permit by the City. At such time, the City can evaluate whether the facility should be increased in height above the 85-feet. He added that at that point, the structure would be up and the visual impact would be known at 85 feet, allowing the City to better judge the impact of a taller structure.

Since the last meeting they have also met with the church to see if the antennas could be integrated into the church facility or whether to construct a stand alone bell tower. They met with a structural engineer at the church and reviewed the church drawings. The existing church structure is very open and of a vaulted type construction; not designed for additional loadings of the type involved with an additional cupola/steeple. The addition of such a structure would impart sizable new loadings to the existing structure and require significant structural modifications and major renovation of the church. Additional foundation work would also need to be performed in order to carry the new loads. These modifications would be major and time consuming, having considerable impacts on the aesthetic look of the existing church (inside and outside) as well as impact church schedules/activities for an extended period of time. After review, the church said it was not interested in such modifications.

A stand alone disguised bell tower is theoretically possible, but there was concern whether it would be architecturally compatible. Due to site restrictions and in order to accommodate the ground space needed for a bell tower, the tower would need to be placed approximately where the currently proposed monopole tower is located. Since this location is adjacent to the low point of the church structure a large profile bell

tower will be easily noticeable. As the height of the structure increases to over 100 feet, it becomes a very massive structure that would stand out more than the stealth pole that is being proposed. The Church agreed that the original proposal would be less obtrusive to the neighborhood and their property than a new massive bell tower.

The bell tower structures (from other locations) presented at the last meeting had a distance between poles of 12 to 20 feet creating a massive footprint, and those were structures under 100 feet in height. From the aesthetic standpoint, both T-Mobile and the Church prefer the proposed monopole because of the much thinner profile than you would have with a bell tower structure.

Mr. Holland noted to limit the height of the bell tower to 85 feet would significantly limit the options for co-location in the future. He did not feel an 85-foot bell tower would allow for any future co-locations at this site. Letters documenting their investigation and study were submitted for the record.

Mr. Holland restated they are requesting approval for an 85-foot stealth facility on the property and in order to facilitate potential future co-location, they would agree to build a foundation that would be capable of supporting a taller structure.

Patricia Archer, 4611 West 66th Terrace, stated that her backyard faced the church property. She feels this is a financial decision for a commercial business. If the foundation is built to support taller structures, this will create an ongoing question of how tall is the tower going to go and when, and how many equipment compounds will there be. She feels 85 feet is a pacifier, with 145 feet being their goal. The church will get additional money for each provider on the tower at the expense of the neighboring residents. The residents are not against technology. They are objecting to the application and to the location. The Planning Commission has recommended denial

three times and she is confused that the City Council would override their own Planning Commission.

Five years ago when an application for a monopole was made at Homestead Country Club, they were told facilities could not be placed near school locations because of the unknown potential health risk factors. She questioned if a double standard was being used against the children living around this site.

Mrs. Archer views this as a business and asked if an individual would be allowed to construct a business this height in the City. She asked the Council if they have gone out and looked at towers over 85 feet in height to get a clear picture of what is being proposed and what the people will be living with. She stated the residents are not fighting technology, they are fighting this location, and they suggested other commercial areas. She feels there are several questions that still need to be answered. She questioned the validity of a lawsuit over a specific application in a specific location and does not feel this is a blanket prohibition against towers. There is a smarter choice.

Casey Housley, 4900 West 68th Street, stated it is baffling to him that the church does not want to be inconvenienced to have their sanctuary reconstructed, yet they are willing to have the neighborhood inconvenienced for many years in the future. They have asked for a structure to be incorporated into the church, yet the church can't be inconvenienced. Their response to the bell tower, "well we don't like that." But do the neighbors like a 145-foot tower? The fact that the church is willing for the neighbors to be inconvenienced long-term and not willing to be inconvenienced temporarily for renovation bothers him. He said the neighbors would support a tower architecturally incorporated into the church structure.

Mr. Housley stated in considering towers, it does not have to be a one size fits all policy throughout the City. You can have shorter structures incorporated into structures in residential neighborhoods, and larger structures with co-location placed in commercial areas where the landscape can support them. It does not have to be an either/or situation. He feels that taller towers to support co-location is the best path to pursue in north Prairie Village. In areas where you have the character of the neighborhood involved, where you have largely residential areas and little land to deal with, perhaps a different idea needs to be adopted - not one size fits all.

Mr. Housley stated the last time the City Council overrode the recommendation of the Planning Commission was 22 years ago. The Planning Commission on three separate occasions unanimously recommended the denial of T-Mobile's applications at this location at varying heights. They are clearly sending the message that this is not the proper site for a cell tower. He noted that the two newest members of the Commission, with no history of the prior applications, voted against this application. Not one member of the Planning Commission has voted in support of any of the applications at this location. He feels the Council should give deference to the recommendation of the Planning Commission since that is their role and expertise.

It has been stated the reason this application is being considered is because of the pending litigation. Mr. Housley stated that long after the lawsuit is over, the cell phone tower could still be in place, and he urged the Council to focus on the criteria for approval.

First, does the proposal cause substantial damage to property values. A report from Donald Gossman, a certified professional appraiser, has already been submitted stating it does. In addition, Mr. Housley submitted a letter for the record, signed by

seven different real estate agents that state from their experience when working with buyers in Prairie Village, they are less likely to buy properties that are closely situated to visual obstructions and/or visual obsolescence's than those properties that are not. "Such obstructions include cell phone towers, power lines, radio towers and shopping centers. Common sense and logic tell us, the value of property closely situated to such structures significantly decreases the value of the property because of the visual obstruction and because many buyers will either not buy a home closely situated to such structures or will only buy the property at a significant discount." Five agents signed the letter and two additional have stated they would sign.

The comment was made at the earlier meeting that a councilmember purchased a home near the radio tower. Mr. Housley stated it is his feeling that when you purchase a home next to an existing tower, power lines, etc., you factor that into the value of the property. Conversely, the citizens around this proposed site purchased their property without a visual obstruction and are being asked to accept one after the fact. It was not factored into their properties values when they made their purchases.

The second criteria is "will it hinder future development?" Not one neighboring resident one standing before the Council has stated other than it will hinder future redevelopment. Mr. Housley noted several homes in the area that are new or have made significant recent enhancements and these residents have stated they would not have made those improvements had they known the proposed tower would be constructed.

The third criteria he addressed is "architectural consistency". He cannot think of a structure in a residential area in Kansas north of corporate woods that would be as tall as this structure at fourteen and a half stories. Mr. Housley agreed with the earlier

comment made by Mrs. Archer that an 85-foot structure would only be a pacifier, and that the 85-foot height has already been denied. It has been said that many of those opposing the tower are NIMBY's (not in my back yard). It is not an issue for him about not wanting it in his backyard. If towers are needed, he feels they should be placed in a location where they would do the greatest good for the greatest amount of people. Clearly areas that are at higher elevations are going to do the City the most good because they are going to provide the most coverage - for example, McCrum Park or Nall Baptist Church.

Mr. Housley distributed to the Council a handout discussing the alternative locations in a chart format listing the other sites that have been discussed listing the positive characteristics of the location, site input, T-Mobile's information, and the public perspective. This demonstrates that there are many other viable locations that would serve the overall community better. He feels the McCrum Park location is the best location. There have been discussions with Nall Avenue Baptist Church expressing their interest as a site, but T-Mobile walked away from those negotiations, as well as a location at Village Presbyterian Church. Mr. Housley stated he believes the impact of placing facilities at these sites will lower the heights on all of these locations - even if multiple towers are then used.

He feels the water tower at McCrum Park deserves special consideration as it sits topographically high in the City, the antenna could be placed on the water tower or the tower could be taken down and a monopole constructed. This would be an opportunity to generate revenue for the City in that if the City were to be proactive in constructing a tower at this site, it could lease space on that tower and have an ongoing revenue source. Mr. Housley stated that if the Council votes tonight out of fear of the

lawsuit you will be doing the citizens of the City a disservice. The residents have stated many times they are willing to assist in fighting the lawsuit. He said he would start a legal defense fund and he would put \$1,000 into it tonight. Don't vote out of fear of the law suit. Vote based on the criteria as set out in the City's ordinances.

Charlotte White, 6805 Cedar, acknowledged both the work of the City Council and the neighbors on this issue. She noted that she has been a full-time real estate professional for the past six years and knows from experience how cell towers affect both buyers and sellers of properties. She stated as follows:

- Appraisals: Quoting a different appraiser "Cell Towers and their out buildings adjacent to residential property are considered a visual obsolescence when completing a property value appraisal." She said the appraiser said it had the same impact as being next to a shopping center.
- Buyers: She had two buyers in the last two months drive away from properties without even getting out of the car; one had massive electrical wires next door and the other a cell tower.
- Sellers: When she does a property analysis for a listing, she always takes visual obsolescence's into consideration in pricing, making adjustments to the listing price.
- Disclosures: She said sellers must disclose any material defects or issues affecting the property value. Sellers must also disclose if they have received any notice of conditions or proposed change in the neighborhood and surrounding area. She as an agent must disclose any such information or she is liable.

Mrs. White stated she supports cellular communication and better service. However, she feels the towers should be placed at lower heights, concealed in structures or placed on existing facilities for the benefit of all residents.

Wyatt Cobb, 6615 Hodges Drive, referenced a letter from Brant Tidwell urging the City Council to preserve the integrity of the community. The letter referenced several other alternative locations (McCrum Park, Nall Baptist Church, Village Presbyterian Church and the cemetery), and urged the City Council to select the most appropriate location for this facility, and not to buckle under the pressure of pending litigation and

override the recommendation of the Planning Commission. Mr. Tidwell also expressed support to move forward with a new wireless communications facility ordinance applying appropriate criteria for the location of these facilities. Mr. Cobb added his concern with the impact of this application on his property value and his decision as whether to rebuild or sell. He said it is easier to explain a bell tower than a cell tower.

Cindy Worthy, 4306 Homestead Drive, feels the City Council needs to consider how they feel about the need for cellular service in the City. She uses her phone a lot but does not get cell service at her home. However, she would rather have the existing level of pool service than to have a large tower constructed. She acknowledged she did not want one in her backyard and can understand the residents' opposition to having one in their backyard.

Kate Faerber, 4806 West 68th Street, noted that after the last application, the City discovered its insurance does not cover the pending litigation. She noted her homeowners' insurance does not cover cell towers either. She feels that living in Prairie Village is their insurance policy, as the City carefully studies and reviews applications for wireless facilities before approve the required permits. Mrs. Faerber presented a picture taken from their backyard of a simulated 145-foot tower. The impact on their home is significant. She would not buy a home with this tower at the proposed site. At the first neighborhood meeting of the 15 persons present, only 2 people supported the application. Mrs. Faerber pointed out that five of the 26 landowners required to be notified did not claim their certified notices.

The proposed equipment area for this 145-foot tower is 30' x 28', with additional equipment structures of 16' x 20' and 16' x 20' for the other carriers' facilities which is about the size of a small 7-11 and would be highly unlikely to be approved in a

residential community. In the City of Leawood, when the proposal for Leawood Golf Course was presented, it was presented as a 95-foot tower. That City said 65-feet and they compromised at 75-feet, but said it had to be an alternative structure because it was too close to residential properties. So they created a monopine with realistic branches and a height in line with the existing trees. That is what the residents are seeking, that the facility be in tune with the surrounding architecture, and if it can't be done, they feel there are other better locations. Mrs. Faerber stated this is a long-term decision for the City and they feel it will set precedence for future applications. She asked the Council to deny the proposed application.

Harold Neptune, 4722 West 68th Street, submitted a representation of the proposed tower using dimensions of the church in the same plane as the tower. The proposed monopole is 28' from the church parking lot, the distance of the monopole from the building is 28 inches with a base of 42 inches. The second picture is taken from the back of their home with the differing height levels marked. Looking at the photos, they cannot see how anyone can say this structure is characteristic of the neighborhood. He said they now cannot sell their house without getting sued or disclosing this tower.

Pat Kauffman, 4307 West 63rd Terrace, noted this application is not in her backyard nor several of the other residents in the area. This is about Prairie Village.

Mary Cordill, 4904 West 68th Street, made the following statements:

- The neighbors are not opposed to cell towers in the neighborhood. They agree they are important. They are promoting thoughtful installations that maintain the aesthetics of the neighborhood and value of their properties. They want coverage, but also to protect their property values.
- Tall co-location towers are good in commercial areas and in some residential areas. However, they feel that primarily in low density residential areas there needs to be shorter towers that can be disguised; noting samples of sites in the

area that have been very successful in doing this - St. Ann's Church and the Lutheran Church at Tomahawk & Stateline particularly. There are also creative installations such as the monopines.

- They feel setback requirements for residential areas are very important. The proposed 145-foot tower would not meet the proposed setback requirements of the proposed ordinance. There is no other city in the area that would accept the proposed setback.
- She feels the financial stability of the site needs to be considered as this is a long-term installation.
- They have spent over a year dealing with this issue. The Planning Commission has recommended denial of three separate applications. Follow their recommendation. This does not meet Special Use Permit criteria and does not fit in this neighborhood.
- She also agrees the 85-foot tower is only a pacifier and assured the Council the next five years will be spent fighting additional applications to add height to that structure.

Paige Price, 6730 Fonticello, lived here as a child and has returned because of the community. She did not buy next to a shopping center or a 14 ½ story structure. She recently improved her home of 18 years and stated she would not have ever done so if she knew this cell tower would be constructed. She stated she would have sold and moved to Leawood where there are ordinances to protect the citizens. This is not a commercial area and the cell tower is commercial. She said the proposed compound footprint for the equipment units would be larger than some of the houses across the street. This is not in keeping with Prairie Village.

Mary Cordill, 4904 West 68th Street, added the following comments:

- Nall Avenue Baptist Church is interested in having a tower on their property and they sit 90 feet higher in elevation. Logically you would think there could be a shorter tower at that location and get the same level of coverage. Their administrator stated today, they agree with shorter towers integrated into structures and were willing to work with T-Mobile.
- Brant Tidwell talked with Pastor Tom Are at Village Presbyterian Church who confirmed they were interested and did in fact talk with T-Mobile regarding locating on their property. However, when the Board gave them a lease rate, they walked away without any negotiation. Mrs. Cordill stated this documents that T-Mobile has not fully explored other available options.
- McCrum Park has been discussed as an option, and with the new ownership of the Prairie Village Shopping Center this may be another alternative.

Audrey Webber, 6832 Granada Road, stated she lives in a house where she does not get cell phone coverage and does not have a landline. Her elderly mother lives in the county where she gets cell phone coverage and can get EMT communication. Her mother always carries her phone in case she needs help. She would like to move her mother into the area but is concerned about the lack of cell phone coverage and related emergency communication. This is a serious safety issue and she asked the Council to consider this in their decision and, if not here, to do something to allow all Prairie Village residents to have dependable coverage that is needed.

Randy Cordill, 4904 West 68th Street, in response to the issue of 9-1-1 safety, he secured the following information from the FCC website: "Basic 9-1-1 rules require wireless service providers to transmit all 9-1-1 calls to public safety answering points regardless of whether the caller subscribes to the providers service or not."

The thing that bothers him the most is that T-Mobile decided to use their creativity to sue the City to get approval of a bad application at a bad location when there are better alternatives. He is not opposed to cell towers, but there are better ways to do this. If you decide there needs to be a tower, allow them to build a 65-foot tower made into a flagpole replacing the existing flagpole at this location today. He is ready to write a check. Do not let them intimidate and bully the City into approving this application.

Pastor Peter Rehwaldt, Faith Lutheran Church, made the following comments in response to comments by others:

- The structure of their church building does not have a peak roof that meets in the middle - the west side does not meet the east side except for windows. Therefore, to create a structure on top of that (a steeple) would require reconstructing the entire roof. He noted the decision not to do so was not

because of the inconvenience, it was because the design of the church was how they wanted it.

- This leaves the option of a free-standing bell tower. He asked that you take the picture presented by Mr. Neptune and instead of taking a 42" wide pole, picture a fifteen or twenty foot wide building in that same space. The opinion of the church is that a bell tower of that width and dimension and the height of 85, 120 or 145 feet would not be architecturally consistent for their property or for the neighborhood.
- The church is not opposed to working with its neighbors, but you must recognize that the church facility is not the same as a residential lot. While the church is residential in function and purpose, they are commercial in concept and nature. They have two parking lots the size of 3-4 house lots. In addition, if you have been to church on a Sunday there is more traffic than is typically found in a residential neighborhood.
- There are certain things that would not work. Putting a steeple on this facility will not work and constructing a freestanding bell tower would be problematic at best. The church at Tomahawk is approximately 50 feet tall and they have constructed a bell tower that is 65 feet tall. With the style of their building those proportions work. However, if you were to take that building and double the size of the bell tower to 120 feet, it would not work. It would not be architecturally consistent with the neighborhood.

Pat Daniels, 8000 Juniper, stated he does not live in this area and his property would not be impacted; however, he is very interested in what happens in Prairie Village. He stated it is only common sense that you do not put a tower at the lowest portion of the service area. There has to be another answer, a better location for this tower. The City can comply with federal regulations and law by working constructively to find a better location. He feels a better location would be McCrum Park, noting you would be replacing a tower that already exists. He recognizes there are economic issues involved that have to be worked out; but this is the logical answer as to how to work it out in the long term.

David Hickman, 5101 West 68th Street, noted he has been doing commercial real estate for 22 years and noted that almost every transaction has a contingency or city approval. He finds it strange that T-Mobile would enter into an agreement without having determined that this was an acceptable use at this location. He feels the

residents are being forced into this position. He distributed a photo of an antenna at 60th & Roe in Mission and asked those involved to look at this objectively, listen to the residents, and to take the time necessary to determine the best decision on this application. It has a significant long-term impact on the community.

Bob Kalkofen, 5011 West 69th Terrace, said the dominant feature on the horizon by his work was a cell tower at 93rd and Antioch, and that it stood out as a prominent feature. He had the following questions:

- How do you disguise a 145-foot tower that rises about the tree line?
- Why does this have to be 145 feet, and noted that the St. Ann's tower at 65 feet sits lower than Faith Lutheran?
- Why has T-Mobile entered into a lease before securing the necessary approvals; does T-Mobile think this is a foregone conclusion that they will be able to construct the tower as desired?

He said he was stuck with his house now because the City was being bullied by T-Mobile and the church.

Mayor Shaffer called upon Curtis Holland to respond to the comments and questions raised by the public.

Mr. Holland said he disagreed with the neighbors on a number of points. He responded that Nall Avenue Baptist Church would be available if T-Mobile would place the monopole five feet from the south property line adjacent to residential properties. He does not see that as an option, and therefore they did not enter into a lease agreement with that Church. Regarding Village Presbyterian Church that site is in a different search ring and would provide coverage for a different area. Mr. Holland noted they may go back to that site, but it is not an alternative location for this application.

Many of the comments made addressed a 145-foot structure, although it was stated at the beginning of his presentation that T-Mobile proposed to construct an 85-

foot structure with the capability for future extensions of height. Prairie Village is unique because of the abundance of mature, tall trees that require a minimum height to 85' to get coverage. If the City wants to meet the coverage needs that have been documented by other carriers in addition to T-Mobile, the City would end up with multiple structures with a minimum height of 85-feet. Their charge is to try to work with facilities to make them as compatible with the areas they cover. In order to provide service in residential areas, the towers have to be in residential areas.

He noted, contrary to comments made regarding locating in a hole, when you need to serve an area in a hole, it is best to locate within that area. The installation at the church on State Line was done to provide coverage in a hole at that area.

Mr. Holland stressed the proposed structure is not a 145-foot tower, but an 85-foot structure with possible extensions to 145 feet. The City has complete control as to whether or not it goes one-inch higher as that would require an additional Special Use Permit with the required notices and hearings.

He noted one suggestion was to approve a 65-foot tower because that is only 20 feet taller than the church. He said 85 feet is only 20 feet taller than that.

With respect to the claim that the Council has not overridden a Planning Commission recommendation in 22 years, which he cannot confirm, he noted the charge of the City Council is broader than looking at the immediate area which the Planning Commission must consider, but to look at the entire community at-large. Mr. Holland stated the lack of coverage in this community is an important issue and one that is experienced by every major carrier. They have all indicated that they would like to have improved coverage in this area. You may end up with one taller structure or four additional smaller structures located in this area.

Mr. Holland noted that when the earlier application by Cingular for antenna at McCrum Park was before the City, (former Council member). Daniels stated he did not think it was a good idea.

Mr. Holland stated the comments made regarding real estate sales disclosure were untrue and that individuals did not have to disclose if they were living near a cell tower or that a rezoning is pending. In response to tall structures north of College Blvd, he noted the 150-foot cell tower located behind City Hall, the 250-foot radio tower down the street and the 120-foot tall McCrum water tower. These facilities are in the area. The Federal Communications Act requires that you consider and provide for and allow wireless coverage. You can not prohibit these facilities or carriers from providing these services in an area. Mr. Holland also noted a misstatement on the requirement to provide for 9-1-1 calls. Companies are required to do so if the phone is compatible with the technology that is providing the service; however, every provider uses a different technology/engineering platform. If you are in an area where all the providers need improved coverage, which has been documented for this area, you will not be able to make these calls.

The decision before the City Council is whether you will allow wireless coverage in this area. They have rights to provide wireless service to Prairie Village and all the areas when they have a license. This application is not about trying to bully the City and its not about a pending lawsuit. It's about trying to provide coverage to their customers so they can use the services they are demanding. Mr. Holland stated much of the population is going to solely wireless phone coverage. He said many are cord cutters and need service. As a community, the City Council should think larger than this little area and about the community at large.

In closing Mr. Holland stated if there was a better solution, they would have found it by now. He requested the Council's approval of the application for an 85-foot structure at this location noting, the City does not have to improve it one-inch higher.

Al Herrera stated it is not a matter of not wanting a cell tower and they understand the need. His problem with the application has been the contradicting information that has been received and the level of mistrust that has been raised. He said he spoke with Nall Baptist and was told no one had approached them in two years. He does not see any compromise made by the applicant to fit in with the community. He does not understand why a tower would be located at this site to provide coverage to the west. Mr. Herrera noted the Planning Commission serves as an arm of the Council. He said he felt bullied. When they met with T-Mobile in January, they told T-Mobile to compromise and to talk to Nall Baptist. He expressed to Rev. Rehwaldt that he does not feel the church has been willing to work with the neighbors for an acceptable compromise. He questioned the church entering into an agreement prior to Council approval. He does not feel T-Mobile has been truthful in response to questions raised by the City or the residents. He noted the denial of McCrum lease (in 2006 with Cingular) was based not on the proposed antenna, but on the size and location of the equipment compounds. The City is trying to attract new families and encourage residents to make improvements to their property. Improvements are taking place in this area; however, the residents have all stated they would not have made their purchases or improvements to property if the proposed tower was in place.

Mr. Holland responded that a letter was submitted to the Council last Thursday with an email from Nall Avenue Baptist Church which indicated that they did not want the facilities where T-Mobile wanted it. The decision was made based on where Nall

Baptist wanted to place the tower, immediately adjacent to the south property line which abuts residential properties. T-Mobile had already experienced the City's denial of an application at this current site with the placement being adjacent to a residential property line. Therefore, they did not want to file another application that would be rejected because of its closeness to residential properties. T-Mobile feels that Nall Baptist is not an option. T-Mobile requested a location deeper onto the church property in the parking area and away from the adjacent residential properties and that was not acceptable to the Church.

The propagation maps submitted indicate a significant coverage gap in this immediate area. The gap also extends to the west, but the significant gap is also where the current tower is proposed. Mr. Holland noted that McCrum Park would not be a bad idea, but noted all those surrounding residents would oppose the installation just as they did before. Also, if a tower were placed where the existing water tower is at McCrum Park, it would not meet the setback being proposed in the City's new ordinance.

Mr. Holland stated entering into a lease prior to gaining City approval is the standard operating procedure in the industry. The lease has a contingency that provides an out if the application is not approved. The City requires approval of the property owner for an application to even be filed.

In response to the statement that a cell tower installation would stop the redevelopment of the neighborhood and property improvements, Mr. Holland stated a building permit was issued for a property on this street on March 26th, after this application was filed and the proposed installation was public knowledge. He understands the difficulty of this application and again noted they are asking for an 85-foot structure, not an inch taller if the City does not want it any taller.

The Mayor confirmed with Mr. Holland that T-Mobile only needs 85 feet, and that under their proposal, should another carrier need to locate above 85 feet, it would be at that carrier's expense.

Dale Beckerman confirmed the 85-foot structure would accommodate T-Mobile's needs for both data and voice applications and that the two antennas would be located within the monopole.

Diana Ewy Sharp confirmed that McCrum Park meets the coverage needs of T-Mobile and that antennas could be placed on the water tower. She asked where the equipment compound would then be located. Mr. Holland stated none of the equipment facilities are underground as they are susceptible to water and moisture in the clay soil in Johnson County. The proposed structure in the Cingular application was a custom-made small equipment building placed outside the fenced area surrounding the base of the tower. The Water District would not allow any access underneath the tower because of the underground pipes and the foundation located beneath the tower. If T-Mobile were to use this site, he feels their equipment building would also need to be placed outside the fence.

Mrs. Ewy Sharp asked, knowing that current estimates are approximately \$400,000 to tear down the water tower and that WaterOne will not be able to budget for that until 2014, is there a possibility that T-Mobile and the other carriers would be willing to absorb those costs? Mr. Holland stated he could not speak for the other carriers and stated it depends on how willing they are today to contribute to the removal of that facility. He added there are a lot of liability issues because of the lead-based paint that is on the tower. Mrs. Ewy Sharp asked if T-Mobile would be willing to allow a period of time to explore that possibility.

Mr. Holland responded T-Mobile would not withdraw this application. He feels a decision needs to be made about this facility. He stated this would be a tremendous task that would require the cooperation of each of the different carriers, with Federal rules that must be considered, and Johnson County Water District and the City as players, which is at least six parties.

Mrs. Ewy Sharp asked if the Water Department is not using the tower would the equipment box be able to go within the fenced area. Mr. Holland responded that he did not think so and noted the cost to repaint the structure is over a million dollars. Mr. Holland noted he had supplied e-mail communications with Mike Armstrong of the Water District indicating the costs and requirements.

Mrs. Ewy Sharp stated she is really interested in co-location and the possible revenue stream if a tower could be located on City property. She needs to know if the site would meet their needs and if they would be willing to allow for that exploration. Mr. Holland responded they want a decision on this application. They would not withdraw this application. He feels there needs to be a decision made on this application.

Dale Beckerman asked if there were any proposed co-locators at Faith Lutheran for which McCrum does not work. Mr. Holland responded he does not know relative to all four carriers, but three have indicated that it could work for them. Mr. Beckerman asked what the construction costs are for an 85-foot tower. Mr. Holland clarified the costs would be only for the construction of the tower and responded about \$80,000. Mr. Beckerman noted this is approximately a fifth of the cost to take down the water tower. Mr. Holland repeated any action at that location would take the cooperation of several parties and noted the residents surrounding that site were as passionately against the earlier application as those present tonight.

Mayor Shaffer noted the City was instrumental in getting the Water District to allow antennas on the tower in Harmon Park.

Laura Wassmer asked if a 65-foot structure would work. Mr. Holland stated it would not because of the 60 to 70-foot trees in this area and the signals need to be above the tree canopy to work.

David Morrison asked if there had been any discussion on using the monopine design or a free standing cross. He feels that would be more aesthetically acceptable than a pole. Mr. Holland responded there is a free standing 95-foot cross at 55th and Metropolitan in Kansas City, Kansas, and that it would not be more attractive than the monopole proposed.

Bill Griffith confirmed the Homestead application was withdrawn by the Country Club. Dennis Enslinger stated both the provider and the property owner must agree to the filing of an application and his understanding is that Homestead withdrew their consent for the application to be filed making the application no longer valid. Mr. Griffith confirmed the application for McCrum Park was made by Cingular represented by Selective Sites. His concern is that the church has been the only site for which an application has been submitted by T-Mobile to meet this coverage gap, and he is unconvinced that all available options have been fully explored.

Mr. Enslinger responded there have been three separate applications at this location, all filed by T-Mobile, with the first application for 120-foot structure being withdrawn by the applicant. The second application was for 85 feet at the same property with a different site plan location, with that application being denied by both the Planning Commission and Council. This is the third application and no other sites have been proposed by T-Mobile except this location.

Dennis Enslinger summarized the following options available to the City Council:

- The current motion is to override the recommendation for denial and would take a vote of eight members of the Council with the Mayor being able to cast the deciding vote if needed. He added based on the recommended motion from the Council Committee of the Whole, there is a draft ordinance in the packet listing the 18 conditions of approval found in the Planning Commission Staff Report. He clarified that motion proposes the tower to be 140 feet, not 145 feet, as one of the conditions of approval.
- The second option the Council has is to uphold the Planning Commission recommendation which would take a vote of seven members with the Mayor having the ability to cast the deciding vote if necessary. He added that if the Council goes with this option, the Council needs to add a caveat to be in compliance with the Federal Regulations and direct staff to prepare a written record of denial for consideration by resolution by the City Council at a future date.
- The third option is to by a majority of those present to remand back to the Planning Commission the current application, asking the Planning Commission to reconsider specific items that you feel are relevant.
- The final option is by simple majority to continue the application to a future date.

Mr. Enslinger stated the City Council has received a number of items this evening and there have been other items referenced by both the applicant and the neighborhood indicating that they sent information directly to Council members. Typically, those items would be considered new information and information that the Planning Commission did not have in reaching their determination for denial of the application. It is very important that this be considered in any motion that is made. If the motion is to remand back to the Planning Commission, it is essential that all the information provided to the Council be provided to the Planning Commission for consideration. He noted as part of the public hearing process before the Planning Commission, information is to be presented and the Council's review should be limited to the record and focused on what was presented at the Planning Commission public hearing, as opposed to things stated at the previous Council Committee of the Whole meeting or at tonight's meeting.

Mayor Shaffer reminded the Council there is currently a motion on the floor to override the recommendation of the Planning Commission.

David Belz stated the possibilities at McCrum Park have sparked his interest because of the potential revenue implications and asked if he wanted to pursue these, how he should vote on the motion on the floor and what the next steps would be.

Dennis Enslinger stated there is not an easy answer to that question, noting part of it depends on if the applicant is willing to allow some delay, also noting the Federal regulations require the City to act on the application in a timely fashion, and therefore, he does not feel it could be delayed unless the applicant agrees. He feels the next step would be to have the City (as the McCrum Park property owner) to clarify with the Water District what they are actually asking for. He noted the \$450,000 mentioned this evening is not only for taking down the water tower but also includes improvements necessary afterwards to the water system to enable the removal of the water tower. He noted that roughly half of those costs are for a PRV valve that has to be installed.

Another important question staff has asked is how big of a footprint would the Water District need after the tower is removed, keeping in mind there is a large amount of infrastructure below grade at that location. It would be important to know if all their infrastructure would then be below grade or would they need an additional above grade pump and if so how big would that area be and then how much area would need to be provided for cellular providers. This would be the next step from his perspective. In terms of the motion, there would be some time to do this exploration if the application is remanded back to the Planning Commission to consider specific items. He would not direct them to look at McCrum Park, but at other options related to this application such as whether a monopine would be acceptable, integration into the church, etc. This

would go to the Planning Commission at their June 2nd meeting and would not come back to the City Council until June 15th.

Mr. Enslinger stressed a zoning application is to be reviewed on the merits of the current application and just because McCrum has been suggested as a alternative, the focus needs to remain on what has been presented and review the application based on its merits.

Steve Horner, Assistant City Attorney, added if the Council chooses to deny the application a chain reaction process is started - first requiring staff to prepare the written record of denial, and then T-Mobile has 30 days to file a lawsuit for this application. Mr. Horner stated an alternative would be to continue the application to allow time for investigation of the McCrum Park option. Then if it was discovered after speaking with WaterOne and others that McCrum Park is not a viable option, this application could be picked back up without starting over. He feels this is the better option.

Charles Clark confirmed the City is already in Federal Court on the denial of the second application and asked what the implication would be if this application was also denied. Mr. Horner responded that he would prefer not to address the pending lawsuit at this time. Dale Beckerman confirmed the on-going lawsuit is on-hold while this application is being considered. Mr. Horner noted, however, they are to report back to the Federal Court this week with regards to the status of this application.

Dale Beckerman noted that the City may be required by the Federal Court to allow the construction of the 85-foot tower previously requested and if that were to occur, there would not be any potential for co-location. Based on the indicated need for coverage in this area by other providers, it would then seem likely that without the possibility for co-location, there would be additional applications by other carriers. He

does not view this as a positive situation. Mr. Horner stated that typically in these suits if the court overturns the decision of the City, the application as submitted is approved, which in this case would be an 85-foot tower.

Al Herrera confirmed that if the application was continued and it was determined that McCrum Park was not feasible, the application process would continue where in left off seeking action by the City Council.

Steve Horner noted by ordinance the only public comment that is required is that at the public hearing before the Planning Commission, although the City has allowed public comment both at the Committee level and the Council level.

Mr. Herrera confirmed an application to locate at McCrum Park would require a new application and the required notifications and public hearings.

Michael Kelly stated he felt the best way to utilize this delay would be to send the application back to the Planning Commission for reconsideration allowing staff time to further investigate McCrum Park.

Charles Clark confirmed that if the application is denied this evening the applicant does not have to wait thirty days on the pending lawsuit against the City.

Laura Wassmer stated she feels this is a decision for the City Council noting they have heard all the information and she does not support sending it back to the Planning Commission. She would like to hear more about possibilities at McCrum Park.

Curtis Holland stated they are not opposed to the City continuing their application and looking further at McCrum, and coming back to the City Council at the next meeting on May 18th. They would make a sincere effort to evaluate the McCrum site with the City actively involved in the process and would be willing to delay action for three weeks to do so.

Steve Horner asked if this also included remanding the application to the Planning Commission. Mr. Holland responded he agrees with Ms Wassmer that the Planning Commission has already considered this item. Ms Wassmer stated she feels the application should be continued because there is information that is valuable for everyone to know before a final decision made. She is hearing the same message from other Council members that they would like to have the McCrum location fully explored before they make a final decision. Laura Wassmer moved to table action on this application to allow for further exploration of McCrum Park as a possible site. The motion was seconded by Al Herrera.

Mayor Shaffer stated the motion to table overrides the motion on the floor and is not debatable. City Attorney Katie Logan stated the motion must include a date for reconsideration. Laura Wassmer amended her motion to include the meeting date of June 1st with the amendment accepted by Mr. Herrera.

Mayor Shaffer asked Mr. Holland if he felt June 1st was sufficient time to gather the necessary information. Mr. Holland responded he felt the information could be gathered by that time and perhaps sooner. It was suggested that the motion be reworded for reconsideration no later than June 1st in case the investigation was completed earlier. Katie Logan stated a specific date is required. Laura Wassmer suggested May 18th to not delay the consideration longer than needed. Steve Horner noted he has a previous commitment on May 18th and cannot be in attendance. Mayor Shaffer noted he would not be in attendance June 1st. Alternate dates were discussed.

Mayor Shaffer called for a vote on the motion on the floor to table consideration of this application until Monday, June 1st. The motion was voted on with the following votes cast: "aye" Herrera, Wassmer, Ewy Sharp, Belz; "nay" Griffith, Hopkins, Voysey,

Kelly, Wang, Beckerman, Clark and Wassmer. Mayor Shaffer declared the motion defeated by a vote of 4 to 8.

Laura Wassmer moved to table consideration of this application until Monday, May 18th. The motion was seconded by Al Herrera. The motion was voted on with the following votes cast: "aye" Herrera, Wassmer, Ewy Sharp, Belz; "nay" Griffith, Hopkins, Voysey, Kelly, Wang, Beckerman, Clark and Wassmer. Mayor Shaffer declared the motion defeated by a vote of 4 to 8.

David Voysey stated the City Council needs to deal with this application now. It is too late to bring McCrum Park into consideration. He feels the City needs to give T-Mobile the minimum they will accept and address the citizens concerns and move forward approving an 85-foot monopine and then get the new ordinance on the books to prevent this situation in the future

Ruth Hopkins called the question on the motion on the floor. Mayor Shaffer noted that this was undebatable and does not require a second.

Michael Kelly repeated the motion on the floor as follows: that the City Council override the recommendation of the Planning Commission and approve the Special Use Permit as presented subject to the 18 conditions of approval recommended in the Planning Commission Staff Report.

Katie Logan confirmed the vote is to approve the application as originally submitted to the Planning Commission with the conditions recommended by Planning Staff which lowers the height of the tower from 145 feet to 140 feet.

Mayor Shaffer stated as a motion to override the recommendation of the Planning Commission eight votes are required for approval and it would be the adoption of an ordinance for approval a roll call vote will be taken.

The following votes were cast: “aye” Hopkins, Wang, Beckerman, Clark, Ewy Sharp and Belz; “nay” Herrera, Griffith, Voysey, Kelly, Wassmer and Morrison. Mayor Shaffer stated the 6 to 6 vote does not meet the required eight for adoption and therefore, the motion fails.

Michael Kelly feels there are still a lot of questions that need to be answered to ensure we maintain the characteristics of Prairie Village and noted that new information has been presented that has not be heard by the Planning Commission; therefore, he moved the City Council remand the Special Use Permit for the wireless communications facility at 4805 West 67th Street back to the Planning Commission with the following instructions: 1) review the installation of a wireless communications facility in a stealth manner such as a “monopine” or integrated into the architecture of the church structure; 2) review an appropriate location for the proposed structure if a monopine is appropriate for this area; 3) review the height of the structure and 4) review any all new information presented to the City Council. The motion was seconded by Andrew Wang.

David Belz confirmed that no specific height recommendation is included in the motion.

Michael Kelly stated his concern is with the setting of precedence, therefore, he wants the Planning Commission to determine what is in the best interest of the City in the long-term. He wants to hear back from the Planning Commission about integrated wireless facilities and do they work at this location. This also gives the City time to further investigate McCrum Park. Laura Wassmer asked if he would include in the directions to the Planning Commission to consider McCrum location. Katie Logan advised that would be a separate application.

Bill Griffith feels if this is sent back it would simply be playing political football with the Planning Commission and their time. They've recommended it be denied, and he feels the Council should affirm that decision and let the Federal Courts and the pending suit run its course.

David Voysey stated he would be open to the motion if there was a height requirement, such as 85 feet.

Michael Kelly moved to amend his motion adding that the height of the tower not exceed 85 feet. Andrew Wang accepted the amendment.

Al Herrera stated this is a good example of being proactive and not reactive. He supports this motion. He feels it is also fair to the applicant.

Ruth Hopkins does not agree with sending the application back to the Planning Commission noting that a height restriction of 85 feet prohibits co-location and the City would be looking at applications at multiple locations. Mayor Shaffer stated he is not sure the Planning Commission would accept an 85-foot monopine.

Charles Clark noted the applicant does not have to wait and could go to Federal Court tomorrow. He understands the sentiments of the residents but unfortunately, feels the City will lose based on the Federal Communications Act and the past decisions of the court. Al Herrera asked why he did not vote to pursue McCrum Park if he felt the City was going to lose the lawsuit. Mr. Clark responded that at 85 feet there will be at least three more applicants still needing to provide service in this area. They will easily fill up McCrum Park.

Laura Wassmer stated the City Council is the ultimate decision making body and she feels the decision making should be kept at the Council, noting the Council has heard all the information from the applicant and the residents and knows what it would

like to see. She feels the additional information should be gathered and the decision made by the Council. She does not feel at this point the Planning Commission will be able to make a better decision than the City Council.

Dale Beckerman noted this is the third trip through Faith Lutheran in a year and he feels if there were other options available they would have been discovered by now and that has not occurred. He feels it would be a delaying step to send it back to the Planning Commission as he does not feel anything new will result. He ultimately feels the decision on this application will be made by the Federal courts without the residents or the City having any input.

David Voysey asked if the monopine would work, why it was not discussed in previous Planning Commission meetings. Mr. Holland responded it was discussed at the Planning Commission level and at the time they were trying to accommodate four carriers and that could not be accomplished with an 85-foot monopine. During the January meeting with the City, T-Mobile was directed to maximize the facility for co-location opportunities and to revisit with the carriers. Each one of them had different height requirements with some up to 130 feet, making a multiple provider monopine structure necessary. Because of the vertical and horizontal separation required, it was not felt that four monopine structures on this site would be a viable solution. The Planning Commission's primary focus was on co-location. Dale Beckerman stated a 140-foot monopine is not feasible. Ms Wassmer stated she wanted a 65-foot monopine.

Ruth Hopkins called the question on the motion on the floor as amended. The following votes were cast: "aye" Herrera, Voysey, Kelly, Wang and "nay" Griffith, Hopkins, Wassmer, Beckerman, Clark, Morrison, Ewy Sharp and Belz. Mayor Shaffer stated the motion failed.

Laura Wassmer stated she would like to direct staff to get additional information on McCrum Park. Mayor Shaffer stated that is not applicable to the application on the floor and the Council has already voted on this.

Katie Logan stated a definitive motion needs to be made, such as approving the Planning Commission recommendation. Defeating the motion to override the Planning Commission recommendation and to send the application back to the Planning Commission does not conclude action on this application.

Dennis Enslinger stated the Council has the following two options:

- Amend the ordinance as it is written to however the Council would like it to read specifying the conditions required by the City. For example, he mentioned a different height or form of tower. This would be a motion to modify the recommendation of the Planning Commission and therefore, as a change to the Commission's recommendation it would require eight votes for adoption; or
- Adopt the Planning Commission's recommendation with direction to staff to prepare a written record of denial for consideration by resolution at a future Council meeting, setting a specific meeting date. He stated seven votes would be necessary for approval of that motion.

Bill Griffith moved the City Council affirm the recommendation of the Planning Commission as stated in their April 4, 2009 minutes and to direct staff to include in the written record of denial the reasons based on the factors listed by the Commission being #2, #3, #4 and #9 to be presented by resolution at the May 18, 2009 meeting of the City council. The motion was seconded by David Belz.

Mayor Shaffer confirmed if this motion is approved the City would be finished with this application except for the consideration of the Resolution of denial confirming the findings of the Planning Commission and formalizing this action.

Michael Kelly stated a positive vote on this motion will almost ensure that the City will get what it does not want to happen.

The following votes were cast: "aye" Herrera, Griffith, Voysey, Wang, Wassmer, Morrison, Ewy Sharp and Belz; and "nay" Hopkins, Kelly, Beckerman and Clark. Mayor Shaffer declared the motion approved by a vote of 8 to 4 and announced to the public the vote finalizing this action will take place on Monday, May 18th at the City Council meeting.

Mayor Shaffer stated that due to the lateness of the evening the remaining agenda items will be carried over to the May 18th City Council meeting.

ANNOUNCEMENTS

Committee meetings scheduled for the next two weeks include:

Planning Commission	05/05/2009	7:00 p.m.
Park & Recreation Committee	05/13/2009	7:00 p.m.
Sister City Committee	05/11/2009	7:00 p.m.
Council Committee of the Whole	05/18/2009	6:00 p.m.
City Council	05/18/2009	7:30 p.m.

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The Prairie Village Arts Council is pleased to announce a photography exhibit by Kay Trieb for the month of May. The reception will be held on Friday, May 8th from 6:30 - 7:30 p.m.

Recreation memberships are now for sale in the City's Clerk's office. The pool will open on May 23rd.

The City offices will be closed on Monday, May 25th in observance of Memorial Day. Deffenbaugh also observes this holiday and trash pick-up will be delayed one day.

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 10:50 p.m.

Joyce Hagen Mundy
City Clerk

CITY TREASURER'S WARRANT REGISTER

DATE WARRANTS ISSUED:

Warrant Register Page No. 1

May 4, 2009

**Copy of Ordinance
2859**

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
EXPENDITURES:			
Accounts Payable			
91848-91938	4/3/2009	149,160.41	
91939-91945	4/7/2009	85,184.71	
91946-92052	4/17/2009	359,881.03	
92053-92056	4/24/2009	3,185.19	
92057-92057	4/27/2009	180,917.31	
Payroll Expenditures			
4/10/2009		230,269.48	
4/24/2009		230,474.06	
Electronic Payments			
Intrust Bank -credit card fees (General Oper)		396.48	
State of Kansas - sales tax remittance		2.51	
Marshall & Ilsley - Police Pension remittance		7,312.87	
Intrust Bank - fee		371.82	
KCP&L		6,718.90	
CBIZ - Section 125 admin fees		252.92	
Intrust Bank - purchasing card transactions		18,222.56	
United Health Care		1,108.72	
Kansas Gas		1,645.53	
Wells Fargo HSA		3,224.25	
TOTAL EXPENDITURES:			\$ 1,278,328.75
Voided Checks			
Marsh Enterprises	#91901	(400.00)	
TOTAL VOIDED CHECKS:			(400.00)
GRAND TOTAL CLAIMS ORDINANCE			1,277,928.75

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

Passed this 18th day of May 2009.

Signed or Approved this 18th day of May 2009.

(SEAL)

ATTEST: _____

City Treasurer

Mayor



VILLAGEFEST COMMITTEE

Council Meeting Date: May 18, 2009

CONSENT AGENDA: Consider Approval of VillageFest Contracts

RECOMMENDATION

Staff recommends the City Council approve the following contracts for VillageFest 2009.

Scott Klamm	Music Demonstration	\$188
Billy Ebeling	Headliner Band	\$1,500

FUNDING SOURCE

VillageFest Fund

ATTACHMENTS

1. Contracts

PREPARED BY

Jeanne Koontz, Deputy City Clerk
May 13, 2009

ENTERTAINMENT/ VENDOR AGREEMENT

THIS ENTERTAINMENT/VENDOR AGREEMENT, (hereinafter "Agreement") is made and entered into this 5th day of MAY, 2009, by and between the City of Prairie Village, Kansas (hereinafter "the City") and Scott Klamm, (hereinafter the "Vendor").

WHEREAS, the City is sponsoring an event, entitled VillageFest, for the general public which is to be held on July 4, 2009; and

In consideration of the mutual promises and covenants contained herein, Vendor and City agree as follows:

1. Type of Space Provided: the Vendor shall specify the square footage required including facility foot print and clearance space outside the facility foot print:

Tent with Table & 2 Chairs
2. Type of Service Provided: the Vendor agrees to provide the following services:

Music Demonstration
3. Hours of Operation: The Vendor shall provide services to the general public from 9:00 a.m. to 10:30 a.m. on July 4, 2009.
4. Access to Facilities:
 - a. Vendor shall have access to Vendor's location on July 4, 2009 for set-up between 7:00 a.m. and 9:00 a.m. and for breakdown after 10:30 a.m. Vendor's vehicle(s) must be removed from the VillageFest grounds within one hour after the end of this time period or the vehicle(s) will be subject to tow.
 - b. Vendor shall furnish the City a list of each equipment/facility showing the required electrical power in AC volts and AC amp, required water from a garden hose, required fencing, required set-up/breakdown assistance specifying skills required, and any other special requirements as part of this Agreement. Any amendments to Exhibit A must be approved by the City in writing.
5. Compensation: In consideration for the entertainment provided, the City shall pay to the Vendor the amount of \$188, to be paid on or before July 4, 2009 unless the event is canceled as provided in Section 6 of this agreement.

6. Cancellation of the Event: The City has full authority to cancel the event for any reason. In the event that the City cancels VillageFest, the City shall notify Vendor of the cancellation in a timely manner, and this Agreement shall be terminated.

7. Clean-Up: Vendor shall maintain its Vendor's Booth and/or operating areas in a neat, clean, sanitary condition and in good order and repair, free and clean of all litter, debris and rubbish at all times. Vendor shall be responsible for the clean up of its areas on an ongoing basis during the VillageFest and at the conclusion of business and conclusion of the VillageFest. Vendor's clean up responsibilities shall also include, but not be limited to, bagging and depositing Vendor's trash in the designated containers. City reserves the right to terminate all of Vendor's rights under this Agreement, including the right to operate if Vendor has failed to maintain clean and sanitary conditions in and around Vendor's location.

8. Indemnity:
 - a. Vendor shall indemnify and hold harmless the City and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting there from and (ii) is caused in whole or in part by any negligent act or omission of the Vendor, or any sub-contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph.

 - b. The Vendor is responsible for all items left on the VillageFest premises, including, but not limited to, those items left in and around Vendor's location before, during and after the hours of operation of the VillageFest. Vendor shall be solely responsible for its own security at all times. Risk of loss of equipment, cash and other items belonging to or in the possession of Vendor is on Vendor. City shall not be responsible for loss of or damage to Vendor's property or inventory whether attributable to theft, vandalism spoilage, weather or any other cause.

 - c. Vendor is responsible for and agrees to reimburse City for any damage caused by Vendor to City's property or to property being used by the City.

SPMS Not applicable
as per
agreement
from
2008,
as discussed
with
Jeanne Koontz

- d. Vendor shall furnish City with a valid certificate of broad form general liability insurance, completed operations and products insurance coverage for personal injuries and property damage with combined single limits of coverage of not less than \$1,000,000.00 per occurrence, with the City named as an additional insured on such policies. **Copies of said certificate shall be provided to City on or before June 22, 2009.**

- 9. **Notification:** Notification and any other notices under this Agreement shall be made as follows:
 - City Clerk
7700 Mission Road
Prairie Village, KS 66208
(913) 381-6464

- 10. **Staff:**
 - a. Vendor shall provide managers and sufficient staff to keep Vendor's Booth operational during the hours of operation of the VillageFest.

 - b. Vendor's volunteers, employees, representatives and staff shall be prohibited by Vendor from consuming alcoholic beverages, be in possession of controlled substances, acting in a manner prohibited by state law or city ordinance, or conducting themselves in a manner detrimental to the event and the public attending when on duty at or in Vendor Booth.

 - c. Vendor and its employees are independent contractors and are not employees, servants or agents of VillageFest or of the City. Vendor has the sole responsibility of providing workers' compensation coverage for its employees.

- 11. **Cancellation:** The City shall retain the right to cancel this Agreement at any time without penalty.

- 12. **Entire Agreement:** This Agreement evidences the entire agreement between the parties hereto and supersedes all prior agreements and understandings pertaining to VillageFest.

- 13. **Effective Date:** This Agreement is effective upon City's acceptance as evidenced by the execution of this Agreement by City's authorized representatives in the space provided below.

CITY OF PRAIRIE VILLAGE

By: _____
(signed)

Ronald L. Shaffer

Mayor

City of Prairie Village

7700 Mission Road

Prairie Village, Kansas, 66208

913-381-6464

(date of execution)

ATTEST:

City Clerk, Joyce Hagen-Mundy

VENDOR

By Scott W. Klammer
(signed)

Scott W. Klammer
(typed name)

musician
(typed title)

(typed company name)

38 NW 39th Street
(typed address)

Kansas City MO 64116
(typed city, state, zip)

816-453-1471
(typed telephone number)

MAY 5, 2009
(date of execution)

APPROVED BY:

City Attorney, Catherine P. Logan

ENTERTAINMENT/ VENDOR AGREEMENT

THIS ENTERTAINMENT/VENDOR AGREEMENT, (hereinafter "Agreement") is made and entered into this 11 day of May, 2009, by and between the City of Prairie Village, Kansas (hereinafter "the City") and Billy Ebeling (hereinafter "Vendor").

WHEREAS, the City is sponsoring an event, entitled VillageFest, for the general public which is to be held on July 4, 2009; and

In consideration of the mutual promises and covenants contained herein, Vendor and City agree as follows:

1. Type of Space Provided: the Vendor shall specify the square footage required including facility foot print and clearance space outside the facility foot print:

2. Type of Service Provided: the Vendor agrees to provide the following services:

Music Performance

3. Hours of Operation: The Vendor shall provide services to the general public from 12:00 p.m. to 1:30 p.m. on July 4, 2009.

4. Access to Facilities:
 - a. Vendor shall have access to Vendor's location on July 4, 2009 for set-up and breakdown between 11:30 a.m. and 2:00 p.m. Vendor's vehicle(s) must be removed from the VillageFest grounds within one hour after the end of this time period or the vehicle(s) will be subject to tow.

 - b. Vendor shall furnish City a list of each equipment/facility showing the required electrical power in AC volts and AC amp, required water from a garden hose, required fencing, required set-up/breakdown assistance specifying skills required, and any other special requirements as part of this Agreement. Any amendments to Exhibit A must be approved by the City in writing.

5. Compensation: In consideration for the entertainment provided, the City shall pay to the Vendor the amount of \$1,500, to be paid on or before July 4, 2009 unless the event is canceled as provided in Section 6 of this agreement.

6. Cancellation of the Event: The City has full authority to cancel the event for any reason. In the event that the City cancels VillageFest, the City shall notify Vendor of the cancellation in a timely manner. The City agrees to pay the Vendor a \$300 cancellation fee.
7. Clean-Up: Vendor shall maintain its Vendor's Booth and/or operating areas in a neat, clean, sanitary condition and in good order and repair, free and clean of all litter, debris and rubbish at all times. Vendor shall be responsible for the clean up of its areas on an ongoing basis during the VillageFest and at the conclusion of business and conclusion of the VillageFest. Vendor's clean up responsibilities shall also include, but not be limited to, bagging and depositing Vendor's trash in the designated containers. City reserves the right to terminate all of Vendor's rights under this Agreement, including the right to operate if Vendor has failed to maintain clean and sanitary conditions in and around Vendor's location.
8. Indemnity:
 - a. Vendor shall indemnify and hold harmless the City and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting there from and (ii) is caused in whole or in part by any negligent act or omission of the Vendor, or any sub-contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph.
 - b. The Vendor is responsible for all items left on the VillageFest premises, including, but not limited to, those items left in and around Vendor's location before, during and after the hours of operation of the VillageFest. Vendor shall be solely responsible for its own security at all times. Risk of loss of equipment, cash and other items belonging to or in the possession of Vendor is on Vendor. City shall not be responsible for loss of or damage to Vendor's property or inventory whether attributable to theft, vandalism spoilage, weather or any other cause.
 - c. Vendor is responsible for and agrees to reimburse City for any damage caused by Vendor to City's property or to property being used by the City.
 - d. Vendor shall furnish City with a valid certificate of broad form general liability insurance, completed operations and products insurance coverage for

personal injuries and property damage with combines single limits of coverage of not less than \$1,000,000.00 per occurrence, with the City named as additional insured on such policies. **Copies of said certificate shall be provided to City on or before June 22, 2009.**

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- c. Vendor and its employees are independent contractors and are not employees, servants or agents of VillageFest or of the City. Vendor has the sole responsibility of providing workers' compensation coverage for its employees.

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CITY OF PRAIRIE VILLAGE

By: _____
(signed)

Ronald L. Shaffer

Mayor

City of Prairie Village

7700 Mission Road

Prairie Village, Kansas, 66208

913-381-6464

(date of execution)

ATTEST:

City Clerk, Joyce Hagen-Mundy

VENDOR

By Billy Ebeling _____
(signed)

Billy Ebeling
(typed name)

Band Leader
(typed title)

(typed company name)

527 California Street At A 6
(typed address)

Lawrence KS 66044
(typed city, state, zip)

913-908 5607
(typed telephone number)

May 11 2009
(date of execution)

APPROVED BY:

City Attorney, Catherine P. Logan

**COUNCIL COMMITTEE OF THE WHOLE
May 4, 2009**

The Council Committee of the Whole met on Monday, May 4, 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, Bill Griffith, Ruth Hopkins, David Voysey, Andrew Wang, Laura Wassmer, Dale Beckerman, Charles Clark, David Morrison, Diana Ewy Sharp and David Belz. Staff members present: Quinn Bennion, City Administrator; Wes Jordan, Chief of Police; 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.

COU2009-50 Consider *Village Voice* Agreement

Dennis Enslinger noted the contract with Alphagraphics for designing, printing and mailing the newsletter ended at the end of 2008. At the December 23, 2008, Communications Committee meeting the committee discussed redesigning the newsletter and changing to a bi-monthly publication in full color. On January 5, 2009, the City Council authorized the publication of five full-color newsletter publications and the Park & Recreation brochure annually with focus on redesign and community content.

Staff sent bids to 21 vendors and received five responses. Based on the price and quality of work, staff interviewed First Choice Associates, Spangler Graphics and Alphagraphics. Staff was impressed with the quality of work from First Choice Associates and their pricing was the most reasonable. The proposed contract will fulfill the current calendar year.

Diana Ewy Sharp asked if the Communications Committee participated in the process. Mr. Enslinger replied the chair was kept informed, but because of time constraints the Committee did not participate in the interview process. Michael Kelly added the Committee will meet May 13th to discuss the design and the new direction of focus.

David Belz noted Alphagraphics had done the newsletter for the past several years and asked why the change was being made. Mr. Enslinger responded the primary reason for the change is the desire to change the design of the newsletter and First Choice Associates provides more options and expertise in this area.

Diana Ewy Sharp made the following motion, which was seconded by David Belz and passed unanimously:

MOVE THE CITY COUNCIL APPROVE A CONTRACT WITH FIRST CHOICE ASSOCIATES & COMMUNICATIONS, LLC FOR THREE BI-MONTHLY ISSUES OF THE *VILLAGE VOICE*.

**COUNCIL ACTION REQUIRED
CONSENT AGENDA**

***COU2009-51 Consider Municipal Code Chapter XIV Article 3 Floodplain Management**

Bob Pryzby reported the Federal Emergency Management Agency has advised the City that a final flood elevation determination for the City of Prairie Village, Johnson County, Kansas has been made and it will be issuing a Flood Insurance Rate Map that identifies the Special Flood Hazard Areas. These areas are subject to inundation by the base (1 percent annual chance) flood. This map will become effective August 3, 2009. Mr. Pryzby stated there are some changes to the map within the City, but none are significant. The City is required to adopt floodplain management regulations that meet the National Flood Insurance Program regulations.

The City currently has a Floodplain Management Code, Chapter XIV, Article 3. In reviewing the new FEMA requirements, the changes are substantial and therefore a totally new code has been written to replace the existing code. Mr. Pryzby stated the Chief Engineer in the Kansas Department of Agriculture, Division of Water Resources, Floodplain Management has reviewed and approved the code as required.

David Voysey made the following motion, which was seconded by Ruth Hopkins and passed unanimously:

**MOVE THE CITY COUNCIL ADOPT ORDINANCE 2194 FOR THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS, AMENDING CHAPTER XIV, ENTITLED "STORMWATER" BY AMENDING ARTICLE 3 ENTITLED "FLOODPLAIN MANAGEMENT" ESTABLISHING FLOODPLAIN MANAGEMENT FOR CONSTRUCTION, ANY NEW DEVELOPMENT OR REDEVELOPMENT PROJECTS LOCATED IN THE FLOODPLAIN.
COUNCIL ACTION TAKEN
MAY 4, 2009**

COU2009-52: Consider Project 191023: 2009 Concrete Repair Program

Bob Pryzby reported during the construction, staff encountered a condition where it was not practical to install the specified concrete sidewalk. The condition was tree roots that had raised and broken the existing concrete sidewalk. The City's normal practice would be to trim the roots. The City Arborist viewed the site and recommended against trimming the root area. He recommended placing an asphalt sidewalk that is flexible and permits easier and quicker replacement in the future.

The proposed change order establishes a unit cost for the construction of the asphalt sidewalk with quantities to be determined in the field. Therefore, there is no change in the contract amount at this time.

Laura Wassmer asked if this had been done elsewhere in the City. Mr. Pryzby responded it had been done about a half dozen times. Ms Wassmer asked if there had been any complaints on this change. Mr. Pryzby noted a resident on Somerset did not like the appearance; however, he noted this surface is more flexible and better for the health of the trees. Ruth Hopkins stated she felt this was only temporary. Mr. Pryzby

noted when the tree is replaced the sidewalk will be replaced with a concrete surface; but this surface is recommended by the City's Arborist to help preserve the mature tree.

Ruth Hopkins made the following motion, which was seconded by David Voysey and passed unanimously:

**MOVE THE CITY COUNCIL APPROVE CONSTRUCTION CHANGE
ORDER #2 TO PROJECT 191023: 2009 CONCRETE REPAIR
PROGRAM ESTABLISHING A UNIT COST FOR ASPHALT SIDEWALK
COUNCIL ACTION TAKEN
MAY 4, 2009**

COU2009-53 Consider Resolution 2009-03 adopting the Johnson County Multi-Hazard Mitigation Plan

Johnson County Emergency Management, along with all of the cities within Johnson County, has recently completed a 15-month process of updating the Johnson County Hazard Mitigation Plan. This plan is inclusive of all cities with the County and has recently been approved by the Federal Emergency Management Agency (FEMA). Chris Engel noted that once approved by the City, the plan will be in force and potential mitigation funding becomes available at the state level. He noted the plan was not distributed in the packet because of its length, but noted the plan is available in digital form and

The adoption is done by resolution and was included in the Council packet.

Ruth Hopkins asked if the City participated in the formation of this Plan. Mr. Engel responded he and Mike Helms participated as the City's representatives.

Ruth Hopkins made the following motion, which was seconded by Diana Ewy Sharp and passed unanimously:

**MOVE THE CITY COUNCIL ADOPT RESOLUTION 2009-03 ADOPTING
THE JOHNSON COUNTY MULTI-HAZARD MITIGATION PLAN
COUNCIL ACTION REQUIRED
CONSENT AGENDA**

COU2009-54 Consider Ordinance 2193 establishing membership & voting authority for Committee of the Whole

Quinn Bennion noted at the April 20th Council Committee of the Whole meeting there was discussion regarding the voting rights of the Council President and the Mayor in committee. Upon further investigation, it was determined the language prohibiting the Council President and the Mayor from voting is found in the City's Personnel Policy as it relates to appeal hearings.

The City Attorney explained the language changes proposed to the City's ordinance which adds the Mayor as a member of the committee with voting authority to cast a tiebreaking vote. The language also clarifies that the Committee Chair/Council

President may vote, in regular meetings of the Committee of the Whole. Mr. Bennion noted the proposed ordinance also identifies the requirement for a quorum to be seven members.

Diana Ewy Sharp asked if the language requires the Mayor to vote. Ms Logan stated it is written "may" vote. Mayor Shaffer stated in the past he has only voted in the case of a tie or as needed to determine the vote.

Ruth Hopkins asked how this discrepancy occurred. Mayor Shaffer stated he felt it probably occurred when the committee structure was changed four council committees to only two. Ms. Logan stated the discrepancy was noted during preparation for the upcoming employee appeal.

Dale Beckerman made the following motion, which was seconded by Al Herrera and passed unanimously:

MOVE THE CITY COUNCIL ADOPT ORDINANCE 2193 AMENDING CHAPTER ONE OF THE PRAIRIE VILLAGE MUNICIPAL CODE ENTITLED "ADMINISTRATION" BY AMENDING ARTICLE 8 ENTITLED "COMMITTEES" BY AMENDING SUBSECTION (a) OF SECTION 1-804 ENTITLED "COUNCIL COMMITTEE OF THE WHOLE; MEMBERSHIP, DUTIES AND MEETINGS."

**COUNCIL ACTION REQUIRED
CONSENT AGENDA**

2010 BUDGET PRESENTATION & DISCUSSION

Quinn Bennion expressed appreciation to the Council, Finance Committee and Staff for their comments and work on the 2010 budget to date recognizing the budget restraints and seeking ways to bridge the projected budget gap. Staff initially came up with approximately 90 reduction strategies. Thirty-nine have been included in the packet for Council discussion. Mr. Bennion noted that some of these are very defined actions, other actions are still in the conceptual stage to address the projected \$1.5 to \$1.6 million shortfall.

Mr. Bennion stated the first fifteen items have been recommended by staff and in some cases already implemented. Staff is seeking direction on the remaining items. Based on the direction provided, staff will prepare the proposed 2010 budget for presentation to the Council on June 8th.

Ruth Hopkins asked what was meant by #5 "Reduce Travel Expenses":. Mr. Bennion responded after reviewing travel budgets, staff felt this line item could be reduced by \$20,000. Staff will look for training opportunities within or close to the Kansas City area for the required employee training to maintain professional certifications to reduce travel costs. The City is currently budgeting for eight council members to attend both the March and November NLC conferences. There were three and five council members attending these conferences the past year. It was felt in 2010 only six attendees could be budgeted. Bill Griffith noted this is not a true reduction, but simply for more accurate reflection of actual

expenditures. Charles Clark stated the budget should be as realistic as possible as it is the basis for the City's mil levy. Bill Griffith felt staff could reduce the budget to real expenditures without Council discussion. Michael Kelly asked what the total travel budget for staff and Council. Mr. Bennion stated travel expenses are located in different line items individual department budgets and can not be easily extracted, but noted this will not be the case with the new budget software.

Diana Ewy Sharp asked how the \$1.5 to \$1.6 million gap was determined. Mr. Bennion responded it is based on revenue received in 2008, what is estimated for 2009 and projections for 2010 vs. projected expenditures. He noted the estimated revenue does not include alcohol tax funds. Mr. Bennion reviewed the assumptions followed by the staff in projecting expenditures:

- Salary increases of 0% to 2%
- Health insurance increase of 3%
- Police Pension contribution of \$450,000
- Contract Services and Commodities increase of 2%
- No increase in Capital Outlay

Mrs. Ewy Sharp asked for clarification on the Police Pension contribution. Mr. Bennion responded that \$450,000 is included in the budget expenditure estimate for the Police Pension Plan. This is \$220,000 more than the 2009 budgeted amount.

#6 - Pay to Stay. Dennis Enslinger stated this proposal is for the City to bill some or all of the jail board fees the City pays regardless of conviction. These would be assessed at the time of the fine. Bill Griffith questioned the cost and difficulty of collecting these. Charles Clark stated there is no additional cost to the City by adding this charge onto the fine. Bill Griffith confirmed there would not be any special enforcement to obtain payment. Dennis Enslinger confirmed that there would be a warrant similar to unpaid fines as used currently.

#7 - Establish an alarm license fee. Chief Jordan has recommended this fee noting that Mission Hills and several other cities charge similar fees. Dale Beckerman confirmed this was both a licensing fee and a charge for false alarms. He stated he was hesitant to charge for both. He was ok with the false alarm fee, but not the permit fee. David Voysey asked if this would apply to all alarms, not only new. Mr. Herrera stated he would like to see this removed. Mr. Bennion responded that direction from Council is sought on these items. Many of the items are only at the concept stage and additional information would be provided at the time of approval.

#16 - Defer future funding of the traffic calming program. Quinn Bennion noted this program will continue, however, there is currently \$100,000 available in this program. Under the proposal, the City would not discontinue the program, but would not budget additional funds in 2010. Bill Griffith asked if the available funding would cover the projects currently underway. Bob Pryzby responded he could not answer that until it is determined what traffic calming measure would be implemented. Mr. Griffith stated it would be foolish to continue funding in the 2010 budget.

#17 - Review reductions to CIP budget. Mr. Bennion stated Bob Pryzby has prepared a draft CIP budget for 2010 with an increase of \$900,000 over the 2009 program. Staff is recommending that be cut back by \$400,000. Mr. Pryzby stated the budget was prepared

based on current infrastructure condition ratings. The following is a summary of program ratings for the past three years:

:

Program	2006	2007	2008
ADA Projects	83%	83%	82%
Curb & Gutter	91%	93%	94%
Drainage (overall)		91.7%	
Drainage Pipes	90.6%	90.1%	90.7%
Drainage Structures	90%	89.9%	90.4%
Pavement	83%	86.1%	86.1%
Mr. Pryzby noted three years ago \$1 million was added to this program budget.			
Sidewalk	89%	92.4%	94.4%
Traffic Markings		82%	82%
Tree Ratings	97%	96%	94.3%
Overall Infrastructure	86.6%	88.5%	91%

Diana Ewy Sharp asked if the budget could be reduced more based on the condition ratings. Mr. Pryzby responded he would be open to that. Mr. Clark stated he felt it was inevitable.

Bill Griffith noted the biggest city expenditure is salary and benefits. It is 25% to 33% of the total budget and without looking at cuts in this area he does not feel substantial decreases can be made. Mr. Bennion noted these items are addressed in #18 through #20.

David Belz felt nothing makes a city look poorer than poor streets and sidewalks and cautioned against not keeping up with infrastructure maintenance and repair. Mrs. Ewy Sharp agreed but noted some of the condition ratings are in the 90's and a rating of 85 is an acceptable rating. Dale Beckerman reminded the Council that infrastructure maintenance can only be delayed for so long. Bob Pryzby responded he is comfortable with the proposed \$400,000 decrease.

Bill Griffith noted infrastructure expenditures have gone from \$7.6 to \$6.1 to \$5.6 million in the past three years. The City has already made big cuts in this area cutting almost 35% in the past four to five years. However, he acknowledged it is difficult to clearly analyze the impact of SMAC and CARS grant funds.

#18 - #20 Quinn Bennion stated the proposed reductions recommended by staff is an attempt to balance the need to reduce expenditures while maintaining a competitive level of compensation in the market that attracts new employees. The proposed salary range is one to two percent. Laura Wassmer noted that rate exceeds the current inflation level. Michael Kelly asked if employees have the expectation of an annual increases. Mr. Bennion responded salary increased are determined based on performance evaluations. If an employee is not productive they would no longer be employed. Mr. Pryzby stated raises are not automatic with department heads spending a great deal of time doing evaluations and noted he has had employees not get an annual increase. Bill Griffith stated he is not questioning the distribution of the salary pool by staff, but the level at which the merit pool is established by the Council.

#19 - Retirement Incentive. Quinn Bennion stated at this point this is conceptual and is anticipated to be a voluntary program. There are employees who currently meet their pension requirement criteria. Several cities have created or are considering such programs. Bill Griffith warned the City must be very disciplined in establishing this program. Mr. Bennion confirmed the City Council supported further investigation of this concept by staff.

#20 - Elimination of 2 FTE. Dale Beckerman asked if there would be reductions in all departments. Mr. Bennion noted that one police position has already been eliminated in the restructuring of the Police Department with the elimination of CALEA. It is anticipated there would be a FTE from the Public Works Department and Administration. They have not been identified at this time. As full time equivalents, the reductions could be made with part-time positions and hopefully through attrition.

Diana Ewy Sharp expressed concern with eliminating positions when there may not be a gap. She feels there is room to work within the CIP and other revenue sources. She does not see the merit in discussing reductions at this time. She would like to see staff present a proposed budget to the Council with specific decision points. She does not feel Prairie Village can be compared to other cities and that there is money available to meet at least part of the projected gap.

Dale Beckerman stated the gap is real and if the Council is looking at #18 - #20, the Council also needs to look at Council travel.

Quinn Bennion stated when staff began the budget process, they identified over 90 possible reductions ranging from items with major impact to services and those with lesser impact on services. Staff would not make these recommendations if they did not feel they were necessary.

David Belz stated he didn't have a problem with staff looking at all of the items, but acknowledged that after further investigation may choose to not proceed with them.

Diana Ewy Sharp stated would like to discuss the Fund Balance noting a change in the fund balance requirement from 25% to 15% would make a significant change in available revenue. She also wanted to discuss the use of economic development funds. She is feeling pressure to make decisions on reductions without discussing alternate revenue sources.

Michael Kelly stated staff is trying to get the Council involved early and give input on proposed steps that could be taken not asking for adoption.

Laura Wassmer stated in concept there are not any categories she does not want to consider for reductions noting the so called little stuff is adding up and continues to add up. She feels they need to be addressed in the process. She is against cutting any more out of the CIP budget because it is an easy cut although she does not oppose the projected reduction.

David Voysey stated he felt the Council owed it to the citizen to make reductions in expenditures before making any increases in taxes.

#21 - Fund Balance. Quinn Bennion stated he would like to discuss this before the budget worksession on June 8th and due to the lateness recommended the Council Committee reconvene after the conclusion of the City Council meeting.

Andrew Wang moved the Council Committee of the Whole recess until the conclusion of the City Council meeting. The motion was seconded by Ruth Hopkins and passed unanimously.

Council President Michael Kelly recessed the meeting at 7:28 p.m.

Council President reconvened the Council Committee of the Whole at 10:55 p.m.

City Attorney Katie Logan reviewed the procedure and process to be followed for the employee appeal to be considered at the May 18, 2009 meeting.

The meeting was adjourned at 11:15 p.m.

Michael Kelly
Council President.



BWR | Right in the Center

MEMORANDUM

TO: City Council
FROM: Ron Williamson, BWR, Planning Consultant
SUBJECT: PC 2009-03 Wireless Communications Facilities Ordinance
DATE: May 4, 2009

At its regular meeting on April 6, 2009, the City Council discussed the proposed Wireless Communications Facility Ordinance and requested Staff to provide additional information in generally four areas. In addition, Staff met with interested citizens and has included their comments as well.

- A. Co-Location in Residential Areas
- B. Types of Facilities Allowed in Different Areas
- C. Setback Requirements
- D. Setback Waiver
- E. Citizen Input

A. CO-LOCATION IN RESIDENTIAL AREAS

This is a major decision of the Council and it will have an impact on the direction of the ordinance. To date, it has been the policy of the City to encourage co-location and minimize the number of towers that will be needed to accommodate the carriers providing service in Prairie Village. Co-location means fewer but taller towers and height has been a major issue for adjacent property owners. Because the FCC regulations state that "A City shall not discriminate among providers," the City could have more towers if the policy is for shorter towers.

Options for consideration:

1. Retain the existing philosophy that encourages co-location and taller, but fewer towers.
2. Approve a maximum height of ____ (*to be determined by City Council*) feet in residentially zoned areas and have Staff revise the proposed ordinance accordingly.

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

Note: All the parks, schools, city hall, and fire station sites are zoned residential and the two existing towers at City Hall and Fire Station #2 on Roe Avenue would not be allowed under this provision.

3. Approve a maximum height of ___ (*to be determined by City Council*) feet in residentially zoned areas except for properties that are owned by the public.

B. TYPES OF FACILITIES ALLOWED IN DIFFERENT AREAS

This is another major area of discussion. As the ordinance is proposed, monopoles and alternative tower structures and facilities are permitted in all districts by Special Use Permit. Stealth communication facilities only require approval of a Site Plan by the Planning Commission. St. Ann's has two carriers on its bell tower and is an example of a stealth installation. For reference purposes, the definition of the types of facilities as proposed in the ordinance is as follows:

Alternative Tower Structure: This shall mean man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

Antenna: Any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, personal communications services (PCS) and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes and omni-directional antennas, such as whips.

Monopole: A single, freestanding pole-type structure supporting one or more antenna.

Stealth Telecommunications Facility (Integrated): Any Telecommunications Facility that is integrated as an architectural feature of a structure so that the purpose of the Facility for providing wireless services is not readily apparent to a casual observer.

Options for consideration:

1. Allow only stealth installations in residentially zoned areas by Site Plan approval.
2. Allow only stealth installations in residentially zoned areas except for properties that are owned by the public.
3. Allow alternative tower structures in residentially zoned areas subject to approval of a Special Use Permit.

C. SETBACK REQUIREMENTS

The setback requirement of other communities was researched and submitted to the Planning Commission on September 9, 2008 and is as follows:

In reviewing ordinances from other neighboring cities and model codes, there is a wide variation for the setback requirement. Some cities use a specific dimension, others use a ratio such as 1.0 times the monopole height and Overland Park includes a reduction or waiver provision.

Leawood

H) Tower Setback and Buffer Requirements.

1. **Setbacks.** Towers and related facilities shall meet the applicable building setback limits of the zoning district in which the tower and facilities are to be sited.
2. **Distance From Residential Areas.** Any proposed tower and related facilities shall be sited at a distance of at least 500 feet, in all directions, from the base of the tower to the property line of any existing or comprehensive (master) **planned** residential area. Note: This 500-foot buffer requirement applies only to towers as defined herein and not to other wireless communication facilities or alternative tower structures.

Note: Towers are defined as monopole and lattice type towers are not allowed.

Fairway

15-4-3.407 Tower Setback and Requirements

- A. **Setbacks.** Towers and related facilities shall meet the applicable building setback limits of the zoning district in which the tower and facilities are to be sited.
- B. **Distance From Residential Areas.** Any proposed tower and related facilities shall be sited at a distance of at least two hundred (200) feet, in all directions, from the base of the tower to the property line of any existing or comprehensive planned residential area.

Note: This 200-foot buffer requirement applies to towers as defined herein and not to other wireless communication facilities or alternative tower structures.

Westwood

- A. Transmission and receiving towers shall be setback a minimum of 1.2 feet for every foot of tower height from all front, rear and side lot lines.

Overland Park - Old Ordinance

7. Setbacks - Towers and accessory buildings shall meet the setbacks of the zoning district in which they are located unless greater setbacks are required by the Planning Commission or Governing Body. The setbacks for towers located on residentially zoned property which is Master Planned for a use other than very-low density or low-density residential shall be determined at the time of the special use permit.

All towers, except those designed as an architecturally compatible element in terms of material, design and height to the existing or proposed use of the property, shall be setback 200 feet from any surrounding property which is zoned for single-family development, R-2, RP-2 or RP-4. Provided, however, that the distance may be reduced or waived by the Planning Commission or the Governing Body where the residentially zoned land is Master Planned for uses other than very-low density or low-density residential.

Overland Park - New Ordinance

- D. Setbacks - Towers and accessory structures shall meet the setbacks of the zoning district in which they are located unless greater setbacks are required by the Planning Commission or Governing Body. The setbacks for towers located on residentially zoned property which is Master Planned for a use other than very-low density or low density residential shall be determined at the time of the application.

All towers, except those designed as an architecturally compatible element in terms of material, design and height to the existing or proposed use of the property shall be setback 200 feet from any surrounding property which is zoned for single-family development, R-2, RP-2 or RP-4. Provided, however, that the distance may be reduced or waived by the Director, Planning Commission or the Governing Body where the residentially zoned land is Master Planned for uses other than very-low density or low density residential.

- F. The Planning Commission or Governing Body shall have the ability to grant a deviation from the setback and separation standards subject to Section 18.150.070 (H). In support of a deviation request from the separation requirements, the application shall submit a technical study acceptable to the City which confirms that there are no other suitable sites available with the separation requirements.

PCIA

The Personal Communication Industry Association (PCIA) which is the organization that represents the providers. All monopoles and towers shall setback from all property lines a distance equal to their height while the equipment compound is required to meet the zoning district setbacks.

The proposed Prairie Village Ordinance reads as follows:

A. Setbacks

1. The equipment compound shall meet the minimum required setbacks for a principal use in the district in which it is located.
2. Stealth towers and alternative tower structures that are truly architecturally integrated into the building shall maintain the same setbacks that are required for a principal building.
3. Non stealth monopoles or towers 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.
4. The applicant may request a reduction or waiver of the setback requirement. The Planning Commission shall consider the request and make a recommendation to the City Council who will make the final determination. In approving a setback reduction or waiver, the Commission and Council shall consider the following:
 - a. That there are special circumstances or conditions affecting the proposed cell tower installation;
 - b. That the setback waiver is necessary for reasonable development of the cell tower installation or the landowners property;
 - 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.

When the Planning Commission prepared its recommendation, it reviewed the ordinances above but also requested Staff to perform an analysis of existing sites that may potentially be able to accommodate a Wireless Communications Facility.

There are only four public sites that can meet the 200-foot setback and they are:

- City Hall
- Porter Park
- Harman Park
- Franklin Park

Note: Eight school sites could meet the setback requirements but at this time the School District has not agreed to allow wireless communications facilities on their school sites.

There are six private sites that can meet the 200-foot setback and they are:

- St. Ann's School/Church
- Homestead Country Club
- The Village Center
- Corinth Square Center
- Hy-Vee Center
- Meadowbrook Village

Note: No other church sites in Prairie Village can meet the 200-foot setback requirement.

D. SETBACK WAIVER

The idea of a setback waiver was initiated by the City Council when it made an interim review of the proposed Wireless Communications Ordinance. The Council requested that the Planning Commission give consideration to the waiver concept. It should be noted that the setbacks only apply to non stealth structures. The Planning Commission requested an analysis of sites that could accommodate a wireless facility which Staff did and the results are reported under Section C. of the memorandum. Also as reported before, the only other City in the area that has a waiver provision is Overland Park. It had a waiver provision in its old ordinance and also has one in the new ordinance that was recently adopted.

The two tower sites currently located in the City, (City Hall and the Fire Station) do not meet the 200-foot setback and could not be approved without a waiver. In both cases, however, the towers are located in the most appropriate place on the sites. There has been much discussion of a future cell tower at McCrum Park when the water tower is removed and that site is too small to meet the 200-foot setback requirements without a variance.

E. CITIZEN INPUT

On April 16, 2009, Staff met with Mary Cordill who outlined the concerns of the residents with the proposed ordinance. Their major points are outlined in the following. A marked-up copy of their specific revisions is attached.

Section 19.33.025 - Factors for Consideration

They would like factor D deleted from the list. Factor D is one of the Golden criteria which is used for the consideration of zoning change applications and Staff recommends that it not be deleted.

They have requested removing the word "dominate" from Factor G and replacing it with "affect." This is a factor that is used for all Special Use Permits but is not a Golden Factor and Staff recommends that it not be changed. There is a significant difference in "dominate" and "affect." The word dominates also ties

back to the FCC Regulations which states that a denial must be supported by substantial evidence.

They have requested the removal of Factor M, the City Staff Recommendation. This is another Golden Factor and it should not be deleted. However, Staff prepares a Staff Report on every application so that will happen regardless of whether the factor is included.

Section 19.33.03.A - Application Information

They have suggested including a requirement for the applicant to show coverage maps at 10 feet descending intervals. This appears to be a good addition, but, it should have a bottom at perhaps 50 feet.

Section 19.33.03.B

They have requested two additional items:

First, they would like all facilities located in residential areas to be integrated into buildings or accessory structures such as steeple bell towers, flag poles, etc., and structures with no monopoles. The answer to this depends upon how the City Council addresses co-location.

The second issue is the third party analysis of need. They have proposed this to be at the discretion of the City so it is not mandatory for all applications. The Council discussed this previously and did not seem to support it, but it may be a good addition since it is discretionary.

Section 19.33.03.C

They requested the language be changed to prohibit co-location in residentially zoned areas. City Hall, fire stations, schools, parks, churches are potential sites and are all zoned residential. This would not be a very practical change. The co-location issue will be addressed under item A in this memorandum and will provide the direction for this section. It should be pointed out that the bell tower at St. Ann's accommodate two carriers, co-location.

Section 19.33.03 - Add a new Section D on notification.

Notification is included in the Special Use Permit Chapter of the ordinance and sets out the same notification process for all Special Use Permits. They would like publication in the local press (Sun or KC Star) in an advertisement format rather than in the legal notices section so more people would be aware. This obviously would be an additional cost. Also, the posted signs should be larger and the proposed use listed on the sign. The signs need to be clear so people can easily read them. Probably, the better solution is a better posting of the property and that does not need to be in the ordinance. It can be handled administratively. Posting signs are provided to the applicants by the City. Lastly,

they would like the notice to property owners sent to all owners within 1,000 feet rather than 200 feet which is the current requirement. The 200 feet notification is based on the state statute that requires a 200 feet notice for zoning changes. This would add a significant number of notices and an increased cost to the applicant. Based on the response of the public to a variety of applications, the 200 feet notification seems to be getting the word out. If changed, this should apply to all Special Use Permits.

Section 19.33.030.D

They requested the fall radius of the tower be shown on the site plan. This is information that the applicant should easily have available and could be added to the required documents.

Section 19.33.030.E

They requested adding the City may request additional propagation maps. The City already has the ability to do this under Item I.

Section 19.33.030 New H

A public hearing is required for Special Use Permits so this is repetitive and not needed.

Section 19.33.035 Design Requirements

They would like the setback waiver deleted from the ordinance. The Council will have addressed this in a previous section of the memorandum.

**COUNCIL COMMITTEE OF THE WHOLE
March 23, 2009**

The Council Committee of the Whole met on Monday, March 23, 2009 at 6:00 p.m. The meeting was called to order by Council President David Voysey with the following members present: Mayor Shaffer, Al Herrera, Bill Griffith, Ruth Hopkins, 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; Wes Jordan, Chief of Police; Bob Pryzby, Director of Public Works; Katie Logan, City Attorney; Dennis Enslinger, Assistant City Administrator; Karen Kindle, Finance Director; Chris Engel, Assistant to the City Administrator; Ron Williamson, Planning Consultant and Jeanne Koontz, Deputy City Clerk.

Andrew Wang moved the approval of the Consent Agenda for Monday, March 23, 2009:

- **Approve the aforementioned revisions to the Police Department's section of the City's Retention Schedule.**

**COUNCIL ACTION REQUIRED
CONSENT AGENDA**

- **Adopt Ordinance 2192 amending Chapter 11 of the Prairie Village Municipal Code entitled "Public Offenses & Traffic" repealing the existing Article 3 entitled "Drugs" and adopting a new Article 3 entitled "Drugs".**

**COUNCIL ACTION TAKEN
03/23/2009**

The motion was voted on and passed unanimously.

COU2009-35 Consider New Zoning Chapter 19.33 entitled Wireless Communications Facilities; deleting Section 19.28.070(S) and amending Section 19.02.449 entitled "Utility Box"

Ron Williamson said the process for this ordinance began almost one year ago. The City Council requested information on the existing cell tower policy and authorized the Planning Commission to analyze this policy. Since then, there has been input from citizens, providers, carriers and the PCIA (a wireless infrastructure alliance). Staff reviewed adjacent cities' ordinances, prepared numerous staff reports and distributed information to everyone who was interested in this issue and notified them of meetings. The Planning Commission unanimously recommends this ordinance. The ordinance has been reviewed legal staff. The Planning Commission held a public hearing on February 3, 2009 and received written comments from PCIA and Curtis Holland with Polsinelli Shughart. The ordinance was reviewed again at the March 3, 2009 meeting.

The major issues addressed were policy vs. ordinance, co-location (multiple short towers with no co-location or fewer tall towers with co-location), setbacks, integration of towers into existing structures and a waiver provision. Planning Commission requested that staff look at the number of available sites that would accommodate a 500' setback and a 200' setback. There are only two properties in Prairie Village large enough to meet the 500 ft setback: Shawnee Mission East High School and Meadowbrook Country Club. The 200' setback allows for 11 public sites and 6 private sites. The commercial sites have not expressed much interest in having cell towers.

Bill Griffith asked if a 150' monopole could accommodate co-location. Ron Williamson responded it could accommodate approximately four users; most users are now using two locations on each pole.

Al Herrera said he would rather see the City stay with an 85' tower and does not see the benefit of a 150' tower. Ron Williamson responded this is a major consideration for the council. The Planning Commission recommends fewer towers that are taller. It depends on the location of the tower if it needs to be taller.

Michael Kelly asked whether a provider is required to locate on an existing tower if there is space or can they request a new tower because they do not like the spot available. Ron Williamson responded that each carrier wants the highest part of the tower but they need to justify why they need a new tower. The City could require a third party analysis of the height issue. Michael Kelly asked if the footprint of the tower including the support devices will be larger on a taller tower because of more co-locations. Ron Williamson responded that each provider has their own equipment so the more co-locations, the more ground equipment.

Ron Williamson stated the applicant will be able to request a waiver from the setback restrictions. The Planning Commission would consider the request and make a recommendation to the City Council whether to grant the waiver. Three conditions will be reviewed:

- a. That there are special circumstances or conditions affecting the proposed cell tower installation;
- b. That the setback waiver is necessary for reasonable development of the cell tower installation or the landowners property;
- 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.

The Planning Commission has to make a finding on each of the three conditions.

Bill Griffith requested more information on the third party analysis requirement. He specifically asked who pays for the analysis. Ron Williamson said the City can contract for it and bill the applicant. Ultimately, the applicant pays the cost. Bill Griffith asked why the third party analysis is not included in the ordinance. Ron Williamson stated the Planning Commission opted not to include it in the recommendation because they felt it is not necessary for the extra cost. Dennis Enslinger stated the estimates from Overland Park were \$20,000 to \$30,000 for each analysis. The applicant can choose from three firms selected by Overland Park.

David Voysey asked what the significant differences are between our ordinance and other cities' ordinances. Ron Williamson stated the ordinances are fairly parallel with some differences in the setback requirements. Michael Kelly asked how Mission Hills deals with this issue. Ron Williamson responded their ordinance is very loose and the applications are processed through their Board of Zoning Appeals.

Bill Griffith asked if the third party analysis is a legitimate requirement under the Telecommunications Act. Ron Williamson stated it is legitimate as long as it is needed in order to make an appropriate decision. It is not legitimate if it is used only to deter providers from applying. Diana Ewy Sharp asked if the information provided in the application will suffice. Ron Williamson said without a third party analysis, the City is accepting the information from the applicant without

verification. David Belz asked if a company wanted to build another tower instead of co-locate could the City require a third party analysis. Ron Williamson responded the City could require the analysis.

David Voysey opened the discussion to the public.

Casey Housley, 4900 W 68th Street, reminded the Council that he presented a packet of surrounding cities' ordinances to the Council last year. He said the residents would like the ordinance to provide certainty so they do not have to come back to the Council each time to argue their position. The ordinance is an improvement over the policy, but it still does not give certainty, because it has a catch all under the waiver provision. This provision forces both parties to come before Council to argue their position. He said there are differences in what the surrounding cities have implemented regarding specific setback requirements, provisions in residential areas and the wavier provision. He requested the Council send the ordinance back to the Planning Commission for revision.

Mary Cordill, 4904 W 68th Street, requested the ordinance be returned to the Planning Commission for further discussion. She said the residents are very passionate about this issue. There were not any citizens at the public meeting, because there was a big misunderstanding of the date of that meeting. She said she has been receiving updates from city staff, but it was not clear there was a public meeting. She pointed out that there were two new planning commissioners when this discussion began who did not have the benefit of hearing all the previous public input. She implored the council to give the residents a chance to speak before the Planning Commission.

Kate Faerber, 4806 W 68th Street, said she presented packets to the council in February 2008. The Planning Commission did not receive this information until June 2008. She said she is disappointed in this lack of communication between governing bodies. She pointed out that other cities have different setback requirements. She said at the February Planning Commission meeting, she was under the impression that she would be allowed to speak at the March meeting and that is why she did not speak at the February public hearing.

Lebert Schultz, 4507 W 89th Street, said he has practiced law for 40 years and there is always an exception. He urged the Council to allow some flexibility. He pointed out the cell towers are a benefit for citizens that give them quality cell coverage and capacity for future capabilities. He suggested encouraging cooperation between providers, so the number of towers is limited.

Paul Middleton, 6434 Hodges Drive, stated the requirement for a third party evaluation is very logical.

Paige Price, 6730 Fonticello, said Prairie Village is a nice place to live and she would like to keep the family atmosphere. She said commercial towers should be placed on commercial property.

John Faerber, 4806 W 68th Street, stated through effective planning and timely ordinances, he believes a more positive outcome can be obtained. He feels the City has dragged its feet on this issue over the last year. The waiver is very disconcerting. He said he has been a Prairie Village resident for 19 years and feels like his voice has not been heard this past year. He would like to see the City and Homes Associations come up with a more effective master plan.

With no other comments, David Voysey closed the public comment portion of the meeting.

Bill Griffith said that very few sites were mentioned that would meet the 200' or 500' setback. He asked which shopping centers could handle the setback requirements. Ron Williamson responded that Highwoods does not want to have cell towers in case they make changes to their centers. The Prairie Village Shops accommodate a 200' setback. Bill Griffith said there is a long list of people who do not want them. Ron Williamson stated there was a request to put one at Homestead Country Club but the membership decided they did not want it. He said the City cannot force a tower to be located where a landowner does not want it. Bill Griffith stated the City is not obligated to provide a solution for the cell providers and many cities do not have a waiver. Ron Williamson responded the new Overland Park ordinance has a waiver clause. Fairway and Leawood do not have waiver clauses. He said he believes the council asked the waiver to be included in the ordinance.

Diana Ewy Sharp stated she hears the residents feel like nothing they wanted was considered, but feels that the ordinance is a huge victory because the Council did not want to change from a policy to an ordinance. She believes there was very serious consideration given to residents' thoughts and comments. Staff and the Planning Commission spent a great deal of time on this issue. Prairie Village is unique because it is 93% residential and 7% commercial. She stated that she wants all the technology that we can get for our residents. Nobody wants a cell tower in their backyard, but there is a purpose for the infrastructure.

Diana Ewy Sharp made the following motion, which was seconded by Ruth Hopkins:

MOVED THE CITY COUNCIL ADOPT ORDINANCE 2189 ADDING CHAPTER 19.33 ENTITLED "WIRELESS COMMUNICATION FACILITIES" TO THE PRAIRIE VILLAGE MUNICIPAL CODE, 2003; AND ORDINANCE 2190 AMENDING CHAPTER 19.02 ENTITLED "DEFINITIONS" BY AMENDING SECTION 19.02.499 ENTITLED "UTILITY BOX" AND CHAPTER 19.28 ENTITLED "SPECIAL USE PERMITS" BY DELETING SECTION 19.28.070(S).

**COUNCIL ACTION REQUIRED
COMMITTEE REPORTS**

Bill Griffith said he did not understand the reluctance to consider a third party review and will vote no on this motion.

Al Herrera said he does not see why we need to rush through this and would like to give the residents another opportunity to go before the Planning Commission. He would like the ordinance to be tightened up and non-negotiable.

David Voysey stated he thinks the Planning Commission should have one more chance. He does not like the waiver. An ordinance with so many loopholes is like not having an ordinance at all.

Michael Kelly said his primary concern is a guarantee that providers will co-locate. He stated he will be voting no on this motion.

Andrew asked for clarification on how an third party study becomes independent. Dennis Enslinger responded that the City of Overland Park selects a preapproved list of contractors. Andrew Wang asked if anything would prevent a provider from using one of the contractors in the

future. Dennis Enslinger said there will be some relationship but the City of Overland Park is trying to find contractors who do not work in this area. Andrew Wang asked if the incentive to co-locate is economic or are there other reasons. Dennis Enslinger responded that most providers would choose co-location because it is economically beneficial, but the City cannot guarantee they will not look for another site based on their needs. They must show all available towers in a one mile radius and they must show that they cannot co-locate.

Ruth Hopkins stated that we have been discussing the lack of input and thought but there have been nine Planning Commission discussions and all those meetings are open for residents and council members. She said she thinks the Planning Commission has reached their decision and will not change their minds.

Charles Clark stated there have not been any questions raised tonight they have not been thoroughly reviewed and considered by the Planning Commission.

Dale Beckerman said he agrees with Councilmember Clark. He said the third party review is an attractive option but the real issue is whether the tower is necessary and suitable. He believes this can be determined without a third party review. He stated that since Prairie Village is 93% residential, it is necessary to have flexibility because of the scarcity of suitable sites. The Planning Commission has done a good job of tailoring the ordinance to Prairie Village.

Laura Wassmer said the process has taken over one year and that tells her it is not a good process. It has been very painful and will continue to be painful if this ordinance is passed. She does not think a third party is needed if the ordinance is specific enough. She would like the Planning Commission to review the ordinance considering specific setbacks, resident input and making the process easier for everyone involved.

David Belz said he would vote for the motion because the Planning Commission has been reviewing this for almost one year and he trusts that they vetted the possibilities and brought forward the best possible ordinance for Prairie Village. He stated Prairie Village is a unique situation and there may be times when we do not want the ordinance to be so tight. In reference to the third party review, he understands that it can be required even if it is not in the ordinance.

Al Herrera said he would like to send the item back to Planning Commission. If a provider wants to install a 150' tower, he would like to see the lease that includes two other tenants. He would like the ordinance tightened up. He does not think it is urgent to pass it tonight and would like to send it to Planning Commission one more time.

The motion was voted on and passed 7-6 with an "aye" vote from the Mayor. The following council members voted "aye:" Hopkins, Wang, Beckerman, Clark, Ewy Sharp and Belz.

This matter will be considered at the City Council meeting on April 6, 2009.

COU2009-36 Consider Resolution of Support for Transportation Enhancement Funding from Kansas Department of Transportation

Chris Engel reported the resolution is part of the application process for grant funding for the stimulus package. The application for a grant from the Kansas Department of Transportation for

the Brush Creek Trail System has already been submitted. The City will provide ongoing maintenance.

Diana Ewy Sharp stated the Park and Recreation Committee already discussed and approved this item.

Diana Ewy Sharp made the following motion, which was seconded by David Belz and passed unanimously:

**MOVE THE CITY COUNCIL ADOPT A RESOLUTION OF SUPPORT FOR
TRANSPORTATION ENHANCEMENT FUNDING FROM THE KANSAS DEPARTMENT
OF TRANSPORTATION TO FUND BRUSH CREEK TRAIL - PHASE ONE.
COUNCIL ACTION TAKEN
03/23/2009**

COU2009-37 Consider Ordinance regarding Quorum Requirements

Katie Logan reported Council requested a modification to the quorum requirement at the last meeting. The ordinance changes the requirement from eight to seven and removes antiquated language.

Ruth Hopkins made the following motion, which was seconded by Bill Griffith:

**MOVE THE CITY COUNCIL ADOPT ORDINANCE 2191 AMENDING CHAPTER 1 OF
THE PRAIRIE VILLAGE MUNICIPAL CODE ENTITLED "ADMINISTRATION" BY
AMENDING ARTICLE 2 ENTITLED "GOVERNING BODY" BY AMENDING SECTION 1-
204 ENTITLED "SAME: QUORUM-COMPELLING ATTENDANCE."
COUNCIL ACTION REQUIRED
CONSENT AGENDA**

David Belz stated he will vote against the motion because he is not comfortable that almost half of the Council could be gone and decisions could still be made. He stated that maybe the Council should not be voting if we cannot get eight council members to attend a meeting.

Charles Clark stated it is very inconvenient to not have a meeting if something needs to be resolved.

Quinn Bennion said the ordinance removes the requirement that compels a council member to attend.

The motion passed 11 to 1 with David Belz voting nay.

Laura Wassmer said she hopes as a matter of procedure that Council would postpone a vote if it needs to have full Council input.

COU2009-39 Consider Allocation of Funds for the Intergraph Project to Purchase/Install laptop computer mounts, docking stations and external GPS antennas in the marked patrol units and CSO vehicle

Chief Jordan reported the Council agreed to set aside \$13,200 in the Equipment Reserve Fund for this purchase on December 1, 2008. The final bid from K-Comm., Inc. was \$1,564 less than project costs.

Ruth Hopkins made the following motion, which was seconded by Charles Clark and passed unanimously:

MOVE THAT \$11,636.00 BE TRANSFERRED FROM THE POLICE RECORDS MANAGEMENT/CAD PROJECT (221471) TO THE POLICE IN-CAR LAPTOP COMPUTERS PROJECT (221473) IN THE EQUIPMENT RESERVE FUND TO FINANCE THE PURCHASE AND INSTALLATION OF LAPTOP COMPUTER MOUNTS/DOCKING STATIONS AND EXTERNAL GPS ANTENNAS IN THE MARKED PATROL UNITS AND THE CSO VEHICLE.

**COUNCIL ACTION TAKEN
03/23/2009**

Discussion regarding El Monte Fountain

Diana Ewy Sharp pulled the El Monte Fountain Agenda Item because the Prairie Village Homes Association Board will not meet until April 15th.

COU2007-51 Village Vision: Discussion of Report from Council Retreat

The discussion of the Council Retreat Report will be moved to the April 6, 2009 meeting.

Adjournment

Council President David Voysey adjourned the committee meeting at 7:20 p.m.

David Voysey
Council President

Redlined Ordinance From Neighborhood Group

A. Create a new chapter titled Wireless Communication Facilities

19.33 WIRELESS COMMUNICATION FACILITIES

19.33.005 Intent

The Telecommunications Act of 1996 grants authority to local jurisdictions decisions regarding the placement, construction, and modification of wireless communication facilities, towers and antennas. As the City has diverse and unique landscapes that perpetuate the identity of its residential neighborhoods, protection of these valuable resources is paramount. Accordingly, the Governing Body finds that the unregulated placement and design of wireless communication facilities, towers and antennas result in visual clutter that adversely affects community aesthetics and damages the character of the City. This ordinance is intended to provide minimum standards that ensure that the wireless communication needs of residents and businesses are met, while at the same time the general safety, welfare, property value and aesthetics of the community is protected.

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1933.010 Purpose

A wireless communication facility, tower or antenna including its equipment, but excluding small wireless communication antennas as setout in Section 19.33.055 may be sited, constructed, designed or maintained provided that it is in conformance with the stated standards, procedures, and other requirements of this ordinance. More specifically, these regulations are necessary to:

- A. Provide for suitable location of wireless communication facilities, towers and antennas so as to mitigate their negative effect on residential neighborhoods, property values and land uses;
- B. Maintain community aesthetics by minimizing the negative visual effects of wireless communication facilities, towers and antennas through specific design and siting criteria;
- C. Maximize the use of existing towers and alternative tower structures so as to minimize the need for new tower locations;
- D. Encourage co-location among wireless service providers on existing and newly constructed, within the parameters set forth herein in order to reduce the overall number of to needed; and
- E. Promote the use of innovative stealth, camouflage and disguise techniques for wireless communication facilities, towers, and antennas as to integrate their appearance with the many architectural and natural themes found throughout the City.

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19.33.015 Definitions

Redlined Ordinance From Neighborhood Group

For the purposes of this Ordinance, the following terms shall be defined as:

- A. **Alternative Tower Structure:** This shall mean man-made trees, towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.
- B. **Antenna:** Any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, personal communications services (PCS) and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes and omni-directional antennas, such as whips.
- C. **Co-location:** The act of siting Telecommunications Facilities from more than one provider in the same location on the same Support Structure as other Telecommunications Facilities, Co-location also means locating Telecommunications Facilities on an existing structure (for example: buildings, water tanks, towers, utility poles, etc.) without the need to construct a new support structure.
- D. **Equipment:** Any equipment serving or being used in conjunction with a Telecommunications Facility or Support Structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.
- E. **Equipment Compound:** The area in which the equipment and tower may be located which is enclosed with a fence or wall or is within a building or structure.
- F. **Maintenance:** Ensuring that Telecommunications Facilities and Support Structures are kept in good operating condition. Maintenance includes inspections, testing and modifications that maintain functional capacity, aesthetic and structural integrity; for example the strengthening of a Support Structure's foundation or of the Support Structure itself or replacing Antennas and Accessory Equipment on a like-for-like basis on an existing Telecommunications Facility. Ordinary maintenance also includes maintaining walls, fences and landscaping including the replacement of dead or damaged plants as well as picking up trash and debris. Ordinary Maintenance does not include Modifications.
- G. **Modifications:** Improvements to existing Telecommunications Facilities and Support Structures, that result in some material change to the Facility or Support Structure. Such Modifications include, but are not limited to, extending the height of the Support Structure, replacing the support structure and the expansion of the compound area for additional equipment.

Redlined Ordinance From Neighborhood Group

- H. **Monopole:** A single, freestanding pole-type structure supporting one or more Antenna.
- I. **Stealth Telecommunications Facility:** Any Telecommunications Facility that is integrated as an architectural feature of a structure so that the purpose of the Facility for providing wireless services is not readily apparent to a casual observer.
- J. **Support Structure(s):** Monopoles, Towers, Utility Poles and other freestanding self-supporting structures which supports a device used in transmitting or receiving radio frequency energy.
- K. **Wireless Communications Facility(ies):** Any unmanned facility established for the purpose of providing wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communications service (PCS), and paging service. A Wireless Communication Facility can consist of one or more Antennas and Accessory Equipment or one base station.

19.33.020 Special Use Permit Requirement

Unless otherwise excepted herein, wireless communication facilities, towers and antenna shall be allowed only upon approval of a Special Use Permit in accordance with the procedures setout in Chapter 19.28, Special Use Permit.

19.33.025 Factors For Consideration

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.
- B. The zoning and uses of property nearby.
- C. The extent that a change will detrimentally affect neighboring property.
- D. ~~The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.~~
- E. ~~The proposed special use at the specified location will rot adversely affect the welfare or convenience of the public.~~

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Redlined Ordinance From Neighborhood Group

F. 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 that the special use will not affected 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 so affected the immediate neighborhood consideration shall be given to:

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1. The location, size, nature and height of buildings, structures, walls, and fences on the site in relation to the subject neighborhood; and
2. The nature and extent of landscaping and screening on the site in relation to the subject neighborhood.

G. 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.

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

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

J. 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.

K. 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.

19.33.030 Application Information

At the time the application is filed, the applicant shall submit the following information:

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- 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 at 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

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

If the use of existing towers, alternative tower structures or sites are unavailable, a reason or reasons specifying why they are unavailable shall 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 construction; technical limitations of the system; equipment exceeds structural capacity of 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.

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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.

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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.

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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.

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The applicant shall show coverage maps for the proposed tower or structure at the requested height and at 10' descending intervals as well.

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

The applicant shall provide at least 2 styles or types of structures that could be used in the proposed location.

- 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.

In low density, R-1 zoned areas, antennas shall be incorporated into existing architectural structures within the neighborhood such as steeples, bell towers, flag poles, school structures, and consistent with the aesthetics and proportion of the existing structures.

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The City may, at its discretion, hire such third parties as are necessary, at the applicant's expense, to confirm any information presented within the Application for Special Use Permit.

- C. In all areas zoned other than residential, all R-1 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.

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- D. A list of recipients to whom Notices of Intent to apply for Special Use Permit were sent to property owners within 1000' of the lot/property where the site is located, via certified mail and copies of all return receipt cards returned to the Applicant by the United States Postal Service.

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- E. 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, 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 site plan shall list the fall radius of the tower as proposed.

- F. 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.

- G. The City may request additional propagation maps as it deems necessary to grant or deny a Special Use Permit.

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 antenna and related

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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.

- H. A public hearing is required for each Special Use Permit Application and notice shall be provided by a posting at the proposed site.
- I. Preliminary construction schedule including completion dates.
- J. The applicant shall provide a copy of its FCC license
- K. Copies of letters sent to other wireless communication providers and their response regarding their interest to co-locate.
- L. Any other relevant information requested by City Staff.
- M. Application and fee. The applicant shall submit a completed application form with all required attachments and must agree to and reimburse the City for all costs related to the application.

19.33.035 Design Requirements

A. Setbacks

1. The equipment compound shall meet the minimum required setbacks for a principal use in the district in which it is located.
2. Stealth towers and alternative tower structures that are truly architecturally integrated into the building shall maintain the same setbacks that are required for a principal building.
3. In non-residential zoned areas, or non-R-1 areas, non-stealth monopoles or towers 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.

B. Screening and Landscape Buffer

Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence or a permanent building enclosure using materials similar to adjacent structures on the property. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.

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<#>That there are special circumstances or conditions affecting the proposed cell tower installation,¶
<#>That the setback waiver is necessary for reasonable development of the cell tower installation or the landowners property;¶
<#>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.¶
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Landscaping shall be required around the base or perimeter of the screening wall or fence. A combination of coniferous and deciduous trees and shrubs is required and drought tolerant plant materials are encouraged.

Deleted: When the visual impact of the equipment compound would be minimal, the landscaping requirement may be reduced or waived by the Planning Commission or City Council.

C. Tower/Antenna Design

1. All non-stealth towers shall maintain a hot dipped galvanized finish, and shall be a monopole design unless otherwise approved by the Planning Commission or City Council.
2. All antenna installed on towers shall be internal. Antenna bridges and platforms are not allowed. Public service omni-directional antenna operated by the City of Prairie Village and other governmental agencies are exempt from this requirement.
3. All antenna and related facilities installed on an alternative tower structure shall be of materials that are consistent with the surrounding elements so as to blend architecturally with said structure and to camouflage their appearance. Antenna on the rooftop or above a structure shall be screened, constructed and/or colored to match the structure to which they are attached.
4. Antenna and related facilities shall be of materials and color that are consistent with the tower or alternative tower structure and surrounding elements so as to blend architecturally with said tower or structure. The antenna and related facilities shall be a neutral color that is identical to, or closely compatible with, the color of the tower or alternative tower structure so as to make the antenna and related facilities as visually unobtrusive as possible. Antenna mounted on the side of a building or structure shall be painted to match the color of the building or structure of the background against which they are most commonly seen.
5. All electrical cables shall be installed within the monopole. For installations on buildings, water towers and other structures, cables shall be enclosed with a shield that is painted the same color as the building, water tower, or structure. Underground cables that are a part of the installation shall be required to be located at a safe depth underground.

D. Illumination

Communication towers may be only illuminated if required by the FCC and/or the FAA. Security lighting around the base of the tower may be installed, provided that no light is directed toward an adjacent residential property or public street.

E. Height

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The maximum height for a wireless communication tower shall be 150 feet plus a lightning rod not exceeding ten feet (10') and only in areas zoned other than residential.

F. Sealed Drawings

The construction plans for the tower shall be prepared and sealed by a structural engineer licensed in the State of Kansas. Construction observation shall be provided by the design engineer provided that said engineer is not an employee of the tower's owner. If the design engineer is an employee of the owner, an independent engineer will be required to perform construction observation.

- G. Anti-perch devices that prevent birds from perching or roosting on installation shall be installed when appropriate.

19.33.040 Conditions of Approval

The Planning Commission and City Council may require any or all of the following conditions and may add additional conditions if deemed necessary for a specific location:

- A. The initial approval of the Special Use Permit shall be for a maximum of five years. At the end of the five year period, the permittee shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a good faith effort has been made to cooperate with other providers to establish co-location at the tower site, that a need still exists for the tower, and that all the conditions of approval have been met. The Special Use Permit may then be extended for an additional ten years by the City Council and the permittee shall resubmit after each ten year reapproval. The process for considering a resubmittal shall be the same as for the initial application.
- B. Any tower, antenna or other facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned and the owner of such tower, antenna or facility shall remove the same within 90 days after receiving notice from the City. If the tower, antenna or facility is not removed within that 90 days period, the governing body may order the tower, antenna or facility removed and may authorize the removal of the same at the permittee's expense. Prior to the issuance of the Special Use Permit, the applicant shall submit a bond to the City in an amount adequate to cover the cost of tower removal and the restoration of the site. This bond will be secured for the term of the Special Use Permit plus one additional year. In the event the bond is insufficient and the permittee otherwise fails to cover the expenses of any such removal, the site owner shall be responsible for such expense.

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- C. The applicant shall have a structural inspection of the tower perform by a licensed professional engineer licensed in the State of Kansas prior to every ten year renewal and submit it as a part of the renewal application.
- D. Any wireless communication facility, tower or antenna which is not 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 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 notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the facility tower antenna and all appurtenances and restore the site to its original condition.
- E. The permittee shall keep the property well maintained including maintenance and replacement of landscape materials; free of leaves, trash and other debris; and either regularly cleaning up bird droppings or installing anti-perch devices that prevent birds from perching on the installation.
- F. 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 facility, tower or antenna 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.
- G. In order to ensure structural integrity, all wireless communication facilities, towers and antenna shall be constructed and maintained in compliance with all applicable local building codes and the applicable standard for such facilities, towers and antenna that are published by the Electronic Industries Alliance.
- H. All wireless communication facilities, towers and antenna 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 all facilities, towers, and antenna 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.
- I. It shall be the responsibility of any permit holder to promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
- J. A copy of the lease between the applicant and the landowner containing the following provisions:

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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 tower facility in the event that the leaseholder fails to remove it upon abandonment.
- K. Information to establish the applicant has obtained all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission

19.33.045 Site Plan Approval

All installations shall have a site plan approval in accordance with Chapter 19.32, Site Plan Approval.

19.33.050 Exceptions

Any wireless communications facility, tower and antenna that are a stealth design shall be exempt from the Special Use Permit requirements and shall be approved in accordance with Chapter 19.32, Site Plan Approval.

The initial approval of the Site Plan shall be for a maximum of five years. At the end of the five year period, the applicant shall resubmit the application to the Planning Commission and shall demonstrate to the satisfaction of the Planning Commission that a good faith effort has been made to cooperate with other providers to establish co-location at the tower site, that a need still exists for the tower, and that all the conditions of approval have been met. The application may then be extended for an additional ten years.

19.33.055 Existing Site Improvements

Alterations or improvements to existing wireless communication sites shall be allowed when these alterations or improvements are implemented to:

- A. Accommodate additional wireless service providers, provided that the alterations on improvements meet all applicable requirements of this Chapter. Unless otherwise provided for by the current Special Use Permit, application for such alteration or improvement to an existing site will require approval through an amended Special Use Permit. However, if provided by the current Special Use Permit, such application shall be considered a revised final site plan and will only require submission to and approval of the Planning Commission.
- B. Any such alteration or improvement shall meet any and all current applicable design and technical standards and requirements. The cumulative effect of any additional antennas and related facilities must comply with the radio frequency radiation emission guidelines established by the FCC.

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- C. Additional Antennas. When provided for in the approved capacity limit of a multi-user towers current Special Use Permit, additional antennas or replacement of current antenna may be added through an application for a revised site plan and will only require submission to and approval by the Planning Commission. Any additional antennas that exceed the originally approved capacity limit shall be considered a revised application, and shall require an amended Special Use Permit to locate. Any additional antennas or replacement of current antennas shall meet any and all current applicable design and technical standards and requirements. The cumulative effect of any additional antennas and related facilities must comply with the radio frequency radiation emission guidelines established by the FCC.
- D. In the event that new technology provides a better alternative to the design requirements herein, the Planning Commission may reasonably approve or require design modification of a wireless communication facility, tower or antenna when the appearance of the same is deemed to be less obtrusive than the requirements permitted herein.
- E. Any proposal by a permit holder to replace a current antenna or to alter and improve an existing facility, tower or antenna in a manner to make the same less obtrusive such as lessening the tower height, converting the structure to an alternative tower structure, or modifying the antenna to a "slim line" or internal design shall be considered as an amended site plan and will only require submission to and approval by the Planning Commission.
- F. Any such alteration or improvement shall meet any and all current applicable design and technical standards and requirements, and the cumulative effect of any additional antennas and related facilities must comply with the radio frequency emission guidelines established by the FCC.

19.33.060 Small Wireless Communications Antennas

The location, design and appearance of small wireless communications antennas installations shall be subject to Staff review and approval as follows:

- A. Small wireless communication antennas shall mean those whip antennas 6' 0" or less in height and panel antennas with a maximum front surface area of 2.0 square feet and not more than 15" in width, 36" in height, and 4" in depth that can be mounted on an existing utility or street light pole.
- B. Prior to installation, the provider shall obtain a permit from the City. If the proposed installation is located in right-of-way, the permit shall be issued in accordance with the City's requirements for a R-O-W permit. Otherwise it shall be issued by the Building Official.

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- C. The size, location, and appearance of the small wireless antennas will be subject to Staff review and approval. In its discretion, if Staff does not feel the proposed installation meets the intent of this regulation, it may refer approval of the permit to the Planning Commission.
- D. Prior to the review and approval of a permit, the applicant shall enter into an agreement whereby it agrees to abide by the requirements of the City's Right-of-Way Ordinance (as applicable) and to protect the City from any liability associated with the proposed installation. Such protection shall include requirements regarding bond, insurance, and indemnification. The agreement shall be applicable to the applicant's subsequent small wireless communication antenna permits and shall be in a form approved by the City's legal counsel.
- E. Utility racks will not be permitted and all equipment will be contained within an enclosed utility box. Utility boxes shall be located and installed in accordance with the requirements of the Zoning Regulations as set out in Sections 19.34.020.K and 19.30.055.G.
- F. Small antennas will be allowed to be mounted on existing utility and street light poles but the installation of taller utility poles or new overhead wiring to accommodate the antennas will not be permitted unless approved as a Special Use Permit.
- G. Not more than three antennas panels and one provider may be located on a utility or street light pole.
- H. The coaxial cable connecting the antennas to the equipment box shall be contained inside the pole or shall be flush mounted to the pole and covered with a metal, plastic, or similar material cap that matches the color of the pole and is properly secured and maintained by the provider.
- I. The applicant shall provide proof that it is a licensed provider and will comply with all federal, state and city regulations and laws relative to wireless services.
- J. The applicant shall provide any relevant information requested by City Staff.
- K. Any applicant may appeal a Staff decision to the Planning Commission.
- L. Any antenna that is not operated for a continuous period of six months shall be considered abandoned and the owner of such antenna shall remove the same within 90 days after receiving notice from the City. If the antenna is not removed within that 90 day period, the Governing Body may order the antenna removed and may authorize the removal of such antenna at the owner's expense.

19.33.065 Nonconformities

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Pre-existing wireless communication facilities, towers and antennas operating with a valid Special Use Permit, shall be considered legal non-conforming structures and shall not be required to meet the mandates of this Ordinance until the expiration of their applicable Special Use Permit.

B. Changes in other Sections of the Code to be in compliance with new regulations.

19.02.499 Utility Box

Any cabinet, pedestal, box, building, or other equipment enclosure used for public utility services, public service corporations, or telecommunications providers including any associated equipment such as condensing units and generators. Traffic signal controllers shall not be considered utility boxes. Utility boxes with a footprint smaller than one and one-half square foot, a pad of two square feet or less, and a height of 36" or less are exempt from this definition. Utility racks and open trellis-type structures for mounting equipment are not permitted. All equipment must be placed within a cabinet or enclosed structure that has an acceptable aesthetic design and has break away capability for safety.

All existing utility boxes are nonconforming structures and have all rights granted by Chapter 19.40 Nonconformities. Utility boxes are exempt from Section 19.40.015B Enlargement, Repair and Maintenance, and Section 19.40.015C Damage, Destruction, and Demolition and may be replaced provided that the replacement box is generally the same size as or smaller than the original utility box. This determination will be made by City Staff.

C. Delete Section 19.28.070.S of the Special Use Permit Chapter as follows:

- S. Wireless Communications Towers and antennas constructed or installed for use by commercial carriers (Ord. 1909, Sec. II, 1997).

**PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
MUNICIPAL BUILDING - 7700 MISSION ROAD
TUESDAY, JUNE 3, 2008
Council Chambers
7:00 P. M.**

- I. ROLL CALL
- II. APPROVAL OF PC MINUTES - May 6, 2008
- III. PUBLIC HEARINGS
- IV. NON-PUBLIC HEARINGS
 - PC2008-106 Request for Building Line Modification
Front Setback from 40 to 30 & Side setback from 30 to 15
4414 Homestead Drive
Zoning: R-1a
Applicant: Kurt Ellenberger (WITHDRAWN BY APPLICANT)
 - PC2008-108 Request for Building Line Modification
Front Setback from 60 to 48 feet
4306 West 89th Street
Zoning: R-1a
Applicant: Nicki Adams Morrissey (WITHDRAWN BY APPLICANT)
 - PC2008-109 Request for Building Line Modification (WITHDRAWN)
Front Setback from 38 to 28 feet
5320 West 64th Street
Zoning: R-1a
Applicant: George Lafferty for Don & Barbara Wigger
 - PC2008-110 Temporary Use Permit for Retail Sales
3848 West 75th Street
Zoning: C-0
Applicant: Rob & Paula Leigh, Delaware Interiors
- V. OTHER BUSINESS
 - Update on Cell Tower Policy vs Regulations

VI. ADJOURNMENT

Plans available at City Hall if applicable

If you can not be present, comments can be made by e-mail to
Cityclerk@Pvkansas.com

***Any Commission members having a conflict of interest, shall acknowledge that conflict prior to the hearing of an application, shall not participate in the hearing or discussion, shall not vote on the issue and shall vacate their position at the table until the conclusion of the hearing.**

1. That the Short-Term Permit for an outdoor market be approved for a period from May 10, 2008 to October 11, 2008.
2. That the hours of operation shall be from 8:00 a.m. to 1:00 p.m. on Saturdays.
3. The Market shall be permitted only in the courtyard and two parking spaces on the west side of Delaware Interiors.
4. The applicant will properly maintain the area and remove all outdoor storage of merchandise after the sale concludes on each Saturday.

The motion was seconded by Randy Kronblad and passed unanimously.

OTHER BUSINESS

Discuss Cell Tower Policy

Ron Williamson stated on March 24th, he and Dennis Enslinger presented historical information to the City Council on the evolution of the current cell tower policy as well as research on cell tower ordinances and policies from other cities. The Council has directed the Planning Commission to review the existing policy, especially in relation to setbacks and buffers. This has not been discussed earlier due to full Planning Commission agendas and the Commission's consideration of an active cell tower application.

Mr. Williamson advised the Commission that T-Mobile has withdrawn their application for a 120' monopole at 4805 West 67th Street and announced to the City Council their intention to file a new application for an 85' tower on that site for consideration on the Commission's July 1st meeting.

Residents have asked to be able to address the Commission on what regulations they would like to see implemented.

Steve Price, 6730 Fonticello, asked the Planning Commission to place a moratorium on the acceptance of cell tower applications until the Commission and City Council have had the opportunity to reconsider the existing language.

Ron Williamson stated the Planning Commission can recommend a moratorium; however, they do not have the authority to set them. This is a City Council action and moratoriums are generally set for a specific period of time.

Mr. Williamson stated the current regulations are a Planning Commission policy and can be changed by the Planning Commission. New language could be added to the existing policy by the Planning Commission at a regular meeting..

Andrew Wang advised the Commission that at the Council meeting on June 2nd the request for a moratorium was denied because the city's legal counsel state the applicant's withdrawal of his application was done with the understanding they would be able to file a new application for consideration by the Commission on July 1st and setting a moratorium would be inappropriate.

Chairman Ken Vaughn asked those present to share what they would like to see in the cell tower regulations.

Steve Price stated he would like to see cell towers incorporated into existing structures and not free standing structures.

Mary Cordill, 4904 West 68th Street, would like to have the Planning Commission recommend that the City Council form a citizen's task force to look at how to handle towers in the City. She would like to see the City offer incentives to commercial properties to encourage them to allow the placement of towers on their properties rather than in residential neighborhoods. Mrs. Cordill noted under the current policy the residents are carrying the burden of protecting their neighborhoods from the impact of towers. She feels the towers are too high, should not be free standing structures, and should be a minimum of 25' from property lines. Speaking on the recent application, she stated this is not the best location and noted they would be willing to help find another location. When they met with T-Mobile, it was stated that once a tower was located in an area, others usually followed. This would have a significant impact on this small residential neighborhood, especially with the accompanying equipment compounds.

Kate Faerber, 4806 West 68th Street, stated that although this directly affects her family, this is really a Prairie Village issue. She would like the Commission to consider some of the restrictions set by other cities in their regulations, particularly those regarding setback. The tower in the recent application was closer to her home than to the church on the property where it was located. She would also like towers incorporated into existing structures. Mrs. Faerber would like to see a setback from residential property of 150'.

Robb McKim noted the current provisions state that applications for a new location need to allow additional carriers and asked if it specifically required more than one vendor.

Mr. Williamson stated the tower has to be able to handle more than one vendor. The rationale was to have taller towers but fewer of them.

Randy Kronblad noted the additional vendors require additional equipment on the ground and increases the size of the equipment compounds. Mr. Williamson noted equipment compounds have become larger while actual antennas have become smaller. Mr. Kronblad stated he was concerned with the ground level clutter caused by multiple equipment compounds.

Marlene Nagel asked if it was possible to have more than one carrier when the tower is constructed as part of a structure. Mr. Williamson stated there are two carriers on the St. Ann's tower located in their steeple.

Nancy Vennard asked if all the carriers had generators. Mr. Williamson responded currently none of the carriers have generators and noted this is an issue that should be addressed in the policy.

Mrs. Vennard asked if it would be possible to get samples of other city's regulations. Staff will distribute this information and the City Council minutes to the Commission.

Bob Lindeblad stated in the drafting of the policy it is important to also have input from the telecommunication providers as well as the residents. He also stressed the need to have a clear understanding of the city's authority under the Federal Telecommunications Act. This places more responsibility on the City.

Ken Vaughn agreed the Commission needs to review the Telecommunications Act and other city's ordinances and policies. He feels towers should be architecturally compatible with the site.

Ron Williamson stated the City has discussed the question of locating towers in commercial developments owned by Highwoods Properties, but they do not want anything placed on their property that might limit their ability to change their development.

Nancy Vennard noted it is possible for equipment units to be placed under ground but it is very expensive.

Bob Lindeblad noted the equipment must be located within a specific distance from the towers/antenna. Mr. Williamson added some carriers equipment can be placed inside their poles.

Robb McKim stated he would prefer to see the equipment compounds located adjacent to or be part of the existing tower. It would seem reasonable to have them located in close proximity.

Marlene Nagel confirmed the new T-Mobile application would be handled as a new application.

NEXT MEETING

The next meeting will be Tuesday, July 1st. It was confirmed there would be a quorum for the meeting. The secretary noted there will be a BZA application from Claridge Court for a variance to the side yard setback on the southeast corner of their property. The Planning Commission agenda will include two site plan approvals for retaining walls, the T-Mobile Application and an AT&T application for a conditional use permit for another utility box.

ADJOURNMENT

With no further business to come before the Commission, the meeting was adjourned at 7:45 p.m.

Ken Vaughn
Chairman

**PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
MUNICIPAL BUILDING - 7700 MISSION ROAD
TUESDAY, JULY 1, 2008
Council Chambers
7:00 P. M.**

I. ROLL CALL

II. APPROVAL OF PC MINUTES - June 3, 2008

III. PUBLIC HEARINGS

PC2008-05 Request for Special Use Permit for a
Telecommunications Tower & Related Equipment
4805 West 67th Street
Zoning: R-1a
Applicant: Scott Beeler for T-Mobile

IV. NON-PUBLIC HEARINGS

PC2008-111 Site Plan Approval for Retaining Wall
8136 Juniper Drive
Zoning: R-1a
Applicant: David Soxman

PC2008-112 Site Plan Approval for Retaining Wall
8109 Juniper Drive
Zoning: R-1a
Applicant: Michael Magerl

V. OTHER BUSINESS

VI. ADJOURNMENT

Plans available at City Hall if applicable

If you can not be present, comments can be made by e-mail to
Cityclerk@Pvkansas.com

***Any Commission members having a conflict of interest, shall acknowledge that conflict prior to the hearing of an application, shall not participate in the hearing or discussion, shall not vote on the issue and shall vacate their position at the table until the conclusion of the hearing.**

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

This is a project that is consistent with the housing goal that encourages investment in residents which is as follows:

Housing: Encourage neighborhoods with unique character, strong property values and quality housing options for families and individuals of a variety of ages, incomes, needs and preferences.

Mr. Williamson advised the Commission that in addition to reviewing the standard site plan criteria, the ordinance also states that the Planning Commission may make the Planning Commission may make adjustments to the height and location of the retaining wall provided that it results in a project that is more compatible, provides better screening, provides better storm drainage management or provides a more appropriate utilization of the site.

In this case, it would appear that “a more appropriate utilization of the site” would be the factor that is most applicable. A retaining wall will be necessary along this property line to protect the property to the west and prevent erosion of the slope. The property to the west will not actually see the retaining wall because of the elevation.

Ken Vaughn stated he is concerned that the blocks need to be installed correctly. Mr. Magerl stated the City has inspected them. Mr. Vaughn requested City staff verify the wall is constructed according manufacturer’s specifications.

Randy Kronblad moved the Planning Commission find the proposed retaining wall provides a better solution to control the stormwater and a more appropriate utilization of the site and therefore, approve PC2008-112 allowing for the construction of a retaining wall at 8109 Juniper Drive subject to staff verification that the retaining wall is installed per manufacturer’s specifications. The motion was seconded by Bob Lindeblad and passed unanimously.

OTHER BUSINESS

Discussion of Cell Tower Policy

Mr. Williamson reported at its regular meeting on March 24, 2008, the City Council reviewed the Cell Tower Policy and the Memorandum dated March 24, 2008 which was distributed to the Planning Commission in June. The City Council would like the Planning Commission to consider adding buffers and setbacks to the Cell Tower Policy. The Council suggested that the Planning Commission review the entire Policy and make revisions where it sees fit based on changes that have occurred since 1996 when the Cell Tower Policy was originally adopted. The items to be considered by the Planning Commission are as follows:

1. The original policy as adopted in 1996. Revisions and deletions based upon experience in using the policy.
2. Adding setbacks.
3. Adding buffers.

4. Adding a location requirement, types of sites, integrated into existing buildings, etc.
5. Whether to continue with the policy or recommend an ordinance.
6. Other items requested by the Planning Commission.

Mr. Williamson asked the Planning Commission what additional items they would like staff to address.

Marlene Nagel acknowledged Kate Faerber's assistance in compiling historical information. She stated she would like the following items to be reviewed: the setback requirement, require applicants to provide documentation for other sites explored in the area, and incorporation of facilities into residential neighborhoods.

Mr. Wang asked whether a strong policy or an ordinance would be more resistant to a court challenge. Mr. Enslinger stated there are merits to both. A policy is easier to alter and an ordinance must meet certain statutory requirement. He said staff could investigate both and bring the results back. Randy Kronblad pointed out in the comparison provided by Ms. Faerber all the neighboring communities have ordinances. Bob Lindeblad stated language can be used to allow some flexibility in an ordinance. Mr. Enslinger said as long as the policy or ordinance is applied consistently it will be upheld in court.

Casey Housley, 4900 West 68th Street, addressed the Commission expressing the need for the guidelines to be revisited. From the citizen's perspective the policy needs to have more certainty. He stated he personally believes a policy is not as strong as an ordinance. He requested a moratorium while the Commission considers the policy. Mr. Williamson stated the City Council would need to approve a moratorium.

Mr. Williamson stated staff will bring back recommendations to the August or September meeting.

ADJOURNMENT

With no further business to come before the Commission, the meeting was adjourned at 9:35 p.m.

Ken Vaughn
Chairman

PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
MUNICIPAL BUILDING - 7700 MISSION ROAD
TUESDAY, SEPTEMBER 9, 2008
Multi-Purpose Room
7:00 P. M.

- I. ROLL CALL
- II. APPROVAL OF PC MINUTES - August 5, 2008
- III. PUBLIC HEARINGS
PC2008-06 Request for Conditional Use Permit for a
Communications Utility Box
5020 West 67th Street
Zoning: R-1a
Applicant: Chris Carroll for AT&T
(WITHDRAWN BY APPLICANT)
- IV. NON-PUBLIC HEARINGS
PC2008-113 Site Plan Approval
3500 West 75th Street
Zoning: C-0
Applicant: Thad Smith
- V. OTHER BUSINESS
Discussion on Cell Tower Regulations
- VI. ADJOURNMENT

Plans available at City Hall if applicable

If you can not be present, comments can be made by e-mail to
Cityclerk@Pvkansas.com

***Any Commission members having a conflict of interest, shall acknowledge that conflict prior to the hearing of an application, shall not participate in the hearing or discussion, shall not vote on the issue and shall vacate their position at the table until the conclusion of the hearing.**

OTHER BUSINESS

Ken Vaughn welcomed recently appointed Planning Commissioner Dirk Schafer to the Commission and noted Dale Warman, who was also appointed, would be present at the October meeting.

Discussion on Cell Tower Regulations

Ron Williamson stated the Commission directed Staff to review the Cell Tower Policy that was adopted in 1996 and to address several items that have been identified by the public, the City Council and the Planning Commission. These items are as follows:

1. Policy vs. Ordinance
2. Adding Setbacks
3. Adding Buffers
4. Integration of Towers into Existing Buildings in Residential Districts
5. Documentation of Sites Evaluated
6. Master Plan of Anticipated Locations by Provider
7. Site Maintenance
8. Golden Factors

Mr. Williamson stated his research included several data resources including ordinances from other cities, information from the American Planning Association, information from the Personal Communication Industry Association (PCIA), which is an organization representing providers and wireless guidelines provided by the Mid-America Regional Council (MARC).

1. Policy vs. Ordinance

There are advantages and disadvantages to either approach. As it has been pointed out, they both can be effective if administered uniformly. The primary advantage to a policy is that it can be changed quicker and easier than an ordinance. It should be noted, however, that the policy has not been changed since it was adopted in 1996. A policy can be more responsive to change because hearings and publications are not required. Most of the neighboring communities have adopted ordinances and ordinances are more rigid than policies. Some believe that an ordinance would stand up better in a court of law than a policy. This discussion occurred in 1996 and both the Planning Commission and City Council chose the policy approach.

Mr. Williamson advised the Commission a lawsuit has been filed by T-Mobile against the City for the denial of their recent application for a cell tower and one of the issues raised in the suit is the enforcement of the policy. Whether or not that is a relevant issue will be decided by the Court, but for our purposes, the Commission should be looking more at the ordinance approach.

2. Adding Setbacks

In reviewing ordinances from other cities and model codes, there is a wide variation for the setback requirement.

In reviewing regulations from other communities outside of the metro area, the variety is very similar. One exception is that towers that are a stealth design are normally only required to meet the setbacks of the buildings in the district.

He noted the distances required in the Leawood and Fairway regulations would have very little effect because there are based on Planned Residential Districts and there are very few planned residential districts in Prairie Village and they are small.

In comparing the regulations from other communities, it seems there are some commonalities regarding setbacks and it is suggested that the following be added:

1. The equipment compound shall meet the minimum required setbacks for a principal use in the district in which it is located.
2. Stealth towers that are truly architecturally integrated into the building shall maintain the same setbacks that are required for a principal building.
3. Monopoles or towers shall setback a minimum distance from all property lines equal to the height of the tower or monopole or some multiplier of the height.

Bob Lindeblad confirmed the setbacks are measured from the property line and not the actual residential structure. Mr. Williamson noted the reasons given for the setbacks are appearance and public safety, although with the construction of current towers a large fall zone is not needed as units usually collapse upon themselves if they do fall.

3. **Adding Buffers**

In most of the ordinances, the buffer is the same as the setback. In some ordinances reference is made to a landscape buffer that screens the equipment compound. Consider adding the following text:

“Landscape Buffer. Landscaping in the form of a combination of coniferous and deciduous trees is required on the outside perimeter of the screening wall. The standard buffer shall consist of a landscaped strip at least 6 feet wide outside the perimeter of the screening wall. Coniferous trees are to be a minimum of 6 feet in height, while deciduous trees are to have a minimum 3 inch caliper. The owner or provider shall be responsible for maintenance of all related landscape and screening materials. Existing mature tree growth and natural forms on the site shall be preserved to the maximum extent possible.”

4. **Integration of Towers into Existing Buildings in Residential Districts**

Consider adding the following text:

In residential districts, the telecommunications facility which includes towers, antennas and support equipment, shall be a stealth design which means that it will be integrated as an architectural feature of a structure so that the purpose

of the facility for providing wireless services is not readily apparent to the casual observer.

5. **Documentation of Sites Evaluated**

The current policy addresses this item, but perhaps it needs to be emphasized so that the applicants provide more detailed information about why certain locations were not selected. Perhaps a requirement should be added that if a site is rejected by an owner, a letter must be obtained from that owner stating that they do not want a facility on their property.

6. **Master Plan of Anticipated Locations by Provider**

As providers have approached the City of Prairie Village, they have presented one application at a time. Consequently it is a piece meal program and the Planning Commission has a difficult time of determining coverage and ultimately how many facilities will be needed. Therefore, staff has suggested the following language be added:

“The applicant shall submit a master plan at the time of application that demonstrates how the proposed wireless communication facility, tower or antenna will provide coverage for the service provider within the City and adjacent cities as well. The applicant shall also identify other sites that will be needed to provide complete coverage for the entire community. The master plan shall provide evidence that the proposed site as well as other sites are necessary for the provision of wireless service in Prairie Village.”

7. **Site Maintenance**

Site maintenance has become an issue in some locations primarily because the towers and equipment compounds attract birds and the droppings are a health concern. A maintenance condition needs to be attached to address this problem. Suggested language is as follows:

“The applicant shall keep the property well maintained including maintenance and replacement of landscape materials; free of leaves, trash and other debris; and either regularly cleaning up bird droppings or installing anti-perch devices that prevent birds from perching on the installation.”

8. **Golden Factors**

Many communities in Kansas use the Golden Factors as the criteria for consideration of Special Use permits. The Golden Factors were established by case law for consideration of zoning change applications and are used by Prairie Village for that purpose. The Golden Factors are as follows:

19.52.30 Factors.

These factors to be considered in approving or disapproving a zoning request shall include, but not be limited to the following:

1. The character of the neighborhood;
2. The zoning and uses of property nearby;

3. The suitability of the property for the uses to which it has been restricted under its existing zoning;
4. The extent that a change will detrimentally affect neighboring property;
5. The length of time of any vacancy of the property;
6. 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;
7. City Staff recommendations; and
8. Conformance with the Comprehensive Plan.

When the Zoning Ordinance was updated in 1995, the Planning Commission did not feel that the Golden Factors addressed Special Use Permits adequately and developed a new set of factors that are to be considered for all Special Use Permits. It should be emphasized that these factors apply to all Special Use Permits including wireless communication facilities. These factors are as follows:

Chapter 19.28 - Special Use Permits

In making their decision, consideration shall be given to any of the following factors that are relevant to the request:

- A. The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations;
- B. The proposed special use at the specified location will not adversely affect the welfare or convenience of the public;
- C. The proposed special use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located;
- D. 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 that the special use will not dominate 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 so dominate 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.
- E. 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.
- F. Adequate utility, drainage, and other such necessary facilities have been or will be provided.
- G. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.
- H. 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.

- i. Architectural style and exterior materials are compatible with such style and materials used in the neighborhood in which the proposed building is to be built or located.

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.

Some of the factors are similar to the Golden Factors, but are more focused toward specific uses rather than broadly based for a zoning change which includes many uses. These factors can be revised; deleted and new ones can be added. Please review and comment. The Golden Factors have a legal history and have a greater likelihood of standing up in court.

Existing Policy

The next step was to review the existing policy and make revisions where necessary. Suggested revisions are in italics.

PLANNING COMMISSION POLICY FOR THE APPROVAL OF WIRELESS COMMUNICATION TOWERS

Adopted December 10, 1996

At the time the application is filed, the applicant shall submit the following information:

1. A study comparing potential sites within an approximate ½ mile radius of the proposed application area. The study shall include the location and capacity of existing towers, potential surrounding sites, a discussion of the ability or inability of the tower site to host a communications facility and reasons why certain sites were excluded from consideration. The study must demonstrate to the City's satisfaction that alternative tower sites are not available due to a variety of constraints. It must also contain a statement explaining the need for the facility in order to maintain the system and include a map showing the service area of the proposed *facility* as well as other existing and proposed towers *and antennas*.

If the use of current towers is 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 owner; topographical limitations; adjacent impediments blocking transmission; site limitations to tower construction; technical limitations of the system; equipment exceeds structural capacity of facility or tower; no space on existing facility or tower; other limiting factors rendering existing facilities or towers unusable.

2. A photo simulation of the proposed facility as viewed from the adjacent residential properties and public rights of way.

3. A signed statement indicating the applicant's intention to share space on the tower with other providers.
4. A copy of the lease between the applicant and the landowner containing 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 tower facility in the event that the leaseholder fails to remove it upon abandonment.
5. A site plan prepared in accordance with Chapter 19.32 Site Plan Approval.

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, as well as proposed and existing structures within 150 feet of the tower base. 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 by Planning and Development.

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

Add the following:

The applicant shall provide an engineer's certification 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 antennae 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, along with directional data concerning the pointing of any directive antenna.

- ~~7. Description of services that will be offered or provided by the applicant over its existing or proposed facilities including what services or facilities the applicant will offer or make available to the City and other public, educational and governmental institutions.~~

(This can be deleted if it really is no longer applicable.)

8. Indication of the specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposed to temporarily or permanently remove or relocate.

(This should be combined with Item No. 5, Site Plan.)

9. Preliminary construction schedule including completion dates.
10. Sufficient detail to establish the applicant's technical qualifications, experience and expertise *as a provider* regarding communication or utility facilities and services described in the application.
11. Information to establish the applicant has obtained all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
12. Any other relevant information requested by City Staff.
13. An application fee. The applicant must agree to and reimburse the City for all costs related to the application for franchise to use or to occupy the public right-of-way including any legal, financial or administrative activities. Such application fee shall not be charged against the regular compensation to be paid to the City.
14. Copies of letters sent to other wireless communication providers notifying them of the proposed request and inquiring of their interest to co-locate.

The Planning Commission will consider and may require any or all of the following conditions to be a part of the approval of the Special Use Permit.

1. No change
2. All towers shall maintain a hot dipped galvanized finish, and shall be a mono-pole design unless otherwise approved by the Planning Commission.

Add:

Towers and related facilities shall be designed, camouflaged, and colored so that their appearance blends with the surrounding natural and built environment.

3. *Add New #3*
 - a. *Design of Towers. All antennae installed on towers shall be internal or shall panel antennae of "slim-line" design and shall be mounted parallel with the tower. Antennae bridges and platforms are not allowed. Public service omni-directional antennae operated by the City of Prairie Village are exempt from this requirement.*
 - b. *Design on Alternative Tower Structures. All antennae and related facilities installed on an alternative tower structure shall be of materials*

that are consistent with the surrounding elements so as to blend architecturally with said structure and to camouflage their appearance. Antennae on the rooftop or above a structure shall be screened, constructed and/or colored to match the structure to which they are attached. Antennae exceeding 12 inches in diameter on a roof or building-mounted facility shall not exceed the height of the structure to which they are attached, unless fully enclosed.

- c. *Color and Finish. Antennae and related facilities shall be of materials and color that are consistent with the tower or alternative tower structure and surrounding elements so as to blend architecturally with said tower or structure. The antennae and related facilities shall be a neutral color that is identical to, or closely compatible with, the color of the tower or alternative tower structure so as to make the antennae and related facilities as visually unobtrusive as possible. Antennae mounted on the side of a building or structure shall be painted to match the color of the building or structure of the background against which they are most commonly seen.*

4. ***Add New # 4***

All electrical cables shall be within the monopole for installations on buildings, water towers and other structures, cables shall be enclosed with a shield that is painted the same color as the building, water tower, or structure.

Ron Williamson stated the staff report was sent to neighborhood residents from the last cell tower application and to area providers. He stated he had spoken with Curt Holland who has represented Cingular Wireless on other applications in the City.

The next step is for the Planning Commission to decide whether it prefers the ordinance or policy approach. Staff will then revise the proposed regulations based on the direction of the Planning Commission and prepare either a revised policy or a proposed ordinance. If an ordinance is the preferred approach notice, it will need to be published and a public hearing held by the Planning Commission. If authorized by the Planning Commission, that public hearing could be held October 7, 2008 and then forwarded to City Council. If the Planning Commission chooses the policy approach, the text would be revised and it could be adopted on October 7, 2008.

As an alternative, the revised text could be adopted as a policy on October 7, 2008, while an amendment is being processed to adopt it as an ordinance.

Bob Lindeblad stated he was not comfortable making any decisions with three Commission members not present. The other Commission members agreed that this serious issue should only be discussed in context of the full Commission. Ken Vaughn asked the Secretary to confirm with Commission members if all members will be in attendance at the October meeting.

Bob Lindeblad suggested to Mr. Williamson that he do additional investigation on the setbacks to make certain the setbacks required to not prohibit cells towers from locating anywhere within the City. He may want to look at the radius of residential

properties surrounding public use properties. Mr. Lindeblad noted that some cities have streamlined their approval process to benefit the construction of towers integrated into existing structures.

Randy Kronblad confirmed the lawsuit filed will be reviewed against the existing regulations and will not be impacted by any changes made. Mr. Williamson noted if the court finds in favor of T-Mobile, the court will determine where the cell tower would be allowed. Because the cell tower was recommended for denial, the site plan was not approved and if the Court overturns the City's denial, the site plan will still need to come before the Planning Commission for approval.

Andrew Wang suggested the City Attorney or Assistant City Attorney be present at the next meeting to provide guidance to the Commission from the legal viewpoint.

Next Meeting

The Secretary announced the October agenda does not include any agenda items for the Board of Zoning Appeals. Applications before the Planning Commission include a Special Use Permit for SureWest Communications Utility Box on City Hall property; site plan approval for a CVS at the southwest corner of Somerset & Mission Road, Sign Standards for the Cap Fed Building on State Line and a monument sign for the Church across from the fire station on 63rd. Street.

Ron Williamson suggested the Commission members review the City's Village Vision with regard to the development of the Corinth Square Shopping Center. This is an area specifically addressed by Village Vision and will be impacted by the CVS application.

ADJOURNMENT

With no further business to come before the Planning Commission, Chairman Ken Vaughn adjourned the meeting at 7:40 p.m.

Ken Vaughn
Chairman

**PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
MUNICIPAL BUILDING - 7700 MISSION ROAD
TUESDAY, OCTOBER 7, 2008
Council Chamber
7:00 P. M.**

I. ROLL CALL

II. APPROVAL OF PC MINUTES - September 9, 2008

III. PUBLIC HEARINGS

**PC2008-09 Request for Conditional Use Permit for a
Communications Utility Box
7700 Mission Road
Zoning: R-1a
Applicant: Tom Reaves for SureWest**

**PC2008-10 Request for Conditional Use Permit for
Drive-thru
8200 Mission Road
Zoning: C-2
Applicant : Landplan Engineering for CVS**

IV. NON-PUBLIC HEARINGS

**PC2008-115 Site Plan Approval - Retail building
Southwest Corner Somerset & Mission
Zoning: C-2
Applicant: Landplan Engineering for CVS**

**PC2008-113 Site Plan Approval
3500 West 75th Street
Zoning: C-0
Applicant: Thad Smith**

**PC2008-114 Sign Standard & Monument Sign Approval
1900 West 75th Street
Applicant: Luminous Neon, Inc.**

**PC2008-116 Monument Sign Approval
3920 West 63rd Street
Zoning: R-1a
Applicant: Trinity Anglican Church**

V. OTHER BUSINESS

Discussion on Cell Tower Regulations

3. That the sign cabinet be painted a color that complements the church building and be placed on a brick base that matches the brick on the church. Revised drawings shall be submitted to Staff for review and approval.
 4. That the existing floodlights be removed.
- The motion was seconded by Marlene Nagel and passed unanimously.

OTHER BUSINESS

Discussion on Cell Tower Regulations

Ron Williamson reviewed his September staff report which addressed several items that have been identified by the public, the City Council, the Planning Commission and staff.

These items are as follows:

1. Policy vs. Ordinance
2. Adding Setbacks
3. Adding Buffers
4. Integration of Towers into Existing Buildings in Residential Districts
5. Documentation of Sites Evaluated
6. Master Plan of Anticipated Locations by Provider
7. Site Maintenance
8. Golden Factors

Mr. Williamson stated his research included several data resources including ordinances from other cities, information from the American Planning Association, information from the Personal Communication Industry Association (PCIA), which is an organization representing providers and wireless guidelines provided by the Mid-America Regional Council (MARC).

1. **Policy vs. Ordinance**

There are advantages and disadvantages to either approach. As it has been pointed out, they both can be effective if administered uniformly. The primary advantage to a policy is that it can be changed quicker and easier than an ordinance. It should be noted, however, that the policy has not been changed since it was adopted in 1996. A policy can be more responsive to change because hearings and publications are not required. Most of the neighboring communities have adopted ordinances and ordinances are more rigid than policies. Some believe that an ordinance would stand up better in a court of law than a policy. This discussion occurred in 1996 and both the Planning Commission and City Council chose the policy approach. At this time staff is recommending the ordinance approach.

2. **Adding Setbacks**

In reviewing ordinances from other cities and model codes, there is a wide variation for the setback requirement.

In reviewing regulations from other communities outside of the metro area, the variety is very similar. One exception is that towers that are a stealth design are normally only required to meet the setbacks of the buildings in the district.

He noted the distances required in the Leawood and Fairway regulations would have very little effect because they are based on Planned Residential Districts and there are very few planned residential districts in Prairie Village and they are small.

In comparing the regulations from other communities, it seems there are some commonalities regarding setbacks and it is suggested that the following be added:

1. The equipment compound shall meet the minimum required setbacks for a principal use in the district in which it is located.
2. Stealth towers that are truly architecturally integrated into the building shall maintain the same setbacks that are required for a principal building.
3. Monopoles or towers shall setback a minimum distance from all property lines equal to the height of the tower or monopole or some multiplier of the height.

At the request of the Commission, Mr. Williamson researched the impact of having a 200' and/or 500' setback requirement as favored by residents.

If a 500 feet setback were used, the site would need to be at least 1,000 feet in each direction. There are only two properties in Prairie Village large enough to meet this setback: Shawnee Mission High School and Meadowbrook Country Club.

If the setback was reduced to 200 feet, a 400' x 400' site would be required and there are a number of sites in Prairie Village meeting this criteria. They include the following:

Public Sites
Indian Hills Middle School
Corinth Elementary School
Belinder Elementary School
Briarwood Elementary School
Belinder Elementary School
Somerset Elementary School
Prairie Elementary School
City Hall
Porter Park
Harmon Park
Franklin Park

Private Sites
St. Ann School
Homestead Country Club
The Village Center
Corinth Square
Hy-Vee Center
Meadowbrook Village

None of the church sites are adequate in size to meet either the 500 or 200 feet minimum setback from the property line. However, if the cell towers were architecturally integrated into the buildings on the site so that they are truly a stealth installation, the building setback line would apply rather than the cell tower setback.

3. **Adding Buffers**

In most of the ordinances, the buffer is the same as the setback. In some ordinances reference is made to a landscape buffer that screens the equipment compound. Consider adding the following text:

"Landscape Buffer. Landscaping in the form of a combination of coniferous and deciduous trees is required on the outside perimeter of the screening wall. The standard buffer shall consist of a landscaped strip at least 6 feet wide outside the perimeter of the screening wall. Coniferous trees are to be a minimum of 6 feet in height, while deciduous trees are to have a minimum 3 inch caliper. The owner or provider shall be responsible for maintenance of all related landscape and screening materials. Existing mature tree growth and natural forms on the site shall be preserved to the maximum extent possible."

4. **Integration of Towers into Existing Buildings in Residential Districts**
Consider adding the following text:

In residential districts, the telecommunications facility which includes towers, antennas and support equipment, shall be a stealth design which means that it will be integrated as an architectural feature of a structure so that the purpose of the facility for providing wireless services is not readily apparent to the casual observer.

5. **Documentation of Sites Evaluated**

The current policy addresses this item, but perhaps it needs to be emphasized so that the applicants provide more detailed information about why certain locations were not selected. Perhaps a requirement should be added that if a site is rejected by an owner, a letter must be obtained from that owner stating that they do not want a facility on their property.

6. **Master Plan of Anticipated Locations by Provider**

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7. **Site Maintenance**

Site maintenance has become an issue in some locations primarily because the towers and equipment compounds attract birds and the droppings are a health

concern. A maintenance condition needs to be attached to address this problem. Suggested language is as follows:

“The applicant shall keep the property well maintained including maintenance and replacement of landscape materials; free of leaves, trash and other debris; and either regularly cleaning up bird droppings or installing anti-perch devices that prevent birds from perching on the installation.”

8. **Golden Factors**

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1. The character of the neighborhood;
2. The zoning and uses of property nearby;
3. The suitability of the property for the uses to which it has been restricted under its existing zoning;
4. The extent that a change will detrimentally affect neighboring property;
5. The length of time of any vacancy of the property;
6. 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;
7. City Staff recommendations; and
8. Conformance with the Comprehensive Plan.

When the Zoning Ordinance was updated in 1995, the Planning Commission did not feel that the Golden Factors addressed Special Use Permits adequately and developed a new set of factors that are to be considered for all Special Use Permits. It should be emphasized that these factors apply to all Special Use Permits including wireless communication facilities. These factors are as follows:

Chapter 19.28 - Special Use Permits

In making their decision, consideration shall be given to any of the following factors that are relevant to the request:

- A. The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations;
- B. The proposed special use at the specified location will not adversely affect the welfare or convenience of the public;
- C. The proposed special use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located;

- D. 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 that the special use will not dominate 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 so dominate 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.
- E. 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.
- F. Adequate utility, drainage, and other such necessary facilities have been or will be provided.
- G. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.
- H. 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.
- I. Architectural style and exterior materials are compatible with such style and materials used in the neighborhood in which the proposed building is to be built or located.

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.

Some of the factors are similar to the Golden Factors, but are more focused toward specific uses rather than broadly based for a zoning change which includes many uses. These factors can be revised; deleted and new ones can be added. Please review and comment. The Golden Factors have a legal history and have a greater likelihood of standing up in court.

Existing Policy

The next step was to review the existing policy and make revisions where necessary. Suggested revisions are in italics.

**PLANNING COMMISSION POLICY FOR THE APPROVAL
OF WIRELESS COMMUNICATION TOWERS**
Adopted December 10, 1996

At the time the application is filed, the applicant shall submit the following information:

1. A study comparing potential sites within an approximate ½ mile radius of the proposed application area. The study shall include the location and capacity of existing towers, potential surrounding sites, a discussion of the ability or inability of the tower site to host a communications facility and reasons why certain sites were excluded from consideration. The study must demonstrate to the City's satisfaction that alternative tower sites are not available due to a variety of constraints. It must also contain a statement explaining the need for the facility in order to maintain the system and include a map showing the service area of the proposed *facility* as well as other existing and proposed towers *and antennas*.

If the use of current towers is 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 owner; topographical limitations; adjacent impediments blocking transmission; site limitations to tower construction; technical limitations of the system; equipment exceeds structural capacity of facility or tower; no space on existing facility or tower; other limiting factors rendering existing facilities or towers unusable.

2. A photo simulation of the proposed facility as viewed from the adjacent residential properties and public rights of way.
3. A signed statement indicating the applicant's intention to share space on the tower with other providers.
4. A copy of the lease between the applicant and the landowner containing 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 tower facility in the event that the leaseholder fails to remove it upon abandonment.
5. A site plan prepared in accordance with Chapter 19.32 Site Plan Approval.

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, as well as proposed and existing structures within 150 feet of the tower base. 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 by Planning and Development.

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

Add the following:

The applicant shall provide an engineer's certification 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 antennae 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, along with directional data concerning the pointing of any directive antenna.

- ~~7. Description of services that will be offered or provided by the applicant over its existing or proposed facilities including what services or facilities the applicant will offer or make available to the City and other public, educational and governmental institutions.~~

(This can be deleted it really is no longer applicable.)

8. Indication of the specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposed to temporarily or permanently remove or relocate.

(This should be combined with Item No. 5, Site Plan.)

9. Preliminary construction schedule including completion dates.
10. Sufficient detail to establish the applicant's technical qualifications, experience and expertise *as a provider* regarding communication or utility facilities and services described in the application.
11. Information to establish the applicant has obtained all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
12. Any other relevant information requested by City Staff.
13. An application fee. The applicant must agree to and reimburse the City for all costs related to the application for franchise to use or to occupy the public right-of-way including any legal, financial or administrative activities. Such application fee shall not be charged against the regular compensation to be paid to the City.
14. Copies of letters sent to other wireless communication providers notifying them of the proposed request and inquiring of their interest to co-locate.

The Planning Commission will consider and may require any or all of the following conditions to be a part of the approval of the Special Use Permit.

1. No change
2. All towers shall maintain a hot dipped galvanized finish, and shall be a mono-pole design unless otherwise approved by the Planning Commission.

Add:

Towers and related facilities shall be designed, camouflaged, and colored so that their appearance blends with the surrounding natural and built environment.

3. **Add New #3**
 - a. ***Design of Towers. All antennae installed on towers shall be internal or shall panel antennae of "slim-line" design and shall be mounted parallel with the tower. Antennae bridges and platforms are not allowed. Public service omni-directional antennae operated by the City of Prairie Village are exempt from this requirement.***
 - b. ***Design on Alternative Tower Structures. All antennae and related facilities installed on an alternative tower structure shall be of materials that are consistent with the surrounding elements so as to blend architecturally with said structure and to camouflage their appearance. Antennae on the rooftop or above a structure shall be screened, constructed and/or colored to match the structure to which they are attached. Antennae exceeding 12 inches in diameter on a roof or building-mounted facility shall not exceed the height of the structure to which they are attached, unless fully enclosed.***
 - c. ***Color and Finish. Antennae and related facilities shall be of materials and color that are consistent with the tower or alternative tower structure and surrounding elements so as to blend architecturally with said tower or structure. The antennae and related facilities shall be a neutral color that is identical to, or closely compatible with, the color of the tower or alternative tower structure so as to make the antennae and related facilities as visually unobtrusive as possible. Antennae mounted on the side of a building or structure shall be painted to match the color of the building or structure of the background against which they are most commonly seen.***

4. **Add New # 4**

All electrical cables shall be within the monopole for installations on buildings, water towers and other structures, cables shall be enclosed with a shield that is painted the same color as the building, water tower, or structure.

Ken Vaughn stated he preferred an ordinance over a policy, felt the 200 foot setback was reasonable, would like to see documentation of the evaluation of sites and a master plan for installations within the City. He does not have a preference on golden factors vs. existing criteria.

Nancy Vennard stated she favored keying the height of the tower by proportion to the setback required rather than have a set 200' setback required. This would address the relationship of the tower to the property. Ron Williamson responded the City of Westwood uses a 1.2 multiplier for every foot of tower height. Dennis Enslinger noted the City of Merriam uses a 1.5 multiplier.

Bob Lindeblad asked if the 200 feet setback would result in areas of Prairie Village not being able to get service. Mr. Enslinger responded service can be provided by antenna located on buildings or on structures other than towers. Mr. Lindeblad asked if the City Council is willing to locate towers in City parks. Mr. Williamson acknowledged most of the public locations are in parks and noted the issue of having them on school property has not been discussed with the School District. Mr. Enslinger noted the composition of school boards and city councils change over time, but he would expect their preference to be structures on buildings. Mr. Lindeblad pointed out there are not many tall buildings in Prairie Village.

Ron Williamson stated based on the NSGS Topo maps the highest points in the City are at 83rd & Nall and 75th & Belinder. Ken Vaughn added 67th & Nall is also a relatively high area.

Bob Lindeblad stated if the 200' requirement is used, there needs to be an exception clause. Ron Williamson noted the hazard you face with a strict setback is that you risk having to place the tower at a location that may not be the best location for the site. Mr. Lindeblad stated he prefers having setback connected to the height of the tower is some type of ratio. Mr. Vaughn noted this could provide more possible sites depending on the multiplier. Dirk Schafer noted the maximum tower height of 150 feet would require a 225 foot setback if a 1.5 multiplier were used. Mr. Lindeblad stated the need to have enough height to allow for multiple carriers to co-locate on towers.

Marlene Nagel stated she was not aware of any issues with site maintenance and asked if this couldn't be addressed as a condition of approval. Mr. Williamson responded the fire district has had maintenance problems with the tower on their property and some of it could be addressed by design.

Marlene Nagel noted a number of the residents had expressed concern with the notification process and asked if a larger notification area should be required. Mr. Williamson responded all property owner's within 200' are notified as well as all homes associations within 500 feet. Mrs. Nagel noted there are areas of the City where there are no homes associations. Mr. Williamson stated it could be increased but if so, it needed to be done for all applications. Mr. Lindeblad stated he does not support a

broader notification area. He noted signs are placed on the property, immediate neighbors are notified.

Nancy Vennard stated #2 on the current policy requires a photo simulation of the proposed facility as viewed from the adjacent residential properties and public rights of way. She felt that photo simulations should be provided from several different locations.

Bob Lindeblad felt antennas should not be painted, particularly above the tree line. The galvanized color blends more effectively with the skyline.

Ken Vaughn led the Commission in a review of their findings on the eight areas identified.

#1 - Policy vs. Ordinance: Commission prefers ordinance.

#2 - Adding Setbacks: Commission wants a multiplier based on the height of the tower. A 1.5 multiplier is appropriate, noting this would be the minimum setback required and larger setbacks would be acceptable.

#3 - Adding Buffers: A buffer is desired, but does not want to prescribe how that buffer is constructed or what it contains. Different locations will require different levels of buffering.

#4 - Integration of Towers: The Commission wants to encourage integration and feels that an application integrates the tower into an existing structure a special use permit should not be required. The approval process would be a site plan approval. The question was raised if antenna on the top of buildings should require a special use permit. It was noted the primary concern is with the screening of the mechanical equipment and antenna and this could be done through site plan approval.

#5 - Documentation of Sites: Mr. Lindeblad questioned the level of documentation. Mr. Williamson confirmed the current level of documentation was acceptable.

#6 - Master Plan: Bob Lindeblad felt this could be considered proprietary information and difficult to get. Dirk Schafer stated he would like to have some idea of the big picture. Mr. Enslinger stated a "gap study" for the city would give some idea of future applications without releasing confidential information.

#7 - Site Maintenance: This should be added as a condition of approval.

#8 - Golden Factors: Mr. Williamson stated there has been more case law related to the Golden Factors; however, they are more general in nature. The Commission felt that both could be used by the City noting in some applications several of the factors would not be applicable and could simply be noted as non-applicable.

Marlene Nagel noted paragraph #5 - Site Plan Approval in the proposed language change for the existing policy the "layout of the site, as well as proposed and existing structures with 150 feet of the tower base." should be increased to 200 or 300 feet.

Andrew Wang confirmed setbacks are measured from the property line not from adjacent structures.

Chairman Ken Vaughn noted Jon & Kate Faerber in attendance and asked if they had any comments or concerns with the direction proposed by the Commission. They stated they did not and thanked the Commission for their work on this issue.

Next Meeting

The November 4th meeting will include the continued items from this evening, a fence site plan and an application for the renewal of the conditional use permit for the daycare program operated at 7501 Belinder by the Kansas City Autism Center. The 2009 meeting and filing date schedule will be submitted to the Planning Commission for approval. Nancy Vennard expressed concern with the November meeting being held on a national election day.

The BZA will also meet to consider a variance for a section of fence increasing the height from six feet to eight feet. Also at that meeting election of officers will take place due to the resignation of Board Chairman Rob McKim. It was subsequently determined that the fence height would be a site plan application and the BZA will not need to meet.)

ADJOURNMENT

With no further business to come before the Commission, Chairman Ken Vaughn adjourned the meeting at 8:45 p.m.

Ken Vaughn
Chairman

**PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
MUNICIPAL BUILDING - 7700 MISSION ROAD
TUESDAY, NOVEMBER 4, 2008
Council Chamber
7:00 P. M.**

I. ROLL CALL

II. APPROVAL OF PC MINUTES - October 7, 2008

III. PUBLIC HEARINGS

**PC2008-11 Request for Special Use Permit for a DayCare
7501 Belinder
Zoning: R-1a
Applicant: Ron Johnson for KC Autism Center**

**PC2008-10 Request for Conditional Use Permit for Drive-thru
8200 Mission Road
Zoning: C-2
Applicant : Landplan Engineering for CVS**

IV. NON-PUBLIC HEARINGS

**PC2008-115 Site Plan Approval - Retail building
Southwest Corner Somerset & Mission
Zoning: C-2
Applicant: Landplan Engineering for CVS**

**PC2008-113 Site Plan Approval
3500 West 75th Street
Zoning: C-0
Applicant: Thad Smith**

**PC2008-114 Sign Standard & Monument Sign Approval
1900 West 75th Street
Applicant: Luminous Neon, Inc.**

**PC2008-117 Site Plan Approval - Fence
4210 Homestead Drive
Zoning: R-1a
Applicant: Kraig Kohring**

**PC2008-107 Request for Site Plan Approval for Emergency Generator
4500 West 89th Street
Zoning: C-2
Applicant: Emily Harding, Softek Solutions**

V. OTHER BUSINESS

**Discussion on Cell Tower Regulations
Review/Approval of 2009 Meeting & Submittal Schedule**

Nancy Vennard noted this is something that is so seldom used and the length of time it would be used would be less than a week resulting in minimal truck traffic to refill the fuel supply. Ms Harding noted the generator would have a 125 gallon tank.

Ken Vaughn stated by on the 60 kilowatt generator rating he would estimate fuel usage would be less than five gallons per hour.

Dirk Shafer stated that he sees more diesel fuelled generators than natural gas.

Dale Warman agreed with Mrs. Vennard noting the office building was a very short distance from the substation and any outage should be minimal. He has seen a lot of diesel fuel usage without any problems and does not see a problem with approving the requested change to diesel fuel at this property.

Marlene Nagel stated she felt the Commission should continue to prefer the use of natural gas in residential areas. Ken Vaughn stated each application needs to be considered independently, noting this location is not in an area where the impact on neighboring properties would be a problem and the need for the backup generator is present.

Randy Kronblad moved the Planning Commission find in favor of the findings of factor and moved to approve the amended site plan for an emergency generator at 4500 West 89th Street subject to the following conditions:

1. The generator will be located on the north or rear side of the building.
2. The generator's fuel source will be diesel fuel.
3. The generator shall only be tested between the hours of 8:00 a.m. and 5:00 p.m.
4. The generator shall be installed in accordance with NFPA 37 Standards for the Installation and Use of stationary Combustion Engines and Gas Turbines.
5. The generator will provide sound attenuation at a Level 2 which is 65 db.
6. The fence detail be submitted to staff for approval prior to the installation of the unit.

The motion was seconded by Dale Warman and passed unanimously.

OTHER BUSINESS

Discussion on Cell Tower Regulations

Ron Williamson reviewed the proposed revisions to the City's cell tower regulations which incorporated changes recommended by the Planning Commission, Staff and the Assistant City Attorney Steve Horner.

Staff is recommending that some applications be approved by site plan and others through special use permits. Therefore a new chapter is proposed entitled "Wireless Communication Facilities" which will include both processes.

The text of the proposed amendment is as follows:

19.33 WIRELESS COMMUNICATION FACILITIES

19.33.005 Intent

The Telecommunications Act of 1996 grants authority to local jurisdictions over decisions regarding the placement, construction, and modification of wireless communication facilities, towers and antennae. As the City has diverse and unique landscapes that perpetuate the identity of its residential neighborhoods, protection of these valuable resources is paramount. Accordingly, the Governing Body finds that the unregulated placement and design of wireless communication facilities, towers and antennae results in visual clutter that adversely affects community aesthetics and damages the character of the City. This ordinance is intended to provide minimum standards that ensure that the wireless communication needs of residents and businesses are met, while at the same time the general safety and welfare of the community is protected.

19.33.010 Purpose

A wireless communication facility, tower or antenna may be sited, constructed, designed or maintained in the city provided that it is in conformance with the stated standards, procedures, and other requirements of this ordinance. More specifically, these regulations are necessary to:

- A. Provide for suitable location of wireless communication facilities, towers and antennae so as to mitigate their negative effect on residential neighborhoods and land uses;
- B. Maintain community aesthetics by minimizing the negative visual effects of wireless communication facilities, towers and antennae through specific design and siting criteria;
- C. Maximize the use of existing towers and alternative tower structures so as to minimize the need for new tower locations;
- D. Encourage co-location among wireless service providers on existing and newly constructed sites in order to reduce the overall number of towers needed; and
- E. Promote the use of innovative stealth, camouflage and disguise techniques for wireless communication facilities, towers, and antennae so as to integrate their appearance with the many architectural and natural themes found throughout the City.

19.33.015 Special Use Permit Requirement

Unless otherwise exempted herein, wireless communication facilities, towers and antennae shall be allowed only upon approval of a Special Use Permit in accordance with the procedures setout in Chapter 19.28, Special Use Permit.

19.33.020 Factors For Consideration

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.
- B. The zoning and uses of property nearby.
- C. The extent that a change will detrimentally affect 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.
- E. City Staff recommendations.
- F. The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.
- G. The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.
- H. 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 that the special use will not dominate 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 so dominate 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.
- I. 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.
- J. Adequate utility, drainage, and other such necessary facilities have been or will be provided.
- K. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.
- L. 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.
- M. 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.

19.33.025 Application Information

At the time the application is filed, the applicant shall submit the following information:

- A. A study comparing potential sites within an approximate two mile radius of the proposed application area. The study shall include the location and capacity of

existing towers, potential surrounding sites, a discussion of the ability or inability of the tower or potential site to host a communications facility and reasons why certain tower or potential sites were excluded from consideration. The study must demonstrate to the City's satisfaction that alternative tower sites are not available due to a variety of constraints. It must also contain a statement explaining the need for the facility in order to maintain the system and include a map showing the service area of the proposed facility as well as other existing and proposed towers and antennas.

If the use of existing towers or potential 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 construction; technical limitations of the system; equipment exceeds structural capacity of 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 application shall be responsible for updating the inventory of existing, proposed, approved and/or constructed tower antenna location that occur within the two mile study area during the Special Use Permit process.

The applicant shall submit an overall plan that shows the coverage gaps in service 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 wireless communication facility, tower, and/or antenna will impact the overall network of the wireless service provider within the City of Prairie Village and adjacent cities on both sides of the state line. The applicant shall be required to update this information as necessary during the Special Use Permit process.

The study shall also provide documentation establishing the minimum height necessary to provide services for the primary carrier and the height required to provide for co-location.

- B. Multiple photo simulations of the proposed facility as viewed from the adjacent residential properties and public rights of way.
- C. When possible, all wireless communication towers and alternative structures must be designed to accommodate multiple providers co-location, unless the Planning Commission or 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 provide fairly priced co-location opportunities, and/or to agree to binding arbitration to

determine the fair market value cost if an agreement cannot be negotiated shall 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.

- D. 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 tower facility in the event that the leaseholder fails to remove it upon abandonment.
- E. 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, 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.
- F. Description of the transmission medium that will be used by the applicant to offer or to provide services and proof 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 certification 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 antennae 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.
- G. Preliminary construction schedule including completion dates.
- H. Sufficient detail to establish the applicant's technical qualifications, experience and expertise as a provider regarding communication or utility facilities and services described in the application.

- I. Information to establish the applicant has obtained all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
- J. Copies of letters sent to other wireless communication providers and their response regarding their interest to co-locate.
- K. Any other relevant information requested by City Staff.
- L. An application fee. The applicant must agree to and reimburse the City for all costs related to the application for franchise to use or to occupy the public right-of-way including any legal, financial or administrative activities. Such application fee shall not be charged against the regular compensation to be paid to the City.

19.33.030 Design Requirements

A. Setbacks

- 1. The equipment compound shall meet the minimum required setbacks for a principal use in the district in which it is located.
- 2. Stealth towers that are truly architecturally integrated into the building shall maintain the same setbacks that are required for a principal building.
- 3. Monopoles or towers shall setback a minimum distance from all property lines equal to the height of the tower times a multiplier of 1.5 but shall not be required to setback more than 200 feet from the property line.

B. Screening and Landscape Buffer

Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence or a permanent building enclosure using materials similar to adjacent structures on the property. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.

Landscaping shall be required around the base or perimeter of the screening wall or fence. A combination of coniferous and deciduous trees and shrubs is required and drought tolerant plant materials are encouraged. When the visual impact of the equipment compound would be minimal, the landscaping requirement may be reduced or waived by the Planning Commission or Governing Body.

C. Tower/Antennae Design

- 1. All towers shall maintain a hot dipped galvanized finish, and shall be a mono-pole design unless otherwise approved by the Planning Commission.
- 2. All antennae installed on towers shall be internal or shall be a panel antenna of "slim-line" design and shall be mounted parallel with the tower. Antenna bridges and platforms are not allowed. Public service omni-

- directional antennae operated by the City of Prairie Village and other governmental agencies are exempt from this requirement.
3. All antennae and related facilities installed on an alternative tower structure shall be of materials that are consistent with the surrounding elements so as to blend architecturally with said structure and to camouflage their appearance. Antennae on the rooftop or above a structure shall be screened, constructed and/or colored to match the structure to which they are attached.
 4. Antennae and related facilities shall be of materials and color that are consistent with the tower or alternative tower structure and surrounding elements so as to blend architecturally with said tower or structure. The antennae and related facilities shall be a neutral color that is identical to, or closely compatible with, the color of the tower or alternative tower structure so as to make the antennae and related faculties as visually unobtrusive as possible. Antennae mounted on the side of a building or structure shall be painted to match the color of the building or structure of the background against which they are most commonly seen.
 5. All electrical cables shall be within the monopole. For installations on buildings, water towers and other structures, cables shall be enclosed with a shield that is painted the same color as the building, water tower, or structure. Underground cables that are a part of the installation shall be required to be located at a safe depth underground.

D. Illumination

Communication towers may be only illuminated if required by the FCC and/or the FAA. Security lighting around the base of the tower may be installed, provided that no light is directed toward an adjacent residential property or public street.

E. Height

The maximum height for a wireless communication tower shall be 150 feet plus a lighting rod not exceeding ten feet (10').

F. Sealed Drawings

The plans for the tower shall be prepared and sealed by a structural engineer licensed in the State of Kansas. Construction observation shall be provided by the design engineer provided that said engineer is not an employee of the tower's owner. If the design engineer is an employee of the owner, an independent engineer will be required to perform construction observation.

- G. Anti-perch devices that prevent birds from perching or roosting on the installation shall be installed when appropriate.

19.33.035 Conditions of Approval

The Planning Commission and City Council may require any or all of the following conditions and may add additional conditions if deemed necessary for a specific location:

- A. The initial approval of the Special Use Permit shall be for a maximum of five years. At the end of the five year period, the permittee shall resubmit the application to the Planning Commission and shall demonstrate to the satisfaction of the Planning Commission that a good faith effort has been made to cooperate with other providers to establish co-location at the tower site, that a need still exists for the tower, and that all the conditions of approval have been met. The application may then be extended for an additional five years and the permittee shall resubmit after each five year reapproval.
- B. Any tower, antenna or other facility that is not operated for a continuous period of six months shall be considered abandoned and the owner of such tower, antenna or facility shall remove the same within 90 days after receiving notice from the City. If the tower, antenna or facility is not removed within that 90 days period, the governing body may order the tower, antenna or facility removed and may authorize the removal of the same at the permittee's expense. Prior to the issuance of the Special Use Permit, the applicant shall submit a bond to the City in an amount adequate to cover the cost of tower removal and the restoration of the site. This bond will be secured for the term of the Special Use Permit plus one additional year. In the event the bond is insufficient and the permittee otherwise fails to cover the expenses of any such removal, the site owner shall be responsible for such expense.

The City may, at its option, claim the abandoned tower for its own use instead of having it removed and the City may sell or lease the tower to other companies or use it for its own needs. If the City chooses this option, it shall release the applicant's bond.

- C. The applicant shall have a structural inspection of the tower performed by a licensed professional engineer licensed in the State of Kansas prior to every five year renewal and submit it as a part of the renewal application.
- D. Any permit granted for an antenna or tower installation 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 notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the towers and all appurtenances and restore the site to its original conditional.
- E. The permittee shall keep the property well maintained including maintenance and replacement of landscape materials; free of leaves, trash and other debris; and either regularly cleaning up bird droppings or installing anti-perch devices that prevent birds from perching on the installation.
- F. Evidence of liability insurance with an insurance company licensed to do business in Kansas in an amount not less than one million (\$1,000,000) dollars per occurrence and two million (\$2,000,000) dollars in 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 permit holder, or alleged to so have been caused or occurred. If the applicant 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.

- G. Any wireless communication facility, tower or antenna which is not structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) shall be considered in violation of the Special Use Permit and shall be cured within sixty (60) days of written notice or removed as provided for herein.
- H. 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 facility, tower or antenna shall be cured 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.
- I. In order to ensure structural integrity, all wireless communication facilities, towers and antennae shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such facilities, towers and antennae that are published by the Electronic Industries Association.
- J. All wireless communication facilities, towers and antennae 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 all facilities, towers, and antennae 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.
- K. It shall be the responsibility of any permit holder to promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.

19.33.040 Site Plan Approval

All installations shall have a site plan approval in accordance with Chapter 19.32 Site Plan Approval.

19.33.045 Exceptions

Any wireless communications facility, tower and antennae that are a stealth design, which means that they will be integrated as an architectural feature of a structure or building so that the wireless services installation is not readily apparent to the casual observer, shall be exempt from the Special Use Permit requirements and shall be approved in accordance with Chapter 19.32 Site Plan Approval.

The initial approval of the Site Plan shall be for a maximum of five years. At the end of the five year period, the applicant shall resubmit the application to the Planning

Commission and shall demonstrate to the satisfaction of the Planning Commission that a good faith effort has been made to cooperate with other providers to establish co-location at the tower site, that a need still exists for the tower, and that all the conditions of approval have been met. The application may then be extended for an additional five years.

19.33.050 Existing Site Improvements

Alterations or improvements to existing wireless communication sites shall be allowed when these alterations or improvements are implemented to:

- A. Accommodate additional wireless service providers, provided that the alterations or improvements meet all applicable requirements of this Chapter. Unless otherwise provided for by the current Special Use Permit, application for such alteration or improvement to an existing site will require approval through a new Special Use Permit. However, if provided by the current Special Use Permit, such application shall be considered a revised final site plan and will only require submission to and approval of the Planning Commission.
- B. Alter an existing facility, tower, or antenna in a manner that makes the facility, tower or antenna less obtrusive, such as lessening the tower height, converting the structure to an alternative tower structure, or modifying the antenna to a "slim line" or internal design. Such application shall be considered a revised final site plan and will only require the submission to and approval by the Planning Commission.
- C. Any such alteration or improvement shall meet any and all current applicable design and technical standards and requirements. The cumulative effect of any additional antennae and related facilities must comply with the radio frequency radiation emission guidelines established by the FCC.
- D. Additional Antennae. When provided for in the approved capacity limit of a multi-user tower's current Special Use Permit, additional antennae or replacement of current antenna may be added through an application for a revised site plan and will only require submission to and approval by the Planning Commission. Any additional antennae that exceed the originally approved capacity limit shall be considered a revised application, and shall require a Special Use Permit to locate. Any additional antennae or replacement of current antennae shall meet any and all current applicable design and technical standards and requirements. The cumulative effect of any additional antennae and related facilities must comply with the radio frequency radiation emission guidelines established by the FCC.
- E. In the event that new technology provides a better alternative to the design requirements herein, the Planning Commission may reasonably approve or require an alternative design of a wireless communication facility, tower or antenna when the appearance of the same is deemed to be less obtrusive than the requirements permitted herein.

- F. Any proposal by a permit holder to replace a current antenna or to alter and improve an existing facility, tower or antenna in a manner to make the same less obtrusive shall be considered a revised site plan and will only require submission to and approval by the Planning Commission.
- G. Any such alteration or improvement shall meet any and all current applicable design and technical standards and requirements, and the cumulative effect of any additional antennae and related facilities must comply with the radio frequency emission guidelines established by the FCC.

19.33.055 Nonconformities

Pre-existing wireless communication facilities, towers and antennae operating with a valid Special Use Permit, shall be considered legal non-conforming structures and shall not be required to meet the mandates of this Ordinance until the expiration of their applicable Special Use Permit.

Dennis Enslinger stated the City Council, at its meeting on Monday, requested that they see the proposed language before a public hearing was authorized by the Commission.

Randy Kronblad confirmed the regulations would be written as an ordinance adding a new chapter to the zoning regulations. The language would be removed from the Special Use Permit chapter.

Mr. Kronblad noted the ordinance refers to residential neighborhoods and questioned if it should only apply to residential areas. Ron Williamson responded the applicant would have to get a Special Use Permit for any location. He would like to see it applied to a larger area without the reference to residential

Nancy Vennard confirmed the 200' notification area was measured from the property line. Mr. Williamson noted Homes Associations within 500' are also notified. Mr. Lindeblad stated 200' is a well established notification area. Mrs. Vennard noted the required notice for the CVS application using 200' was very minimal. Mr. Lindeblad responded that is why the property is also required to have signs placed noting the pending application. Ron Williamson stated the statutes require 200' notification for zoning and he feels that distance should be consistent throughout.

Andrew Wang raised questions regarding the accuracy of photo simulations and photographs based on how they are taken. Bob Lindeblad responded that will also be an issue.

Ken Vaughn suggested language the following language be added to the requirement for photo simulations: "as directed by City Staff". This will help to get the views the City wants to be able to see. Mr. Williamson noted the photographs on the last application were difficult because of the grade of the property and surrounding property.

Marlene Nagel stated she still has concerns with the situation where the applicant says "this is the only site" and would like to require them to provide a written that other potential sites are not available.

Bob Lindeblad does not believe the City can require the applicant to get to the point where there are no other options. There may be other options and there is nothing wrong with that; however, it is the applicant's responsibility to explain why these are not being used and why they have selected the location proposed. Nancy Vennard noted past applicant/s have presented inaccurate and conflicting information.

Andrew Wang stated the change from a ½ mile distance to a 2 mile distance seems excessive. Ken Vaughn asked if this was a radius or diameter. Mr. Williamson responded it is a radius with the intent of seeing how they are going to address the big picture regardless of the City limit lines. Both Leawood and Fairway use the two mile distance.

Randy Kronblad moved the proposed language with the revisions requested by the Commission be forwarded to the City Council for review. The motion was seconded by Marlene Nagel and passed unanimously.

December Meeting

Ron Williamson asked the Commission if they wanted to delay the December Commission meeting from December 2 to December 9th because of the Thanksgiving Holiday. Several Commissioners indicated they would be out of town for the holiday and it would be difficult for them to review the packet prior to the meeting.

Bob Lindeblad moved the Planning Commission change its December meeting from December 2nd to December 9, 2008. The motion was seconded by Marlene Nagel and passed unanimously.

2009 Meeting Schedule

The Commission Secretary presented the proposed meeting and submittal schedule for 2009. The only variation to meeting dates recommended is for the December meeting as it fall directly after Thanksgiving making it difficult both for staff to get out the packet with the shortened week and difficult for Commissioners to review the packet over the holiday. It was suggested the December meeting be held on the second Tuesday of the month.

Randy Kronblad moved to approved the proposed 2009 meeting schedule with the December meeting changed to the second Tuesday of the month and submittal dates adjusted accordingly. The motion was seconded by Dale Warman and passed unanimously.

ADJOURNMENT

With no further business to come before the Planning Commission, the meeting was adjourned at 8:25 p.m.

Ken Vaughn
Chairman

**PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
MUNICIPAL BUILDING - 7700 MISSION ROAD
TUESDAY, DECEMBER 9, 2008
Multi-Purpose Room
7:00 P. M.**

- I. ROLL CALL
- II. APPROVAL OF PC MINUTES - November 4, 2008
- III. PUBLIC HEARINGS
 - PC2008-10 Request for Conditional Use Permit for Drive-thru
8200 Mission Road
Zoning: C-2
Applicant : Landplan Engineering for CVS
- IV. NON-PUBLIC HEARINGS
 - PC2008-115 Site Plan Approval - Retail Building
Southwest Corner Somerset & Mission
Zoning: C-2
Applicant: Landplan Engineering for CVS
 - PC2008-114 Sign Standard & Monument Sign Approval
1900 West 75th Street
Applicant: Luminous Neon, Inc.
 - PC2008-118 Site Plan Approval - Bldg Height Elevation
4820 West 68th Street
Zoning: R-1a
Applicant: Bryon Vanlerberg
- V. OTHER BUSINESS
 - Discussion on Cell Tower Regulations
 - Discussion of possible changes to "Building Height Regulations"
- VI. ADJOURNMENT
 - Plans available at City Hall if applicable
 - If you can not be present, comments can be made by e-mail to
Cityclerk@Pvkansas.com

***Any Commission members having a conflict of interest, shall acknowledge that conflict prior to the hearing of an application, shall not participate in the hearing or discussion, shall not vote on the issue and shall vacate their position at the table until the conclusion of the hearing.**

OTHER BUSINESS

Discussion on Cell Tower Regulations

Ron Williamson stated that on December 1, 2008, the City Council Committee of the Whole discussed the proposed revisions to the City's cell tower regulations. The consensus of the Council was that the ordinance approach was preferred over the policy. The only other area discussed by the City Council was setbacks. The primary concern was that if the setbacks are too restrictive, there will be no locations that can be approved for cell towers and some type of waiver is needed. Mr. Williamson noted that two of the existing towers in Prairie Village do not meet the setbacks as proposed in the ordinance and would become nonconforming structures.

The proposed revisions to Section 19.33.025 were approved by the Planning Commission.

Mr. Williamson noted there are 19 sites that could accommodate a non-stealth cell tower using the 200 feet setback. Eight of those sites are schools and at this time the school district has not agreed to allow cell towers, but this could change in the future. Six of the sites are private and the remainder are city owned properties. None of the church sites meet the 200 feet setback from the property line. If the setback remains as proposed, the only way to change it would be by a variance through the Board of Zoning Appeals. Finding the conditions of "uniqueness" and "hardship" could be difficult.

As an alternative, it was suggest the Council that a waiver provision be added where the Council could reduce the setback if it deemed it appropriate. Two alternatives were presented to address a waiver.

Alternative #1

The applicant may request a waiver of the setback requirement. The Planning Commission shall consider the request and make a recommendation to the City Council who will make the final determination.

Alternative #2

The applicant may request a waiver of the setback requirement. The Planning Commission shall consider the request and make a recommendation to the City Council who will make the final determination. In approving a setback waiver, the Commission and Council shall consider the following:

- a. That there are special circumstances or conditions affecting the property.
- b. That the setback waiver is necessary for reasonable development of the cell tower installation;
- 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.

Dennis Enslinger added that some Council members wanted to delete the setback requirement from the regulations entirely.

Nancy Vennard asked if the regulations would be considered a violation of the FCC with the significant limitation of available sites. Mr. Enslinger stated the City is not limiting the sites, only the construction of stand alone stealth towers - applications incorporated within building structures would be allowed.

Randy Kronblad confirmed the setback was from neighboring property line.

Bob Lindeblad stated the City of Overland Park allows the Planning Commission and City Council to waive requirements for extenuating circumstances. Dennis Enslinger stated the City Council felt the waiver should be at the Council level. Bob Lindeblad stated he feels the Commission and Council should work together with the Commission recommending the waiver and the Council taking official action.

Dennis Enslinger stated staff could look at the Overland Park provision and come back with more information for the Commission in January.

Ken Vaughn and Dirk Schafer stated they felt stipulated criteria are necessary and support alternative #2.

Ron Williamson reviewed the letter submitted from Curtis Holland at Polsinelli. Bob Lindeblad confirmed the current base is 1½ times the height with a maximum height of 200 feet.

Nancy Vennard asked what the intent of the setback regulations. She noted falling ice is not an issue unless there are strong winds and aesthetics are not changed by setback.

Bob Lindeblad stated he felt the height of the tower is reasonable. Mr. Enslinger added it is the industry standard, with 80' towers there would be a number of other sites available. Randy Kronblad stated he did not feel the difference between 80' and 100' was significant.

The letter from Polsinelli suggested a search area of ½ mile instead of the proposed two miles. Mr. Williamson stated the intent of the ordinance is to be able to see a pattern within the City. The cities of Leawood and Mission Hills have a three mile area, Fairway has a two mile area and Overland Park is ½ mile. Ken Vaughn stated he felt 1 mile with a two mile circumference was appropriate.

Bob Lindeblad asked if this was in reference to stealth towers only or did it include antenna on top of buildings. The wording "wireless communication sites" is not clear. Nancy Vennard asked if it would also include "booster boxes". Mr. Enslinger stated he felt it included antennas as well as towers.

Bob Lindeblad stated he is not interested in tower location, but in coverage areas. Mr. Enslinger wanted see the locations and did not feel this was a major cost or difficulty for the providers. He noted neighboring cities require greater distances. The Commission was ok with a one-mile circumference.

Dale Warman stated the terms should be clarified in the definitions.

Mr. Enslinger noted the final two items in the letter are being reviewed by the City's legal counsel. Staff will report the findings on those items.

Discussion of possible changes to "Building Height Regulations"

Jim Brown, City Building Official, reported that the current trend within the City of Prairie Village in regards to new single family dwellings is the construction of larger and taller homes. Most of our housing stock is of older 1950's/1960's Ranch or Cape Cod design. It is now common for these older homes to be demolished and replaced with more modern larger and taller homes with varying roof pitches and elevations. In keeping with this trend, it has become necessary to further clarify and adopt a consistent and specific method of measuring building height.

Jim Brown stated the present method of determining building height is not specific and leads to subjective or "gray areas".. The present method is to find the lowest elevation (grade) at a point 5 feet from the perimeter of the house and then from this lowest elevation (grade) the measurement for the building height begins.

The current definition of "building height" is as follows:

19.02.100- Building, height of.

"Height of Building" means the vertical distance in feet measured from grade to the highest point of the roof for flat roofs, to the deck surface of mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs. Heating, ventilating, air conditioning and elevator equipment located on flat roofs may extend not more than eight(8) feet above this maximum building height and for gable, hip and gambrel roofs no more than two(2) feet above peak of the roofs provided, however, that all such equipment is adequately screened from view and compatibility incorporated into the building design."

In determining building height based upon the current definition, the subjective or "gray area" is a result of the term "mean height" used in the definition. At present we determine this as the average height between all roof peaks. Mr. Brown noted this method does not coincide with the method of determining building height as specified in the International Building Code (IBC) adopted by the City.

The IBC is much more definitive and specific as to how to determine building height. IBC definitions are as follows:

Height, Building.

"The vertical distance from grade plane to the average height of the highest roof surface".

● This definition establishes the two points of measurement that determine the height of a building in feet. The lower point of measurement is the grade plane. The upper point of measurement is the roof surface of the building with consideration given to sloped roofs

**PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
MUNICIPAL BUILDING - 7700 MISSION ROAD
TUESDAY, JANUARY 6, 2009
Council Chambers
7:00 P. M.**

I. ROLL CALL

II. APPROVAL OF PC MINUTES - December 9, 2008

III. PUBLIC HEARINGS

**PC2008-10 Request for Conditional Use Permit for Drive-thru
8200 Mission Road
Zoning: C-2
Applicant : Landplan Engineering for CVS
(Continuance Requested by Applicant)**

**PC2009-01 Request for Conditional Use Permit for Drive-thru
95th & Mission Road
Zoning C-2
Applicant: Walgreen's**

IV. NON-PUBLIC HEARINGS

**PC2008-115 Site Plan Approval - Retail Building
Southwest Corner Somerset & Mission
Zoning: C-2
Applicant: Landplan Engineering for CVS
(Continuance Requested by Applicant)**

**PC2009-101 Site Plan Approval
95th & Mission Road
Zoning: C-2
Applicant: Walgreen's**

V. OTHER BUSINESS

**Proposed Ordinance Revisions - Cell Towers
Proposed Ordinance Revisions - Repeater Antennas
Proposed Ordinance Revisions - Bldg. Height
Proposed Ordinance Revisions - Emergency Generators**

VI. ADJOURNMENT

Plans available at City Hall if applicable

If you can not be present, comments can be made by e-mail to
Cityclerk@Pvkansas.com

*Any Commission members having a conflict of interest, shall acknowledge that conflict prior to the hearing of an application, shall not participate in the hearing or discussion, shall not vote on the issue and shall vacate their position at the table until the discussion is concluded.

9. The lighting plan needs to be revised in accordance with Section 19.34.050 "Outdoor Lighting" and submitted to Staff for review and approval.
10. A sidewalk shall be added on the east side of Buena Vista with a crosswalk across the west driveway.

The motion was seconded by Marlene Nagel and passed unanimously.

**PC2008-115 Site Plan Approval - Retail Building
 Southwest Corner Somerset & Mission**

Randy Kronblad moved the Commission continue consideration of PC2008-115 to the February 3, 2009 meeting of the Planning Commission. The motion was seconded by Dale Warman and passed by a vote of 6 to 0 with Dirk Schafer abstaining.

OTHER BUSINESS

Proposed Ordinance Revisions - Cell Towers

Ron Williamson stated the revisions to the proposed ordinance from meeting were minimal. Changes have been made standardizing the language at the request of the Assistant City Attorney. Also added to Section 19.33.025 that the Planning Commission makes a recommendation regarding any waiver to be granted by the City Council.

Mr. Williamson also reviewed the Overland Park regulations for the criteria they use. Their ordinance does not contain any criteria, but it does address reductions as well as waivers. This is a good clarifier and has been added.

Language has been added requiring the renewal process for the Special Use Permit be the same as that for the original application. The Assistant City Attorney has recommended the removal of language regarding abandonment noting they may be included in the lease for facilities located on City property. He has also recommended the specific insurance requirements be removed from the ordinance and placed in the lease agreement. The proposed language calls for "sufficient" insurance coverage. Nancy Vennard asked who defines "sufficient". Mr. Williamson stated it would be clearly defined in the lease agreement by the property owners.

Dennis Enslinger stated the Commission had requested he contact other cities for information on their regulations. He reported other communities are looking at the following provisions in addition to the provisions being considered by Prairie Village

- Zone of visibility map from 500 feet of the tower location. This provision is similar to the current proposal to include photosims
- Independent third party review of engineering documentation and coverage maps. This provision would be funded through an escrow account.
- Priority location for cell tower facilities. This would be where the city lists general locations such as City owned property, industrial and other publicly owned property and then prioritized these locations.

Bob Lindeblad does not support requiring applicants to explain why a non-preferred location has been chosen.

Ken Vaughn stated he would like to see the qualification of sites explained by the applicant.

The Commission did not feel any of these requirements should be added to the City's proposed regulations.

The proposed ordinance is as follows with all deletions are ~~lined-out~~ and all additions or new information are in *bold italics*.

19.33 WIRELESS COMMUNICATION FACILITIES

19.33.005 Intent

The Telecommunications Act of 1996 grants authority to local jurisdictions over decisions regarding the placement, construction, and modification of wireless communication facilities, towers and antennae. As the City has diverse and unique landscapes that perpetuate the identity of its residential neighborhoods, protection of these valuable resources is paramount. Accordingly, the Governing Body finds that the unregulated placement and design of wireless communication facilities, towers and antennae results in visual clutter that adversely affects community aesthetics and damages the character of the City. This ordinance is intended to provide minimum standards that ensure that the wireless communication needs of residents and businesses are met, while at the same time the general safety and welfare of the community is protected.

19.33.010 Purpose

A wireless communication facility, tower or antenna *including its equipment, but excluding small wireless communication antennae as setout in Section 19.34.020.L* may be sited, constructed, designed or maintained ~~in the city~~ provided that it is in conformance with the stated standards, procedures, and other requirements of this ordinance. More specifically, these regulations are necessary to:

- A. Provide for suitable location of wireless communication facilities, towers and antennae so as to mitigate their negative effect on residential neighborhoods and land uses;
- B. Maintain community aesthetics by minimizing the negative visual effects of wireless communication facilities, towers and antennae through specific design and siting criteria;
- C. Maximize the use of existing towers and alternative tower structures so as to minimize the need for new tower locations;
- D. Encourage co-location among wireless service providers on existing and newly constructed sites in order to reduce the overall number of towers needed; and
- E. Promote the use of innovative stealth, camouflage and disguise techniques for wireless communication facilities, towers, and antennae so as to integrate their appearance with the many architectural and natural themes found throughout the City.

19.33.015 Special Use Permit Requirement

Unless otherwise excepted herein, wireless communication facilities, towers and antennae shall be allowed only upon approval of a Special Use Permit in accordance with the procedures setout in Chapter 19.28, Special Use Permit.

19.33.020 Factors For Consideration

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.
- B. The zoning and uses of property nearby.
- C. The extent that a change will detrimentally affect 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.
- E. City Staff recommendations.
- F. The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.
- G. The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.
- H. 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 that the special use will not dominate 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 so dominate 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.
- I. 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.
- J. Adequate utility, drainage, and other such necessary facilities have been or will be provided.
- K. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.
- L. 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.
- M. 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.

19.33.025 Application Information

At the time the application is filed, the applicant shall submit the following information:

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

If the use of existing towers or potential *alternative tower* 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 construction; technical limitations of the system; equipment exceeds structural capacity of 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 application shall be responsible for updating the inventory of existing, proposed, approved and/or constructed tower antenna location that occur within the two-mile study area during the Special Use Permit process.~~

The applicant shall submit an overall plan that shows the coverage gaps in service 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 wireless communication facility, ~~tower, and/or antenna~~ will impact ~~its~~ the overall network of the wireless service provider within the City of Prairie Village and adjacent cities on both sides of the state line. ~~The applicant shall be required to update this information as necessary during the Special Use Permit process.~~

The study shall also provide documentation establishing the minimum height necessary to provide *the applicant's* services for ~~the primary carrier~~ and the height required to provide for co-location.

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

- 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.
- 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, ~~or 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 provide fairly priced co-location opportunities, and/or to agree to binding arbitration to determine the fair market value cost if an agreement cannot be negotiated shall 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.
- D. 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 tower facility in the event that the leaseholder fails to remove it upon abandonment.
- E. 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, 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.

- F. Description of the transmission medium that will be used by the applicant to offer or to provide services and proof 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 certification 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 antennae 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.

- G. Preliminary construction schedule including completion dates.
- H. Sufficient detail to establish the applicant's technical qualifications, experience and expertise as a provider regarding communication or utility facilities and services described in the application.
- I. Information to establish the applicant has obtained all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.
- J. Copies of letters sent to other wireless communication providers and their response regarding their interest to co-locate.
- K. Any other relevant information requested by City Staff.
- L. An application fee. The applicant must agree to and reimburse the City for all costs related to the application for franchise to use or to occupy the public right-of-way including any legal, financial or administrative activities. Such application fee shall not be charged against the regular compensation to be paid to the City.

19.33.030 Design Requirements

- A. Setbacks

1. The equipment compound shall meet the minimum required setbacks for a principal use in the district in which it is located.
2. Stealth towers *and alternative tower structures* that are truly architecturally integrated into the building shall maintain the same setbacks that are required for a principal building.
3. Monopoles or towers shall setback a minimum distance from all property lines equal to the height of the tower ~~times a multiplier of 1.5 but shall not be required to setback more than 200 feet from the property line~~ *unless a reduction or waiver is granted by the City Council.*

4. The applicant may request a *reduction or* waiver of the setback requirement. The Planning Commission shall consider the request and make a recommendation to the City council who will make the final determination. In approving a setback *reduction or* waiver, the Commission and Council shall consider the following:
 - a. That there are special circumstances or conditions affecting the property;
 - b. That the setback waiver is necessary for reasonable development of the cell tower installation;
 - 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.

B. Screening and Landscape Buffer

Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence or a permanent building enclosure using materials similar to adjacent structures on the property. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.

Landscaping shall be required around the base or perimeter of the screening wall or fence. A combination of coniferous and deciduous trees and shrubs is required and drought tolerant plant materials are encouraged. When the visual impact of the equipment compound would be minimal, the landscaping requirement may be reduced or waived by the Planning Commission or Governing Body.

C. Tower/Antennae Design

1. All towers shall maintain a hot dipped galvanized finish, and shall be a mono-pole design unless otherwise approved by the Planning Commission.
2. All antennae installed on towers shall be internal or shall be a panel antenna of "slim-line" design and shall be mounted parallel with the tower. Antenna bridges and platforms are not allowed. Public service omni-directional antennae operated by the City of Prairie Village and other governmental agencies are exempt from this requirement.
3. All antennae and related facilities installed on an alternative tower structure shall be of materials that are consistent with the surrounding elements so as to blend architecturally with said structure and to camouflage their appearance. Antennae on the rooftop or above a structure shall be screened, constructed and/or colored to match the structure to which they are attached.
4. Antennae and related facilities shall be of materials and color that are consistent with the tower or alternative tower structure and surrounding elements so as to blend architecturally with said tower or structure. The antennae and related facilities shall be a neutral color that is identical to, or closely compatible with, the color of the tower or alternative tower structure so as to make the antennae and related facilities as visually unobtrusive as possible. Antennae mounted on the side of a building or structure shall be painted to match the color of the building or structure of the background against which they are most commonly seen.
5. All electrical cables shall be within the monopole. For installations on buildings, water towers and other structures, cables shall be enclosed with a shield that is painted the same color as the building, water tower, or structure. Underground cables that are a part of the installation shall be required to be located at a safe depth underground.

D. Illumination

Communication towers may be only illuminated if required by the FCC and/or the FAA. Security lighting around the base of the tower may be installed, provided that no light is directed toward an adjacent residential property or public street.

- E. Height
The maximum height for a wireless communication tower shall be 150 feet plus a lighting rod not exceeding ten feet (10').
- F. Sealed Drawings
The plans for the tower shall be prepared and sealed by a structural engineer licensed in the State of Kansas. Construction observation shall be provided by the design engineer provided that said engineer is not an employee of the tower's owner. If the design engineer is an employee of the owner, an independent engineer will be required to perform construction observation.
- G. Anti-perch devices that prevent birds from perching or roosting on the installation shall be installed when appropriate.

19.33.035 Conditions of Approval

The Planning Commission and City Council may require any or all of the following conditions and may add additional conditions if deemed necessary for a specific location:

- A. The initial approval of the Special Use Permit shall be for a maximum of five years. At the end of the five year period, the permittee shall resubmit the application to ~~the Planning Commission~~ and shall demonstrate to the satisfaction of the Planning Commission *and the City Council* that a good faith effort has been made to cooperate with other providers to establish co-location at the tower site, that a need still exists for the tower, and that all the conditions of approval have been met. The ~~application~~ *Special Use Permit* may then be extended for an additional five years *by the City Council* and the permittee shall resubmit after each five year reapproval. *The process for considering a resubmittal shall be the same as for the initial application.*
- B. Any tower, antenna or other facility that is not operated for a continuous period of six months shall be considered abandoned and the owner of such tower, antenna or facility shall remove the same within 90 days after receiving notice from the City. If the tower, antenna or facility is not removed within that 90 days period, the governing body may order the tower, antenna or facility removed and may authorize the removal of the same at the permittee's expense. Prior to the issuance of the Special Use Permit, the applicant shall submit a bond to the City in an amount adequate to cover the cost of tower removal and the restoration of the site. This bond will be secured for the term of the Special Use Permit plus one additional year. In the event the bond is insufficient and the permittee otherwise fails to cover the expenses of any such removal, the site owner shall be responsible for such expense.

~~The City may, at its option, claim the abandoned tower for its own use instead of having it removed and the City may sell or lease the tower to other companies or use it for its own needs. If the City chooses this option, it shall release the applicant's bond. In discussion with Legal Counsel, this item can be delted from the Ordinance, but may be included in the lease for facilities located on city property.~~

- C. The applicant shall have a structural inspection of the tower performed by a licensed professional engineer licensed in the State of Kansas prior to every five year renewal and submit it as a part of the renewal application.

- D. Any permit granted for an antenna or tower installation *wireless communication facility, tower or antenna* 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 notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the *facility tower antenna* and all appurtenances and restore the site to its original condition.
- E. The permittee shall keep the property well maintained including maintenance and replacement of landscape materials; free of leaves, trash and other debris; and either regularly cleaning up bird droppings or installing anti-perch devices that prevent birds from perching on the installation.
- F. Evidence of *sufficient* liability insurance with an insurance company licensed to do business in Kansas. ~~in an amount not less than one million (\$1,000,000) dollars per occurrence and two million (\$2,000,000) dollars in 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 permit holder, or alleged to so have been caused or occurred.~~ If the applicant 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.~~ *In discussion with Legal Counsel this clause should be part of the lease agreement more so than a condition of the Special Use Permit.*
- G. Any wireless communication facility, tower or antenna which is not structurally maintained to a suitable degree of safety and appearance (as determined by the City and any applicable law, statute, ordinance, regulation or standard) shall be considered in violation of the Special Use Permit and shall be rectified within ~~sixty (60)~~ *ninety (90)* days of written notice or removed as provided for herein.
- H. 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 facility, tower or antenna 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.
- I. In order to ensure structural integrity, all wireless communication facilities, towers and antennae shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such facilities, towers and antennae that are published by the Electronic Industries Association.
- J. All wireless communication facilities, towers and antennae 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 all facilities, towers, and antennae 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.
- K. It shall be the responsibility of any permit holder to promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.

19.33.040 Site Plan Approval

All installations shall have a site plan approval in accordance with Chapter 19.32 Site Plan Approval.

19.33.045 Exceptions

Any wireless communications facility, tower and antennae that are a stealth design, which means that they will be integrated as an architectural feature of a structure or building so that the wireless services installation is not readily apparent to the casual observer, shall be exempt from the Special Use Permit requirements and shall be approved in accordance with Chapter 19.32 Site Plan Approval.

The initial approval of the Site Plan shall be for a maximum of five years. At the end of the five year period, the applicant shall resubmit the application to the Planning Commission and shall demonstrate to the satisfaction of the Planning Commission that a good faith effort has been made to cooperate with other providers to establish co-location at the tower site, that a need still exists for the tower, and that all the conditions of approval have been met. The application may then be extended for an additional five years.

19.33.050 Existing Site Improvements

Alterations or improvements to existing wireless communication sites shall be allowed when these alterations or improvements are implemented to:

- A. Accommodate additional wireless service providers, provided that the alterations or improvements meet all applicable requirements of this Chapter. Unless otherwise provided for by the current Special Use Permit, application for such alteration or improvement to an existing site will require approval through a new Special Use Permit. However, if provided by the current Special Use Permit, such application shall be considered a revised final site plan and will only require submission to and approval of the Planning Commission.
- B. Alter an existing facility, tower, or antenna in a manner that makes the facility, tower or antenna less obtrusive, such as lessening the tower height, converting the structure to an alternative tower structure, or modifying the antenna to a "slim line" or internal design. Such application shall be considered a revised final site plan and will only require the submission to and approval by the Planning Commission.
- C. Any such alteration or improvement shall meet any and all current applicable design and technical standards and requirements. The cumulative effect of any additional antennae and related facilities must comply with the radio frequency radiation emission guidelines established by the FCC.
- D. Additional Antennae. When provided for in the approved capacity limit of a multi-user tower's current Special Use Permit, additional antennae or replacement of current antenna may be added through an application for a revised site plan and will only require submission to and approval by the Planning Commission. Any additional antennae that exceed the originally approved capacity limit shall be considered a revised application, and shall require a Special Use Permit to locate. Any additional antennae or replacement of current antennae shall meet any and all current applicable design and technical standards and requirements. The cumulative effect of any additional antennae and related facilities must comply with the radio frequency radiation emission guidelines established by the FCC.

- E. In the event that new technology provides a better alternative to the design requirements herein, the Planning Commission may reasonably approve or require an alternative design of a wireless communication facility, tower or antenna when the appearance of the same is deemed to be less obtrusive than the requirements permitted herein.
- F. Any proposal by a permit holder to replace a current antenna or to alter and improve an existing facility, tower or antenna in a manner to make the same less obtrusive shall be considered a revised site plan and will only require submission to and approval by the Planning Commission.
- G. Any such alteration or improvement shall meet any and all current applicable design and technical standards and requirements, and the cumulative effect of any additional antennae and related facilities must comply with the radio frequency emission guidelines established by the FCC.

19.33.055 Nonconformities

Pre-existing wireless communication facilities, towers and antennae operating with a valid Special Use Permit, shall be considered legal non-conforming structures and shall not be required to meet the mandates of this Ordinance until the expiration of their applicable Special Use Permit.

Proposed Ordinance Revisions - Repeater Antennas

Ron Williamson noted in March, 2004, In March 2004, the Planning Commission started analyzing this issue. This was initiated by Sprint but no installations have been made. The Planning Commission discussed it in April, June, and July and held a public hearing in August which was continued to September. The Planning Commission had a number of questions and apparently Sprint changed its plans so the ordinance amendment was not finalized.

The Planning Commission discussed the proposed amendment at its meeting on August 3, 2004 and suggested several changes be made to the proposed regulations. Most of the concern was related to the size of the antenna and the proliferation that might occur in residential neighborhoods. It was suggested that item 1 of part C be revised to incorporate whip antennas of 6'0" in height or less, and panel antennas that have a front surface of 2.0 square feet or less but not to exceed 36" in height or 15" in width and 4" in depth.

Those changes are included in the following text which is the latest version of the proposed amendment. Words to be deleted are lined out and new language is shown in bold italics.

- A. Amend the definition of Utility Box as follows:

19.02.499 Utility Box

Any cabinet, pedestal, box, building, or other *equipment enclosure* used for public utility services, public service corporations, or telecommunications providers including any associated equipment such as condensing units and generators. Traffic signal controllers shall not be considered utility boxes. Utility boxes with a footprint smaller than one and one-half square foot, a pad of two square feet or less, and a height of 36" or less are exempt from this definition. *Utility racks and open trellis-type structures for mounting equipment are not permitted. All equipment must be placed within a cabinet or enclosed structure that has an acceptable aesthetic design and has break away capability for safety.*

All existing utility boxes are nonconforming structures and have all rights granted by Chapter 19.40 Nonconformities. Utility boxes are exempt from Section 19.40.015B Enlargement, Repair and Maintenance, and Section 19.40.015C Damage, Destruction, and Demolition, and may be replaced provided that the replacement box is generally the same size as or smaller than the original utility box. This determination will be made by City Staff.

B. Amend Section 19.28.070.5 of the Special Use Permit Chapter as follows:

S. Wireless Communications Towers and antennae *except small wireless communication antennae as set out in Section 19.34.020.L*, constructed or installed for use by commercial carriers (Ord. 1909, Sec. II, 1997). This section will be deleted when the new wireless communication ordinance is adopted as a separate chapter.

C. Add a new subsection to Chapter 19.34 Accessory Uses as follows: (Changes were made to 1,3,4,7 and a new 12.)

19.34.020L The location, design and appearance of small wireless communications antennae installations shall be subject to Staff review and approval as follows:

1. *Small wireless communication antennae shall mean those whip antennae 6' 0" or less in height and panel antennae with a maximum front surface area of 2.0 square feet and not more than 15" in width, 36" in height, and 4" in depth that can be mounted on an existing utility or street light pole.*
2. *Prior to installation, the provider shall obtain a permit from the City. If the proposed installation is located in right-of-way, the permit shall be issued in accordance with the City's requirements for a R-O-W permit. Otherwise it shall be issued by the Building Official*
3. *The size, location, and appearance of the small wireless antennae will be subject to Staff review and approval. In its discretion, if Staff does not feel the proposed installation meets the intent of this regulation, it may refer approval of the permit to the Planning Commission.*
4. *Prior to the review and approval of a permit, the applicant shall enter into an agreement whereby it agrees to abide by the requirements of the City's Right-of-Way Ordinance (as applicable) and to protect the City from any liability associated with the proposed installation. Such protection shall include requirements regarding bond, insurance, and indemnification. The agreement shall be applicable to the applicant's subsequent small wireless communication antenna permits and shall be in a form approved by the City's legal counsel.*
5. *Utility racks will not be permitted and all equipment will be contained within an enclosed utility box. Utility boxes shall be located and installed in accordance with the requirements of the Zoning Regulations as set out in Sections 19.34.020.K and 19.30.055.G.*
6. *Small antennae will be allowed to be mounted on existing utility and street light poles but the installation of taller utility poles or new overhead wiring to accommodate the antennae will not be permitted unless approved as a Special Use Permit.*

7. *Not more than three antennae panels and one provider may be located on a utility or street light pole.*
8. *The coaxial cable connecting the antennae to the equipment box shall be contained inside the pole or shall be flush mounted to the pole and covered with a metal, plastic, or similar material cap that matches the color of the pole and is properly maintained by the provider.*
9. *The applicant shall provide proof that it is a licensed provider and will comply with all federal, state and city regulations and laws relative to wireless services.*
10. *The applicant shall provide any relevant information requested by City Staff.*
11. *Any applicant may appeal a Staff decision to the Planning Commission.*
12. *Any antenna that is not operated for a continuous period of six months shall be considered abandoned and the owner of such antenna shall remove the same within 90 days after receiving notice from the City. If the antenna is not removed within that 90 day period, the governing body may order the antenna removed any may authorize the removal of such antenna at the owner's expense.*

Bob Lindeblad asked if this technology was still viable. Evan Fitts with Polsinelli, Shalton, Flanigan & Suelthaus, responded he discussed this with Curtis Holland who has represented carriers for more than 16 years and he advised that he has had one application in that time period. He feels it was proposed as a temporary fix to a problem.

Ken Vaughn stated that is the language was reasonable, he felt it was ok to include these changes. He referenced the information on the new technology proposed by AT&T that was distributed to the Commission by Marlene Nagel.

Dale Warman asked if these regulations would apply to other utilities as well as communication companies. He noted KCP&L has had discussion regarding placing unity on utility poles. If so he wants the language to clearly identify how the units are secured to the poles.

Mr. Williamson noted these applications would be reviewed by Public Works as they would be located in the city's right-of-way.

The Planning Commission directed staff to include both the language on wireless facilities and small wireless antenna for consideration.

Nancy Vennard moved the Planning Commission authorize a public hearing on proposed ordinance revisions addressing wireless communication facilities and small wireless communication antenna at the February 3, 2009 Planning Commission. The motion was seconded by Randy Kronblad and passed unanimously.

Proposed Ordinance Revisions - Building Height

Ron Williamson stated at its regular meeting on December 9, 2008, the Planning Commission discussed the proposed changes and authorized a public hearing for the February 3, 2009 Planning Commission meeting. The Planning Commission requested that staff provide the Planning Commission with specific language changes at their January meeting.

Jim Brown noted the issue is that the definitions and methods of measurement for building height are inconsistent between the Zoning Ordinance and the Building Code. The Building Code is more commonly used among builders so it is more appropriate to amend the Zoning

Ordinance. There are three definitions that need to be change: building height; grade and story. The Planning Commission requested that staff investigate different regulations for commercial and residential buildings. The building code does not differentiate between residential and commercial, and has one set of definitions for all structures. Therefore, staff recommends that the definitions be consistent with the building code and one set of definitions be used for both residential and commercial buildings. Language to be deleted is lined out and new language is in *bold italics*. The proposed changes are as follows:

A. BUILDING HEIGHT

19.02.100 Building Height.

~~“Height of Building” means the vertical distance in feet, measured from grade to the highest point of the roof for flat roofs, to the deck surface of mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs. Heating, ventilating, air conditioning and elevator equipment located on flat roofs may extend not more than eight (8) feet above this maximum building height and for gable, hip and gambrel roofs no more than two (2) feet above peak of the roofs provided, however, that all such equipment is adequately screened from view and compatibility incorporated into the building design.”~~

19.02.100 Building Height (New Text):

Building Height: “The vertical distance from grade plane to the average height of the highest roof surface.”

B. GRADE

19.02.254 Grade.

~~“Grade” means the lowest point of elevation of the finished surface of the ground, paving or sidewalks within the area between the building and the property line or, when the property line is more than five feet from the building, between the building and a line five (5) feet from the building. (Ord. 2019 Sec. 1, 2001)~~

19.02.254 Grade Plane (New Text):

Grade Plane: “A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than six feet from the building, between the building and a point six feet from the building.”

C. STORY

19.02.435 Story.

~~“Story” means that portion of a building included between the surface of a floor and the surface of the floor next above, or if there is no floor above, the space between the floor and the ceiling next above.~~

~~In a residential building the upper story is a half story when sloping ceilings are produced by finishing the underside of roof rafters on pitched roofs having the eave line four feet or less above the floor of that story. Mansard structures on any residential or commercial building shall not be considered roofs for the purpose of this definition.~~

~~A lower story in a residential or business building is a half story when the floor thereof is below the average finished grade elevation along the entire front of the building a distance of not less than three feet and not more than five feet.~~

~~A lower story is a full story when the floor thereof is not below said average elevation a distance of three feet.~~

~~A lower story is a basement and not counted as a story for height purposes when the floor thereof is below said average elevation a distance of more than five feet.~~

19.02.435 Story (New Text):

Story: "That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. It is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters."

19.02.436 Story Above Grade Plane (New Test):

Story Above Grade Plane: "Any story having its finish floor surface entirely above grade plane, except that a basement shall be considered a story where the finished surface of the floor above the basement is:"

1. More than six feet above grade plane; or
2. More than 12 feet above the finished ground level at any point.

Dirk Schafer asked if the proposed changes addressed the problems encountered by staff. Mr. Brown responded these changes place the City's regulations directly in line with the International Building Code Regulations.

Proposed Ordinance Revisions - Emergency Generators

Ron Williamson stated at its regular meeting on December 9, 2008, the Board of Zoning Appeals considered a variance to allow a standby generator to be placed in a side yard. This was the second application of this type and the Board has granted both variances. In both cases location in the side yard was logically the better location, but it was difficult to find favorably on the five statutory criteria. The Board recommended that the Planning Commission consider amending the regulations to allow the Planning Commission to approve a location in a side yard, noting these units are approximately the size of an air conditioning unit and only run during a weekly test and when the power is out.

The current regulation reads as follows:

- F. Permanent standby emergency generators shall be permitted as an accessory use for single-family and two-family dwellings subject to the following conditions:
- a. Said generators shall be used during emergency situations only which result in power failures; and
 - b. Said generators shall be installed in accordance with NFPA 37 Standards for the Installation and Use of Stationary Combustion Engines and Gas Turbines; and
 - c. Said generators shall be connected to a natural gas line; and
 - d. Said generators shall be located within the building envelope but no further than five (5) feet from a wall of the principal structure and not in a front or side yard; and
 - e. Said generators shall only be tested during daylight hours; and
 - f. Said generators shall be contained in an enclosed cabinet or housing that provides sound attenuation; and
 - g. The footprint of the cabinet shall not exceed twelve (12) square feet; the pad shall not exceed 48 inches; and
 - h. The applicant shall obtain a permit from the City prior to installation. (Ord. 2049, Sec. III, 2003)

Mr. Williamson noted the question was raised about setting a minimum setback and the ordinance does that in subsection d. where it requires the location within the building envelope, which means it must meet the side yard setback requirements. In District R-1a the side yard setback from the property line is five feet and in District R-1b it is four feet. In the two variances that were approved, the lots had large side yards that were well in excess of the minimum setback requirements.

Mr. Williamson presented the following additional subsection be added to allow a side yard, but not a front yard location:

- 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 for review and approval.

The Planning Commission 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 may impose any conditions it deems necessary to mitigate any negative impacts of the proposed location.

Ken Vaughn confirmed this applies only to side yards and would replace the need for a variance to be requested.

Randy Kronblad moved the Planning Commission authorize a public hearing on proposed revisions to PVMC 19.34.025F adding (i) addressing the placement of emergency generators in side yards on residential property for Tuesday, February 3, 2009. The motion was seconded by Dale Warman and passed unanimously.

Next Meeting

The Planning Commission Secretary stated the Board of Zoning Appeals will meet on February 3, 2009 to hear a request for a variance for a side yard setback at 7338 Roe Circle. The Planning Commission agenda would contain the public hearings authorized this evening as well as the tabled CVS application and a public hearing on a conditional use permit request by AT&T for a communications utility box at 6730 Fonticello.

Nancy Vennard and Dale Warman stated they would be out of town and unable to attend the February meeting. The Secretary noted that with Mr. Schafer's conflict of interest on the CVS application, all other Commission members will need to be in attendance to have a quorum for that application.

ADJOURNMENT

With no further business to come before the Commission, Chairman Ken Vaughn adjourned the meeting at 8:30 p.m.

Ken Vaughn
Chairman

**PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
MUNICIPAL BUILDING - 7700 MISSION ROAD
TUESDAY, FEBRUARY 3, 2009
Council Chambers
7:00 P. M.**

I. ROLL CALL

II. APPROVAL OF PC MINUTES - January 6, 2008

III. PUBLIC HEARINGS

- PC2008-10 Request for Conditional Use Permit for Drive-thru
8200 Mission Road
Zoning: C-2
Applicant : Landplan Engineering for CVS**

- PC2009-02 Request for Conditional Use Permit for a Communications
Utility Box by AT&T in the right-of-way at
6730 Fonticello
Zoning: R-1a
Applicant: Zach Zupan, representing AT&T**

- PC2009-03 Proposed Ordinance Revisions to Wireless Communications
Regulations - 19.33
Applicant: City of Prairie Village**

- PC2009-04 Proposed Ordinance Revisions to Definitions of Building
Height, Grade and Story - PVMC 19.02
Applicant: City of Prairie Village**

- PC2009-05 Proposed Ordinance Revisions to PVMC 19.34.040 -
Emergency Generators in residential districts
Applicant: City of Prairie Village**

IV. NON-PUBLIC HEARINGS

- PC2008-115 Site Plan Approval - Retail Building
Southwest Corner Somerset & Mission
Zoning: C-2
Applicant: Landplan Engineering for CVS**

V. OTHER BUSINESS

VI. ADJOURNMENT

Plans available at City Hall if applicable

If you can not be present, comments can be made by e-mail to
Cityclerk@Pvkansas.com

***Any Commission members having a conflict of interest, shall acknowledge that conflict prior to the hearing of an application, shall not participate in the hearing or discussion, shall not vote on the issue and shall vacate their position at the table until the conclusion of the hearing.**

Since this is a very small installation and a companion to an existing utility box, there is not a need for additional utilities, drainage, or other facilities.

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

There will not be a need for access roads or entrance and exit drives because all the parking will be adequately handled in Fonticello Street.

8. 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 proposed use does not utilize any hazardous or toxic materials and does not generate any obnoxious odors or unnecessarily intrusive noises.

Bob Lindeblad moved the Planning Commission find favorably on the findings of fact and approve application PC2009-02 granting a Conditional Use Permit for the installation of the two VRAD utility boxes in Fonticello Street right-of-way at 6730 Fonticello subject to the following conditions:

1. That the applicant work with the adjacent property owners to develop and agree on the landscape plan for the back side of the boxes; that the plan be signed by the owners and submitted to staff for review and approval.
2. That the applicant present the landscape plan to the Tree Board for review and approval.
3. That the applicant install the landscaping immediately after installation of the utility boxes.
4. That the applicant properly protect the existing trees during construction so they are not damaged or destroyed.
5. That the applicant maintain the landscaping and replace any plant materials that die so that the integrity of the landscape screening is maintained throughout the life of the project.
6. That the Conditional Use be approved for an indefinite period of time.
7. That should the utility boxes become obsolete and not functional, they shall be removed from the site within six months and the site shall be restored to its original conditions.

The motion was seconded by Marlene Nagel and passed unanimously.

**PC2009-03 Proposed Ordinance Revisions to Wireless Communications Regulations - 19.33
Applicant: City of Prairie Village**

Chairman Vaughn opened the public hearing and requested staff present the proposed ordinances.

Ron Williamson stated the Commission has been reviewing its Wireless Communications Regulations since March of 2008. In that process information has been gathered from concerned residents, the telecommunication providers, the ordinances from other cities as well as PCIA, the wireless infrastructure association. Proposed drafts have been reviewed by the City's legal staff and in their opinion, are in accordance with the telecommunications act. The final draft was distributed to interested residents, representatives of wireless providers and PCIA with written comments received back from PCIA and providers. These comments as well as the staff report are attached as exhibits to these minutes. The major

change is that wireless communications will be governed by an ordinance rather than a policy as direction by the Planning Commission.

Mr. Williamson reviewed those recommendations of the PCIA which staff were in agreement.

19.33.025(A) the third paragraph can be amended to clarify the providers need with the addition of the term "lack of network capacity". The new language would read as follows: "The applicant shall submit an overall plan that shows the coverage gaps in service and **lack of network capacity** throughout the entire City and provide an indication of future needed/proposed wireless communication facilities, towers, and/or antenna."

19.33.025(D) move the lease submittal from the application to a condition of approval.

19.33.035(B) change the period of abandonment from "six" months to "**twelve**" months.

19.33.035L(I) references the "Electronic Industries Association". It should be "**Electronic Industries Alliance**" who issues technical codes and standards. This change will be made.

Comments were also received from The Posinelli Law Firm, who represents several carriers. Mr. Williamson reviewed the following recommendations that staff have accepted:

19.33.025(A) the term "lack of network capacity" will be added as also recommended by PCIA.

The first sentence in the second paragraph will be amended to read as follows: "If the use of **existing towers, alternative tower structure or sites** are unavailable, a reason or reasons specifying why they are unavailable needs to be set out . . ."

19.33.025(C) The second sentence shall be changed to read as follows: "Failure of a permit holder to **negotiate in good-faith, fairly priced co-location opportunities, based on industry standards, may** be grounds for denial or revocation of the Special Use Permit.

19.33.025(D) Staff also agreed with the recommendation for the submittal of a signed lease be moved to a condition of approval.

19.33.025(F) The applicant will provide a "**Statement**" that they will meet all federal, state and local regulations.

19.33.025(H) shall be changed to read as follows: "**A copy of the applicant's FCC license or sufficient detail to establish the applicant's technical qualifications, experience and expertise as a provider regarding communication or utility facilities and services described in the application.**"

19.33.025(I) This section will be moved to a condition of approval.

19.33.030(A)(3) the addition of the clarifying term "Non-stealth" with the new language reading "Non-Stealth monopoles or towers 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."

19.33.030(A4b) shall be changed to read as follows: "That the setback waiver is necessary for reasonable development of the cell tower installation **or the landowner's property; or**

19.33.030(C1) shall be changed to read as follows: "All **non-stealth** towers shall maintain a hot dipped galvanized finish, and shall be a monopole design unless otherwise approved by the Planning Commission or by the City Council."

19.33.030(F) the first sentence shall be changed to read as follows: The **construction** plans for the tower shall be prepared and sealed by a structural engineer licensed in the State of Kansas."

19.33.035(A) Conditions of Approval were discussed by the Commission and it was agreed that the proposed language for a five year initial approval and ten year renewal period.

19.33.035(G) will be reviewed further by staff and may be combined with 19.33.035(D).

19.33.035(I) Electronic Industries Association shall be changed to "**Electronic Industries Alliance**" as pointed out by PCIA. and the second sentence shall be changed to read as follows: "If such standards and regulations are changed **and are applicable to existing wireless facilities**, then all facilities, towers, and antennae shall be brought into compliance within six (6) months...."

19.33.045 Change renewal from "five" to "ten" years.

19.33.050(A) the word new in the first sentence will be changed to "**amended**"

19.33.050(B) the final sentence shall be changed to read as follows: "Such **alteration** shall be considered **via** a revised site plan **application** and will only require the submission to and approval by the Planning Commission.

19.33.050(D) the word "**amended**" shall be inserted in the fifth line of the paragraph in front of the word Special.

19.33.050(B, C & F) these sections were suggested to have redundancy. Staff will review and the best language from all sections will be used.

Chairman Ken Vaughn asked for comments from the public.

Curtis Holland, 6501 College Blvd., attorney with Polsinelli, Shalton, Flanigan, Suelthaus, expressed his appreciation to the staff and City for their openness in addressing this issue and willingness to work with industry providers to create regulations that will benefit both the residents of Prairie Village and allow the providers to improve their services to those residents.

Mr. Holland stated he supports his recommended language, particularly that which provided more clarity. He had two primary concerns to address. The first being the submittal of construction plans as part of the application process. He felt this should be moved to a site plan requirement. Mr. Williamson advised him the requirement was part of the site plan process and not the application process for the Special Use Permit. Mr. Holland withdrew his request.

Mr. Holland's second concern is with Section 19.33.050 as it relates to the renewal process for the Special Use Permit for existing structures noting the significant financial investment that is required for a tower. He feels the initial period of approval should be for ten years and would like to see paragraphs E, F & G removed. These conditions are fine for new applications, but when they are applied to existing conditions the language is troubling.

Bob Lindeblad stated that he felt the Planning Commission had the option to require these improvements under the renewal process for a permit whether they were specifically

addressed in the ordinance or not. Mr. Holland replied there is a greater burden on the City if an initial application has been approved to justify it not being renewed.

Staff agreed to review the language. Mr. Lindeblad noted the language would be reviewed by the Commission again at its next meeting.

With no one else wishing to address the Commission, the public hearing was closed at 7:55 p.m.

Bob Lindeblad stated he feels it has been beneficial to go over these changes as slowly and thoroughly as the staff and Commission has and is confident it will result in a better written ordinance. He agrees with the staff suggestion that no formal action be taken this evening and that staff bring back a final draft incorporating the changes discussed for review at the next meeting prior to forwarding the Planning Commission recommendation to the City Council for consideration.

Marlene Nagel asked for clarification on the term "non-stealth" monopole. Bob Lindeblad noted clear definitions of such terms as "stealth monopole" and "non-stealth monopole" be included in the ordinance so there is no misunderstanding.

Bob Lindeblad moved the Planning Commission direct staff to prepare the final draft in ordinance form with the changes discussed including the addition of definitions with formal action continued to the March 3, 2009 meeting of the Planning Commission. The motion was seconded by Randy Kronblad and passed unanimously.

PC2009-04 Proposed Ordinance Revisions to Definitions of Building Height, Grade and Story – PVMC 19.02
Applicant: City of Prairie Village

Chairman Vaughn opened the public hearing and asked staff to present the proposed ordinance.

Ron Williamson stated on December 9, 2008, the Planning Commission discussed the proposed changes to bring consistency between the zoning ordinances and the building code. To accomplish this there are three definitions that need to be changed. The Commission reviewed new language and authorized a public hearing for the February 3, 2009 Planning Commission meeting. There were no changes in the text from what was presented in December.

The following are the proposed revisions:

A. BUILDING HEIGHT

Amend Section 19.02.100 Building Height to read as follows:

19.02.100 Building Height:

Building Height: "The vertical distance from grade plane to the average height of the highest roof surface."

B. GRADE

Amend Section 19.02.254 Grade to read as follows:

19.02.254 Grade Plane

Grade Plane: "A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, where the lot line is more than six feet from the building, between the building and a point six feet from the building."

C. STORY

Amend Section 19.02.435 Story to read as follows:

19.02.435 Story

Story: "That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. It is measured as the vertical distance from top to top of two successive tiers of beams or finished floor surfaces and for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters."

Story Above Grade Plane: "Any story having its finish floor surface entirely above grade plane, except that a basement shall be considered a story where the finished surface of the floor above the basement is:"

1. More than six feet above grade plane; or
2. More than 12 feet above the finished ground level at any point.

No one was present to speak on this matter and Chairman Vaughn closed the public hearing.

Randy Kronblad confirmed the proposed changes were acceptable to the Building Official and moved the Planning Commission forward the proposed revisions to the City Council with their recommendation to adopt the new language. The motion was seconded by Marlene Nagel and passed unanimously.

PC2009-05 Proposed Ordinance Revisions to PVMC 19.34.040 – Emergency Generators in residential districts Applicant: City of Prairie Village

Chairman Vaughn opened the public hearing and asked staff to present the proposed ordinance.

The Board of Zoning Appeals recommended that the Planning Commission consider amending the regulations to allow the Planning Commission to approve a location in the side yard. These units are approximately the size of an air conditioning unit and only run during a weekly test and when power is out. The Commission reviewed the proposed revisions on January 6th and authorized a public hearing for February 3, 2009.

Ron Williamson stated the revision would be made by adding a new subsection to read as follows:

- a. 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 for review and approval.

The Planning Commission 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 may impose any conditions it deems necessary to mitigate any negative impacts of the proposed location.

No one was present to speak on this matter and Chairman Vaughn closed the public hearing.

Dirk Schaefer moved the Planning Commission forward the proposed revisions to the City Council with their recommendation to adopt the new language. The motion was seconded by Marlene Nagel and passed unanimously

NON-PUBLIC HEARINGS

**PC2008-115 Site Plan Approval – Retail Building
Southwest Corner Somerset & Mission
Zoning: C-2**

Randy Kronblad moved the Commission continue consideration of PC2008-115 to the March 3, 2009 meeting of the Planning Commission. The motion was seconded by Marlene Nagel and passed by a vote of 4 to 0 with Dirk Schaefer abstaining.

Ron Williamson noted representatives of the applicant were present and had asked to be allowed to informally present a revised conceptual site plan/footprint showing the new location of the building. Chairman Ken Vaughn stated the Commission was agreeable and Dirk Schaefer recused himself due to a professional conflict of interest.

John Damrath, Cedarwood Development, Inc. and Jeff Martin with Land Plan Engineering distributed a revised footprint of the proposed building. The plan places the building closer to the street with parking on the interior of the lot. The exit onto Somerset provides better alignment with the existing traffic flow.

Bob Lindeblad noted the layout appears to be more acceptable and provides for better pedestrian flow; however, he would like to see some landscaping such as a solid hedge wall along the street to screen the vehicular traffic of the drive-thru. He did not anticipate the location of the drive-thru as presented, but feel

the applicant is heading in a better direction. However, he stated there are still several architectural and site design considerations yet to be determined. He stated that these are just initial reactions since he had not had an opportunity to study the plan.

Ken Vaughn stated that he had hoped there would be no drive arounds.

OTHER BUSINESS

The March meeting will consider the Final Plat for the Walgreen's property, the CVS application and a final look at the new wireless communications regulations.

ADJOURNMENT

With no further business to come before the Commission, Chairman Ken Vaughn adjourned the meeting at 8:15 p.m.

Ken Vaughn
Chairman

**PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
MUNICIPAL BUILDING - 7700 MISSION ROAD
TUESDAY, MARCH 3, 2009
Council Chambers
7:00 P. M.**

- I. ROLL CALL
- II. APPROVAL OF PC MINUTES - February 3, 2009
- III. PUBLIC HEARINGS
 - PC2008-10 Request for Conditional Use Permit for Drive-thru
8200 Mission Road
Zoning: C-2
Applicant : Landplan Engineering for CVS
(Continuance Requested by Applicant)
- IV. NON-PUBLIC HEARINGS
 - PC2008-115 Site Plan Approval - Retail Building
Southwest Corner Somerset & Mission
Zoning: C-2
Applicant: Landplan Engineering for CVS
(Continuance Requested by Applicant)
 - PC2009-102 Preliminary & Final Plat Approval
Northwest Corner of 95th & Mission Road
Zoning: C-2
Applicant: Mission River, LLC for Walgreens
- V. OTHER BUSINESS
 - PC2009-03 Proposed Ordinance Revisions to Wireless Communications
Regulations - 19.33
Applicant: City of Prairie Village
- VI. ADJOURNMENT

Plans available at City Hall if applicable

If you can not be present, comments can be made by e-mail to
Cityclerk@Pvkansas.com

***Any Commission members having a conflict of interest, shall acknowledge that conflict prior to the hearing of an application, shall not participate in the hearing or discussion, shall not vote on the issue and shall vacate their position at the table until the conclusion of the hearing.**

PC2009-102 Preliminary & Final Plat Approval I - Northwest Corner of 95th & Mission Road

Leon Osbourn, with Kaw Valley Engineering, Inc., submitted preliminary and final plat for the property on the northwest corner of 95th & Mission Road. On January 6, 2009, the Planning Commission approved a Conditional Use Permit and Site Plan for the proposed Walgreens Drugstore on this property. The tract was unplatted at that time and one of the conditions of approval was for the property to be platted.

Preliminary Plat

The Preliminary Plat contains all the information required by the subdivision regulations. Since a Site Plan has been approved by the Planning Commission for this location, many items normally addressed in platting have already been addressed by the Site Plan.

Mr. Osbourn noted that in discussion since the Site Plan was approved, the Public Works Department is recommending a change in the direction of the storm drainage. Instead of all the drainage running east, another line will need to be constructed and a portion of the runoff will run to a storm drain to the west. This is because this site falls into two drainage basins.

A note indicates that access is being restricted to one opening on 95th and the same note needs to apply to the private street on the west side of the property.

Final Plat

The Final Plat essentially has all the information on it that is required; a statement has been submitted that current taxes have been paid and a title report has also been submitted.

Access control notes need to be added on the Final Plat adjacent to the west property line and 95th Street and granting of access control needs to be included in the text of the Dedication Section of the Plat.

The Preliminary Plat indicated that the 25-foot easement along the east property line would be vacated with the Plat. This will be indicated in the text of the Plat.

Ron Williamson noted the plat shows an eight foot pedestrian easement adjacent to 95th Street as required on the Site Plan. Since the sidewalk is shown on the approved Site Plan, it is not necessary to show the easement, however, the applicant prefers to show it and Staff has no objections. It should be identified in the text of the Dedications. Ken Vaughn stated he was glad to see the pedestrian easement shown on the plat.

Dale Warman moved the Planning Commission approve the Preliminary Plat of 95th and Mission and the Final Plat of 95th and Mission and forward it to the City Council for acceptance of easements and rights-of-way subject to the following conditions:

1. Add notations on the face of the Final Plat and in the text regarding access control to 95th Street and to the private street along the west property line.
2. Either shows a new location for the private easement along the east property line or vacates it and includes the appropriate text on the Final Plat.
3. Include the Pedestrian Easement in the Dedications text.
4. Submit the Final Plat to the Johnson County surveyor for review and approval.
5. The applicant submits plans and specifications to the Department of Public Works for all public improvements for review and approval prior to starting any construction.

The motion was seconded by Marlene Nagel and passed unanimously.

OTHER BUSINESS

PC2009-03 Proposed Ordinance Revisions to Wireless Communications Regulations - Chapter 19.33

Ron Williamson reviewed the final ordinance revisions based on the discussion at the public hearing meeting held in February. An entire page of definitions has been added to provide additional clarification.

Marlene Nagel stated she understood that stealth towers were only required to meet the requirement of building setbacks. She feels this is unclear and would rather have only structures that are part of a building to follow the building setback requirements and other towers to be required to get a waiver.

Mr. Williamson responded the language was written to allow landscape (tree) type towers to have the same provisions as a building.

Nancy Vennard stated she does not see the difference between definitions A & I

- A. Alternative Tower Structure: This shall mean man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.
- I. Stealth Telecommunication Facility: Any Telecommunications Facility that is integrated as an architectural feature of a structure or the landscape so that the purpose of the Facility for providing wireless services is not readily apparent to a casual observer.

Bob Lindeblad stated that "Stealth Tower" over the years has meant a monopole with all the antennae inside the pole.

There was confusion between the definitions of stealth and monopole. Mr. Williamson stated a stealth pole is different than a monopole. Marlene Nagel asked if there was an installation of a free standing monopole, how you would decide if it should meet the setback of a built in structure or not. She is not sure the current language protects the City.

Dirk Schafer confirmed that Mrs. Nagel wants the monopole to have the same setbacks as a tower. He suggested the definition of monopole be changed by deleting the last sentence.

H. **Monopole:** A single, freestanding pole-type structure supporting one or more Antenna. ~~For purposes of this Ordinance Monopole is not a tower.~~

Dennis Enslinger added this ordinance applies to both towers and to antennae place on buildings.

Commission members asked the following changes to be made to clarify the language in addition to the change noted above.

I. **Stealth Telecommunications Facility:** Any Telecommunications Facility that is integrated as an architectural feature of a structure ~~or the landscape so~~ that the purpose of the Facility for providing wireless services is not readily apparent to a casual observer.

19.33.35 Design Requirements

A. Setbacks

2. Stealth towers and alternative tower structures that are truly architecturally integrated into the building ~~or landscape~~ shall maintain the same setbacks that are required for a principal building.

B. Screening and Landscape Buffer - No Change

C. Tower/Antennae Design

1. All ~~non-stealth~~ towers shall maintain a hot dipped galvanized finish, and shall be a monopole design unless otherwise approved by the Planning Commission ~~or City Council~~.

2. All antennae installed on towers shall be internal. ~~Or shall be a panel antenna of "slim-line" design and shall be mounted parallel with the tower.~~ Antenna bridges and platforms are not allowed. Public service Omni-directional antennae operated by the City of Prairie Village and other governmental agencies are exempt from this requirement.

Nancy Vennard moved the Planning Commission forward the proposed ordinance revisions with the changes requested to the City Council with their recommendation for adoption. The motion was seconded by Marlene Nagel and passed unanimously:

**PC2009-101 Site Plan Approval
95th & Mission Road**

Dennis Enslinger presented revised exterior elevations for Walgreens. Mr. Williamson presented photographs of the prototype building for Commission information only.

T-Mobile Update

Dennis Enslinger stated that T-Mobile has submitted an application for a 145 foot tower on the Faith Lutheran Church site. The tower will host three carriers and will have six antennae. He stated the neighbors have been notified and a neighborhood meeting will be held shortly. Marlene Nagel asked the height of the tree antennae at Leawood.

Mr. Enslinger stated this is a new application and was submitted under the current regulations. They are aware of the proposed regulations and staff will address both in staff comments. There are only two areas that the application is not in compliance with the proposed regulations: 1) the ½ mile radius and 2) under the proposed regulations they would need to receive a waiver from the City Council for the setback. They are not bound by the requirements of the proposed regulations. Mr. Enslinger added they will be requesting the two previous applications be considered as part of the record for this application. Staff will be recommending against doing so.

ADJOURNMENT

With no further business to come before the Planning Commission, Chairman Ken Vaughn adjourned the meeting at 7:45 p.m.

Ken Vaughn
Chairman

CELL TOWER REGULATION DISCUSSION

Prairie Village Planning Commission 2008

- **June 3** General Discussion of cell tower regulations (both Kate Faerber and Mary Cordill addressed the Commission)
- **July 1** Ron Williamson discussed directions from City Council on changes to regulations - Casey Housley addressed the Commission
- **September 9** Mr. Williamson presented changes to the following 8 areas the City Council asked the Commission to consider in preparing new regulations:
1) policy vs ordinance; 2) Adding Setbacks; 3) Adding buffers; 4) integration of towers into existing structures; 5) documentation of sites evaluated; 6) Master Plan of anticipated locations; 7) site maintenance and 8) Golden Factors
- **October 7** Additional information and discussion on the 8 issues raised by the City Council & the Commission
- **November 4** Proposed revisions as prepared by staff & reviewed by Asst. City Attorney presented to the Planning Commission - PC recommended changes (Staff Report & Agenda sent to providers & neighbors)
- **December 9** Revisions requested by Commission added to proposed revisions and discussed, including language used by other cities.

2009

- **January 6** Revisions requested by Commission added to proposed revisions. Public Hearing authorized for next meeting. Staff directed to finalize and send to providers and neighborhood. (Proposed ordinance sent to providers and concerned neighbors)
- **February 3** Public Hearing held - written comments received from PCIA (wireless infrastructure association) and Curtis Holland representing providers. All comments were reviewed by staff and discussed by the Commission. Staff was directed to integrate the comments made into a final document for review prior to sending to Council. (Proposed ordinance, agenda & Staff report sent to providers and neighbors)
- **March 3** Final review of ordinance, minor changes made to some definitions and forwarded to Council with recommendation for approval. (Staff reports, agenda, minutes sent to providers & neighbors prior to meeting)

CELL TOWER REGULATION DISCUSSION

Prairie Village City Council

- March 3, 2008 - Moratorium suggested by Al Herrera
- March 24, 2008 - Casey Housley spoke at Public Participation requesting changes to existing regulations
- March 24, 2008 - at Council Committee of the Whole - Dennis & Ron reviewed history of and explained current regulations
- June 2, 2008 - Mary Cordill spoke at Public Participating requesting a task force be formed to consider new regulations and requested a moratorium be set on accepting any new applications.
- July 21, 2008 - under Old Business discussion of a moratorium - Staff directed to prepare
- August 4, 2008 - Casey Housley spoke at Public Participation - T-Mobile 2nd application formally denied by Council - motion to set a moratorium failed by a vote of 3 to 8
- November 17, 2008 - during staff reports Dennis Enslinger reported new regulations have been drafted and would be presented at the next meeting.
- December 1, 2008 - at the Council Committee of the Whole - Dennis Enslinger presented draft of proposed regulations to City Council for input.

Ordinance No. 2189

AN ORDINANCE CREATING CHAPTER 19.33 ENTITLED "WIRELESS COMMUNICATION FACILITIES" TO THE PRAIRIE VILLAGE MUNICIPAL CODE, 2003

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 and proper notice having been published and hearing held on February 3, 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. Adding Chapter 19.33

Chapter 19.33 of the Prairie Village Municipal Code, entitled "Wireless Communication Facilities" is hereby added to read as follows:

19.33 WIRELESS COMMUNICATION FACILITIES

19.33.005 Intent

The Telecommunications Act of 1996 grants authority to local jurisdictions over decisions regarding the placement, construction, and modification of wireless communication facilities, towers and antennae. As the City has diverse and unique landscapes that perpetuate the identity of its residential neighborhoods, protection of these valuable resources is paramount. Accordingly, the Governing Body finds that the unregulated placement and design of wireless communication facilities, towers and antennae results in visual clutter that adversely affects community aesthetics and damages the character of the City. This ordinance is intended to provide minimum standards that ensure that the wireless communication needs of residents and businesses are met, while at the same time the general safety and welfare of the community is protected.

19.33.010 Purpose

A wireless communication facility, tower or antenna including its equipment, but excluding small wireless communication antennae as setout in Section 19.33.055 may be sited, constructed, designed or maintained provided that it is in conformance with the stated standards, procedures, and other requirements of this ordinance. More specifically, these regulations are necessary to:

- A. Provide for suitable location of wireless communication facilities, towers and antennae so as to mitigate their negative effect on residential neighborhoods and land uses;
- B. Maintain community aesthetics by minimizing the negative visual effects of wireless communication facilities, towers and antennae through specific design and siting criteria;
- C. Maximize the use of existing towers and alternative tower structures so as to minimize the need for new tower locations;
- D. Encourage co-location among wireless service providers on existing and newly constructed sites in order to reduce the overall number of towers needed; and
- E. Promote the use of innovative stealth, camouflage and disguise techniques for wireless communication facilities, towers, and antennae so as to integrate their appearance with the many architectural and natural themes found throughout the City.

19.33.015 Definitions

For the purposes of this Ordinance, the following terms shall be defined as:

- A. **Alternative Tower Structure:** This shall mean man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.
- B. **Antenna:** Any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, personal communications services (PCS) and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes and omni-directional antennas, such as whips.
- C. **Co-location:** The act of siting Telecommunications Facilities from more than one provider in the same location on the same Support Structure as other Telecommunications Facilities. Co-location also means locating Telecommunications Facilities on an existing structure (for example: buildings, water tanks, towers, utility poles, etc.) without the need to construct a new support structure.
- D. **Equipment:** Any equipment serving or being used in conjunction with a Telecommunications Facility or Support Structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.
- E. **Equipment Compound:** The area in which the equipment and tower may be located which is enclosed with a fence or wall or is within a building or structure.
- F. **Maintenance:** Ensuring that Telecommunications Facilities and Support Structures are kept in good operating condition. Maintenance includes inspections, testing and modifications that maintain functional capacity, aesthetic and structural integrity; for example the strengthening of a Support Structure's foundation or of the Support Structure itself or replacing Antennas and Accessory Equipment on a like-for-like basis on an existing Telecommunications Facility. Ordinary maintenance also includes maintaining walls, fences and landscaping including the replacement of dead or damaged plants as well as picking up trash and debris. Ordinary Maintenance does not include Modifications.
- G. **Modifications:** Improvements to existing Telecommunications Facilities and Support Structures, that result in some material change to the Facility or Support Structure. Such Modifications include, but are not limited to, extending the height of the Support Structure, replacing the support structure and the expansion of the compound area for additional equipment.
- H. **Monopole:** A single, freestanding pole-type structure supporting one or more Antenna.
- I. **Stealth Telecommunications Facility:** Any Telecommunications Facility that is integrated as an architectural feature of a structure so that the purpose of the Facility for providing wireless services is not readily apparent to a casual observer.
- J. **Support Structure(s):** Monopoles, Towers, Utility Poles and other freestanding self-supporting structures which supports a device used in transmitting or receiving radio frequency energy.
- K. **Wireless Communications Facility(ies):** Any unmanned facility established for the purpose of providing wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communications service (PCS), and paging service. A Wireless Communication Facility can consist of one or more Antennas and Accessory Equipment or one base station.

19.33.020 Special Use Permit Requirement

Unless otherwise excepted herein, wireless communication facilities, towers and antennae shall be allowed only upon approval of a Special Use Permit in accordance with the procedures setout in Chapter 19.28, Special Use Permit.

19.33.025 Factors For Consideration

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.
- B. The zoning and uses of property nearby.
- C. The extent that a change will detrimentally affect 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.
- E. The proposed special use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.
- F. The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.
- 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 that the special use will not dominate 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 so dominate 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.
- 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.
- I. Adequate utility, drainage, and other such necessary facilities have been or will be provided.
- J. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.
- 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.
- 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.
- M. City Staff recommendations.

19.33.030 Application Information

At the time the application is filed, the applicant shall submit the following information:

- 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 sites and antennas.

If the use of existing towers, alternative tower structures, 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 construction; technical limitations of the system; equipment exceeds structural capacity of 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 also provide documentation establishing the minimum height necessary to provide the applicant's services and the height required to provide for co-location.

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

- 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.
- 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.
- 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, 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.

- 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 antennae 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.

- F. Preliminary construction schedule including completion dates.
- G. The applicant shall provide a copy of its FCC license
- H. Copies of letters sent to other wireless communication providers and their response regarding their interest to co-locate.
- I. Any other relevant information requested by City Staff.
- J. Application and fee. The applicant shall submit a completed application form with all required attachments and must agree to and reimburse the City for all costs related to the application.

19.33.035 Design Requirements

A. Setbacks

1. The equipment compound shall meet the minimum required setbacks for a principal use in the district in which it is located.
2. Stealth towers and alternative tower structures that are truly architecturally integrated into the building shall maintain the same setbacks that are required for a principal building.
3. Non-stealth monopoles or towers 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.
4. The applicant may request a reduction or waiver of the setback requirement. The Planning Commission shall consider the request and make a recommendation to the City Council who will make the final determination. In approving a setback reduction or waiver, the Commission and Council shall consider the following:
 - a. That there are special circumstances or conditions affecting the proposed cell tower installation;
 - b. That the setback waiver is necessary for reasonable development of the cell tower installation or the landowners property;
 - 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.

B. Screening and Landscape Buffer

Adequate screening of the equipment cabinets located at the tower base shall be provided by a solid or semi-solid wall or fence or a permanent building enclosure using materials similar to adjacent structures on the property. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.

Landscaping shall be required around the base or perimeter of the screening wall or fence. A combination of coniferous and deciduous trees and shrubs is required and drought tolerant plant materials are encouraged. When the visual impact of the equipment compound would be minimal, the landscaping requirement may be reduced or waived by the Planning Commission or City Council.

C. Tower/Antennae Design

1. All non-stealth towers shall maintain a hot dipped galvanized finish, and shall be a monopole design unless otherwise approved by the Planning Commission or City Council.
2. All antennae installed on towers shall be internal. Antenna bridges and platforms are not allowed. Public service omni-directional antennae operated by the City of Prairie Village and other governmental agencies are exempt from this requirement.
3. All antennae and related facilities installed on an alternative tower structure shall be of materials that are consistent with the surrounding elements so as to blend architecturally with said structure and to camouflage their appearance. Antennae on the rooftop or above a structure shall be screened, constructed and/or colored to match the structure to which they are attached.
4. Antennae and related facilities shall be of materials and color that are consistent with the tower or alternative tower structure and surrounding elements so as to blend architecturally with said tower or structure. The antennae and related facilities shall be a neutral color that is identical to, or closely compatible with, the color of the tower or alternative tower structure so as to make the antennae and related facilities as visually unobtrusive as possible. Antennae mounted on the side of a building or structure shall be painted to match the color of the building or structure of the background against which they are most commonly seen.
5. All electrical cables shall be installed within the monopole. For installations on buildings, water towers and other structures, cables shall be enclosed with a shield that is painted the same color as the building, water tower, or structure. Underground cables that are a part of the installation shall be required to be located at a safe depth underground.

D. Illumination

Communication towers may be only illuminated if required by the FCC and/or the FAA. Security lighting around the base of the tower may be installed, provided that no light is directed toward an adjacent residential property or public street.

E. Height

The maximum height for a wireless communication tower shall be 150 feet plus a lighting rod not exceeding ten feet (10').

F. Sealed Drawings

The construction plans for the tower shall be prepared and sealed by a structural engineer licensed in the State of Kansas. Construction observation shall be provided by the design engineer provided that said engineer is not an employee of the tower's owner. If the design engineer is an employee of the owner, an independent engineer will be required to perform construction observation.

- G. Anti-perch devices that prevent birds from perching or roosting on the installation shall be installed when appropriate.

19.33.040 Conditions of Approval

The Planning Commission and City Council may require any or all of the following conditions and may add additional conditions if deemed necessary for a specific location:

- A. The initial approval of the Special Use Permit shall be for a maximum of five years. At the end of the five year period, the permittee shall resubmit the application and shall demonstrate to the satisfaction of the Planning Commission and the City Council that a good faith effort has been made to cooperate with other providers to establish co-location at the tower site, that a need still exists for the tower, and that all the conditions of approval have been met. The Special Use Permit may then be extended for an additional ten years by the City Council and the permittee shall resubmit after each ten year reapproval. The process for considering a resubmittal shall be the same as for the initial application.
- B. Any tower, antenna or other facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned and the owner of such tower, antenna or facility shall remove the same within 90 days after receiving notice from the City. If the tower, antenna or facility is not removed within that 90 days period, the governing body may order the tower, antenna or facility removed and may authorize the removal of the same at the permittee's expense. Prior to the issuance of the Special Use Permit, the applicant shall submit a bond to the City in an amount adequate to cover the cost of tower removal and the restoration of the site. This bond will be secured for the term of the Special Use Permit plus one additional year. In the event the bond is insufficient and the permittee otherwise fails to cover the expenses of any such removal, the site owner shall be responsible for such expense.
- C. The applicant shall have a structural inspection of the tower performed by a licensed professional engineer licensed in the State of Kansas prior to every ten year renewal and submit it as a part of the renewal application.
- D. Any wireless communication facility, tower or antenna which is not 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 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 notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the facility tower antenna and all appurtenances and restore the site to its original condition.
- E. The permittee shall keep the property well maintained including maintenance and replacement of landscape materials; free of leaves, trash and other debris; and either regularly cleaning up bird droppings or installing anti-perch devices that prevent birds from perching on the installation.
- F. 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 facility, tower or antenna 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.

- G. In order to ensure structural integrity, all wireless communication facilities, towers and antennae shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such facilities, towers and antennae that are published by the Electronic Industries Alliance.
- H. All wireless communication facilities, towers and antennae 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 all facilities, towers, and antennae 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.
- I. It shall be the responsibility of any permit holder to promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
- J. 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 tower facility in the event that the leaseholder fails to remove it upon abandonment.
- K. Information to establish the applicant has obtained all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.

19.33.045 Site Plan Approval

All installations shall have a site plan approval in accordance with Chapter 19.32, Site Plan Approval.

19.33.050 Exceptions

Any wireless communications facility, tower and antennae that are a stealth design shall be exempt from the Special Use Permit requirements and shall be approved in accordance with Chapter 19.32, Site Plan Approval.

The initial approval of the Site Plan shall be for a maximum of five years. At the end of the five year period, the applicant shall resubmit the application to the Planning Commission and shall demonstrate to the satisfaction of the Planning Commission that a good faith effort has been made to cooperate with other providers to establish co-location at the tower site, that a need still exists for the tower, and that all the conditions of approval have been met. The application may then be extended for an additional ten years.

19.33.055 Existing Site Improvements

Alterations or improvements to existing wireless communication sites shall be allowed when these alterations or improvements are implemented to:

- A. Accommodate additional wireless service providers; provided that the alterations or improvements meet all applicable requirements of this Chapter. Unless otherwise provided for by the current Special Use Permit, application for such alteration or

improvement to an existing site will require approval through an amended Special Use Permit. However, if provided by the current Special Use Permit, such application shall be considered a revised final site plan and will only require submission to and approval of the Planning Commission.

- B. Any such alteration or improvement shall meet any and all current applicable design and technical standards and requirements. The cumulative effect of any additional antennae and related facilities must comply with the radio frequency radiation emission guidelines established by the FCC.
- C. Additional Antennae. When provided for in the approved capacity limit of a multi-user tower's current Special Use Permit, additional antennae or replacement of current antenna may be added through an application for a revised site plan and will only require submission to and approval by the Planning Commission. Any additional antennae that exceed the originally approved capacity limit shall be considered a revised application, and shall require an amended Special Use Permit to locate. Any additional antennae or replacement of current antennae shall meet any and all current applicable design and technical standards and requirements. The cumulative effect of any additional antennae and related facilities must comply with the radio frequency radiation emission guidelines established by the FCC.
- D. In the event that new technology provides a better alternative to the design requirements herein, the Planning Commission may reasonably approve or require design modification of a wireless communication facility, tower or antenna when the appearance of the same is deemed to be less obtrusive than the requirements permitted herein.
- E. Any proposal by a permit holder to replace a current antenna or to alter and improve an existing facility, tower or antenna in a manner to make the same less obtrusive such as lessening the tower height, converting the structure to an alternative tower structure, or modifying the antenna to a "slim line" or internal design shall be considered as an amended site plan and will only require submission to and approval by the Planning Commission.
- F. Any such alteration or improvement shall meet any and all current applicable design and technical standards and requirements, and the cumulative effect of any additional antennae and related facilities must comply with the radio frequency emission guidelines established by the FCC.

19.33.060 Small Wireless Communications Antennae

The location, design and appearance of small wireless communications antennae installations shall be subject to Staff review and approval as follows:

- A. Small wireless communication antennae shall mean those whip antennae 6' 0" or less in height and panel antennae with a maximum front surface area of 2.0 square feet and not more than 15" in width, 36" in height, and 4" in depth that can be mounted on an existing utility or street light pole.
- B. Prior to installation, the provider shall obtain a permit from the City. If the proposed installation is located in right-of-way, the permit shall be issued in accordance with the City's requirements for a R-O-W permit. Otherwise it shall be issued by the Building Official

- C. The size, location, and appearance of the small wireless antennae will be subject to Staff review and approval. In its discretion, if Staff does not feel the proposed installation meets the intent of this regulation, it may refer approval of the permit to the Planning Commission.
- D. Prior to the review and approval of a permit, the applicant shall enter into an agreement whereby it agrees to abide by the requirements of the City's Right-of-Way Ordinance (as applicable) and to protect the City from any liability associated with the proposed installation. Such protection shall include requirements regarding bond, insurance, and indemnification. The agreement shall be applicable to the applicant's subsequent small wireless communication antenna permits and shall be in a form approved by the City's legal counsel.
- E. Utility racks will not be permitted and all equipment will be contained within an enclosed utility box. Utility boxes shall be located and installed in accordance with the requirements of the Zoning Regulations as set out in Sections 19.34.020.K and 19.30.055.G.
- F. Small antennae will be allowed to be mounted on existing utility and street light poles but the installation of taller utility poles or new overhead wiring to accommodate the antennae will not be permitted unless approved as a Special Use Permit.
- G. Not more than three antennae panels and one provider may be located on a utility or street light pole.
- H. The coaxial cable connecting the antennae to the equipment box shall be contained inside the pole or shall be flush mounted to the pole and covered with a metal, plastic, or similar material cap that matches the color of the pole and is properly secured and maintained by the provider.
- I. The applicant shall provide proof that it is a licensed provider and will comply with all federal, state and city regulations and laws relative to wireless services.
- J. The applicant shall provide any relevant information requested by City Staff.
- K. Any applicant may appeal a Staff decision to the Planning Commission.
- L. Any antenna that is not operated for a continuous period of six months shall be considered abandoned and the owner of such antenna shall remove the same within 90 days after receiving notice from the City. If the antenna is not removed within that 90 day period, the Governing Body may order the antenna removed and may authorize the removal of such antenna at the owner's expense.

Section III. Repeal of Prior Ordinances.

All ordinances and parts thereof that are inconsistent with any provision of this ordinance are hereby repealed.

Section IV. 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 _____ day of April, 2009

Ronald L. Shaffer, Mayor

ATTEST:

APPROVED AS TO FORM:

Joyce Hagen Mundy
City Clerk

Catherine P. Logan
City Attorney

Ordinance No. 2190

AN ORDINANCE AMENDING CHAPTER 19.02 OF THE PRAIRIE VILLAGE MUNICIPAL CODE, ENTITLED "DEFINITIONS" BY AMENDING SECTION 19.02.499 ENTITLED "UTILITY BOX"; AND CHAPTER 19.28 ENTITLED "SPECIAL USE PERMITS" IS AMENDED BY DELETING SECTION 19.28.070(S)

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 and proper notice having been published and hearing held on February 3, 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 and III.

Section II. Amendment to Chapter 19.02

Chapter 19.02 of the Prairie Village Municipal Code, entitled "Definitions" is hereby amended by amending Section 19.02.499 to read as follows:

19.02.499 Utility Box

Any cabinet, pedestal, box, building, or other equipment enclosure used for public utility services, public service corporation, or telecommunications providers including any associated equipment such as condensing units and generators. Traffic signal controllers shall not be considered utility boxes. Utility boxes with a footprint smaller than one and one-half square foot, a pad of two square feet or less, and a height of 36" or less are exempt from this definition. Utility racks and open trellis-type structures for mounting equipment are not permitted. All equipment must be placed within a cabinet or enclosed structure that has an acceptable aesthetic design and has break away capability for safety.

All existing utility boxes are nonconforming structures and have all rights granted by Chapter 19.40 "Nonconformities. Utility boxes are exempt from Section 19.40.015B Enlargement, Repair and Maintenance, and Section 19.40.015C Damage, Destruction, and Demolition, and may be replaced provided that the replacement box is generally the same size as or smaller than the original utility box. This determination will be made by City Staff.

Section III. Amendment to Chapter 19.28

Chapter 19.28 of the Prairie Village Municipal Code, entitled "Special Use Permits" is hereby amended by deleting Section 19.28.070(S) "Wireless Communications Towers"

Section IV. Repeal of Prior Ordinances.

All ordinances and parts thereof that are inconsistent with any provision of this ordinance are hereby repealed.

Section V. 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 _____ day of April, 2009

Ronald L. Shaffer, Mayor

ATTEST:

APPROVED AS TO FORM:

Joyce Hagen Mundy
City Clerk

Catherine P. Logan
City Attorney

LATHROP & GAGE_{LLP}

MEMO

To: Members of the Governing Body
Prairie Village, Kansas

From: Katie Logan

Date: May 15, 2009

Subject: T-Mobile Cell Tower Application

Staff has requested my input on certain procedural matters relating to the pending cell tower application:

1. The applicant, T-Mobile, indicated, through statements by its counsel at the May 4 meeting, that it would be satisfied with approval of a "stealth monopole" wireless communications facility with conditions that height be limited to 85' (instead of the 145' applied for) and a base that would accommodate future height expansion to accommodate co-location.
2. The motion that passed at the May 4 City Council meeting was a motion to approve the Planning Commission recommendation of denial of the application for a 145' stealth monopole wireless communications facility, and directing staff to prepare written findings to be approved at the May 18 meeting. The action of the Governing Body is not final until and unless it approves those written findings.

Possible Actions at the May 18 meeting:

- a. By motion and approval by 7 members of governing body, written findings are approved and the action to follow the recommendation of the Planning Commission and deny the application for a 145' tower becomes final.
- b. Before final action [i.e. before the governing body approves the written findings], a motion could be made by any councilmember to rescind the prior action of the council to approve the planning commission recommendation. A motion to rescind requires approval of 2/3 of council members present. If the motion passes, the governing body may take any action it could have taken at the May 4 meeting regarding the pending application of T-Mobile, including:
 - i. Override Planning Commission recommendation of denial and approve a wireless communications facility with

conditions. Requires 2/3 approval of Governing Body – 8 votes. Conditions may include maximum height restriction of 85’ or other height, stealth monopole or other stealth structure [pine tree has been discussed], and foundation that would accommodate increased height.

- ii. Take the same action taken at the May 4 meeting. Requires 7 votes of governing body.
- iii. Refer back to Planning Commission with recommendations. Requires majority vote of council members present.



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Curtis M. Holland
(913) 234-7411
cholland@polsinelli.com

May 12, 2009

BY ELECTRONIC MAIL

City of Prairie Village Planning Office
c/o Ron Williamson
Bucher Willis & Ratliff Corporation
903 East 104th Street, Suite 900
Kansas City, MO 64131

**Re: PC 2009-06: Request for a Special Use Permit for a Wireless
Communications Facility to be Located at Faith Evangelical Lutheran
Church, 4805 W. 67th Street**

Dear Ron:

I am writing to request that the City Council take up our request on May 18 to approve an 85' tall, stealth monopole, with a foundation that would accommodate a future taller monopole to allow for co-location. As you will recall at the May 4 City Council meeting, the City Council voted only to uphold the City Planning Commission's recommendation for denial of a 145' tall monopole. During the May 4 meeting, I formally modified our request to reduce the height of the monopole to 85', but the City Council took no formal action on our request. The case now pending before the City Council is a request for an 85' tall stealth monopole, not the Planning Commission's recommendation for denial of a 145' structure. Please distribute this request to the City Council members so they may consider this request at their meeting on May 18. Thanks.

Sincerely,

Curtis M. Holland

cc: Steve Horner, Esq.
Dennis Enslinger
Joyce Mundy
City Council Members
Garth Adcock
Trevor Wood

RESOLUTION 2009-05

A RESOLUTION ADOPTING A WRITTEN RECORD OF DENIAL AS THE BASIS FOR DENIAL OF SPECIAL USE PERMIT APPLICATION NO. PC2009-06/COU2009-49 IN ACCORDANCE WITH THE TELECOMMUNICATIONS ACT OF 1996.

WHEREAS, the Governing Body adopted the recommendation of the Planning Commission to deny the Special Use Permit for a wireless communication tower and equipment compound at 4805 West 67th Street (Faith Evangelical Church) on a vote of 8 to 4; and

WHEREAS, the Governing Body also directed staff, on a vote of 8 to 4, to draft a written summary of the basis for the decision to deny the application for a wireless communication facility at Faith Evangelical Church (4805 West 67th Street).

NOW, THEREFORE, BE IT RESOLVED, the Governing Body hereby adopts the attached written denial as the basis for its denial of Special Use Permit Application No. PC2009-06/COU2009-49 in accordance with the Telecommunications Act of 1996

ADOPTED AND PASSED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS, THIS ____ DAY OF _____, 2009.

By: _____
Ronald L. Shaffer, Mayor

ATTEST:

Joyce Hagen Mundy, City Clerk

DENIAL OF SPECIAL USE PERMIT APPLICATION NO. PC2009-06

**DECISION OF THE GOVERNING BODY OF THE
CITY OF PRAIRIE VILLAGE, KANSAS**

Project No./Title: Special Use Permit Application No. PC2009-06 and
Council Agenda Item COU2009-49

Request: Special Use Permit for the installation of a wireless communications
facility and equipment compound

Location: 4805 West 67th Street in the City of Prairie Village, Kansas

Applicant: Curtis M. Holland of Polsinelli Shughart PC, on behalf of the Applicant,
T-Mobile Central LLC ("T-Mobile"), and with permission of the property
owner of record, Faith Evangelical Lutheran Church.

The Governing Body of the City of Prairie Village, Kansas, at a public meeting on May 4, 2009, by a majority vote of 8 ayes to 4 nays, denied the Special Use Permit request for the installation of a wireless communications facility and equipment compound on property located at 4805 W. 67th Street, filed by Curtis M. Holland of Polsinelli Shughart PC, attorney and representative for T-Mobile (hereinafter the "Application"). In accordance with the Federal Telecommunications Act of 1996, the Governing Body, as the governing body of a municipal corporation acting in a quasi-judicial capacity, hereby adopts this written denial of said Application and offers this writing as the basis for the Governing Body's vote of denial.

A. Background, Chronology and Procedure.

1. On February 27, 2009, Curtis M. Holland of Polsinelli Shughart PC, on behalf of T-Mobile, and with permission of the property owner of record, filed the Application (PC2009-06) for a Special Use Permit for the installation of a wireless communications facility and equipment compound for use by T-Mobile on property located at 4805 W. 67th Street in the R-1, residential single-family zoning district.¹ The Application also requires a separate Site Plan approval for the tower facility and associated equipment compound following approval of the Special Use Permit.
2. This was the third application submitted by the Applicant for the installation of a wireless communications facility and equipment compound at this location.²
 - a. The first application for a 120-foot monopole was voluntarily withdrawn by the Applicant on June 2, 2008, before any consideration or action by the Governing Body.
 - b. The second application for an 85-foot monopole was considered by the Governing Body and, by Resolution on August 4, 2008, the Governing Body adopted its written denial of said application. This denial was then appealed by T-Mobile in the United States District Court for the District of Kansas, where such appeal is still pending. (Case No. 08-CV-2400-JAR/DJW.)
 - c. Resulting from the mediation of Case No. 08-CV-2400-JAR/DJW, T-Mobile agreed to: (1) re-explore alternative locations, specifically including, but not limited to, Nall Baptist Church and McCrum Park; (2)

¹ The initial application states it is for a 145' low profile communications facility. However, T-Mobile prefers and requested at the meetings approval of an 85' tower with a foundation sufficient to support a taller tower if later approved by a subsequent Special Use Permit. T-Mobile advised that it only requested a tower up to 145' in order to maximum co-location possibilities, should that be the City's preference.

² In addition to its application, T-Mobile submitted on disk 722 pages of documents from the prior two applications. Before doing so, it was discussed and understood by T-Mobile and the City that said prior applications and documents were not part of the new application, that the new application would be reviewed and evaluated specifically on its own merits, and that such submission was only for the purposes of providing background information.

contact the other carriers and report on their service needs in the subject area and their minimum height and equipment building needs; and (3) reduce the size of its equipment building as much as possible and, if Faith Evangelical Lutheran Church remained its proposed location, to incorporate the equipment building into the church structure. It was understood that T-Mobile could then submit a new application for consideration, and that it should sufficiently provide for co-location, with the understanding the City could approve something smaller if preferred. Provided, there was an explicit understanding that no approval could be consented to or even considered by the Governing Body beforehand, but that the new application was subject to the regular procedural review and consideration as set forth by the City ordinance and policy.

3. All forms of legal notice for a public hearing on the Application before the Planning Commission on April 7, 2009, were given as required by law.
4. On March 12, 2009, the Applicant conducted a public information meeting regarding its Application, in accordance with Planning Commission policy.
5. Ron Williamson, BWR, Planning Consultant for the City, issued his Planning Commission Staff Report (hereafter "Staff Report"), dated April 7, 2009, addressing the Application and: (1) the special use criteria set out in *Chapter 19.28 – Special Use Permits of the City of Prairie Village Zoning Code* (hereafter the "Special Use Criteria"); (2) the criteria set out in the *Planning Commission Policy for the Approval of Wireless Communication Towers* (adopted December 10, 1996 and formally reviewed and accepted by the Governing Body on January 6, 1997, hereafter referred to as the "Tower Policy"); and (3) the site plan criteria set out in *Chapter 19.32 - Site Plan Approval of the City of Prairie Village Zoning Code* (hereafter the "Site Plan Approval Criteria"). (Said Chapters and the Tower Policy are incorporated herein by reference.) The Planning Consultant did not give a recommendation for or against the Application, but recommended the Planning Commission consider all of the relevant criteria in making its recommendation to the

Governing Body. The Planning Consultant did recommend that, if the Planning Commission recommended approval of the Special Use Permit, it should include the eighteen (18) conditions cited in the Staff Report as part of the recommendation. The Staff Report is attached hereto as Exhibit A and incorporated herein by reference.

6. On April 7, 2009, a public hearing was held before the Planning Commission to consider the proposed Special Use Permit and associated Site Plan. The Applicant's representative and attorney, Curtis M. Holland, and Staff made presentations. During the public hearing 15 persons spoke with regard to the Application. After the public hearing was closed, the Planning Commission began its deliberations. Excerpts of the minutes of said meeting are attached hereto as Exhibit B and incorporated herein by reference.
7. Immediately following the public hearing on April 7, 2009, the Planning Commission considered the Application and conducted a thorough discussion of: the Special Use Criteria, the Tower Policy criteria, and the Site Plan Approval Criteria. For reasons more thoroughly discussed in Section B 4. hereafter, the Planning Commission, upon motion by Commissioner Nagel, seconded by Commissioner Warman, recommended denial of the Application for a Special Use Permit by a unanimous vote. Staff subsequently prepared a written report summarizing the Planning Commission's recommendation, which is attached hereto as Exhibit C and incorporated herein by reference. (See also Minutes, Exhibit B.) Because of the recommendation to deny the Special Use Permit, no action was taken on the proposed Site Plan.
8. At its meeting on April 20, 2009, the Council Committee of the Whole reviewed and considered the Application, the Staff Report, the Planning Commission minutes and record (including the public hearing), and the Planning Commission's recommendation. After receiving the presentations of Staff and the Applicant, the Council Committee of the Whole allowed public comment on the issue and 4 individuals spoke on the matter. During his presentation, the Applicant's representative and attorney, Curtis M. Holland, stated that the Applicant was requesting an 85-foot tower with a foundation

structurally sufficient for a taller tower at a later date. The Council Committee of the Whole then conducted significant discussion about the Application. At the conclusion, upon motion by Committee Member Belz, seconded by Committee Member Hopkins, the Council Committee of the Whole approved a recommendation to the Governing Body to override the recommendation of the Planning Commission and to approve the Special Use Permit as presented, subject to the 18 conditions of approval recommended in the Staff Report. The motion passed by a vote of 5 ayes to 3 nays (with 4 committee members absent). Excerpts of the minutes of the April 20, 2009 Council Committee of the Whole meeting are attached hereto as Exhibit D and incorporated herein by reference. In addition, Staff prepared a written report summarizing the Committee's recommendation, which is attached hereto as Exhibit E and incorporated herein by reference.

9. At its May 4, 2009 City Council meeting, the Governing Body considered the Application and the prior record. On behalf of the Council Committee of the Whole, Councilmember Kelly moved to adopt the Committee's recommendation to override the recommendation of the Planning Commission and to approve the Special Use Permit as presented, subject to the 18 conditions of approval recommended in the Staff Report. After receiving further comment from the Applicant's representative and attorney, Curtis M. Holland, the Mayor permitted additional public comment on the Application and 16 individuals spoke on the matter. Mr. Holland again reiterated that the Applicant was requesting an 85-foot tower with a foundation structurally sufficient for a taller tower at a later date.

Thereafter, the Governing Body engaged in significant discussion on the Application. Two separate motions to continue the matter were made by Councilmember Wassamer and seconded by Councilmember Herrera, but were both defeated by votes of 4 ayes to 8 nays. Councilmember Hopkins then called the question on the motion to adopt the Council Committee of the Whole's recommendation to override the recommendation of the Planning Commission and to approve the Special Use Permit as presented, subject to

the eighteen (18) conditions of approval recommended in the Staff Report. The motion was defeated by a vote of 6 ayes to 6 nays. Councilmember Kelly then moved to return the Application to the Planning Commission with the instructions to: (1) review the possible installation of a facility in a stealth manner, such as a monopine or as integrated into the architecture of the church structure; (2) review the appropriate location for the proposed structure if a monopine is appropriate for this area; (3) review the height of the structure, with a maximum height limit of 85 feet; and (4) review any new information presented to the City Council. The motion was seconded by Councilmember Wang, but defeated by a vote of 4 ayes to 8 nays. After reviewing the remaining options, and for reasons more thoroughly discussed in Section C hereafter, Councilmember Griffith moved to approve the Planning Commission's recommendation to deny the Application and to direct Staff to prepare a written record of the basis of the denial for consideration at the May 18, 2009 City Council meeting. The motion was seconded by Councilmember Morrison, and passed by a vote of 8 ayes to 4 nays. Excerpts of the minutes of the May 4, 2009 City Council meeting are attached hereto as Exhibit F and incorporated herein by reference.

B. Summary of Evidence Received and Reviewed

1. STAFF REPORT AND RECOMMENDATION:

Staff did not provide a specific recommendation for approval or denial but provided comments regarding specific factors that Staff felt was relevant to the Application as outlined in the Staff Report. (Exhibit A.)

Staff summarized issues of concern with the Applicant's previous applications. Staff then advised that the Telecommunication Act of 1996 established some parameters when considering a wireless facility, with the following primary points:

- A city shall not discriminate among providers.
- A city shall not prohibit or have the effect of prohibiting the installation of wireless services.

- An application must be acted on within a reasonable period of time.
- A decision to deny an application for wireless communications must be in writing and supported by substantial evidence.
- The Federal Communications Commission regulates the environmental efforts of radio frequency emissions and a city cannot consider this issue as approving or denying an applicant.

Staff reviewed the Application in light of the Tower Policy, including the following:

- Co-Location. The Applicant provided two letters of intent. AT&T requested co-location at 85' and 95', with a 10' x 16' equipment box. Sprint requested co-location at 130', with a 10' x 15' equipment box. Staff advised that, based on the information provided by the Applicant, that the maximum tower height to co-locate all providers was 140', which would leave one additional location for a fourth carrier.³
- Validation Study (Alternative sites). Staff listed the eight (8) possible locations identified by the Applicant as being able to meet their coverage objectives, and the information provided by the Applicant concerning the availability of the same. The eight site candidates are:
 1. Woodson Avenue Bible Church (67th & Woodson)
 2. St. Michaels & All Angels (67th & Nall)
 3. Nall Baptist Church (67th & Nall)
 4. 69th & Roe Water Tank (69th Terr. & Roe – McCrum Park)
 5. Faith Evangelical Lutheran Church (66th & Roe – the proposed site)
 6. Homestead Country Club (Homestead & Mission)
 7. Village Presbyterian Church (67th & Mission)
 8. Johnson County Fire District No. 2 (63rd & Mission)
- Other Policy Requirements. Staff also cited that the Applicant provided: a propagation study and coverage report for the proposed location; a photo simulation; a co-location agreement; a lease; a site plan; and other

³ On May 4, 2008, the Applicant informed the Council that Verizon was now also interested in co-locating.

information regarding provider qualification and related information. (See Staff Report for comments on these matters.)

Staff reviewed the required findings of fact and criteria for a Special Use Permit and provided comments regarding the same.

Staff indicated that, should the Planning Commission recommend approval of the Application, the following conditions should be included as part of the recommendation:

- 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, the Applicant shall resubmit the Application to the Planning Commission and shall demonstrate to the satisfaction of the Planning Commission that a good faith effort has been made to cooperate with other providers to establish co-location at the tower site, that a need still exists for the tower and that all the conditions of approval have been met. The application may then be extended for an additional five years.
- 2) The Special Use Permit shall be approved for four carriers and each carrier shall be required to submit a Site Plan to the Planning Commission for their installation.
- 3) The monopole tower shall maintain a hot dipped galvanized finish and be reduced to 140 feet in height.
- 4) The tower shall not be lit, but security lighting around the base of the tower may be installed provided that no light is directed toward an adjacent residential property.
- 5) The maximum height for this communication tower shall be 145 feet plus a lighting rod not exceeding four feet.
- 6) If the tower is not operated for a continuous period of 12 months it shall be considered abandoned and the owner of such tower shall remove the same within 90 days after receiving notice from the City. If the tower is not removed within that 90 day period, the governing body may order the tower removed and may authorize the removal of such tower at the owner's expense.
- 7) The construction plans for the tower shall be prepared and sealed by a structural engineer licensed in the State of Kansas. Construction observation shall be provided by the design engineer provided that said engineer is not an employee of the tower's owner or tenant. If the design

engineer is an employee of the owner an independent engineer will be required to perform construction observation.

- 8) Adequate screening of the equipment cabinets located at the tower base shall be provided by an eight foot solid brick wall attached to the church and a roofed structure. The brick shall match the brick of the existing church building. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
- 9) The applicant shall submit a Stormwater Management Plan for review and approval of Public Works.
- 10) The applicant shall have a structural inspection of the tower performed by a licensed professional engineer prior to every renewal and submit it as a part of the renewal application.
- 11) Any wireless communication facility, tower or antenna which is not 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 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 notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the facility, tower, antenna and all appurtenances and restore the site to its original condition.
- 12) The permittee shall keep the property well maintained and replacement of landscape materials; free of leaves, trash and other debris; and either regularly cleaning up bird droppings or installing anti-perch devices that prevent birds from perching on the installation.
- 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 facility, tower or antenna 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, all wireless communication facilities, towers and antennae shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such facilities, towers and antennae that are published by the Electronic Industries Alliance.
- 15) All wireless communication facilities, towers and antennae 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 all facilities, towers, and antennae 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) It shall be the responsibility of any permit holder to promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.
- 17) A copy of the lease agreement between the applicant and the landowner containing the following provisions:
 1. The landowner and the applicable 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 tower facility in the event that the leaseholder fails to remove it upon abandonment.
- 18) Information to establish the Applicant has obtained all other governmental approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.

Finally, Staff advised that, should a Special Use Permit be recommended, separate Site Plan approval by the Planning Commission is required in accordance with Chapter 19.32 of the Zoning Ordinance. With regard to such Site Plan approval, Staff provided comments lettered A - G, and 5 recommended conditions should the Site Plan be approved. (Incorporated herein by reference.)

2. APPLICANT'S PRESENTATION:

On behalf of the Applicant, Curtis M. Holland presented to and answered questions from the Planning Commission, the Council Committee of the Whole and the Governing Body concerning the Application. The Applicant's presentation and responses are summarized as follows:

The Applicant briefly reviewed the history of its prior applications for a wireless facility at the proposed site, including the pending appeal of its prior application before the District Court.

The Applicant stated it has coverage gaps in the area which will be served by the proposed tower and facilities. The Applicant advised that it is seeking a tower to provide it with two canister antenna locations – one for its wireless telephone service, and one for its data (Internet) service. The Applicant said it would take the two highest locations on the tower. The Applicant further stated it is agreeable to all 18 conditions recommended in the Staff Report.

The Applicant reviewed its process to select a site, and stated that the proposed site is one of eight identified sites that can meet its coverage needs. With regard to the alternative sites, the Applicant stated as follows:

- McCrum Park – At the public hearing, the Applicant advised that WaterOne was planning to remove the water tower at McCrum Park at some unknown date. The Applicant updated this information by letter dated April 30, 2009, stating that the water tower removal is now scheduled for 2014 due to current WaterOne budget issues. There was no testimony that the Applicant had discussed with WaterOne the possibility of co-locating on the water tower in the interim, or that it had discussed any kind of lease with the property owner. (Which the City as the property owner can confirm did not occur.)
- Nall Baptist Church – There was disputed testimony between the Applicant and opponents regarding the status of the Applicant's contact and negotiations with Nall Baptist Church. Opponents stated that the Applicant walked away from negotiations 1-2 years ago and that the church was still interested in a lease. The Applicant advised by letter dated April 30, 2009, that the Applicant and the church last communicated in June of 2008.⁴ The email attachment indicates that the last communication was the church representative's request that the Applicant consider an alternative tower location on the Nall Baptist site.
- Upon inquiry, the Applicant stated that the Fire Station, Village Presbyterian Church and Homestead County Club were no longer considered in the same service ring as the proposed site. No further explanation nor any scientific study

⁴ As stated previously, as a result of the mediation of the prior application's appeal, T-Mobile agreed to re-explore alternative locations before filing a new application, specifically including, but not limited to, Nall Baptist Church and McCrum Park. As shown by this letter and email, this apparently was not done.

or documentation was submitted to establish that these sites no longer would serve the Applicant's coverage needs under this Application.⁵

- Upon inquiry, the Applicant stated that there was insufficient room on the St. Michael's property and that both St. Michael's Church and Woodson Avenue Bible Church were not interested.

At the public hearing, the Applicant stated it received a letter from AT&T requesting co-location at 85' and 95', and from Sprint requesting co-location at 130'. At the May 4th Council meeting, the Applicant updated this information stating it just received a letter from Verizon Wireless also requesting co-location at the proposed site. The Applicant further advised that AT&T and Sprint also expressed interest in McCrum Park as an alternative location (it was unknown if Verizon had interest), but that only Sprint was interested in the Nall Baptist Church site.

The Applicant stated it was asked to provide a proposed facility to maximize co-location, and accordingly, the Application requests a 145-foot monopole capable of co-locating four providers. However, the Applicant stated before the Planning Commission that it does not need or want a 145-foot tower, and that it prefers a shorter tower. Before the Council Committee of the Whole and again before the Governing Body, the Applicant stated that it only wants an 85-foot tower with a foundation sufficient to support a taller tower if later approved by a subsequent Special Use Permit.

In response to requests and comments about the possibility of a 65-foot tower, the Applicant stated that a 65-foot tower would not be acceptable from its standpoint. However, no propagation or other scientific study or documentation was presented to establish that a height of less than 85 feet would fail to provide coverage.

In response to inquiry, the Applicant agreed that, if preferred, it would construct a monopine in lieu of a monopole. However, the Applicant stated it would not architecturally integrate a tower into the architecture of the church as that would

⁵ It is noted that it was established under the prior application that both the Fire Station and Village Presbyterian Church sites are available.

require significant structural modifications and major renovation to the church. Also upon inquiry, the Applicant acknowledged that a freestanding bell tower was feasible, but stated it would not agree to build one.

In response to concerns that its proposal would diminish property values, the Applicant submitted an appraisal report by Integra Realty Resources.

3. PUBLIC COMMENTS:

Members of the public opposing the Application submitted correspondence, photo simulations of the proposal, photos of other local antenna/tower sites (with examples of smaller towers, a monopine, and of towers/antennas architecturally integrated into existing structures and/or as bell towers), an appraiser's affidavit stating that a tower would reduce property values, an appraisal journal article regarding the detrimental impact of towers on property values, a height comparison chart of the proposal and other city structure, a letter from local realtors regarding the detrimental impact of visual obstructions such as cell phone towers on property values, and a chart comparing the proposed site to alternative sites. Members of the public supporting the Application also submitted correspondence (either directly or through the Applicant).

At the public hearing before the Planning Commission on April 7, 2009, 12 individuals spoke in opposition of the Application and 3 spoke in favor of it. At the Council Committee of the Whole meeting on April 20, 2009, 4 individuals spoke in opposition of the Application. At the City Council Meeting on May 4, 2009, 14 individuals spoke in opposition of the Application and 2 spoke in favor of it.

A summary of the public opposition to the Application is as follows:

- The Application fails to meet the criteria in the City's zoning code and policies.
- The Application is inconsistent and incompatible with the architectural character and residential style of the neighborhood.
- The Application is not an appropriate use of the land and is at odds with the zoning of nearby property.

- The Application will have a detrimental impact on nearby property values. References were made to the appraiser's report referring to cell towers as a "visual obsolescence." Realtor testimony and documentation was also provided.
- The proposed site is not suitable because of its poor topography and high trees. It was noted that the Applicant acknowledged at a neighborhood meeting that the site was the least optimal alternative, and that it was option number 8 of 8. It was also expressed that if a tower in the area is necessary, the Applicant should go where it can do the greatest good for the greatest amount of people.
- Alternative sites have not been fully explored or eliminated. Some of these alternative sites are significantly higher in elevation and should provide superior service. Alternatives include:
 - Nall Baptist Church – This church is interested, but the Applicant ended negotiations 1-2 years ago and refused to reconsider. This site is significantly higher in elevation than the proposed site.
 - McCrum Park – This site is significantly higher in elevation than the proposed site. It was noted that McCrum Park already has a 120-foot water tower, so that area has already adapted to a tall visual obstruction. It was suggested the Applicant could locate on the water tower if it remains, or construct a cell tower if it is removed.
 - Village Presbyterian Church – This site is available and the tower/antenna could be placed in its existing steeple.
 - The cemetery located at 65th and Hodges.
 - Prairie Village Shopping Center – This site has new ownership that might consider tower options.
- If the proposed site is selected, the tower should be architecturally incorporated into the church, such as in a bell tower, steeple or monopine. Local examples were presented of a monopine and other towers/antennas architecturally incorporated into existing structures and/or into freestanding bell towers.

- If the proposed site is selected, the tower height should be reduced to a height such as 65 feet. It was noted that the Applicant failed to establish with coverage maps that it cannot go lower than 85 feet, or that a tower of 65 or 75 feet cannot meet its coverage needs. Local examples were presented of smaller functioning towers in other locations in the area.
- The proposed site is not sufficiently setback from adjacent properties.
- The Application will discourage property improvements on nearby properties.
- The Application should be denied on the basis of aesthetics.
- The tower is a 14-story structure, which is higher than any other structure that can be approved under the zoning regulations, and significantly higher than all surrounding structures.
- This is not a situation where the Applicant has no coverage, but where it is seeking to provide in-home and broadband coverage. T-Mobile's in-home Wi-Fi phone and router was also referenced to indicate that the Applicant had alternative means to provide its service.
- Co-location at this site does not make sense.
- Concern was expressed that approval of this Application would lead to requests by other carriers to co-locate at this site at higher heights.
- Concern was expressed regarding the large size of the equipment structure needed to support multiple carriers.
- The Application is a commercial venture taking place in a residential neighborhood, and should not be allowed.
- It was noted that there was a petition of over 300 signatures opposing the prior application at the proposed site.

A summary of the public support of the Application is as follows:

- The Application is needed for both regular and emergency call coverage.
- The proposal will be similar to the monopole at 95th and Nall.
- The City's Village Vision supports infrastructure.

4. PLANNING COMMISSION RECOMMENDATION:

At its April 7, 2009 meeting, the Planning Commission reviewed the Application and recommended denial of the Application by a unanimous vote. The recommendation was based upon an analysis of: the Special Use Criteria set out in *Chapter 19.28 – Special Use Permits of the City of Prairie Village Zoning Code*; and the criteria set out in the Tower Policy. Because of the recommendation for denial of the Special Use Permit, no recommendation was made with regard to the proposed Site Plan. The Commissioners' discussion at the April 7, 2009 meeting can be summarized as follows:

- The Commission was concerned about the aesthetics and the visual impact and intrusion of the Application on the residential character of the neighborhood. It was noted the Application would dominate the immediate neighborhood due to the height of the facility. It was also noted the Application was for a higher height than the prior applications (which the Commission recommended be denied), and was even less in keeping with the architectural nature of the neighborhood.
- The Commission was concerned that the proposed tower was not architecturally integrated into the existing church structure, and was not compatible with surrounding architecture in the residential area. It was noted when the prior applications were reviewed that the Planning Commission requested that any new proposal at this site be architecturally integrated.
- The Commission found that the Application would have an adverse effect on the property values and welfare of the adjacent neighborhood.
- The Commission found that the Application would deter future property investment and remodeling in the adjacent neighborhood.
- The Commission was concerned about the poor location of the site. Concerns included the impact on the neighborhood, the low topography of the site (especially in comparison to alternative sites), and the tall trees in the area.
- The Commission found that other more suitable locations were available that would meet the Applicant's needs. Alternative sites discussed included McCrum

Park, Nall Baptist Church, the Fire Station, Village Presbyterian Church and the Prairie Village Shopping Center.

- The Commission was concerned that it had insufficient information to determine what, if anything, should be allowed at the proposed location. Concern was also expressed regarding the contrasting information, especially with regard to the availability of alternative and more suitable locations.

The Commission's review and consensus to recommend denial of the Application is as follows:

- The Commission found the Application fails to meet Special Use Criteria #2.⁶ It was found that the proposed facility would adversely affect the area because it would not be in keeping with the character of the neighborhood and would have a detrimental impact on the neighborhood. It would therefore adversely affect the welfare of the public.
- The Commission found the Application fails to meet Special Use Criteria #3. Despite expert testimony on both sides, it was found that the Application would negatively impact the value of other properties in the neighborhood by having a negative and detrimental impact on their property values, and by deterring individuals from maintaining and reinvesting in their properties, such as currently being undertaken in the neighborhood.
- The Commission found the Application fails to meet Special Use Criteria #4. Although the site is approximately three acres, the surrounding neighborhood is totally developed with residential properties. The proposed monopole is 145 feet in height and will be the tallest structure in the area. The Commission noted that the size of the proposed monopole would dominate the immediate neighborhood. The Commission stated that the size and nature of the height of the structure along with the lack of integration into the adjacent structure and character of the

⁶ These Special Use Criteria are stated in Section C 2. hereafter. In making its recommendation on the Special Use Permit, it is not necessary that the Commission find all or a majority of these factors favorable or unfavorable. Based on the specific application, the Commission may determine that one or more factors are more significant or critical than others, and base its findings on the critical factors.

- neighborhood were the primary reasons it would dominate the immediate neighborhood. The Commission also stated that the proposed structure would also have a negative impact on the residential redevelopment and substantial remodeling, such as currently being undertaken in the neighborhood.
- o The Commission found the Application fails to meet Special Use Criteria #9. The Commission stated that a monopole structure at the proposed height of 145 feet and the associated related equipment to be situated on the site for the proposed multiple carriers is not compatible with the architectural style or residential character of the neighborhood. The Commission felt that, if a structure at the site is to be utilized, it should be architecturally integrated into the existing structure.

5. GOVERNING BODY REVIEW:

During the Council Committee of the Whole Meeting and the City Council Meeting on April 20, 2009, the Governing Body reviewed the Application and the Planning Commission's recommendation of denial. At the Council Committee of the Whole Meeting, the Committee recommended to override the recommendation of the Planning Commission and to approve the Special Use Permit as presented, subject to the 18 conditions of approval recommended in the Staff Report by a vote of 5 ayes to 3 nays (with 4 committee members absent). At the City Council Meeting, the Council Committee of the Whole's recommendation failed by a vote of 6 ayes to 6 nays. Instead, the Governing Body approved the Planning Commission's recommendation for denial of the Special Use Permit by a vote of 8 ayes to 4 nays. (Subject to the approval of this written record.)

The Council Committee of the Whole and Governing Body's discussion and consideration can be summarized as follows:

- o The Governing Body carefully considered the Application record, the Applicant's presentation, the Staff Report and staff comments, the recommendation and comments and concerns of the Planning Commission, and the comments and concerns of the public.

- The Governing Body was concerned about the aesthetics and the visual impact and intrusion of the Application on the residential character of the neighborhood. There was concern that the Application would dominate the immediate neighborhood due to the height and size of the proposed facilities.
- The Governing Body was concerned the proposed tower was not compatible with surrounding architecture in the residential area and that it was not architecturally integrated into the existing church structure or otherwise masked or camouflaged so as not to impact the surrounding residential area. There was significant discussion about the need to explore alternative design options to better camouflage the tower. Options discussed included, a monopine, integration into the church structure, a free standing bell tower, location on the nearby water tower, or some type of “out-of-the-box” solution (for example, a free standing cross or art).⁷
- The Governing Body was concerned about the poor location of the site. Concerns included the impact on the neighborhood, the low topography of the site (especially in comparison to alternative sites), and the tall trees in the area.
- The Governing Body found that other more suitable locations are available that would meet the Applicant’s needs, and that the Applicant had failed to adequately pursue these alternative sites. The Governing Body expressed significant interest in the possible location at McCrum Park – with the Applicant either locating on the existing water tower if it remains, or constructing a cell tower if the water tower is removed. Interest was also expressed in the Nall Baptist Church site, which it was felt had better topography. Other alternatives include the Fire Station and Village Presbyterian Church – both of which are available and were identified as viable alternatives, but that, without further explanation, documentation or study, the Applicant said were no longer considered in the same service ring.

⁷ The Applicant was agreeable to an 85’ monopine at a different location on the site, but not a taller monopine that could provide co-location. The Applicant said that integration into the church structure itself was not possible without significant structural modification and renovation to the church. The Applicant also said that a free standing bell tower was feasible, but that it would not construct one. The Applicant also said that a free standing cross or art would look bad.

- The Governing Body was concerned about the balance of the need to co-locate other carriers expressing interest in the site against the detrimental impact on the neighborhood caused by a taller tower.
- The Governing Body was concerned that, should it forego co-location, the Applicant still wanted an 85-foot tower. While the Applicant said that it could not utilize a shorter tower to meet its coverage needs (for example a 65 or 70-foot tower), no propagation map or other study was presented to verify this response.
- The Governing Body was concerned that the Application would have an adverse effect on the property values and welfare of the adjacent neighborhood.
- The Governing Body was concerned that the Application would deter future property investment and remodeling in the adjacent neighborhood.
- The Governing Body was concerned about the contrasting information provided, especially with regard to the availability of alternative and more suitable locations.

C. Basis for Denial

1. The City of Prairie Village, Kansas, legislatively adopted an ordinance setting out the procedures and basis for review in considering Special Use Permit applications. These criteria are set forth in *Chapter 19.28 – Special Use Permits of the City of Prairie Village Zoning Code* (the “Special Use Criteria”). In addition, the Planning Commission and City Council have approved a *Planning Commission Policy for the Approval of Wireless Communication Towers* (adopted December 10, 1996 and formally reviewed and accepted by the Governing Body on January 6, 1997, the “Tower Policy”). It is noted that it is not necessary to find all or a majority of the factors favorable or unfavorable, but, based upon the Application, it can be determined that one or more factors are more significant or critical than the others and the determination would be based on the findings of the critical factors.
2. With respect to the Special Use Criteria, the Governing Body concludes as follows:

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

The Governing Body finds that the location of the monopole appears to meet all the setback requirements of the Tower Policy. The compounds for T-Mobile and other carriers must be 25 feet from the rear property line. The proposed (maximum) monopole height is 145 feet, which is less than the 150 foot maximum height set out in the City's Tower Policy.

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

The Governing Body finds that the Application would adversely affect the area because it would not be in keeping with the character of the neighborhood and would have a detrimental impact on the neighborhood. It would therefore adversely affect the welfare of the public. The Application is counter to the goals of the adopted Village Vision, which encourages preservation and investment. The Application will also discourage property improvements and maintenance.

The Governing Body further finds, for the reasons more thoroughly discussed in Section 3 hereafter (regarding the Tower Policy), that alternative sites appear to be available that are more favorable to meet the Applicant's service needs and that would have a less adverse impact on the welfare or convenience of the public.

3. ***The proposed special use will not cause substantial injury to the value of other properties in the neighborhood in which it is to be located.***

The Governing Body finds that the Application would negatively and adversely impact the value of other properties in the neighborhood by having a negative and detrimental impact on their property values, and thus causing substantial injury. In addition, approving a tower at this location would also deter reinvestment and the maintenance of adjacent properties in the neighborhood, such as currently being undertaken in the neighborhood. The property nearby is primarily zoned for single family

uses, and the Governing Body furthermore finds the Application as proposed to be incompatible with such zoning and uses.

4. ***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 that this special use will not dominate 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 so dominate the immediate neighborhood, consideration shall be given to: (a) the location, size and nature of the height of building structures, walls and fences on the site; and (b) the nature and extent of landscaping and screening on the site.***

The Governing Body finds that the location and size of the proposed tower and equipment and the nature and intensity of the Application would dominate the immediate neighborhood and inhibit the desire of others to develop and use the neighboring properties. Although Faith Evangelical Lutheran Church is on a site of approximately three acres, the surrounding neighborhood is totally developed with residential properties. The proposed monopole of 145 feet in height will obviously be the tallest structure in the area. Accordingly, the proposed monopole would dominate the immediate neighborhood. The primary reasons for such dominance are because of the size and nature of the height of the structure along with the lack of integration into the adjacent structure, and because of the existing character of the neighborhood. The proposed structure would also have a negative impact on the residential redevelopment and substantial remodeling, such as currently being undertaken in the neighborhood.

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

The Governing Body finds that additional off-street parking will not be necessary for this particular use because there will be no permanent staff on the site. Service people will be available on site periodically to maintain

maintain the equipment, and of course, when installation occurs. The existing church parking lot that is provided on the site will be adequate for this need.

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

The Governing Body finds that water, sewer and power services to this site should be adequate because there will be no permanent occupancy by people. There will be a need for a gas line if the standby generator is approved (by separate Site Plan approval). It should be noted however that the area may have additional impervious surface and that a storm drainage master plan should be prepared and submitted to Public Works for their review and approval.

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

The Governing Body finds that existing church parking lot will be used for access will be more than adequate to handle the traffic generated by this use.

8. Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing process, obnoxious odors, or unnecessary intrusive noises.

The Governing Body finds that the proposed tower and equipment installation will not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that will affect the general public. If approved under the Site Plan approval, the proposed generator should provide adequate sound attenuation.

9. Architectural style and exterior materials are compatible with such style and materials used in the neighborhood in which the proposed structure is to be built or located.

The Governing Body finds that the Application is not compatible with the architectural style and materials used in neighborhood. A monopole structure at the proposed height of 145 feet and the associated related

equipment to be situated on the site for the proposed multiple carriers is not compatible with the architectural style or residential character of the neighborhood. The Governing Body further finds that, if a structure at the site is to be utilized for communication purposes, it should be architecturally integrated into the existing structure of the church, or otherwise be better masked or camouflaged so as not to impact the surrounding residential area.

The Governing Body further concludes and finds that the negative attributes of Special Use Criteria numbers 2, 3, 4 and 9 as discussed above are more significant or critical than the other criteria, and therefore that the Application fails to meet the required criteria for a Special Use Permit.

3. With respect to the Tower Policy criteria, the Governing Body concludes and finds that the Applicant has failed to fully address the ability or inability of the identified alternative sites to host the proposed tower, or to fully show that the alternative sites are not available. Specifically, the Applicant did not sufficiently follow up and either confirm or rule out the availability of a sufficient wireless facility at either McCrum Park or Nall Baptist Church – both sites being topographically superior to the proposed site. In addition, the Applicant never provided technological data to show that the Fire Station and Village Presbyterian sites (both of which are available) can no longer serve its coverage needs. Based on the documentation provided by the Applicant concerning the alternative sites, and the subsequent availability of other sites, including sites that the Applicant admits are topographically superior, the Governing Body further finds that other more favorable sites are available to meet the Applicant's service needs and/or that the Applicant has failed in its due diligence to pursue said alternative sites.
4. The Telecommunications Act of 1996 expressly reserves the authority of local governments over decisions regarding the placement, construction, and modification of personal wireless service facilities, subject to the certain limitations, including but not limited to, the following: (a) such regulation

cannot unreasonably discriminate among providers of functionally equivalent services; (b) such regulation cannot prohibit or have the effect of prohibiting the provisions of such services; (c) the application must be acted on within a reasonable period of time; (d) any decision to deny a request to place, construct or modify such facilities must be in writing and supported by substantial evidence contained in the written record; and (e) no decision can be made on the basis of any alleged or perceived environmental effect of radio frequency emissions to the extent such facilities comply with the FCC's emission standards. With respect to all of the same, the Governing Body finds that the application of existing state and local zoning and land use regulations to the Application was appropriate, and was consistent with the parameters of the Telecommunications Act of the 1996.

5. The Governing Body concludes, based upon the facts, issues, and evidence received and considered, and under both the Special Use Criteria and the Tower Policy, that the Application should be denied. Therefore, by a vote of 8 to 4 of the Governing Body, Special Use Permit Application No. PC2009-06 was denied on May 4, 2009, subject to the adoption of this written record.

6. The Governing Body, by Resolution _____ on May 18, 2009 adopted this written record as the basis for its denial of Special Use Permit Application No. PC2009-06 in accordance with the Telecommunications Act of 1996.

EXHIBIT A



BWR | Right in the Center

STAFF REPORT

TO: Prairie Village Planning Commission
FROM: Ron Williamson, BWR, Planning Consultant
SUBJECT: PC 2009-06: Request for a Special Use Permit for a Wireless Communication Facility to be Located at Faith Evangelical Church, 4805 W. 67th Street
DATE: April 7, 2009 **BWR Project #2009-0024.01**

BACKGROUND INFORMATION:

The first application on this site was for a 120 feet tall monopole located in the southwest corner of the site. The Planning Commission held a Public Hearing on April 1, 2008 and recommended denial of the Special Use Permit to the City Council based on four major issues:

1. Co-location with other providers had not been adequately addressed.
2. The 120' height was a major objection of the neighbors.
3. The availability of the alternative locations was not recently confirmed and propagation maps needed to be provided for potential locations.
4. The monopole equipment compound needed to be integrated into the existing church building rather than being an island location in the parking lot. (Some thought the tower should actually be integrated into the building such as a steeple or bell tower.)

Because the action was for denial of the Special Use Permit, the Site Plan was not considered by the Planning Commission. The applicant withdrew the application June 2, 2008, at the City Council meeting and re-filed an application for a shorter monopole along with an equipment compound.

The application was re-filed for an 85 feet high monopole. The proposed monopole had four antenna locations: 80 feet; 70 feet; 60 feet; and 50 feet. T-Mobile would use the top two locations. T-Mobile had the trees surveyed in the area and they are 47 feet – 67 feet in height. This means that the bottom two locations on the monopole would have little if any coverage for additional carriers. The consequences of this were that if other carriers need to provide service in this area more towers will need to be constructed. This raised the issue of fewer taller monopoles versus more shorter monopoles. The equipment compound and monopole were relocated adjacent to the west end of the church and the compound also included an equipment area for an additional carrier.

The Planning Commission held a Public Hearing on the new application on July 1, 2008 and recommended denial based on the findings that the proposed Special Use Permit would adversely affect the welfare or convenience of the public; it would cause substantial injury to the value of other properties in the neighborhood; the architectural style and materials are not compatible with those found in the neighborhood; the location is poor because of the topography of the site; and the inability to provide collocation. Again, since the motion was for denial, the Site Plan was not considered by the Planning Commission. The City Council considered the recommendation of the Planning Commission on July 21, 2008 and denied the application.

Most of the wireless communications facility applications in Prairie Village have either been the installation of antennae and their associated equipment cabinets on buildings or water towers. There are only two towers one is located at City Hall, which is 150 feet in height and the other is at the Fire Station at 90th and Roe Avenue which is 100 feet in height. The Telecommunications Act of 1996 established some parameters when considering a wireless facility and the primary points are as follows:

- A city shall not discriminate among providers.
- A city shall not prohibit or have the effect of prohibiting the installation of wireless services.

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- An applicant must be acted on within a reasonable period of time.
- A decision to deny an applicant for wireless communications must be in writing and supported by substantial evidence.
- The Federal Communications Commission regulates the environmental efforts of radio frequency emissions and a city cannot consider this issue as approving or denying an applicant.

COMMENTS:

The Staff has reviewed the application based on the City's existing policy for wireless communication towers (a copy is attached) as well as the new wireless communications facility ordinance. It should be noted that this application was filed prior to adoption of the new ordinance so it technically is only required to be considered under the policy.

The proposed wireless communications facility is for a 145-foot monopole and equipment compound with potential for four carriers. T-Mobile is the applicant and will use the top two canisters which center at 130 feet and 140 feet. T-Mobile uses two canisters because one is for voice communication and the other is for data. AT&T has requested two lower canisters, one centered at 85 feet and the other at 95 feet. Sprint has also requested a location at 130 feet and needs only one canister. Sprint is requesting the same height T-Mobile plans to use so this will need to be worked out among the carriers. There is a possibility for a fourth carrier at the 105 feet level, but it is not known who that will be. Since AT&T is at the 85 foot height, the monopole could be reduced five feet in height and the canisters for T-Mobile and Sprint lowered five feet.

The equipment compound laid out at the base of the monopole will accommodate the T-Mobile needs only and the other users will need to add new walled compounds to accommodate their equipment needs. The proposed T-Mobile compound is 28 feet by 30 feet and includes the monopole and an emergency standby generator as well as their operating equipment.

Standby emergency generators require site plan approval by the Planning Commission so it needs to be addressed as a part of this application. There are some concerns regarding standby generators; one is noise and the other is the source of fuel. The Johnson County Fire District is concerned about multiple installations of standby generators throughout the City and has recommended that they be directly connected to a natural gas line. T-Mobile is the first carrier to submit a request for a standby generator; however, other carriers have made inquiries. It would be preferable to have one generator at a location rather than one for each carrier. This would minimize the negative aspects of a standby generator and reduce the size of the equipment compounds. The applicant has indicated that they have concerns about liability, operation and management when multiple users are involved. Those issues are probably the same with the tower owner. It would seem reasonable that whoever owns the tower would also provide the standby generator for all carriers at the location and would limit their liability by contract.

The applicant held a public information meeting for the neighbors on March 12, 2009 and a number of people attended. The neighbors asked many questions regarding the application and why this particular location was chosen. The complete summary notes are included for Planning Commission review.

Comments regarding the information submitted are as follows:

1. **Validation Study – A study comparing all potential sites within an approximate ½ mile (one mile in new ordinance) radius of the proposed application area. The study shall include the location and capacity of existing towers, potential surrounding sites, a discussion of the ability or inability of the tower site to host a communications facility and reasons why certain sites were excluded from consideration. The study must demonstrate to the City's satisfaction that alternative tower sites are not available due to a variety of constraints. It must also contain a statement explaining the need for the facility in order to maintain the system and include a map showing the service area of the proposed as well as any other existing and proposed towers.**

If the use of current towers is 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 owner; topographical limitations; adjacent impediments blocking transmission; site limitations to tower construction; technical limitations of the system; equipment exceeds structural capacity of facility or tower; no space on existing facility or tower; other limiting factors rendering existing facilities or towers unusable.

The applicant has requested approval of this specific location in order to provide both improved coverage and capacity for the residences and vehicular traffic in this portion of Prairie Village. A current gap exists in desired level of service in this area. Initially coverage was the primary concern for carriers, but with the increased use of wireless communications for internet, e-mail, texting, etc., capacity has also become an issue. The applicant has indicated that calls made on the T-Mobile system in this geographic area are susceptible to signal fade, with the end result that a call might be dropped. In-building coverage also is not at an acceptable level. This installation will significantly improve the coverage and capacity which will result in better service to T-Mobile customers.

This location was chosen after a "search ring" was developed and issued by T-Mobile's radio frequency engineering team. The search ring indicates a geographic area in which potential sites may be located that will effectuate the maximum amount of coverage and capacity where service is poor.

Typical considerations in siting communication installations are the ground elevations and clearance above ground clutter, such as buildings or vegetation. In addition, the communications facility must be located in the correct geographical area, to provide continuous coverage to the sites that are indicated on the propagation studies as having poor levels of service.

Typically, site acquisition specialists' first target potential co-location sites that have already been approved within the search ring. This is done in order to minimize the cost of new construction for carriers and in order to meet the spirit and intent of the local regulations that encourage co-location in order to minimize the number of towers in a jurisdiction.

Based upon these considerations, the site selection team reviewed a total of eight locations prior to selecting this location. A brief report on each site was contained in a memo from the applicant dated February 20, 2009, that is a part of this application request.

The following sites were identified by T-Mobile as candidates to meet their coverage objectives and the text was extracted from their application.

1. Woodson Avenue Bible Church (67th & Woodson) – The SSC Site Acquisition Consultant worked diligently with the Woodson Bible Church for a year negotiating a lease and working to find a suitable place on the property for a cell site. After much deliberation and many meetings, the Site Acquisition Consultant delivered executable leases to the church and was thereafter advised that the congregation was not in favor of the site and they did not want to move forward with the project. Negotiations were ended in approximately June of 2006
2. St. Michaels & All Angels (67th & Nall) – The SSC Site Acquisition Consultant approached St. Michaels church in June of 2005. There is no place on the building that would offer enough height to attach antennas inside the structure. There is not enough room around the grounds close to the structure to add a bell tower. St. Michael's representatives advised the Site Acquisition Consultant the church was not interested in negotiating a lease.
3. Nall Baptist Church (67th & Nall) – The SSC Site Acquisition Consultant approached this candidate in late 2005 and attempted to negotiate a lease. During this time period, the church was in the process of expanding their facilities. T-Mobile proposed to add additional height to a Bell tower that the church proposed to add to its facility. When the church's architect looked at the proposal, he did not think that it fit into the overall scheme of the project and the church decided not to move forward with a lease. Moreover, there was also concern with angering some

of the neighbors who were already opposed to the increased height of the proposed Bell Tower that has since been installed.

The City recently requested T-Mobile to re-look at this location for placement of a new monopole on the eastern portion of this property that would be capable of co-location instead of a facility at Faith Evangelical Church (Candidate 5 below) and was told that it would not be an acceptable candidate. Based on the City's interest for co-location, this site has been ruled out as a viable candidate.

4. 69th & Roe PV Water Tank (69th Terr. & Roe) – This was the first candidate that T-Mobile pursued in 2006. After being advised of failed negotiations between Cingular and the City of Prairie Village, T-Mobile did not believe a site at this location was feasible. Further, it was determined by Water One that it was not certain the water tank would remain on the property; it may be decommissioned. The City recently requested that T-Mobile revisit with Water One to determine when the water tank will be removed and whether that location would be suitable for a new monopole structure capable of co-location. Based on conversations with Mike Armstrong, General Manager for Water One, there is no money in the 2009 Budget to remove the water tank and it is not known when the tank may be removed. Since this is uncertain, this site was ruled out as a viable candidate by the applicant.
5. Faith Evangelical Church (67th & Roe) – This is the site that has been leased and application is for a 145-foot stealth pole. The new height is the minimum height necessary to prove for co-location for three or more carriers. See attached AT&T Mobility and Sprint co-location letters of interest.
6. Homestead Country Club (Homestead & Mission) – The Homestead Country Club was approached by SSC and a different Site Acquisition Consultant on two different occasions dating back to 2002. A flagpole was proposed at the entrance of the Club and a light standard at the tennis courts. Ultimately both proposals were rejected by Homestead Country Club. After talking to T-Mobile RF Engineer, Luke Willenbring, this site is now considered a candidate for another search ring and would not cover the intended area described in the subject SARF.
7. Village Presbyterian Church (67th & Mission) – This site is in a different coverage area for T-Mobile (to the east) and would not cover the intended area described in the subject SARF.
8. Johnson County Fire District No. 2 (63rd & Mission) – This site is in a different coverage area for T-Mobile (to the east) and would not cover the intended area described in the subject SARF.

The applicant has submitted a propagation study and coverage report that shows the existing coverage without this site and shows the proposed coverage with this site indicating how the coverage would be improved for the users in this location.

2. **Photo Simulation – A photo simulation of the proposed facility as viewed from the adjacent residential properties and public rights-of-way.**
Photo simulations have been included showing the proposed stealth tower as viewed from the north, south, west and east. The houses to the south on 68th Street are about 20 feet higher in elevation and will see that portion of the tower that extends above the tree line. The trees in this area are approximately 50 feet – 70 feet tall.

3. **Co-Location Agreement – A signed statement indicating the applicant’s intention to share space on the tower with other providers.**
The proposed installation is designed to accommodate four carriers. T-Mobile included a statement in its project description indicating that it intends to share space with other carriers. This should be a condition of approval if the location is approved. Because of the proposed height of the monopole, co-location is feasible.
4. **Copy of Lease – A copy of the lease between the applicant and the land owner containing 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 tower facility in the event that the leaseholder fails to remove it upon abandonment.**A copy of the lease agreement between T-Mobile and the Faith Evangelical Lutheran Church shall be submitted as a condition of approval. The agreement should contain an abandonment clause and a co-location clause.
5. **Site Plan – A site plan prepared in accordance with Chapter 19.32 Site Plan Approval.**
The Site Plan submitted generally includes all required information and a complete review is included later in this Staff Report; however, there are some general comments as follows:
 - No landscape plan has been submitted with this application. A landscape plan will need to be prepared and submitted for staff review and approval.
 - The plan needs to note that the brick veneer on the wall is to match the existing church building and the compound needs to be integrated into the existing building. Staff should review and approve the actual brick color before it is installed
 - The Site Plan submitted would be adequate for T-Mobile. Any other carriers would need to submit a Site Plan for their installation for review and approval by the Planning Commission, particularly relative to the design of the equipment compounds.
6. **Transmission Medium – Description of the transmission medium that will be used by the applicant to offer or to provide services and proof that applicant will meet all federal, state, and city regulations and laws, including but not limited to FCC regulations.**
The applicant has been allocated a radio frequency spectrum by FCC and is required to meet all state and federal regulations prior to obtaining a building permit from the City.
7. **Description of Services – Description of services that will be offered or provided by the applicant over its existing or proposed facilities including what services or facilities the applicant will offer or make available to the City and other public, educational and governmental institutions.**
T-Mobile is one of the nation’s largest wireless service providers and this proposed installation will be part of their digital telephone network that will ultimately provide nationwide coverage. This particular installation is to provide adequate coverage to the local residents, and traveling public in this area. No special services are being offered or made available to the public.
8. **Relocated Items – Indication of the specific trees, structures, improvements, facilities and obstructions, if any, that the applicant proposed to temporarily or permanently remove or relocate.**
No trees will be removed, but the equipment compound will be located within a grassed area.
9. **Construction Schedule – Preliminary construction schedule including completion dates.**
T-Mobile is unable to specify a construction schedule until such time as a Special Use Permit is granted. Construction is a two to three month process.

10. **Qualifications and Experience – Sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding communications or utility facilities and services described in the application.**
T-Mobile has many cell sites that have been installed throughout the metro area and has an approved "Radio Frequency Spectrum" from FCC. They have an existing site in Prairie Village at the Delmar Water Tower and have submitted a copy of their FCC License.
11. **All Required Governmental Approvals – Information to establish the applicant has obtained all government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.**
There is no information included with this application that indicates the existence of any other governmental approvals required, except the licensing of FCC. This tower is approximately 145 feet in height and is in location that would not require approval from FAA. As a condition of approval, T-Mobile should be required to meet all federal, state and local regulations.
12. **Miscellaneous – Any other relevant information requested by City staff.**
Staff did not request any additional information relevant to this application.
13. **Copies of Co-Location Letters – Copies of letters sent to other wireless communication providers notifying them of the proposed request and inquiring of their interest to co-locate.**
The application includes a letter from AT&T expressing interest to place antennas centered at 85 feet and 95 feet with a 10 feet by 16 feet equipment box. The Nall Avenue Baptist Church would not serve their needs. Sprint also expressed an interest for co-locating at 130 feet with a 10 feet x 15 feet equipment box. The Nall Avenue Baptist Church would also meet their needs. The applicant has contacted other carriers who also have expressed interest, but has not submitted other specific requests from carriers.

NEW ORDINANCE COMPARISON

The primary difference in the Policy and the Ordinance is the setback requirement.

The new ordinance would require the monopole to setback 145 feet (the height of the monopole) from the property lines unless a waiver or reduction were granted by the City Council. This monopole sets back approximately 90 feet from the west property line; 82 feet from the south property line; 164 feet from the north property line and 310 feet from the east property line.

FINDINGS OF FACT:

The Planning Commission shall make findings of fact to support its recommendation to approve, conditionally approve or disapprove the Special Use Permit. In making its decision, consideration should be given to any of the following factors that are relevant to the request:

1. **The proposed special use complies with all applicable provisions of these regulations including intensity use regulations, yard regulations, and use limitations.**
The location of the monopole appears to meet all the setback requirements of the policy. The compounds for T-Mobile and other carriers must be 25' from the rear property line. The proposed monopole is 145 feet in height, which is less than the 150 foot maximum height set out in the City's policy and new ordinance.

- 2. The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.**
The installation of the tower should be a benefit to the community in that it would improve coverage and capacity for users in immediate neighborhood as well as the travelling public. Several e-mails from area residents have been submitted supporting the installation. On the other hand, immediate neighbors have expressed opposition in that the installation would adversely affect their welfare because it would negatively affect the aesthetics and character of the neighborhood. Several letters are attached from area residents requesting denial of the application.
- 3. The proposed special use will not cause substantial injury to the value of other properties in the neighborhood in which it is to be located.**
Those opposing the cell tower have stated in their letters that the monopole would adversely impact property values. No expert testimony to that issue has been submitted. In order to find that the facility would cause substantial injury, there needs to be technical or expert documentation.
- 4. 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 that this special use will not dominate 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 so dominate the immediate neighborhood, consideration shall be given to: (a) the location, size and nature of the height of building structures, walls and fences on the site; and (b) the nature and extent of landscaping and screening on the site.**
The Faith Evangelical Lutheran Church is on a site of approximately three acres. It also should be pointed out that the neighborhood is totally developed; the closest residence which is located to the west is approximately 116 feet away from the proposed monopole and therefore, not immediately adjacent to the installation itself. The monopole, however, is 90 feet from the west property line. There is a significant amount of vegetation on the site that screens the facility from the south, but additional plant materials may need to be added as part of this application. The compound is attached to the church building which helps to integrate it into the existing development. The proposed monopole is 145 feet in height which obviously will be the tallest structure in the area.
- 5. Off-street parking and loading areas will be provided with standards set forth in these regulations, and areas shall be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.**
Additional off-street parking will not be necessary for this particular use because there will be no permanent staff on the site. Service people will be available on site periodically to maintain the equipment, and of course, when installation occurs. The existing church parking lot that is provided on the site will be adequate for this need.
- 6. Adequate utility, drainage, and other such necessary facilities have been or will be provided.**
Water, sewer and power services to this site should be adequate because there will be no permanent occupancy by people. There will be a need for a gas line if the standby generator is approved. It should be noted however that the proposed installation may have additional impervious surface and that a storm drainage master plan will need to be prepared and submitted to Public Works for their review and approval.
- 7. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent hazards and to minimize traffic congestion in public streets and alleys.**
Existing church parking lot will be used for access will be more than adequate to handle the traffic generated by this use.

8. **Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing process, obnoxious odors, or unnecessary intrusive noises.**
The proposed tower and equipment installation will not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that will affect the general public. The proposed generator shall provide adequate sound attenuation.
9. **Architectural style and exterior materials are compatible with such style and materials used in the neighborhood in which the proposed structure is to be built or located.**
The architectural style and materials are typical of those used for utility type electrical poles and monopoles that are frequently found in urban neighborhoods. This monopole will have more of the appearance of a flagpole and no antennas will be visible from the exterior. The screening wall surrounding the equipment compound at the base of the tower will be brick and the brick will match the building on the site. Having the compound attached to the church will improve the appearance of the site and present a more compatible site plan. The applicant also has indicated they are willing to cover the equipment compounds with a roof or roofs to that they will appear more as additions to the existing structure. This will help screen the equipment compounds from the residents on 68th Terrace. The proposed monopole is a bronze color and the Planning Commission has indicated a preference for a hot dipped galvanized finish.

RECOMMENDATION:

After a review of the proposed application in relation to the nine factors previously outlined, the Planning Commission shall make findings of fact and 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 the approval of the Special Use Permit as may be necessary to reduce or mitigate any potentially injurious effect on other property in the neighborhood. If the Planning Commission recommends approval of the Special Use Permit to the City Council, it is suggested that the following conditions be included:

- 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, the applicant shall resubmit the application to the Planning Commission and shall demonstrate to the satisfaction of the Planning Commission that a good faith effort has been made to cooperate with other providers to establish co-location at the tower site, that a need still exists for the tower and that all the conditions of approval have been met. The application may then be extended for an additional ten years.
- 2) This Special Use Permit will be approved for four carriers and each carrier will be required to submit a Site Plan to the Planning Commission for their installation.
- 3) The monopole shall maintain a hot dipped galvanized finish and be reduced to 140 feet in height.
- 4) The tower shall not be lit, but security lighting around the base of the tower may be installed provided that no light is directed toward an adjacent residential property.
- 5) The maximum height for this communication tower shall be 145 feet plus a lighting rod not exceeding four feet.
- 6) If the tower is not operated for a continuous period of 12 months it shall be considered abandoned and the owner of such tower shall remove the same within 90 days after receiving notice from the City. If the tower is not removed within that 90 day period, the governing body may order the tower removed and may authorize the removal of such tower at the owner's expense.

- 7) The construction plans for the tower shall be prepared and sealed by a structural engineer licensed in the State of Kansas. Construction observation shall be provided by the design engineer provided that said engineer is not an employee of the tower's owner or the tenant. If the design engineer is an employee of the owner and independent engineer will be required to perform construction observation.
- 8) Adequate screening of the equipment cabinets located at the tower base shall be provided by an eight foot solid brick wall attached to the church and a roofed structure. The brick shall match the brick of existing church building. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
- 9) The applicant shall submit a Stormwater Management Plan for review and approval of Public Works.
- 10) The applicant shall have a structural inspection of the tower performed by a licensed professional engineer prior to every renewal and submit it as a part of the renewal application.
- 11) Any wireless communication facility, tower or antenna which is not 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 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 notification of noncompliance unless the noncompliance is corrected. If the Special Use Permit becomes null and void, the applicant will remove the facility tower antenna and all appurtenances and restore the site to its original condition.
- 12) The permittee shall keep the property well maintained including maintenance and replacement of landscape materials; free of leaves, trash and other debris; and either regularly cleaning up bird droppings or installing anti-perch devices that prevent birds from perching on the installation.
- 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 facility, tower or antenna 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, all wireless communication facilities, towers and antennae shall be constructed and maintained in compliance with all applicable local building codes and the applicable standards for such facilities, towers and antennae that are published by the Electronic Industries Alliance.
- 15) All wireless communication facilities, towers and antennae 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 all facilities, towers, and antennae 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) It shall be the responsibility of any permit holder to 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 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 tower facility in the event that the leaseholder fails to remove it upon abandonment.

- 18) Information to establish the applicant has obtained all other government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.

SITE PLAN

If the Planning Commission recommends favorably on the Special Use Permit, then it must also review and approve the Site Plan.

The Planning Commission shall give consideration to the following criteria in approving or disapproving the site plan:

- A. The site is capable of accommodating the buildings, parking area, and drives for the appropriate open space and landscape.**
The site is approximately three acres in area with 410 feet of frontage on 67th Street and 365 feet of frontage on Roe Avenue. The site is not a rectangle, however, because the south property line has an irregular alignment. The site adequately provides for the church buildings, parking and circulation. The footprint proposed equipment compounds is approximately 2,000 square feet which can easily be accommodated on the site. The south end of the lot has natural tree cover that will provide screening from the south.
- B. Utilities are available with adequate capacity to serve the proposed development.**
The property is currently served with all utilities and the proposed improvements will not create the demand for additional utilities. No additional needs are contemplated for water and sewer services.
- C. The Plan provides for adequate management of stormwater runoff.**
The site sheet drains from north to a ditch along the south property line. The proposed project will create additional impervious areas and a Stormwater Management Plan that shows how stormwater will be handled will need to be prepared and submitted to Public Works for review and approval.
- D. The plan provides for safe and easy ingress, egress, and internal traffic circulation.**
The existing church parking lot will be used for access to the proposed wireless communications installation and it is more than adequate to handle the traffic generated by this use.
- E. The plan is consistent with good planning and site engineering design principles.**
The Site Plan appears to be well thought out and the proposed project has been integrated into the existing building on the site. The parking and circulation on the site are not affected and the walls surrounding the equipment compounds will be a matching brick with the existing building.
- F. An appropriate degree of compatibility will prevail between the architectural quality of the proposed building and the surrounding neighborhood.**
There really are two parts of this use: the monopole and the equipment compounds. The monopole will have the architectural style of a utility pole that are frequently found throughout the area however it will be much taller at 145 feet. It will be a hot dipped galvanized finish that will blend somewhat with the sky. All equipment compounds will be screened by a brick wall that matches the brick of the church and will be covered by a roof so that they appear more as additions to the building. These roofed equipment compounds will help screen from the higher properties to the south.
- G. The plan represents an overall development pattern that is consistent with the comprehensive plan (Village Vision) and other adopted planning policies.**
The Village Vision does not address wireless communication facilities or other utilities in specific terms. However, the overall strategy of Village Vision is to improve the quality of life in Prairie Village. It can be argued that wireless communications facilities detract from the quality of life

because of their appearance while on the other hand some would argue that in today's world, telecommunications is a necessity and must be provided in order to meet the needs of the residents. The Village Vision also encourages a variety of housing choices to attract young people to move into the City. This younger generation does not use landlines and one of the factors that are needed to attract them is high quality communication.

RECOMMENDATIONS:

It is the recommendation of the Staff that if the Planning Commission approves the Special Use Permit that it also approve the Site Plan subject to the following conditions:

1. The applicant shall comply with all the conditions of approval for the Special Use Permit.
2. That the applicant shall provide plans and elevations to Staff for the structures that will enclose the equipment compounds for review and approval of design and materials.
3. That the applicant provide a landscape plan for staff review and approval.
4. That the applicant propose Stormwater Management Plan to be submitted to and approved by Public Works.
5. That Site Plan approval by the Planning Commission be required for all additional carriers.

EXHIBIT B

**PLANNING COMMISSION MINUTES
MEETING OF APRIL 7, 2009**

ROLL CALL

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

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; Steve Horner, Assistant City Attorney; and Joyce Hagen Mundy, City Clerk/Planning Commission Secretary.

APPROVAL OF MINUTES

Marlene Nagel moved the approval of the minutes of March 3, 2009 as submitted. The motion was seconded by Dirk Schafer and passed by a vote of 4 to 0 with Randy Kronblad abstaining due to his absence on March 3.

Bob Lindeblad stated, as a member of Faith Lutheran Church, he would be recusing himself from participation in the consideration of application PC2009-06. Therefore, it is necessary for the Commission to elect a Temporary Chairman for this evening's meeting. Marlene Nagel nominated Randy Kronblad to serve as temporary Chairman. The nomination was seconded by Dale Warman and passed unanimously.

Mr. Kronblad assumed the Chair and Mr. Lindeblad left the meeting.

PUBLIC HEARINGS

Randy Kronblad reviewed the rules of procedure to be followed for the public hearing and subsequent consideration of PC2009-06.

**PC2008-06 Request for Special Use Permit for Communications Tower and related equipment structure
4805 West 67th Street**

Curtis Holland, with Polsinelli Shughart, 6001 College Blvd, Suite 500, Overland Park, presented the application on behalf of T-Mobile. Also in attendance for the applicant were Garth Adcock, Real Estate & Zoning Manager for T-Mobile; Luke Willenbring, RF Engineering Manager for T-Mobile; Trevor Wood with Selective Site Consultants and Rev. Dr. Peter Rehwaldt, Interim Pastor at Faith Lutheran Church.

Mr. Holland stated this application is the third application for a wireless facility to serve T-Mobile at the southwest corner of 67th and Roe. It is the fourth attempt by a carrier to locate a facility to serve this area, with Cingular Wireless submitting an application for a facility at 69th Terrace & Roe (McCrum Park) in 2005. (*Note - the 2005 Cingular application was voluntarily withdrawn before any action was taken by the City.*) Mr. Holland stated all major carriers providing cellular service have identified general gaps in coverage as well as gaps in in-building coverage in the immediate area of 67th & Roe.

For the benefit of the new Commission members, Mr. Holland reviewed the process followed by cellular providers in selecting a site location.

- RF engineers analyze where in a geographic area they need to provide the desired coverage and then develop a search ring geographic map of the area.
- A site acquisition team then searches that geographic area for possible locations following an established priority of criteria with the top priority for all carriers being to locate on an existing structure or to co-locate. Creating a new structure is the last alternative chosen by providers.
- If the coverage gap is in a totally residential area, they first seek out parks, churches, golf courses and other non-residential uses in residential areas so the impact can be mitigated. He noted the towers need to be of significant height as the antenna operates in direct line of sight and therefore have to be placed above trees and other buildings. Mr. Holland noted this area is both residential and heavily treed with trees from 40 feet to 70 feet in height. Leaves also cause radio signal alteration.
- Once possible sites are identified, the providers need to reach an agreement with the property owner for the use of their property.

Curtis Holland displayed a map of the search area identified and reviewed the following the potential sites they considered for their application:

- Woodson Avenue Bible Church (67th & Woodson)
- St. Michaels & All Angels (67th & Nall)
- Nall Avenue Baptist Church (67th & Nall)
- Water Tower at McCrum Park (69th Terrace & Roe)
- Faith Evangelical Church (67th & Roe)
- Homestead County Club (Homestead & Mission)
- Village Presbyterian Church (67th & Mission)
- Johnson County Fire District #2 (63rd & Mission)

Mr. Holland noted all sites were considered and T-Mobile entered into significant negotiations with three of the property owners, and Faith Lutheran Church agreed to enter into a lease agreement.

Curtis Holland noted after Application two was denied by the City Council, T-Mobile filed an appeal in the District Court of that action that is still pending.

Mr. Holland showed a photograph of the site and identified the proposed location of the first application, a proposed 120-foot stealth monopole on the south property line with an equipment cabinet built at the base of the cabinet. This location met with resistance from the neighbors in close proximity and the Planning Commission recommended denial. Following the recommendation T-Mobile re-evaluated their

application based on what they heard (proposed pole was too close to property line and too tall), and withdrew the application. A second application was submitted reducing the height to 85 feet and relocating the facility adjacent to the west side of the Church. This application was submitted as a compromise even though it would be less effective but it would still have a positive impact on the quality of service provided. This application was recommended for denial by the Planning Commission and then denied by the City Council.

Curtis Holland stated that during the appeal process, the Court ordered mediation. T-Mobile was directed to visit with all of the other carriers to determine: whether they also had a need in this area; if this location would be a potential site for co-location; and what would be the minimum height they would need to address their coverage needs.

They have received letters of intent to co-locate from Cingular (AT&T) for two canisters at a requested height of 85 feet to 95 feet, and from Sprint at a requested height of 130 feet. Mr. Holland stated that other providers expressed interest, but did not submit letters of intent. This attests to the need for coverage in this area. This location and application can provide service to multiple providers. T-Mobile was asked to provide a facility at the minimum height to include as many carriers as possible.

Mr. Holland stated since T-Mobile is constructing the facility they want to place their antennas (2 canisters) in the highest positions in order to achieve the best coverage for their customers. Therefore, they are requesting a 145-foot monopole with the capability of providing service for four providers. They did not change the design of the facility. They are proposing a monopole with all antennas located within the pole. Mr. Holland showed photo simulations of the proposed monopole from all directions initially at 85 feet; and later at 145 feet. The proposed pole is to be painted a brownish copper to blend with the existing church structure.

Mr. Holland noted the applicant had submitted a certified disk with copies of the two previous applications. In closing, Mr. Holland stated they have done their best to try to work out a facility that would meet the goals and desires of the City and attempts to address the neighborhood issues by moving the proposed pole off the south property line. He added the equipment cabinet will be covered to have the appearance of a building and landscaping will be provided as required by the City to buffer the view from the neighboring residents.

A proximity analysis study by Integra Realty Resources of the impact of cellular facilities on neighboring property values was also submitted with the application. The study found there was no negative impact on neighboring property values. Mr. Holland stated there is a large amount of silent support for this facility and submitted for the record a number of e-mails received from T-Mobile customers supporting this facility.

Randy Kronblad asked if Mr. Holland had received and agreed with the eighteen conditions stated in the staff recommendation. Mr. Holland responded they had received the report and are agreeable with the conditions recommended by Mr. Williamson, the City's Planning Consultant.

Dale Warman confirmed the proposed 145-foot height would be adequate for four carriers. Mr. Warman asked if the application was denied, would the City likely receive requests for similar structures in this area. Mr. Holland responded if a 130-foot pole is approved it is probable that one or more of the other carriers would not be able to use this facility and would be looking at this or other locations in this area. He stated any new facilities will need to be at sufficient height due to the mature trees in the area. If a structure was approved for 120 feet or less, you could have requests to amend the permit for a taller tower or pole extension. If nothing is approved, there are multiple carriers needing coverage in this area so there will likely be additional requests made for sites in this area.

Dirk Schafer asked if the 145-foot height could be lowered. Mr. Holland responded that each carrier's antenna height varies as it is dependent on where existing facilities are located as they work together to submit signals, and it also depends on the technology and engineering platforms used by the carrier. It is very common for carriers to have antennas at different heights at the same location. They are relying on the information provided by Sprint and AT&T on their height needs. It would be possible to have four carriers, and definitely could have the three carriers, at the 145-foot height proposed.

Dirk Schafer asked Mr. Holland to quantify their silent support. Mr. Holland responded he is submitting an additional 30 or so e-mails from T-Mobile customers to the 200 submitted during the earlier applications.

Marlene Nagel asked if they had revisited potential sites for this application or was the information presented based on past discussions. Mr. Holland stated the only site they were able to lease is the site before the Commission for consideration. They had discussions with all of the property owners for the locations listed in the report as part of the new application. Mr. Holland reviewed the site map again, noting the three sites shown on the right are outside of the search area. Nall Avenue Baptist and McCrum Park locations have been revisited. There is not sufficient room on the St. Michael's property. They did not revisit the Bible Church because they received a firm no initially, and after discussions with other carriers this site does not have the potential for co-location.

The Nall Avenue Baptist site was also of interest to Sprint for co-location, but was not for AT&T and the other carriers they spoke to. Agreement could not be reached with WaterOne for placement on their tower at McCrum Park because the tower is planned to be removed when budget allows, but there is no current timetable. Given what is known, the proposed site is not only the preferred site, but the only site.

Marlene Nagel noted that in earlier applications it was stated that the Fire District site was an option and now it is not. When and why have the boundaries changed? Mr. Holland responded that there was some confusion about this site, but their engineers never felt that this site was suitable to provide coverage for this area; however, it could be used to provide coverage in another search area. This is the same with the Village Presbyterian and Homestead sites.

Marlene Nagel asked about locating on commercial property in the Prairie Village Shopping Center. Mr. Holland stated if that location would serve this area, if it could be leased and if an agreement could be worked out, they would, as they prefer commercial locations over residential areas. However, that location does not meet their needs.

Curtis Holland stated 15% to 20% of telephone customers no longer have a land line and are being supported totally by wireless coverage. The challenge is these services have to be provided to residents where they live and that is in residential areas.

Randy Kronblad asked about the site plan shown on page A-0-3 where you start at the bottom with a centerline at 90 feet. If that is lowered to 80 feet then it would provide AT&T with an 85-foot spot, placing T-Mobile center lines at 125 feet & 135 feet, leaving two slots in the middle - one at 105 feet and one at 115 feet. Sprint would likely then be out as they want 130 feet. Who else is available to co-locate - do we have commitments from any other providers? Mr. Holland responded the diagram was made when they initiated the third application and it wasn't clear where the other carriers he has needed to be at the time. He doesn't agree that Sprint is necessarily out. Although they indicated their desired antenna height, if this is the only option, he believes there might be compromises on their part. He can't disclose the other major carrier he has had discussions with because it has not provided a letter of intent or authorized him to identify it. He noted there are also two new carriers in the market (Cricket & Clearwire) who are building their systems and, although they may not need a facility immediately, he feels they may in the long term.

He understands that height is an issue and noted that T-Mobile identified in the first application where they wanted to be at 120 feet. This would allow for at least one, and maybe another carrier, plus themselves. They presented the 145-foot height in response to the desire they heard to maximize the co-location possibilities. They do not need a 145-foot tower, and the Commission can approve something at a lower height, possibly at 120 feet, as this would still ensure multiple carriers and would be a better height for T-Mobile purposes. Mr. Holland stated it is not their battle to go to 145 feet in order to provide co-location opportunities desired by other providers, although they are willing to do so. It is their battle to secure a facility for T-Mobile and to provide service to their customers. It is up to the City what in the end may be acceptable.

Randy Kronblad asked if T-Mobile could locate lower on the pole allowing Sprint to have their needed 130-foot height and ensuring co-location. Mr. Holland responded if a facility were approved, T-Mobile would take the two highest locations. They have already submitted applications at lower heights. The foundation for the monopole could also be designed to accommodate a taller pole in the future.

He noted that if a facility were approved at a lower height and at a later time Sprint wanted to go on the tower, the existing tower would have to be replaced with a taller tower, taking everyone off-line while the pole was being replaced and T-Mobile would be located on the top of that pole as the owner of the pole.

Randy Kronblad stated one of the significant reasons the application for an 85-foot pole was denied was because it did not allow for co-location which is a requirement of

the City. Mr. Holland disagreed. He noted the pole would be constructed for co-location. The height of the trees nearby dictate and influence whether co-location is possible; other carriers will have the same challenge to provide service in this area and he feels if this was the option, they would attempt to find a solution. He does feel due to the height that co-location at that height is unlikely, but he stated it was not an absolute no. However, he does feel that in lieu of compromising their signal, it is likely that they would make an application for their own facility in the area.

Dale Warman clarified AT&T stated they needed heights of 85 feet and 95 feet, Sprint a height of 130 feet, and that T-Mobile wants the top two positions.

Curtis Holland stated he is comfortable stating a 145-foot pole would accommodate four providers; however, he is not at all comfortable saying an 85-foot pole could serve the needs of a different carrier and provide for multiple carriers. He feels if a pole was approved at 85 feet it is likely that the City would receive additional applications from other providers.

Ron Williamson briefly reviewed the staff report:

Most of the wireless communications facility applications in Prairie Village have either been the installation of antennae and their associated equipment cabinets on buildings or water towers. There are only two towers located in the City; one is located at City Hall, which is 150 feet in height and the other is at the Fire Station at 90th and Roe Avenue, which is 100 feet in height. The Telecommunications Act of 1996 established some parameters when considering a wireless facility and the primary points are as follows:

- A city shall not discriminate among providers.
- A city shall not prohibit or have the effect of prohibiting the installation of wireless services.
- An applicant must be acted on within a reasonable period of time.
- A decision to deny an applicant for wireless communications must be in writing and supported by substantial evidence.
- The Federal Communications Commission regulates the environmental efforts of radio frequency emissions and a city cannot consider this issue as approving or denying an applicant.

The Staff has reviewed the application based on the City's existing policy for wireless communication towers as well as the new wireless communications facility ordinance. It should be noted that this application was filed prior to adoption of the new ordinance so it technically is only required to be considered under the current wireless communication policy.

The proposed wireless communications facility is for a 145-foot monopole and equipment compound with potential for four carriers. T-Mobile is the applicant and will use the top two canisters which center at 130 feet and 140 feet. T-Mobile uses two canisters because one is for voice communication and the other is for data. AT&T has requested two lower canisters, one centered at 85 feet and the other at 95 feet. Sprint has also requested a location at 130 feet and needs only one canister. Sprint is requesting the same height T-Mobile plans to use so this will need to be

worked out among the carriers. There is a possibility for a fourth carrier at the 105 feet level, but it is not known who that will be. Since AT&T is at the 85 foot height, the monopole could be reduced five feet in height and the canisters for T-Mobile and Sprint lowered five feet.

The equipment compound laid out at the base of the monopole will accommodate the T-Mobile needs only, and the other users will need to add new walled compounds to accommodate their equipment needs. The proposed T-Mobile compound is 28 feet by 30 feet and includes the monopole and an emergency standby generator as well as their operating equipment.

Ron Williamson advised the Commission that they can reduce the height of the pole if desired in taking action or place any additional conditions or restrictions. The Staff Report does not address the Integra Study which was received after the staff report was prepared. Mr. Williamson noted the staff recommendation specifies 18 conditions for approval. He noted the findings of fact need to be addressed in the Commission's actions on the Special Use Permit. He added in addition to the request for the Special Use Permit if approved, the Commission must also take separate action on the proposed site plan. Mr. Williamson stated most of the items under the site plan approval are also covered under the Special Use Permit.

Mr. Williamson stated that the staff has asked the carrier to provide a roof over the walled structure, which has not been done in the past. This will give the structure more of the appearance of a building and better screening.

Marlene Nagel confirmed there are no specific setback requirements in the existing policy under which the application is being considered. She noted the plan presented shows the location of the pole 82 feet from the south property line and 90 feet from the west property line. Mrs. Nagel also confirmed if the tower were to fall, it would fall on itself, not on adjacent residences. Mr. Williamson noted the nearest residence is located 116 feet from the tower.

Marlene Nagel asked if it would be better to delay action until the approval of the new "Wireless Communications Facilities" ordinance is adopted. Mr. Williamson responded the City Council tabled the ordinance and directed staff to present additional information on four issues. It is unknown what changes will be made.

Mr. Williamson noted the attendance of Assistant City Attorney Stephen Horner who is well versed in FCC and Telecommunications Regulations and can also address any questions of the Commission.

Randy Kronblad asked if the existing policy stated a minimum number of co-locations required. Mr. Williams stated it does not. Its intent is to encourage co-location whenever possible.

Randy Kronblad called for a five minute recess. Mr. Kronblad reconvened the meeting at 8:30 p.m. and invited the public to speak.

Pat Archer, 4611 West 66th Terrace, former board member Indian Hills Homes Association, also indicated she was active in the former tower application at

Homestead. She expressed concern with this commercial endeavor and the monetary gain to the Church. She does not feel it is appropriate for them to sell out the neighborhood. She has asked if the Commission members had driven around and viewed other towers in the area. Mrs. Archer noted that she did not receive any communication from the carrier regarding this application although she is located only one block away. This commercial endeavor is going to seriously impact the surrounding residential properties.

Mrs. Archer noted that during consideration of the Homestead application it was stated that the Fire District site was not considered because of the unknown health concerns for the children at the neighboring schools. She asked what about the children residing in this neighborhood?

She is upset with this commercial venture taking place in a residential neighborhood and the money being made by the carrier from the co-locating providers and to the Church. This is strictly business and the residential homes surrounding the property will receive no monetary gain, but rather have their property values lowered by the presence of a 145 foot tower. She asked why the commercial property at 63rd and Shawnee Mission Parkway was not considered. How is it that the tower would not work in Prairie Village Shopping Center, but would work a few blocks away. Mrs. Archer felt Mr. Holland's comment about the trees was understated, stating the average tree in Prairie Village is 60 to 90 feet and to go above the trees he does need the requested height - this is not going to get shorter. She questioned if the e-mails presented in support of the tower were from residents, noting there is a difference between supporting this and supporting this when it is in your neighborhood. She is not willing to live under a tower so someone else can make money at their expense. She stated the Commission's job is to help the area grow, but not at other's expense.

Casey Housley, 4900 West 68th Street, quoted "The cell phone tower does not meet the value of the neighborhood and would not fit the character of the neighborhood. Approving this application would tell current and future property owners that Prairie Village is not maintaining its neighborhoods, which would have a detrimental affect on the residents." This is not a quote from a neighboring property owner addressing this or previous applications. It is a quote from Ms. Nagel on the 85-foot application. This application only compounds the problems not addressed in the first two applications. The factors that the Commission should consider are:

- This tower does not fit in this neighborhood.
- Co-location does not make sense in this area because of the height of the pole needed for co-location. This is acceptable in commercial areas. Co-location is a preference from the communications policy, not a criteria for a Special Use Permit. The Commission's first obligation is to follow the nine criteria in the ordinance.

Mr. Housley stated the driving force behind the neighborhood opposition to the applications for a communications tower on this site have been:

- Height of the tower;
- Consistency with the architectural character of the neighborhood; and
- Impact on property values of adjacent property values.

He said co-location is important, but these other factors are more important. Looking at those factors, this application was denied at 120 feet, and at 85 feet, and it should be denied at 145 feet regardless of any pending legal action. This is a 14 story structure, higher than the water tower or the cell tower behind City Hall. It may well be the highest structure in the entire City and located in the heart of a residential neighborhood.

Mr. Housley reviewed a chart he prepared listing the following height comparisons to the proposed structure.

- A Prairie Village Ranch is 21 feet in height.
- The average Prairie Village Home is 25 feet in height.
- The maximum height of a Prairie Village Home is 35 feet in height.
- Faith Lutheran Church is 54 feet in height.
- St. Ann's Tower is 65 feet in height.
- The water tower is 120 feet in height.
- The proposed monopole is 145 feet in height.

If he were coming before the Commission to build a new structure that was 14 stories tall, he is confident that the request would be denied.

It was stated that this tower is necessary because T-Mobile customers are demanding in-home coverage. It is not a God-given right to have cell phone coverage in your home. It is something that some people want, and you are being asked to allow them to do so at other people's expense.

Mr. Housley noted coverage maps at 65 feet or 75 feet have not been shown. He noted the applicant originally said 120 feet was minimum coverage area to allow for co-location, and then it was 85 feet. There are other cell phone towers in this City and in other cities where 65 feet has been the maximum height allowed.

Mr. Housley asked for evidence of alternative site locations. When asked what the status of alternative locations was or if they had been revisited. Mr. Holland responded "We can't lease anywhere else." Follow-up questions need to be asked. He said the residents received an e-mail from Nall Avenue Baptist Church within the last two weeks stating that they would welcome the opportunity to talk with T-Mobile and always have - T-Mobile broke off negotiations. Have they looked at the cemetery at 67th Street? Mr. Holland stated no one wants them in their back yard. These need to be placed where they do the most good for the most people. This location is not at site because this property sits at a low point in the City. If placed at the lowest point in the City, it has to be taller and becomes more offensive and more inconsistent with the existing architecture of the area. This is not a good location for the rest of the City. The FCC does state that you cannot prohibit cell phone communication everywhere; however, local zoning ordinances are specifically preserved by that Act. Cities have the ability to apply criteria and cities across the country are doing so. Mr. Housley referenced several examples of denials by cities that were challenged in court and upheld. He urged the Commission to not let the pending litigation impact their decision. The application has already been denied twice and now they are back seeking an even higher monopole.

In addressing the impact on neighboring property values, Mr. Housley submitted an affidavit by Donald Gossman of Metro Real Estate Services stating cell phone towers are called "visual obsolescence." He acknowledged the Commission has received contradicting reports on the impact on property values; however, it is not that whether you give more credibility to one appraiser's opinion vs. another's, it is that there is evidence in the form of an Affidavit that says the property values will be affected. You will hear from home owners and real estate agents that will say it does affect property values and a decision to buy in this neighborhood. He also submitted a study by Professor Sandy Bond of the University of Florida in which he concluded cell phone towers can decrease property values by as much as 20 percent.

It is the Commission's duty to preserve the property values of this neighborhood and to preserve the architectural style of this neighborhood. He also noted that when property values go down, the City's tax revenues also decrease.

It is not Prairie Village's job to serve the cell phone needs of surrounding cities. In opposition to the 200 silent majority supporting the tower, they will resubmit signatures of more than 300 people residing in this area opposing the tower. The Commission needs to listen to the voice of the people.

In conclusion, Mr. Housley stated the Planning Commission needs to focus on the nine factors, particularly the ones that apply to this application. These factors clearly support the denial of this application. If the Commission is inclined to grant some specific height of a tower at this location, questions need to be asked of this applicant or of the property owners of alternative sites such as the Fire District and WaterOne to determine the true status of those sites. If approved, this will be an eyesore for many years to come.

Wyatt Cobb, 6615 Hodges, who resides two houses from the parking lot, stated the majority of the residents on his street are adamantly against the tower. He agrees this is clearly about money. At the original neighborhood meeting with the residents, Selective Site Consultants identified this location as the least optimal location, number eight of eight, and now it has become number one. He has concerns with the impact on his property value, and he said that he plans to sell in the next two years. Mr. Cobb stated that T-Mobile in its own line of products offers a solution to in-home cell phone uses. They sell for \$100 a Wi-Fi phone and a \$20 router allowing you to make phone calls over the Internet. This works well for him. He noted the applicant has to provide exact evidence regarding the tower, detailed designs of the tower, or it can be denied. A 145-foot tower at this location does not make sense. He feels this is the worst proposed solution considered so far and encouraged the Commission to hold their ground for a better solution regardless of the pending litigation.

Kate Faerber, 4806 West 68th Street, showed pictures of cell tower sites in Prairie Village and at other locations to demonstrate what has been approved in the City and what has been done elsewhere. The photos showed both freestanding towers, antenna on top of office buildings, antenna incorporated into other structures, particularly locations at Tomahawk and State Line, the monopine in Leawood, two Capital Federal locations, 103rd and Nall, 95th Street between Roe and Nall, City Hall, and St. Ann's Church on Mission Road.

Mrs. Faerber stated a 20% reduction in property value is significant. The new ordinance will require a one foot to one foot setback requirement. (She acknowledged the new regulations are not applicable to this application.) She noted the base structure for four providers will be approximately the size of a small 7-11 - that is not residential use of property to her. T-Mobile is late to the punch. In reviewing files at City Hall on Friday, she noticed some of the signatures on the postcards from T-Mobile customers were not from residents within the search ring, or even within the City. The certified mailing that goes out to property owners within 200 feet goes out to only 26 residents. On the last application, five of those notices were never received. Sixty-five feet worked at St. Ann's, 65 feet worked at the church on State Line, 65 feet worked at Leawood South. She feels the City needs to question the experts as to what their needs really are.

Randy Cordill, 4904 West 68th Street, stated he is adamantly opposed to this application and agrees with the comments made by earlier speakers. He questioned if there is such a driving need for coverage in this area, why the City has not received other applications over the past two years. He stated T-Mobile has turned down locations at a number of other locations and stopped negotiations at a number of places because they are receiving a below market lease rate from the Church. A 145-foot structure does not make sense in a residential area. Co-location is great in a commercial area, but don't force a residential area to become a commercial area by building a 145-foot tower because of co-location. If not the Planning Commission, who is going to stand up and protect the architectural integrity of Prairie Village neighborhoods. Other neighborhoods have held the height at 65 feet. Mr. Cordill stated the church property at State Line is very similar to this property in terms of size, topography and trees and they have made a 65-foot tower work. If this type of application is submitted, you will not get resistance of the residents in the neighborhood to towers integrated into existing structures or structures preserving the residential integrity of the neighborhood.

Mr. Cordill stated this application makes no sense because additional tower height is necessary at this location to provide the same level of service. Mr. Holland mentioned the water tower and stated that you go down the hill about 70 feet from McCrum Park to get to Faith Lutheran Church. He is correct and this lower location needs a taller tower to get the desired height for service. Going up approximately 100 feet to Nall Avenue, would provide the same level of service with an even a shorter tower.

Kate Faerber, 4806 West 68th Street, returned to share photographs taken from her back yard looking towards the proposed tower and submitted it for the record.

Steve Roth, 6801 Cedar, noted on the photograph presented by Mrs. Faerber, a ten foot basketball goal to provide perspective on the excessive height of the proposed pole. He noted the improvements occurring in their neighborhood to their homes and stated this will not continue if the proposed tower is allowed.

Michelene Krueger, 2809 West 71st Street, feels this action is premature and it is important for the Commission to come up with the ordinance that will address both this situation and future applications. Take the time to make Prairie Village the best it can be, as this decision can have a significant impact on future applications. This is a huge decision - do not rush into this. There is a way to find an appropriate location.

She is a big user of cell phones, but would not want to meet her needs at the expense of the neighbors.

Harold Neptune, 4722 West 68th, expressed appreciation for what the Commission does for the City. Statements have been made that locations ½ mile to the east, ½ mile to the west or ½ mile to the southeast will not cover this location; therefore the reverse must be true and this area will not cover those areas. You are about to get applications for cell towers every half mile. The neighbors have never been opposed to disguised cell towers. Pictures have been shown of wonderful ways to disguise them and have heard concerns with the negative impact on property values. It has been well documented that two of the criteria are not met by this application.

Douglas Dallman, 5312 West 64th Street, President of the Faith Lutheran Church Council, stated that Faith is a very viable Church and will continue to be so. He advised the Commission the tower located at 95th & Nall is very similar to the proposed tower and encouraged the Commission to take action on this application.

Rev. Dr. Peter Rehwaldt, Interim pastor of Faith Evangelical Lutheran Church, stated when he arrived in August, the first piece of mail he opened was the City's stormwater drainage fee assessment and the second was a letter from a neighbor opposing a cell tower at this location. Since that day he has spent a lot of time at the City offices and on the City website. Rev. Rehwaldt stated he was impressed with the City's Village Vision document not only for illustrating the joys and the challenges of not only living in this City, but also for guiding its future years. Infrastructure issues are not easy.

There is a growing use of cell phone use for the placement of emergency calls. MARC has identified cell phone connections to the 9-1-1 system to be one of their top legislative priorities. This kind of coverage is necessary. Sixty percent of all 9-1-1 calls in the metropolitan Kansas City area come through cell phones. This is a serious public safety issue and not something to be lost. Rev. Rehwaldt thanked the members of the congregation attending the meeting. He noted residents are impacted by the application, but added the Church has several people coming from throughout the metropolitan area to their facility for worship as well as for secular meetings and activities, such as Lion clubs, scouts and elections. They come with cell phones and they too will be impacted. They, and their safety, must also be considered as part of your charge.

Mary Cordill, 4904 West 68th Street, stated she adamantly opposes this tower for the reasons it has already been denied and disappointed that the City is even considering an application that is so far beyond the bounds of what was previously denied. Mrs. Cordill raised the following points:

- If this tower were to be placed in a neighboring city, the application would not be approved just based on the setback.
- She is concerned about the precedence that would be set by approving this application. This is a significant decision affecting the City for a long-time.
- Neighborhood aesthetics and residential property values must be protected in this process.
- Once a tower goes in, as Mr. Holland stated, there will be requests for additional antenna on the tower and added height.

- The letters of support for T-Mobile were people outside of Prairie Village and particularly outside the coverage area. During the earlier applications, they spoke with residents who had sent in e-mails of support that were totally against the proposed application. The surveys are vague and misleading with incomplete information.
- Mrs. Cordill is concerned with the threat of the lawsuit and the impact if the City caved in. She believes there are other options. They know Nall Avenue Baptist is interested, and it sits 90 to 100 feet higher than this church. There are more questions that need to be asked.
- Looking at the coverage maps, the areas showing zero coverage are actually located closer to Nall and the Nall Avenue Church.
- The stealth monopole at 94th & Nall is located on the south side of the building which abuts commercial property and is only 100 feet in height. It is not an accurate comparison. There are no houses in that area.
- They have spoken with the Prairie Village Chief of Police and he was not able to confirm that 9-1-1 calls have been dropped in this area.
- The Village Vision is a fantastic document, which they wish would have addressed cell towers. She does not believe the construction of cell towers will enhance the development of the City, rather she feels it would hinder redevelopment and enhancement of properties.
- She does not feel the Church should be in the position to make infrastructure decisions for the City. This is a decision to be made by the City.
- Please deny this application.

Paul Middleton, 6434 Hodges Drive, opposes this application. When they are talking cell phone coverage and gaps - he feels it is specific to T-Mobile. He has Verizon and has no problems.

Randy Kronblad called upon Curtis Holland to respond to the comments.

Mr. Holland acknowledged and thanked all present for their comments and time. The predominant theme from those that spoke against the tower was "there are other ways to do this, there are other locations to do this, this is the worst location to do this, Nall Avenue Baptist Church and McCrum Park are better locations." It seems everyone is saying it is horrible here, but not at Nall Avenue Baptist Church or McCrum Park. These other locations are similar, if not identically situated, in terms of being surrounded by residential properties. The only difference is that they are at higher elevations and therefore it is believed that you can have a shorter tower. However, that is not necessarily true. There are other factors that must be considered. There are extremely tall trees in those areas also, which would say, that an equally high tower would need to be constructed in those locations.

Another statement was made by a resident that "he was noticing as he drove around more cell towers", which means that he didn't notice them when he was driving around before which is much like all of us do. We drive around and do not see these things. These facilities blend in over time with the community such that over time you do not see them all the time. There is a diminishing aspect to the visual perception that is not being acknowledged.

When the carrier is looking at improving coverage and where they have gaps, they do not look at city boundaries. The poor coverage area drives the location and is determined by the RF engineering without any reference to the municipal boundaries. It is only after they determine where the coverage gaps are and when the search ring is created that they discover what city the gap lies in.

The point made by the pastor in regard to public safety it is a very, very important consideration with respect to this facility and to wireless facilities in general. They play a significant role in 9-1-1 situations.

Mr. Holland stated that you will see this facility from the south when there are no leaves on the trees; however, when the leaves are on, which is a majority of the year, they provide a significant buffering to the south.

Examples of facilities were presented to give the idea that only a 65 feet height is needed. Wireless facilities and coverage gaps are not always equal and if this could be done with a 65-foot pole it would be done. Those sites may serve a specific purpose in those specific locations. They have different topography issues and different foliage and other clutter issues. They may only be used to target a specific intersection or microcells. They all serve a different purpose and not all sites are equal.

The submittal for this location at 145 feet was made in response to the desires heard by T-Mobile to maximize co-location. If your desire is to reduce the height, T-Mobile is asking for an approval of a facility that would provide them with coverage to this area of Prairie Village. It is up to the Commission to determine what would be the most appropriate at this location. However, he stated that 65 feet is not an acceptable height from T-Mobile's standpoint.

Jane Ferber, 5111 West 68th Street, stated she does not understand why this request is being heard for the third time. She does not feel the Church should be able to dictate what is being done with the City. Say No.

Marsha Hansen, 6434 Hodges, stated the comments made suggesting the location at Nall Avenue Baptist Church were not saying "put it in someone else's backyard," it was that there would be a possibility for a shorter tower at that location because of the higher elevation. She is also concerned that the Church should have the opportunity to lower property values, disrupt the community and possibly set a dangerous precedent for the City. If it was such an ulterior motive for the good of the community, then why isn't that money going back to City or going to charity.

Pastor Rehwaldt noted the comment was made earlier that the pastor would get a check. He does not receive this money personally. In response to the comment about charity, Pastor Rehwaldt responded that Faith Lutheran Church served last year 3500 meals for the homeless out of their kitchen, this year that number will be 4000, maybe more. The school is using their facilities to better serve the children in the neighborhood. Faith Lutheran Church is deeply concerned with its neighbors, with the people in its area, both those with money and resources and also those without. There has been a lot of passionate discussion this evening, he would ask the Commission to base its decision on the guidelines presented by City Staff. He is

deeply offended at the notion that the people of Faith Lutheran Church are not committed to serving the people of this neighborhood and beyond.

Pat Archer, 4611 West 66th Terrace, stated the Commission should not be taking action of vagueness and generalities. The information must be presented clearly in black and white, and if it is not, it should not be approved.

Joyce Whitter, 3707 West 75th Street, spoke in favor of the application. She noted there is a policy in place and staff has made a recommendation. She does not feel the process should be delayed on the prospect of a new ordinance being developed. She has to go outside to talk with her children on her phone. She noted there are generalities being presented on both sides. She does not support delaying the decision.

Randy Kronblad closed the public hearing at 10:00 p.m.

Marlene Nagel stated she read the information in the packet and came this evening with an open mind for this new application. She feels it is a higher height than the last two applications and less in keeping with the architectural character of the neighborhood. It will certainly dominate the neighborhood in terms of the height of the facility. She noted there are differing studies about property values; however, she believes it could negatively impact future property investment in this neighborhood. She has seen three new homes completed and four more under construction and feels that if this facility were installed it would dampen further investment which is strongly promoted in the Village Vision. She does not support this application.

Dale Warman stated he does not disagree that there is a need. He complimented those who spoke on this emotional issue. He does not think this request for a cell tower will go away, and there will be others that will follow it. However, he does not feel the City would be diligent in approving this when there are other options that should be investigated. At this point, he is not in favor of the application.

Dirk Schafer said he appreciated the passion on both sides. He has heard a number of comments about "our Prairie Village" and he can assure you that the people on the Commission are there because they feel that Prairie Village is their town. A couple of things stuck out. The first is the comparison of building heights. When you look at 145 feet which is the equivalent to a fourteen story building and if there was an alternative use being proposed at that height it would not get much consideration. The second comparative height was the 120-foot tall water tower simply a few blocks away. He feels if there is a need for a structure over 100 feet, a structure approximately three times taller than the Church, there should be some consideration given to an existing structure located a few blocks away.

Randy Kronblad stated his agreement with the other Commissioners. His primary issue is that it seems like this is a moving target - a 120-foot application has been considered, an 85-foot application, and now a 145-foot application. He is concerned that the Commission is not being provided the necessary information to determine what, if anything, should be placed at this location. He questions whether it fits into a residential neighborhood, but realizes the other areas are also residential

neighborhoods and if an application is made for either of those sites, the chamber will again be filled with residents opposing the application.

He is particularly concerned with the contradicting information that has been presented this evening. The Commission has received a huge packet of information which they have studied, they have visited the site and those of other towers; but this evening they have been told contrasting information, specifically regarding the possibly of location at another site. He does not feel the Commission can make a sincere decision based on incomplete information. If coverage is needed in this area, technology needs to get better than simply placing a taller pole at this location. He can not support the current application.

Marlene Nagel mentioned another point that needs to be communicated to the applicant and others is that the Commission believes there have been quality applications of wireless communications structures/facilities placed in our community in residential settings and integrated into buildings and there should be that kind of application to meet T-Mobiles needs. She believed that when the Commission recommended denial on the last two applications, it was their hope that if T-Mobile came back it would be with an application that would integrate a facility into the design of the Church.

Dirk Schafer stated during the hearing he heard several people who were opposed to the 145 foot tower say that could accept a tower of a much lower height. This issue is not going to go away and there is a need for better coverage. The City needs to find a way to deal with this issue, to find that middle ground, that aesthetic solution and minimum and effective height and encourage all parties to be open to finding that solution.

Randy Kronblad restated his appreciation of the input of all present to address this issue.

Dale Warman stated the Commission cannot and will not make a decision based on one group of home owners over another. When we say we need to look at another location it is to determine if it is a more appropriate location, we will not move this project to another location unless it makes sense.

The following criteria were considered by the Planning Commission in their review of the application:

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

The location of the monopole appears to meet all the setback requirements of the policy. The compounds for T-Mobile and others carriers must be 25 feet from the rear property line. The proposed monopole is 145 feet in height, which is less than the 150 foot maximum height set out in the City's policy and new ordinance.

2. **The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.**
It was the consensus of the Planning Commission that the proposed facility would adversely affect the area because it would not be in keeping with the character of the neighborhood and therefore would adversely affect the welfare to the public.
3. **The proposed special use will not cause substantial injury to the value of other properties in the neighborhood in which it is to be located.**
The applicant for the cell facility stated that it would not cause substantial injury to the value of other properties. Those opposing the cell facility have stated in their letters that the monopole would adversely impact property values. Expert testimony to both positions was submitted. Planning Commission members noted that although there were conflicting findings from the studies presented, the approval of the application would negatively impact the value of adjacent properties.
4. **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 that this special use will not dominate 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 so dominate the immediate neighborhood, consideration shall be given to: (a) the location, size and nature of the height of building structures, walls and fences on the site; and (b) the nature and extent of landscaping and screening on the site.**
Although Faith Evangelical Lutheran Church is on a site of approximately three acres, the surrounding neighborhood is totally developed with residential properties. The proposed monopole is 145 feet in height and will obviously be the tallest structure in the area. Planning Commission members noted that the size of the proposed tower at 145 feet would dominate the immediate neighborhood. The Planning Commission stated that the size and nature of the height of the structure along with the lack of integration into the adjacent structure and character of the neighborhood were the primary reasons it would dominate the immediate neighborhood. Planning Commission also stated that the proposed structure would also have a negative impact on the residential redevelopment and substantial remodeling, such as currently being undertaken in the neighborhood.
5. **Off-street parking and loading areas will be provided with standards set forth in these regulations, and areas shall be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.**
Additional off-street parking will not be necessary for this particular use because there will be no permanent staff on the site. Service people will be available on site periodically to maintain the equipments, and of course, when installation occurs. The existing church parking lot that is provided on the site will be adequate for this need.
6. **Adequate utility, drainage, and other such necessary facilities have been or will be provided.**

Water, sewer and power services to this site should be adequate because there will be no permanent occupancy by people. There will be a need for a gas line if the standby generator is approved. It should be noted however that the proposed installation may have additional impervious surface and that a storm drainage master plan will need to be prepared and submitted to Public Works for their review and approval.

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

Existing church parking lot will be used for access and will be more than adequate to handle the traffic generated by this use.

8. **Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing process, obnoxious odors, or unnecessary intrusive noises.**

The proposed tower and equipment installation will not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that will affect the general public. The proposed generator shall provide adequate sound attenuation.

9. **Architectural style and exterior materials are compatible with such style and materials used in the neighborhood in which the proposed structure is to be built or located.**

The Commission stated that a monopole structure at a proposed height of 145 feet and the associated related equipment to be situated on the site for the proposed multiple carriers were not compatible with the architectural style or residential character of the neighborhood.

Marlene Nagel moved the Planning Commission find criteria #2, #3, #4 and #9 to be negative as stated above and forward PC2009-06 to the City Council with a recommendation for denial. The motion was seconded by Dale Warman and passed unanimously.

Staff advised the public that the Planning Commission recommendation would be considered by the Council Committee on Monday, April 20th at the Council Committee of the Whole meeting at 6 p.m.

NON-PUBLIC HEARINGS

There were no Non-Public Hearings to come before the Planning Commission.

OTHER BUSINESS

Dennis Enslinger announced that the Mid America Regional Council (MARC) will hold a Planning Workshop on Form Based Codes on Thursday, May 14th from 6 to 8 p.m. at the MARC facility. Planning Commissioners interested in attending should contact Joyce.

The City Council tabled action on the proposed "Wireless Communication Facilities" ordinance until their May 4th meeting and asked staff to provide additional information and options to address the following four areas of concern: Setback Requirements,

Waiver, Co-location in residential areas and the types of facilities allowed in different areas.

ADJOURNMENT

With no further business to come before the Planning Commission, Acting Chairman Randy Kronblad adjourned the meeting at 10:15 p.m.

Randy Kronblad
Acting Chairman

EXHIBIT C



PLANNING COMMISSION

Council Meeting Date: May 4, 2009
Council Committee of the Whole Meeting: April 20, 2009

COU2009-49 Consider Special Use Permit for wireless communication facility and equipment compound at 4805 West 67th Street

RECOMMENDATION

The Planning Commission has recommended denial of the Special Use Permit for the wireless communications facility and equipment compound at 4805 W 67th Street based on the evidence presented at the April 7, 2009 public hearing, as well as, the criteria outlined in the City's zoning ordinance and the Planning Commission Policy for the Approval of Wireless Communication Towers (adopted December 10, 1996).

BACKGROUND

T-Mobile is requesting a Special Use Permit to construct a telecommunications monopole and install supporting equipment cabinets at 4805 West 67th Street. The monopole is proposed to be 145 feet in height with the antennae mounted inside the monopole. An example of this type of monopole is located at 125th Street and Quivira Road in Overland Park. The one difference is that there will be no flags on the monopole proposed in Prairie Village. According to the applicant, the monopole at this height will be able to accommodate a total of four carriers. The proposed T-Mobile equipment compound will be 30' x 28' square surrounded by an 8' tall brick screening wall. The brick will match that of the existing church building. This compound, however, will only accommodate T-Mobile equipment and additional compounds will need to be built for the other carriers. T-Mobile has stated they would place a roof over the equipment structure to provide the appearance of an enclosed structure.

Most of the applications for wireless facilities in Prairie Village have either been the installation of antennae and their associated equipment cabinets on buildings or water towers. There are only two freestanding towers in Prairie Village; and they are located at City Hall and at the Fire Station at 90th and Roe Avenue. The Telecommunications Act of 1996 established some limitations when considering a wireless facility and the primary points are as follows:

- A city shall not discriminate among providers.
- A city shall not prohibit or have the effect of prohibiting the installation of wireless services.
- An application must be acted on within a reasonable period of time.
- A decision to deny an application for wireless communications must be in writing and supported by substantial evidence.
- The Federal Communications Commission regulates the environmental efforts of radio frequency emissions and a city cannot consider this issue as approving or denying an application.

The fourth bullet is the most critical. The Planning Commission has recommended denial of this Special Use Permit and, if that recommendation is adopted by the Council, it should be supported by substantial evidence in writing.

The Staff reviewed the application based on the City's policy for wireless communications towers and the factors required to be considered by the Planning Commission in making its findings of fact to either approve or deny a Special Use Permit. The Staff's recommendations were set forth in its Staff Report to the Planning Commission dated April 7, 2009. It should be noted that the proposed draft wireless communications facilities ordinance does not apply to this specific application.

The Planning Commission held a public hearing on April 7, 2009 and voted to recommend denial of the proposed Special Use Permit. Because the Planning Commission recommended denial on the proposed Special Use Permit, no action was taken on the associated site plan. The vote was 4-0.

A copy of the Planning Commission Staff Report, associated minutes, and items submitted at the public hearing are included with your packet materials. There was a significant amount of public testimony during the public hearing held on April 7, 2009. Proponents of the application primarily focused on safety and emergency availability issues of dependable cellular communications. The opponents were primarily concerned about the monopole height, its appearance (architectural style), lack of compatibility with the surrounding neighborhood, and the adverse affect on adjacent property values.

In reaching its decision, the Planning Commission considered the nine factors outlined in Section 19.28.05 of the Zoning Code and the Planning Commission Policy for the Approval of Wireless Communication Towers (adopted December 10, 1996). In making its recommendation to approve or deny the Special Use Permit, it is not necessary that the Planning Commission find all or a majority of the factors favorable or unfavorable. Based on the specific application, the Planning Commission may feel that one or more of the factors are more significant or critical than the others and the recommendation would be based on the findings of the critical factors. On this application, the Planning Commission determined that factors #2, #3, #4, and #9 were the most pertinent and none of these factors were found in the positive.

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

The location of the monopole appears to meet all the setback requirements of the policy. The compounds for T-Mobile and other carriers must be 25' from the rear property line. The proposed monopole is 145 feet in height, which is less than the 150 foot maximum height set out in the City's policy and new ordinance.

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

It was the consensus of the Planning Commission that the proposed facility would adversely affect the area because it would not be in keeping with the character of the neighborhood and therefore would adversely affect the welfare of the public.

3. **The proposed special use will not cause substantial injury to the value of other properties in the neighborhood in which it is to be located.**

The applicant for the cell facility stated that it would not cause substantial injury to the value of other properties. Those opposing the cell facility have stated in their letters that the monopole would adversely impact property values. Expert testimony on both positions was submitted. Planning Commission members noted that although there were conflicting findings from the studies presented, the approval of the application would negatively impact the value of adjacent properties.

4. **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 that this special use will not dominate 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 so dominate the immediate neighborhood, consideration shall be given to: (a) the location, size and nature of the height of building structures, walls and fences on the site; and (b) the nature and extent of landscaping and screening on the site.**

Although Faith Evangelical Lutheran Church is on a site of approximately three acres, the surrounding neighborhood is totally developed with residential properties. The proposed monopole is 145 feet in height and will obviously be the tallest structure in the area. Planning Commission members noted that the size of the proposed monopole at 145 feet would dominate the immediate neighborhood. The Planning Commission stated that the size and nature of the height of the structure along with the lack of integration into the adjacent structure/character of the neighborhood were the primary reasons it would dominate the immediate neighborhood. Planning Commission also stated that the proposed structure would also have a negative impact on the residential redevelopment and substantial remodeling, such as currently being undertaken in the neighborhood.

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

Additional off-street parking will not be necessary for this particular use because there will be no permanent staff on the site. Service people will be available on site periodically to maintain the equipment, and of course, when installation occurs. The existing church parking lot that is provided on the site will be adequate for this need.

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

Water, sewer and power services to this site should be adequate because there will be no permanent occupancy by people. There will be a need for a gas line if the standby generator is approved. It should be noted however that the proposed installation may have additional impervious surface and that a storm drainage master plan will need to be prepared and submitted to Public Works for their review and approval.

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

Existing church parking lot will be used for access and will be more than adequate to handle the traffic generated by this use.

8. **Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing process, obnoxious odors, or unnecessary intrusive noises.**

The proposed tower and equipment installation will not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that will affect the general public. The proposed generator shall provide adequate sound attenuation.

9. **Architectural style and exterior materials are compatible with such style and materials used in the neighborhood in which the proposed structure is to be built or located.**

The Commission stated that a monopole structure at a proposed height of 145 feet and the associated related equipment to be situated on the site for the proposed multiple carriers were not compatible with the architectural style or residential character of the neighborhood.

Possible Actions by Council Committee of the Whole:

In making its recommendation to the City Council, the Council Committee of the Whole should review the findings of the Planning Commission, materials and testimony presented at April 7, 2009 public hearing, associated application materials, the nine Factors for Consideration outlined in Chapter 19.28 - Special Use Permits, and the Planning Commission Policy for the Approval of Wireless Communication Towers (adopted December 10, 1996). The Council Committee of the Whole has the following possible actions:

- A. **Recommend denial of the Special Use Permit based on the findings of fact as presented by the Planning Commission (a simple majority vote required); or**
- B. **Recommend overriding the recommendation of denial by the Planning Commission (a simple majority vote required).**

In granting a Special Use Permit the City Council may impose such conditions, safeguards and restrictions upon the premises benefited by the special use as may be necessary to reduce or minimize any potentially injurious effect on such special uses upon other property in the neighborhood.

Therefore, the Council Committee of the Whole could recommend changes to the height of the monopole; the location; require it to be integrated into the church structure, etc. It should be noted that any change from the Planning Commission recommendation would require a 2/3 vote of the entire City Council to approve (8 votes); or

- C. Recommend that the City Council return the recommendation to the Planning Commission with a statement specifying the basis for the City Council's failure to approve or disapprove the recommendation and ask the Planning Commission to reconsider those specific items referred to it (a simple majority vote required); or
- D. Continue the item to a designated meeting by a simple majority.

If the Council Committee of the Whole recommends remanding the item back to the Planning Commission, staff would recommend that this action be sent to the City Council for consideration at their April 20, 2009 meeting to allow for the Planning Commission to consider the request at their May 5th meeting. For all other actions other than continuation of the item, staff recommends that the item be forwarded to the City Council for consideration at their May 4, 2009 meeting.

Possible Actions by City Council:

Options of the City Council at first meeting at which Planning Commission recommendation for wireless communication facility application comes before the City Council:

- A. By vote of 7 of the members of the Council¹, approve a motion to follow the PC recommendation by denying the application. Mayor may cast the 7th vote if necessary. This requires 7 total affirmative votes of Council Members, or of Council Members and the Mayor.
- B. By vote of 8 members of the Council², override the PC recommendation by adopting an ordinance to approve the SUP, with or without conditions. Mayor may cast the 8th vote if necessary. This requires 8 total affirmative votes of Council Members, or of Council Members and the Mayor.

¹ Code Section 19.28.045 specifies that this action to be done by ordinance, although the City Council would typically not approve a recommendation of denial by ordinance. However, the intent seems to be that the procedure applicable to adoption of ordinances be applied in option A. Ordinances require approval of a majority of the membership of the City Council. Where the number of favorable votes is one less than required, the mayor shall have power to cast the deciding vote in favor of the ordinance. [1-108, 1-904 and KSA 12-3002].

² Code Section 19.28.045 requires 2/3 majority vote of the membership "of the City Council" to override PC recommendation on first time consideration by City Council.

C. By vote of a majority of the members of the Council present³, approve a motion to return the application to PC with a statement specifying the basis for the City Council's failure to approve or disapprove. Mayor may cast the deciding vote if the members present are equally divided.⁴

If the application is returned to Planning Commission for consideration as specified under option C, the 2/3 supermajority requirement would no longer apply.

ATTACHMENTS

Planning Commission Staff Report
Planning Commission Minutes - April 7, 2009
Application & Preliminary Plans
Documentation Submitted at the April 7, 2009 Public Hearing.

PREPARED BY

Ron Williamson
City Planning Consultant

Dennis J. Enslinger
Assistant City Administrator

Date: April 16, 2009

³ Code Section 19.28.045 does not appear to require that this action be taken by a majority of the members of the council. Unless required otherwise, action can be taken by a majority of the council members present.

⁴ 1-205.POWERS OF THE MAYOR. The Mayor shall have the tiebreaking vote on all questions when the members present are equally divided

EXHIBIT D

COUNCIL COMMITTEE OF THE WHOLE
April 20, 2009

The Council Committee of the Whole met on Monday, April 20, 2009 at 6:00 p.m. The meeting was called to order by Council President David Voysey with the following members present: Mayor Shaffer, Ruth Hopkins, Michael Kelly, Andrew Wang, Laura Wassmer, David Morrison, Diana Ewy Sharp and David Belz. Staff members present: Quinn Bennion, City Administrator; Wes Jordan, Chief of Police; Bob Pryzby, Director of Public Works; Katie Logan, City Attorney; Dennis Enslinger, Assistant City Administrator; Karen Kindle, Finance Director; Chris Engel, Assistant to the City Administrator; Ron Williamson, City Planning Consultant; Steve Horner, Assistant City Attorney and Joyce Hagen Mundy, City Clerk.

COU2009-49 Consider JAG Grant - American Recovery & Reinvestment Act (Stimulus) Funding

Chief Wes Jordan stated his staff has researched the six grants available to public safety departments under the stimulus programs. The only grant the City meets the qualifications for is the Edward Byrne Memorial Justice Assistance Grant (JAG) program established by the Bureau of Justice Statistics (BJS). This grant is awarded based on crime statistics. The Department is eligible to receive \$16,450.00 and must apply in accordance with predetermined guidelines. The Department is required to make notification to the governing body and provide for public comment concerning the acceptance of grant funds 30 days prior to the submission of the grant application.

The Department will be seeking grant funds to purchase a computer voice stress analyzer and training costs associated with the equipment. The department currently relies on outside sources for polygraph examinations during pre-employment background investigations and computer voice stress analysis for criminal investigations. During the past four years, the Department has spent in excess of \$10,000 conducting pre-employment background examinations. Scheduling of these examinations has caused delays in the Department's hiring process and detectives, who must rely on an outside agency to conduct interviews with the computer voice stress analyzer, have also experienced delays during their investigations.

The remaining funds will be used to supplement the purchase of tactical ballistic vests for CIRT (Critical Incident Response Team) members. These team members assist with high-risk, drug-related search warrants, arrest warrants, and buy/busy drug high-risk situations. Department CIRT members do not have tactical ballistic vests and currently use their Department-issued body armor. This body armor does not conform to current tactical requirements and does not afford members with the necessary protection when executing high-risk warrants or when assisting with other high-risk situations.

PUBLIC FORUM

Council President David Voysey opened the meeting up to public comments on the proposed JAG grant application. No public comments were offered regarding this application. The Council President closed the public forum.

Ruth Hopkins made the following motion, which was seconded by Michael Kelly and passed unanimously:

**MOVE THE CITY COUNCIL APPROVE A MEMORANDUM OF UNDERSTANDING
GIVING JOHNSON COUNTY THE AUTHORITY TO ADMINISTER THE EDWARD
BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT ON BEHALF OF THE
PRAIRIE VILLAGE POLICE DEPARTMENT**

**COUNCIL ACTION TAKEN
APRIL 20, 2009**

COUNCIL COMMITTEE
April 20, 2009
6:00 p.m.
Council Chamber

AGENDA

DAVID VOYSEY, COUNCIL PRESIDENT

CONSENT AGENDA

AGENDA ITEMS FOR DISCUSSION

***COU2009-48 Consider JAG Grant - American Recovery & Reinvestment Act (Stimulus) Funding**

Wes Jordan

& Public Forum - comments regarding proposed JAG Grant - American Recovery & Reinvestment Act (Stimulus) Funding

***COU2009-45 Consider Interlocal Agreement with the City of Overland Park Project 190724 - Drainage on Reeds Drive from 70th Terrace to 71st Street
Bob Pryzby**

***COU2009-47 Consider Bid Award for Highway Rock Salt
Bob Pryzby**

**COU2009-46 Consider Special Use Permit for Wireless Communications tower and equipment compound at 4805 West 67th Street
Ron Williamson**

**Discussion regarding Solid Waste Contract
Dennis Enslinger**

COU2007-51 Village Vision

***Council Action Requested the same night**

COU2009-45 Consider Interlocal Agreement with the City of Overland Park for Project 190724: Drainage Improvements on Reeds Drive from 70th Terrace to 71st Street

The City of Overland Park, Kansas, has a drainage project to the west of Reeds Drive. In 2006, the City of Overland Park and the City of Prairie Village jointly installed storm drainage on Reeds Drive between 70th Terrace and 69th Street. This new project will connect some existing storm drains to the new system being constructed by Overland Park. Mr. Pryzby noted there will be no cost to Prairie Village associated with this drain connection.

Diana Ewy Sharp made the following motion, which was seconded by Ruth Hopkins and passed unanimously.

**MOVED THE CITY COUNCIL APPROVE AN INTERLOCAL AGREEMENT WITH THE CITY OF OVERLAND PARK FOR PROJECT 190724: DRAINAGE IMPROVEMENTS ON REEDS DRIVE FROM 70TH TERRACE TO 71ST STREET
COUNCIL ACTION TAKEN
APRIL 20, 2009**

COU2009-47 Consider Bid Award for Highway Rock Salt

Advertised bids were opened on April 10, 2009 for highway rock salt used for snow/ice control. The following four bids were received:

Central Salt, L.L.C.	\$48.10 per ton delivered
Independent Salt	\$51.78 per ton delivered
Cargill	\$54.93 per ton delivered
Hutchinson Salt	\$62.45 per ton delivered

Bob Pryzby noted the 2008 bid for salt was \$44.06 per ton delivered.

Laura Wassmer made the following motion, which was seconded by Ruth Hopkins and passed unanimously:

**MOVED THE CITY COUNCIL ACCEPT THE BID FROM CENTRAL SALT, L.L.C. FOR HIGHWAY ROCK SALT AT A COST OF \$48.10 PER TON DELIVERED
COUNCIL ACTION TAKEN
APRIL 20, 2009**

Quinn Bennion advised the Council that Councilmen Charles Clark and Dale Beckerman are out of town and Councilman Bill Griffith is ill.

COU2009-49 Consider Special Use Permit for Wireless Communication Facility and Equipment Compound at 4805 West 67th Street

Ron Williamson, City Planning Consultant, presented the Planning Commission recommendation which was for denial of T-Mobile's request for a Special Use Permit to construct a telecommunications monopole and install supporting equipment cabinets at 4805 West 67th Street. The monopole is proposed to be 145 feet in height with the antennae mounted inside the monopole. An example of this type of monopole is located at 125th Street and Quivira Road in Overland Park. The one difference is that there will be no flags on the monopole proposed in Prairie Village. According to the applicant, the monopole at this height will be able to accommodate a total of four carriers. The proposed T-Mobile equipment compound will be 30' x 28' square surrounded by an 8-foot tall brick screening wall. The

brick will match that of the existing church building. This compound, however, will only accommodate T-Mobile equipment and additional compounds will need to be built for the other carriers. T-Mobile has stated they would place a roof over the equipment structure to provide the appearance of an enclosed structure.

Mr. Williamson noted most of the applications for wireless facilities in Prairie Village have either been the installation of antennae and their associated equipment cabinets on buildings or water towers. There are only two freestanding towers in Prairie Village; and they are located at City Hall and at the Fire Station at 90th and Roe Avenue.

The Telecommunications Act of 1996 established some limitations when considering a wireless facility and the primary points are:

- A city shall not discriminate among providers.
- A city shall not prohibit or have the effect of prohibiting the installation of wireless services.
- An application must be acted on within a reasonable period of time.
- A decision to deny an application for wireless communications must be in writing and supported by substantial evidence.
- The Federal Communications Commission regulates the environmental efforts of radio frequency emissions and a city cannot consider this issue as approving or denying an application.

The Planning Commission has recommended denial of this Special Use Permit and, if that recommendation is adopted by the Council, it must be supported by substantial evidence in writing.

Mr. Williamson stated staff reviewed the application based on the City's policy for wireless communications towers and the factors required to be considered by the Commission to either approve or deny a Special Use Permit.

The Planning Commission held a public hearing on April 7, 2009, with a significant amount of public testimony. Proponents of the application primarily focused on safety and emergency availability issues of dependable cellular communications. The opponents were primarily concerned about the monopole height, its appearance (architectural style), lack of compatibility with the surrounding neighborhood and the adverse affect on adjacent property values.

In reaching its decision, the Planning Commission considered the nine factors outlined in Section 19.28.05 of the Zoning Code and the Planning Commission Policy for the Approval of Wireless Communication Towers (adopted December 10, 1996). In making its recommendation to approve or deny the Special Use Permit, it is not necessary that the Planning Commission find all or a majority of the factors favorable or unfavorable. Based on the specific application, the Planning Commission may feel that one or more of the factors are more significant or critical than the others and the recommendation would be based on the findings of the critical factors. On this application, the Planning Commission determined that factors #2, #3, #4, and #9 were the most pertinent and none of these factors were found in the positive.

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

The location of the monopole appears to meet all the setback requirements of the policy. The compounds for T-Mobile and other carriers must be 25 feet from the rear property line. The proposed monopole is 145 feet in height, which is less than the 150-foot maximum height set out in the City's policy and new ordinance.

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

It was the consensus of the Planning Commission that the proposed facility would adversely affect the area because it would not be in keeping with the character of the neighborhood and therefore would adversely affect the welfare of the public.

3. **The proposed special use will not cause substantial injury to the value of other properties in the neighborhood in which it is to be located.**

The applicant for the cell facility stated that it would not cause substantial injury to the value of other properties. Those opposing the cell facility have stated in their letters that the monopole would adversely impact property values. Expert testimony on both positions was submitted. Planning Commission members noted that although there were conflicting findings from the studies presented, the approval of the application would negatively impact the value of adjacent properties.

4. **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 that this special use will not dominate 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 so dominate the immediate neighborhood, consideration shall be given to: (a) the location, size and nature of the height of building structures, walls and fences on the site; and (b) the nature and extent of landscaping and screening on the site.**

Although Faith Evangelical Lutheran Church is on a site of approximately three acres, the surrounding neighborhood is totally developed with residential properties. The proposed monopole is 145 feet in height and will obviously be the tallest structure in the area. Planning Commission members noted that the size of the proposed monopole at 145 feet would dominate the immediate neighborhood. The Planning Commission stated that the size and nature of the height of the structure along with the lack of integration into the adjacent structure/character of the neighborhood were the primary reasons it would dominate the immediate neighborhood. Planning Commission also stated that the proposed structure would also have a negative impact on the residential redevelopment and substantial remodeling, such as currently being undertaken in the neighborhood.

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

Additional off-street parking will not be necessary for this particular use because there will be no permanent staff on the site. Service people will be available on site periodically to maintain the equipment, and of course, when installation occurs. The existing church parking lot that is provided on the site will be adequate for this need.

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

Water, sewer and power services to this site should be adequate because there will be no permanent occupancy by people. There will be a need for a gas line if the standby generator is approved. It should be noted however that the proposed installation may have additional impervious surface and that a storm drainage master plan will need to be prepared and submitted to Public Works for their review and approval.

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

Existing church parking lot will be used for access and will be more than adequate to handle the traffic generated by this use.

8. **Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing process, obnoxious odors, or unnecessary intrusive noises.**

The proposed tower and equipment installation will not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that will affect the general public. The proposed generator shall provide adequate sound attenuation.

9. **Architectural style and exterior materials are compatible with such style and materials used in the neighborhood in which the proposed structure is to be built or located.**

The Commission stated that a monopole structure at a proposed height of 145 feet and the associated related equipment to be situated on the site for the proposed multiple carriers were not compatible with the architectural style or residential character of the neighborhood.

Ron Williamson stated that in making its recommendation to the City Council, the Council Committee of the Whole should review the findings of the Planning Commission, materials and testimony presented at April 7, 2009 public hearing, associated application materials, the nine Factors for Consideration outlined in Chapter 19.28 - Special Use Permits, and the Planning Commission Policy for the Approval of Wireless Communication Towers (adopted December 10, 1996). The Council Committee of the Whole has the following possible actions:

- A. Recommend denial of the Special Use Permit based on the findings of fact as presented by the Planning Commission (a simple majority vote required); or
- B. Recommend overriding the recommendation of denial by the Planning Commission (a simple majority vote required).

In granting a Special Use Permit the City Council may impose such conditions, safeguards and restrictions upon the premises benefited by the special use as may be necessary to reduce or minimize any potentially injurious effect on such special uses upon other property in the neighborhood.

Therefore, the Council Committee of the Whole could recommend changes to the height of the monopole; the location; require it to be integrated into the church structure, etc. It should be noted that any change from the Planning Commission recommendation would require a 2/3 vote of the entire City Council to approve (8 votes); or

- C. Recommend that the City Council return the recommendation to the Planning Commission with a statement specifying the basis for the City Council's failure to approve or disapprove the recommendation and ask the Planning Commission to reconsider those specific items referred to it (a simple majority vote required); or
- D. Continue the item to a designated meeting by a simple majority.

If the Council Committee of the Whole recommends remanding the item back to the Planning Commission, staff would recommend that this action be sent to the City Council for consideration at their April 20, 2009 meeting to allow for the Planning Commission to consider the request at its May 5th meeting. For all other actions other than continuation of the item, staff recommends that the item be forwarded to the City Council for consideration at their May 4, 2009 meeting.

Possible Actions by City Council:

Options of the City Council at first meeting at which Planning Commission recommendation for wireless communication facility application comes before the City Council:

- A. By vote of 7 of the members of the Council¹, approve a motion to follow the PC recommendation by denying the application. Mayor may cast the 7th vote if necessary. This requires 7 total affirmative votes of Council Members, or of Council Members and the Mayor.
- B. By vote of 8 members of the Council², override the PC recommendation by adopting an ordinance to approve the SUP, with or without conditions. Mayor may cast the 8th vote if necessary. This requires 8 total affirmative votes of Council Members, or of Council Members and the Mayor.
- C. By vote of a majority of the members of the Council present³, approve a motion to return the application to PC with a statement specifying the basis for the City Council's failure to approve or disapprove. Mayor may cast the deciding vote if the members present are equally divided.⁴

Mr. Williamson noted, if the application is returned to Planning Commission for consideration as specified under option C, the 2/3 supermajority requirement would no longer apply when it is returned to the City Council.

Curtis Holland, with Polsinelli Shughart, 6001 College Blvd, Suite 500, Overland Park, presented the application on behalf of T-Mobile. Also in attendance for the applicant were Garth Adcock, Real Estate & Zoning Manager for T-Mobile; Luke Willenbring, RF Engineering Manager for T-Mobile; Trevor Wood with Selective Site Consultants and Rev. Dr. Peter Rehwaldt, Interim Pastor at Faith Lutheran Church.

Mr. Holland stated there have been three previous applications for communications facilities in this area.. This application is the third application for a wireless facility to serve T-Mobile at the southwest corner of 67th and Roe. The first application was for a 120-foot communications tower at the south property line. The second application was for an 85-foot communications tower moved north adjacent to the church building. It is the fourth attempt by a carrier to locate a facility to serve this area, with Cingular Wireless submitting an application for a facility at 69th Terrace & Roe (McCrum Park) in 2005. Mr. Holland stated all major carriers providing cellular service have identified general gaps in coverage as well as gaps in in-building coverage in the immediate area of 67th & Roe.

¹ Code Section 19.28.045 specifies that this action to be done by ordinance, although the City Council would typically not approve a recommendation of denial by ordinance. However, the intent seems to be that the procedure applicable to adoption of ordinances be applied in option A. Ordinances require approval of a majority of the membership of the City Council. Where the number of favorable votes is one less than required, the mayor shall have power to cast the deciding vote in favor of the ordinance. [1-108, 1-904 and KSA 12-3002].

² Code Section 19.28.045 requires 2/3 majority vote of the membership "of the City Council" to override PC recommendation on first time consideration by City Council.

³ Code Section 19.28.045 does not appear to require that this action be taken by a majority of the members of the council. Unless required otherwise, action can be taken by a majority of the council members present.

⁴ 1-205.POWERS OF THE MAYOR. The Mayor shall have the tiebreaking vote on all questions when the members present are equally divided

The concerns from the residents with the first application were the location was too close to the adjacent residential property line and the height of 120 feet was too tall for this location. In attempting to address these concerns a second application was submitted at a lower height of 85 feet and the proposed tower was moved to the north placing it adjacent to the church building. The objections to this application were the failure to have the facility integrated into the church building and that the height of 85 feet would not realistically allow for co-location addressing the needs of other providers. As part of a court ordered mediation process, T-Mobile and the City held a meeting with City representatives where it was suggested they visit with other providers to determine what their needs were in the area and to construct a facility that would maximize the possibilities of co-location. T-Mobile was also asked to identify the minimum antenna height and the required footprint for the related equipment compound for the interested carriers. They were also asked to revisit the alternative locations, especially the Nall Avenue Baptist site and McCrum Park. They have received written communication from AT&T and Sprint that they need service in this area and would be interested in co-locating at this site. Sprint also indicated they could use the Nall Avenue Baptist site. Mr. Holland has received verbal interest from Verizon for co-locating at the proposed site, but neither Verizon nor AT&T were interested in the Nall Avenue Baptist site at 67th & Nall. This is all four of the five primary carriers stating they need additional coverage in this area. All of these carriers are interested in the proposed site, only Sprint and T-Mobile could use the Nall Avenue site; therefore to maximize the co-location possibilities from two carriers to four, 4805 West 67th Street was determined to be the optimal site.

Mr. Holland stated they have also revisited all of the following sites considered as possible locations:

- Woodson Avenue Bible Church (67th & Woodson)
- St. Michaels & All Angels (67th & Nall)
- Nall Avenue Baptist Church (67th & Nall)
- Water Tower at McCrum Park (69th Terrace & Roe)
- Faith Evangelical Church (67th & Roe)
- Homestead County Club (Homestead & Mission)
- Village Presbyterian Church (67th & Mission)
- Johnson County Fire District #2 (63rd & Mission)

Curtis Holland said locating in this area is challenging because it is heavily residential and because of concerns of aesthetics, property values and other issues. When possible T-Mobile tries to utilize existing structures such as churches, steeples, water tanks and transmission lines and only put up new structures when necessary.

Mr. Holland stated McCrum Park site would be attractive to carriers; however, Johnson County WaterOne has indicated they will be removing the water tower from this location at a future, yet to be determined date. Mr. Holland added the application filed for this location in 2005 was met with significant opposition by the neighboring residents. The City Council returned the application to the Planning Commission for reconsideration with the applicant withdrawing the application after several months.

The proposed application attempts to address what they heard when they met with City representatives in January - to maximize co-location. AT&T would locate two canisters at 85 feet and 95 feet, Sprint has requested 130 feet, T-Mobile would locate internally at the top of the monopole. Mr. Holland added there are two new providers, Clearwire and Cricket, that might have a need in the future.

Curtis Holland stated that alternatively T-Mobile is prepared to construct a tower at 85 feet with a foundation that would be designed and built to support the possibility for increasing the tower height at a later time if subsequent applications were approved by the City for this location. Their primary goal is to provide quality service to T-Mobile's customers but understands the committee's desire and to

allow for a height to accommodate co-location by other providers. Under this alternative, those carriers would need to secure a Special Use Permit following the same process with notification of neighbors, public hearing before the Planning Commission and approval by the City Council prior to co-locating.

Mr. Holland added they are also prepared to modify their request to an 85-foot monopole or a 120-foot monopole that would allow for AT&T & T-Mobile to co-locate. A height lower than 85 feet would not be acceptable because of the mature trees in the area. They need a direct line of sight communication between the antenna and a handset.

Mr. Holland presented a power-point presentation of other wireless facilities located in and adjacent to residential areas to address the concerns with aesthetics. The sites presented were as follows:

- City of Lenexa monopole at 79th & Pflumm (this is a 180-190' monopole with four carriers).
- Johnson County Sheriff monopole at 119th & Ridgeway (100' tower)
- Roeland Park Community Center (150' self-supporting tower)
- Westwood Broadcast Tower
- Mission Woods monopole off Shawnee Mission Parkway
- Johnson County Fire Station 90th & Roe
- Time Warner Tower at 119th & Hemlock (250' self supporting tower)
- Leawood Police Department tower 97th & Lee Blvd
- Korean Church at 93rd & Nall
- Church site at 151st & Switzer (120' tall)
- High Voltage Poles at 146th & Nieman

Mr. Holland noted the number of towers in or near residential neighborhoods, some of them towers, others poles, others integrated antenna. He said that these towers have overtime become unnoticed by the general public, particularly those constructed as monopoles.

Mr. Holland stated they are not necessarily asking for 145 feet, but a minimum of 85 feet and that they will also agree to build a foundation to handle a higher height.

Mr. Holland addressed a study was submitted by the residents that concluded towers negatively impacted the property values of adjacent properties. Mr. Holland stated he submitted a letter today rebutting those conclusions that was done on properties not in this area, but in Florida and asked the Council to disregard the findings of the resident's property value study. He said T-Mobile submitted an appraisal that concluded there is no negative impact on the property values.

Curtis Holland stated that cellular communication has become part of the infrastructure of the United States with more and more individuals relying solely on cellular communication. They are trying to ensure that this 21st century communication is available to Prairie Village residents in this area. Mr. Holland noted on the City's website residents are invited to sign up for Code Red alerts via phone with cellular phone numbers as well as land line numbers being requested. He added a significant number of calls received by 9-1-1 are placed from cellular phones.

David Morrison asked if co-location was possible on monopines. Mr. Holland responded they did look at monopines; however, noted that co-location would be difficult on that type of structure because of the vertical and horizontal requirements by providers would necessitate a number of structures spread out on this property with heights varying from 85 feet to 130 feet. Mr. Morrison asked if they would accept an 85-foot monopine for their application. Mr. Holland stated T-Mobile has indicated that it would; however, he added he felt if that was done, the City would continue to receive requests from other providers to locate in this area.

With no further questions from Councilmembers, Council President David Voysey opened public comment.

Pat Kaufman, 4307 West 63rd Terrace, stated she does not live in the immediate this neighborhood, but has three T-Mobile phones and has not experienced coverage problems. Mrs. Kaufman noted the aerial photographs shown by Mr. Holland were taken from a distance and she does not feel they reflect a true perspective of the communications towers/poles on the neighborhood. Mrs. Kaufman expressed concern and disappointment that T-Mobile was taking an adversarial action and suing the City. She feels if the City approves this application, it will set a dangerous and difficult precedent for dealing with other applications and urged the Council to deny this request.

Randy Cordill, 4904 West 68th Street, acknowledged the volumes of information that have been distributed to the City Council relative to this application. Mr. Cordill quoted the following from the City's proposed wireless communication facilities ordinance: "As the City has diverse and unique landscapes that perpetuate the identity of its residential neighborhoods, protection of these valuable resources is paramount. Accordingly, the Governing Body finds that the unregulated placement and design of wireless communication facilities, towers and antennae results in visual clutter that adversely affects community aesthetics and damages the character of the City. This ordinance is intended to provide minimum standards that ensure that the wireless communication needs of residents and businesses are met, while at the same time the general safety and welfare of the community is protected."

Although Mr. Williamson reviewed what the Federal Communications Act says cities can not do, Mr. Cordill urged the Council to remember that local boards have been given the authority for determining the placement, construction, and other factors relative to communication facilities. Your Planning Commission found that this application failed to meet special use criteria numbers 2, 3, 4 and 9, and that it was not compatible with the architectural style of the residential character of the neighborhood.

Mr. Cordill reviewed a chart he prepared listing the following height comparisons to the proposed structure.

- A Prairie Village Ranch is 21 feet in height.
- The average Prairie Village Home is 25 feet in height.
- The maximum height of a Prairie Village Home is 35 feet in height.
- Faith Lutheran Church is 54 feet in height.
- St. Ann's Tower is 65 feet in height.
- The water tower is 120 feet in height.
- The proposed monopole is 145 feet in height.

Mr. Cordill stated he was not able to address the letter referenced by Mr. Holland as he had not seen it, but noted the Council has heard previous testimony from local real estate professionals stating the negative impact these structures have on property values. He also noted this area has recently seen several property owners making enhancements and improvements to their property.

During the previous application, they acquired over 300 signatures from residents within the area that opposed an 85-foot monopole at this location. He is confident they would also oppose the proposed 145-foot monopole.

Mr. Cordill shares the confusion expressed by Randy Kronblad of the Planning Commission regarding the status of alternate sites. He presented a chart depicting the impact of the higher elevation of the Nall Avenue site on the necessary size of a monopole at that location, noting this location, because of its higher elevation, a 65-foot tower would accomplish the same as a 145-foot tower at the proposed location. It is a bad site and a tall tower is necessary to compensate for it. He also noted that they have had communication with a representative of Nall Avenue Baptist Church last week that stated

they would be interested in talking with T-Mobile. He said he was surprised Verizon and AT&T were not interested in that site.

Mr. Cordill noted the neighborhood opposition to the McCrum application was not regarding the antenna on the tower, but the massive equipment compound that would go outside of the water tower footprint. He felt that a monopole flag pole with an adjacent equipment compound would be accepted.

Mr. Cordill shared photographs of communication towers located throughout the metropolitan area that have been successfully integrated into the surrounding communities. These included antenna placed on multi-story office buildings and antenna integrated into church structures. The neighboring residents would support such structures and are seeking a creative solution such as those shown be applied to this application. They also noted many of these towers were only 65 feet in height.

Finally, in response to the need for cellular connectivity for 9-1-1 calls, the law requires all carriers, regardless of plan coverage, to relay 9-1-1 calls.

Gary Adams, 4110 West 69th Street, expressed concern with the placement of the tower at the bottom of a hill. He noted granting an 85-foot tower to T-Mobile would not address the real issue and needs for this area which will result in additional applications from other providers.

Katie Logan, City Attorney, noted the time for the regularly scheduled City Council meeting was nearing and advised the committee of their options for continuing this hearing.

Michael Kelly moved the Council Committee of the Whole return this application to the Planning Commission for reconsideration asking them to address possible integration of the communication facility into the existing structure or a stealth monopole not to exceed 85 feet in height. David Morrison seconded the motion. Committee members discussed the motion with Mr. Kelly & Morrison respectfully withdrawing the motion.

Council President David Voysey stated the Council Committee of the Whole meeting is hereby recessed at 7:28 p.m. and would be reconvened later.

Council President David Voysey reconvened the Council Committee of the Whole meeting at 7:40 p.m.

Kate Faerber, 4806 West 68th Street, stated in reviewing documents at City Hall she found where Sprint had previously considered placing antenna at 50-feet and/or 60-feet. She expressed confusion with the changing height requirements. She feels the City should ask T-Mobile to compromise and consider alternative designs and locations. Mrs. Faerber reviewed the following listing of current communication facilities located within Prairie Village:

- St. Ann's
- City Hall
- 7801 Delmar
- 5000 West 95th Street
- 9011 Roe Avenue
- 7500 West 75th Street

Mrs. Faerber also shared photos of creative design solutions in the metropolitan area for communication facility installations.

Mrs. Faerber said that the silent majority of 32 e-mails submitted by the applicant covered the following geographic area: only 9 were within the search ring for the tower site; 7 were in Mission Hills, and the remainder were in other areas of Prairie Village and neighboring cities.

Mrs. Faerber stated she felt it was common sense that cell towers adjacent to residential properties would lower property values.

David Voysey called upon Mr. Holland to respond to comments.

Mr. Holland stated this is not an easy decision for the Council to make, but he would like to see it made based on facts. He responded to the public comment as follows:

- The bar chart presented by Mr. Cordill compares structures. They are not proposing a 14-story building. The monopole has a diameter of 42 inches.
- The property value perception has been researched and documented not to negatively impact property values.
- The postcards reflect that residents in the area, as well as the search ring are supportive of the structure. Mr. Holland reminded the City Council that their charge is to represent all the residents of Prairie Village, not only the surrounding residents. He said they should look at the community at large.
- The Nall Avenue Baptist location could work; however, there are very tall trees at both locations requiring taller tower heights - the heights can not be reduced as presented. Mr. Holland stated Nall Avenue Baptist Church has firmly rejected any integration of the antenna with their existing structure or the building of a bell tower structure. Last June, after the denial of the 85-foot tower, they spoke with them regarding the placement of a monopole and their required location was on their south property line immediately adjacent to residential properties and closer to neighboring houses that would not meet any of the City's building setbacks. T-Mobile had requested placing a monopole in a landscaped island in their parking lot, but that was rejected.
- T-Mobile is not the only carrier needing coverage in this area. Four of the five major providers have stated they need coverage in this area now and two new carriers may need coverage in the future.

Mr. Holland closed stating if there was any other way to do this, including at 65 feet, they would do it. He noted when they compromised in the reduction from 120 feet to 85 feet, they lost 25 percent of the coverage area. They can not go lower than 85 feet. The residents are suggesting another 20-foot reduction in height.

Mr. Holland responded to the alternative designs presented by Mrs. Faerber noting that he was actively involved in many of those applications. Those applications were built to address specific needs within a relatively small geographic area. He noted Faith Lutheran Church is 53 feet tall and to build an additional 32-foot tower on the building or a new 85-foot bell tower on the property would be less aesthetically pleasing than the proposed monopole.

During the hearings for the Leawood South monopole the room was packed with residents opposing the application. The Mission Hills residents near the installation at 63rd and State Line Road were also adamantly opposed to that application initially. They now do not notice it is there and Leawood has recently approved another monopole installation.

Mayor Shaffer asked if the monopole installation at 85 feet could accommodate different levels for service. Mr. Holland responded the original application for Leawood South was for 95 feet. The installation was approved for 75 feet in height as the trees in the surrounding area are not as tall. The downside of monopoles is that they can not be extended to serve other providers.

Mayor Shaffer asked how serious the other providers were regarding co-locating. Mr. Holland stated he believes they want to be in this area. Therefore, they have proposed to build their monopole at 85

feet but with a foundation designed and constructed to support a taller pole at a later date if approved by the City. He added this is not an attractive site for any co-location below 85 feet.

Mayor Shaffer asked if Sprint would not be interested if it could not locate at 130 feet. Mr. Holland responded that he thinks Sprint will take what it can get.

Mayor Shaffer confirmed with Mr. Holland that it is possible to co-locate with a monopine.

David Voysey called upon City Staff for comments.

Dennis Enslinger that this is similar to a zoning application in that the City is approving a use for this property. Mr. Enslinger noted that some of the items referenced by the applicant were not heard by the Planning Commission and therefore, staff has not forwarded them to the Council as their decision is to be based on the information presented to and the recommendation of the Planning Commission. The opposition also presented charts and maps that were not presented to the Commission. Typically this information should not be considered, if the application is returned to the Planning Commission the new information will then be presented to them for consideration in their recommendation.

Diana Ewy Sharp asked if all of the criteria or findings of fact needed to be addressed. Ron Williamson replied there are nine criteria for consideration; however, you can select the ones that you feel to be the most important to the application. There is no specific number or requirement for a majority of the criteria to be found favorably.

Mrs. Ewy Sharp expressed the importance of co-location, especially in this situation where there is documentation of need by others for the same general area. Any facility approved has to be able to meet the needs of other providers as well as the applicant's needs. In reviewing the criteria, she can find favorably on a majority of the criteria. There will eventually have to be some type of communications facility in the north end of the City.

Diana Ewy Sharp moved to recommend the City Council override the recommendation of the Planning Commission and approve the application as presented with the 18 conditions recommended by the staff in the Planning Commission staff report. The motion was seconded by Ruth Hopkins.

David Belz agreed with a statement made by Mr. Cordill and raised the question if the residential properties in the photographs presented by Mr. Holland were constructed before or after the installation of the towers. Mr. Belz feels the issue is what is already there and the fear factor of the unknown. He lives in the shadow of a 465-foot radio tower and that tower never entered into consideration when they purchased their home. Daily he walks by homes whose front yards literally touch the anchor posts of the tower and not once has he heard anyone say anything negative about having a 465-foot tower with blinking lights next to their yard. If nothing else, they have gotten use to it and many of these residents moved into their homes with the tower in place. He believes in the future a 145-foot monopole will not be visible to surrounding property owners, just as the 465-foot radio tower is for all practical purposes invisible to those surrounding it.

Mr. Belz stated the City must talk about co-location. If you are talking about an 85-foot monopole that could rise, he is confident that the height of the monopole will continue to rise and rise. He sees no reason not to approve a 145-foot tower now that can and will accommodate the needs of other providers. He supports the motion.

Mayor Shaffer confirmed this motion does not have to go forward to the City Council this evening and that as a recommendation the necessary vote to pass is a simple majority. He noted at the City Council the vote will require a two-thirds vote to pass. The motion was voted on and defeated by a vote of 3 "ayes" (Hopkins, Ewy Sharp, Belz) to 4 "nays" (Kelly, Wang, Wassmer, Morrison).

Michael Kelly moved that regarding the special use permit for the wireless communications tower and equipment compound at 4805 West 67th Street, the Council Committee of the Whole ask the Planning Commission to consider two alternatives: 1) a wireless communications facility that is integrated into the architecture of the church and 2) a stealth wireless communications facility each with heights that do not exceed 85 feet and he requested that this be moved forward for action at this evening's Council meeting. David Morrison seconded the motion.

Dennis Enslinger asked for a clear definition of what was meant by a "stealth" tower. Mr. Enslinger stated there is often confusion with this term as often the monopole in industry standards is defined as "stealth"; but some people view "stealth" to be the pine tree or bell tower examples provided earlier. Mr. Kelly responded his definition of "stealth" would be a pine tree or bell tower.

Mayor Shaffer asked why the item was being requested for immediate action. Mr. Enslinger stated staff is recommending immediate action because then the item could be placed on the May 5th agenda of the Planning Commission, otherwise, it would not go to the Planning Commission until June 2nd.

Laura Wassmer stated she agreed with Mr. Belz and Mrs. Ewy Sharp and that the tower is in place at the time of purchase, it is a non-issue. She agrees that the Council will continue to have additional applications for this area until a solution is found. She believes co-location is vital. She would rather have one tower with multiple carriers than going through this process five more times. However, she would like to see the applicant "think out of the box" and come up with a more aesthetically pleasing solution. She is not sure a 145-foot monopole would be any more pleasing than the proposed monopole. She would like to see all parties work together to come up with a creative solution to address this need and it appears that the 85-foot height will not address the needs of the providers or the City.

Ruth Hopkins stated she opposes the motion as it is limiting the height to 85 feet. She also opposes sending this back to the Planning Commission noting they had the same options facing the City Council and made their recommendation. She feels it is the duty of the Council to come up with a solution. An 85-foot tower will not address the needs and will result in additional towers being placed in the City.

Andrew Wang agrees with Ms. Wassmer that the issue should be remanded to the Planning Commission but does not feel the consideration should be limited to 85 feet.

Michael Kelly stated he would amend his motion by removing "with heights not to exceed 85 feet". David Morrison agreed with the amendment.

David Belz asked for clarification on the options before the committee. He stated as he reads the staff report, the Council if it overrides the recommendation of the Planning Commission it can then make changes to the height, location, etc.

Dennis Enslinger stated that when an item is remanded back to Planning Commission you are asking them to reconsider certain items and the items he heard were basically integrated into the architecture, stealth tower facility defined as something similar to a bell tower or pine tree and looking at the 85-foot height limit. At this point you can not relegate to the Planning Commission an 85-foot height. The application is still for a 145-foot structure; although the Commission could recommend 85 feet when it comes back. The Council could then accept the recommendation for 85 feet or change the height.

David Belz clarified that if this motion is defeated, he could move the recommend the City Council to override the recommendation of the Planning Commission. Then the Council could discuss recommending changes to the height, location, etc.

Dennis Enslinger noted however, that if it is not sent back to the Planning Commission, you will need a two-thirds majority of the Council to approve it. If you send it back and no matter what the Planning Commission forwards back to the Council, you would only need seven votes to approve whatever changes are agreed upon.

Mr. Belz noted the Planning Commission has already rejected the 85-foot, 120-foot and 145-foot height applications. Mayor Shaffer confirmed the intent of the motion is to allow the City Council to consider requiring changes to the application. Mr. Belz responded that is an option.

Ruth Hopkins stated the Planning Commission has already considered these options and she does not see the value in sending it back to them again.

Andrew Wang feels it is the responsibility of the Planning Commission which is made up of architects and individuals with the professional background, to make these recommendations/changes.

Michael Kelly clarified it would take eight votes at City Council to overturn the recommendation of the Planning Commission at this time and if it goes back to the Commission for reconsideration and then back to the Council it would only require seven votes to approve with or without changes.

Michael Kelly restated the motion on the floor as follows: regarding the special use permit for the wireless communications tower and equipment compound at 4805 West 67th Street, he moved the Council Committee of the Whole ask the Planning Commission to consider two alternatives: 1) a wireless communications facility that is integrated into the architecture of the church and 2) a stealth wireless communications facility each with heights that do not exceed 85 feet and request that this be moved forward for action at this evening's Council meeting.

Ruth Hopkins asked why the Council is asking the Commission to reconsider approving a special use permit application for a communications facility that will allow for no co-location.

Michael Kelly amended his motion as follows: Regarding the special use permit for the wireless communications tower and equipment compound at 4805 West 67th Street, he moved the Council Committee of the Whole ask the Planning Commission to consider two alternatives: 1) a wireless communications facility that is integrated into the architecture of the church and 2) a stealth wireless communications facility and request that this be moved forward for action at this evening's Council meeting. David Morrison accepted the amendment.

David Belz expressed concern with using monopine installations, noting they are limited in height which limits co-location. He does not view four monopines in the parking lot as a positive solution.

Andrew Wang asked if co-location was possible on monopine installations. Mr. Holland responded that physically it could be done, but practically it would not be done if at 85 feet. A 145-foot or 120-foot integrated structure is not likely. They would be glad to reconsider it, but it has been considered and is not really a viable solution.

David Morrison asked if a monopine could be constructed taller than 85 feet. Mr. Holland responded he the tallest he is aware of is 75 feet and it could physically be done. He noted that each carrier has different requirements and operational criteria based on the engineering platform for they are using.

Laura Wassmer stated she has not seen anything "out of the box". She suggested integration into something other than structures, such as art pieces or sculptures. She would like to see the architects on the Planning Commission look outside the box, more creatively in coming up with an aesthetically acceptable solution.

David Voysey stated if the Council were starting over, there is no way it would select this location. For him it is simply the wrong location. The City wants to have co-location or stealth design and those two things do not work because of the geographic conditions of this location. If the applicant is willing to compromise and go with a height of 85 feet, the City does a one-time exception and then looks outside the box for a location where this issue can be truly resolved. This is not that location.

David Belz stated testimony has been given by T-Mobile and other providers that this is where they need to be to address coverage voids. He is not an engineer and needs to rely on their expertise that this is where they need to be. There are tall trees at McCrum Park and Nall Avenue Church. This chamber will be filled with residents each time a tower application is considered. He feels a taller structure that can accommodate co-location is essential. It is the Council's responsibility to do what needs to be done.

Ruth Hopkins stated the City has denied towers multiple times even after the Park Committee unanimously recommended a facility at McCrum Park. The residents and the Council continue to tell providers they should go here or there or maybe over there. It is not the City's choice to select the locations for towers. Mr. Morrison stated the City needs to ensure the towers are placed in the best possible locations and this location is not the best site.

Michael Kelly agreed the City needs a cell tower in this City and he understands the Council's frustrations with hearing applications over and over again, but stated that is the responsibility that you accept when you become a Councilmember - to deal with the issues of the City.

Diana Ewy Sharp noted several residents urged the Council to disregard the pending litigation. She feels the Council needs to pay attention to the fact the City is in litigation, they have met with the applicant in an attempt to mitigate the situation and have heard from the applicant what actions they have taken in response to those meetings. This needs to be taken into consideration. She wants to make sure the Council understands there are at least four providers wanting to improve or provide service in this area, maybe six. She can not imagine six communication facilities in the north end of Prairie Village. She is not sure the residents want the Council to "think out of the box". She would not want a 120-foot monopine or a massive piece of art. The monopole being proposed is 42 inches in diameter at the base reducing to 30 inches at the top, she sees this as a viable solution. She noted as much as she would like to accommodate the desires and emotions of the residents, at some point, the Council will need to make this difficult decision.

David Voysey asked City Attorney Katie Logan to clarify the action being taken.

Mrs. Logan stated that under the motion the Committee is making a recommendation to the City Council to return this item to the Planning Commission for them to reconsider the possibility of architectural integration into the church and/or a stealth installation, which is defined as a structure similar to a monopine or bell tower installation.

Michael Kelly confirmed the Planning Commission can send the issue back with a new recommendation or with no recommendation and the City Council can then take action with a majority vote of the Governing Body.

David Belz stated from his understanding of the minutes of the Planning Commission, the applicant has stated this application can not be integrated to the existing structure at 85 feet. Curtis Holland responded a freestanding bell tower would need to be constructed as the existing building is only 53 feet in height and an extension of 32 feet is not feasible. Mr. Belz asked if the Church was willing to have a free standing structure built.

Rev. Peter Rehwaldt, interim pastor for Faith Lutheran Church, stated it is his understanding the Church Council has discussed this possibility but could not envision an 85-foot abutting structure

being less intrusive to the neighborhood than the proposed monopole. Rev. Rehwaldt stated the church did not approach T-Mobile, but were approached by them and together determined the proposed monopole would be the least intrusive installation.

David Voysey called for a vote on the motion, with the following votes cast: "aye" (Kelly, Wang, Morrison) and "nay" (Hopkins, Wassmer, Ewy Sharp, Belz). The motion failed.

City Attorney Katie Logan stated according to the City's ordinances the Mayor does not vote in committee and the chair only votes if needed. Therefore, the vote will be recorded as failing by a vote of 3 to 4.

David Belz made the following motion, which was seconded by Ruth Hopkins:

**RECOMMEND THE CITY COUNCIL OVERRIDE THE RECOMMENDATION OF
THE PLANNING COMMISSION AND APPROVE THE SPECIAL USE PERMIT
AS PRESENTED SUBJECT TO THE 18 CONDITIONS OF APPROVAL
RECOMMENDED IN THE PLANNING COMMISSION STAFF REPORT.
COUNCIL ACTION REQUIRED**

The motion was voted on with the following votes cast: "aye" (Hopkins, Wassmer, Ewy Sharp, Belz) and "nay" (Kelly, Wang, Morrison). David Voysey declared the motion as passed and stated it would be considered by the City Council at their May 4th meeting.

ADJOURNMENT

With no further business to come before the Council Committee of the Whole, Council President David Voysey adjourned the meeting at 9:05 p.m.

David Voysey
Council President

EXHIBIT E



ADMINISTRATION

Council Meeting Date: May 4, 2009

COU2009-49 Consider Special Use Permit for wireless communication facility and equipment compound at 4805 West 67th Street

RECOMMENDATIONS:

The Planning Commission has recommended denial of the Special Use Permit for the wireless communications facility and equipment compound at 4805 W. 67th Street, based on the evidence presented at the April 7, 2009 public hearing, as well as, the criteria outlined in the City's zoning ordinance and the Planning Commission Policy for the Approval of Wireless Communication Towers (adopted December 10, 1996).

After reviewing the Planning Commission recommendation and materials, the Council Committee of the Whole has recommended that the Council override the Planning Commission recommendation for denial of the Special Use for the wireless communications facility and equipment compound at 4805 W. 67th Street, based on the evidence presented at the April 7, 2009 public hearing, as well as, the criteria outlined in the City's zoning ordinance and the Planning Commission Policy for the Approval of Wireless Communication Towers (adopted December 10, 1996). A draft ordinance is attached based on the Council Committee of the Whole recommendation.

POSSIBLE ACTIONS BY THE CITY COUNCIL:

Options of the City Council at first meeting at which Planning Commission recommendation for wireless communication facility application comes before the City Council:

- A. By vote of 7 of the members of the Council¹, approve a motion to follow the PC recommendation by denying the application. Mayor may cast the 7th vote if necessary. This requires 7 total affirmative votes of Council Members, or of Council Members and the Mayor.

¹ Code Section 19.28.045 specifies that this action to be done by ordinance, although the City Council would typically not approve a recommendation of denial by ordinance. However, the intent seems to be that the procedure applicable to adoption of ordinances be applied in option A. Ordinances require approval of a majority of the membership of the City Council. Where the number of favorable votes is one less than required, the mayor shall have power to cast the deciding vote in favor of the ordinance. [1-108, 1-904 and KSA 12-3002].

- B. By vote of 8 members of the Council², override the PC recommendation by adopting an ordinance to approve the SUP, with or without conditions. Mayor may cast the 8th vote if necessary. This requires 8 total affirmative votes of Council Members, or of Council Members and the Mayor.
- C. By vote of a majority of the members of the Council present³, approve a motion to return the application to PC with a statement specifying the basis for the City Council's failure to approve or disapprove. Mayor may cast the deciding vote if the members present are equally divided.⁴

If the application is returned to Planning Commission for consideration as specified under option C, the 2/3 supermajority requirement would no longer apply.

- D. By vote of a simple majority of the Council present, continue the item to a future date. (Mayor may vote to break tie).

DISCUSSION:

The Applicant has requested that the Council continue the item to a future date when the Mayor is present (see attached correspondence).

ATTACHMENTS

Correspondence from Curtis Holland dated April 30, 2009
Draft Ordinance
Council Committee of the Whole Agenda Form
Council Committee of the Whole Minutes - April 20, 2009
Planning Commission Staff Report
Planning Commission Minutes - April 7, 2009
Application & Preliminary Plans
Documentation Submitted at the April 7, 2009 Public Hearing.

PREPARED BY

Ron Williamson
City Planning Consultant

Dennis J. Enslinger
Assistant City Administrator

Date: April 29, 2009

² Code Section 19.28.045 requires 2/3 majority vote of the membership "of the City Council" to override PC recommendation on first time consideration by City Council.

³ Code Section 19.28.045 does not appear to require that this action be taken by a majority of the members of the council. Unless required otherwise, action can be taken by a majority of the council members present.

⁴ 1-205.POWERS OF THE MAYOR. The Mayor shall have the tiebreaking vote on all questions when the members present are equally divided

EXHIBIT F

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
May 4, 2009**

The City Council of Prairie Village, Kansas, met in regular session on Monday, May 4, 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, Bill Griffith, Ruth Hopkins, 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; Wes Jordan, Chief of Police; Bob Pryzby, Director of Public Works; Dennis Enslinger, Assistant City Administrator; Chris Engel, Assistant to the City Administrator; Steve Horner, Assistant City Attorney and Joyce Hagen Mundy, City Clerk.

Mayor Shaffer led all those present in the Pledge of Allegiance. The Mayor distributed Council paychecks in the amount of \$1 to Council members Al Herrera, Bill Griffith, Dale Beckerman and Charles Clark and thanked them for the past service to the City.

PUBLIC PARTICIPATION

Cleo Simmonds, 2902 West 71st Terrace, on behalf of the Sister City Committee welcomed Laura Wassmer as their new Council Liaison and thanked Michael Kelly for his past two years of service and the passion and energy he brought to the Committee. Mayor Shaffer acknowledged the presence of members of the Sister City Committee in

attendance and echoed their thanks to Councilman Kelly and expressed his thanks to the committee for their work on behalf of the City. Councilman Kelly responded that he appreciated working with this dedicated group of individuals and noted their passion for the City of Prairie Village.

No one else was present to address the Council on general matters.

CONSENT AGENDA

Michael Kelly moved the approval of the Consent Agenda for Monday, May 4, 2009.

1. Approve Regular Council Meeting Minutes - April 20, 2009
2. Approve four VillageFest 2009 contracts
3. Approve the Proclamation of May 10 through 16, 2009 as "Police Week"
4. Ratify the Mayor's appointment of Dan Searles to the Park & Recreation Committee to fill an unexpired term expiring April, 2010.

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

MAYOR'S REPORT

- Mayor Shaffer will be attending the Johnson County Mayor's meeting on May 6th.
- The Northeast Johnson County Mayor's will meet in two weeks hosted by Prairie Village
- The Syl Powell Community Center in Mission will be celebrating its 10th anniversary this weekend.
- Mission Hills will be holding a reception for their new Mayor on May 11th.
- Mayor Shaffer will be attending a special luncheon being held on May 9th by the League of Women Voters in Johnson County where Ruth Hopkins will become the second recipient of the "Making Democracy Work" award.

COMMITTEE REPORTS

Council Committee of the Whole

COU2009-51 Consider Municipal Code Chapter XIV Article 3 entitled "Floodplain Management" Consider Interlocal Agreement with the City of Overland Park for Project 190824: Drainage on Reeds Drive from 70th Terrace to 71st Street

On behalf of the Council Committee of the Whole, Michael Kelly moved the City Council adopt Ordinance 2194 for the City of Prairie Village, Johnson County, Kansas, amending Chapter XIV, entitled "Stormwater" by amending Article 3, entitled "Floodplain Management" establishing Floodplain management for construction, any new development or redevelopment projects. The motion was seconded by David Belz.

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

COU2009-52 Consider Project 191023: 2009 Concrete Repair Program

On behalf of the Council Committee of the Whole, Michael Kelly moved the City Council approve Construction Change Order #2 for Project 191023: 2009 Concrete Repair Program establishing a unit cost for asphalt sidewalk. The motion was seconded by Laura Wassmer and passed unanimously.

COU2009-49 Consider Special Use Permit for Wireless Communications Tower and Equipment Compound at 4805 West 67th Street

Based on the recommendation of the Council Committee of the Whole, Michael Kelly moved that the City Council override the recommendation of the Planning Commission and approve the Special Use Permit as presented subject to the 18 conditions of approval recommended in the Planning Commission Staff Report. The motion was seconded by Ruth Hopkins.

Mayor Shaffer stated comments would be allowed but asked those addressing the Council to keep their comments succinct and not repetitive. He noted the Council has already received a large volume of information on this issue. The Council will hear comments from the applicant, the residents, and staff comments and then close the public portion of the meeting.

Curtis Holland, 6001 College Blvd. with Polsinelli Shughart representing T-Mobile, stated this application was considered two weeks ago at the Council Committee of the Whole with several hours of deliberation, which he believes have been accurately reflected in the minutes of that meeting.

Thursday of last week he submitted a letter to Council members responding to the comments made at that meeting, and Casey Housley submitted a response to his letter.

Mr. Holland stated that although their application states it is for a 145-foot tower, their request two weeks ago to the Council was for an 85-foot stealth facility to serve T-Mobile only on the property. In order to facilitate co-location, which they understood to be an important goal for the City, they would agree to build a foundation that would be capable of supporting a taller structure enabling co-location at future dates subject to approval of a Special Use Permit for other carriers. Letters of interest have been submitted on behalf of all of the other major carriers in the area (Sprint, AT&T & Verizon Wireless). Verizon recently submitted a letter expressing interest to co-locate on a facility at this location at the 130-foot level. All of the major carriers in this area are looking to improve service and state they have an interest at this location. Of these four carriers, only two of them have indicated an interest at the Nall Avenue Baptist location. Mr. Holland noted that as these other carriers come forward, they will each be required

to follow the same process of securing a lease, making an application for a Special Use Permit before the City, providing notification to the neighbors, hold a public hearing before the Planning Commission and receiving approval of a Special Use Permit by the City. At such time, the City can evaluate whether the facility should be increased in height above the 85-feet. He added that at that point, the structure would be up and the visual impact would be known at 85 feet, allowing the City to better judge the impact of a taller structure.

Since the last meeting they have also met with the church to see if the antennas could be integrated into the church facility or whether to construct a stand alone bell tower. They met with a structural engineer at the church and reviewed the church drawings. The existing church structure is very open and of a vaulted type construction; not designed for additional loadings of the type involved with an additional cupola/steeple. The addition of such a structure would impart sizable new loadings to the existing structure and require significant structural modifications and major renovation of the church. Additional foundation work would also need to be performed in order to carry the new loads. These modifications would be major and time consuming, having considerable impacts on the aesthetic look of the existing church (inside and outside) as well as impact church schedules/activities for an extended period of time. After review, the church said it was not interested in such modifications.

A stand alone disguised bell tower is theoretically possible, but there was concern whether it would be architecturally compatible. Due to site restrictions and in order to accommodate the ground space needed for a bell tower, the tower would need to be placed approximately where the currently proposed monopole tower is located. Since this location is adjacent to the low point of the church structure a large profile bell

tower will be easily noticeable. As the height of the structure increases to over 100 feet, it becomes a very massive structure that would stand out more than the stealth pole that is being proposed. The Church agreed that the original proposal would be less obtrusive to the neighborhood and their property than a new massive bell tower.

The bell tower structures (from other locations) presented at the last meeting had a distance between poles of 12 to 20 feet creating a massive footprint, and those were structures under 100 feet in height. From the aesthetic standpoint, both T-Mobile and the Church prefer the proposed monopole because of the much thinner profile than you would have with a bell tower structure.

Mr. Holland noted to limit the height of the bell tower to 85 feet would significantly limit the options for co-location in the future. He did not feel an 85-foot bell tower would allow for any future co-locations at this site. Letters documenting their investigation and study were submitted for the record.

Mr. Holland restated they are requesting approval for an 85-foot stealth facility on the property and in order to facilitate potential future co-location, they would agree to build a foundation that would be capable of supporting a taller structure.

Patricia Archer, 4611 West 66th Terrace, stated that her backyard faced the church property. She feels this is a financial decision for a commercial business. If the foundation is built to support taller structures, this will create an ongoing question of how tall is the tower going to go and when, and how many equipment compounds will there be. She feels 85 feet is a pacifier, with 145 feet being their goal. The church will get additional money for each provider on the tower at the expense of the neighboring residents. The residents are not against technology. They are objecting to the application and to the location. The Planning Commission has recommended denial

three times and she is confused that the City Council would override their own Planning Commission.

Five years ago when an application for a monopole was made at Homestead Country Club, they were told facilities could not be placed near school locations because of the unknown potential health risk factors. She questioned if a double standard was being used against the children living around this site.

Mrs. Archer views this as a business and asked if an individual would be allowed to construct a business this height in the City. She asked the Council if they have gone out and looked at towers over 85 feet in height to get a clear picture of what is being proposed and what the people will be living with. She stated the residents are not fighting technology, they are fighting this location, and they suggested other commercial areas. She feels there are several questions that still need to be answered. She questioned the validity of a lawsuit over a specific application in a specific location and does not feel this is a blanket prohibition against towers. There is a smarter choice.

Casey Housley, 4900 West 68th Street, stated it is baffling to him that the church does not want to be inconvenienced to have their sanctuary reconstructed, yet they are willing to have the neighborhood inconvenienced for many years in the future. They have asked for a structure to be incorporated into the church, yet the church can't be inconvenienced. Their response to the bell tower, "well we don't like that." But do the neighbors like a 145-foot tower? The fact that the church is willing for the neighbors to be inconvenienced long-term and not willing to be inconvenienced temporarily for renovation bothers him. He said the neighbors would support a tower architecturally incorporated into the church structure.

Mr. Housley stated in considering towers, it does not have to be a one size fits all policy throughout the City. You can have shorter structures incorporated into structures in residential neighborhoods, and larger structures with co-location placed in commercial areas where the landscape can support them. It does not have to be an either/or situation. He feels that taller towers to support co-location is the best path to pursue in north Prairie Village. In areas where you have the character of the neighborhood involved, where you have largely residential areas and little land to deal with, perhaps a different idea needs to be adopted - not one size fits all.

Mr. Housley stated the last time the City Council overrode the recommendation of the Planning Commission was 22 years ago. The Planning Commission on three separate occasions unanimously recommended the denial of T-Mobile's applications at this location at varying heights. They are clearly sending the message that this is not the proper site for a cell tower. He noted that the two newest members of the Commission, with no history of the prior applications, voted against this application. Not one member of the Planning Commission has voted in support of any of the applications at this location. He feels the Council should give deference to the recommendation of the Planning Commission since that is their role and expertise.

It has been stated the reason this application is being considered is because of the pending litigation. Mr. Housley stated that long after the lawsuit is over, the cell phone tower could still be in place, and he urged the Council to focus on the criteria for approval.

First, does the proposal cause substantial damage to property values. A report from Donald Gossman, a certified professional appraiser, has already been submitted stating it does. In addition, Mr. Housley submitted a letter for the record, signed by

seven different real estate agents that state from their experience when working with buyers in Prairie Village, they are less likely to buy properties that are closely situated to visual obstructions and/or visual obsolescence's than those properties that are not. "Such obstructions include cell phone towers, power lines, radio towers and shopping centers. Common sense and logic tell us, the value of property closely situated to such structures significantly decreases the value of the property because of the visual obstruction and because many buyers will either not buy a home closely situated to such structures or will only buy the property at a significant discount." Five agents signed the letter and two additional have stated they would sign.

The comment was made at the earlier meeting that a councilmember purchased a home near the radio tower. Mr. Housley stated it is his feeling that when you purchase a home next to an existing tower, power lines, etc., you factor that into the value of the property. Conversely, the citizens around this proposed site purchased their property without a visual obstruction and are being asked to accept one after the fact. It was not factored into their properties values when they made their purchases.

The second criteria is "will it hinder future development?" Not one neighboring resident one standing before the Council has stated other than it will hinder future redevelopment. Mr. Housley noted several homes in the area that are new or have made significant recent enhancements and these residents have stated they would not have made those improvements had they known the proposed tower would be constructed.

The third criteria he addressed is "architectural consistency". He cannot think of a structure in a residential area in Kansas north of corporate woods that would be as tall as this structure at fourteen and a half stories. Mr. Housley agreed with the earlier

comment made by Mrs. Archer that an 85-foot structure would only be a pacifier, and that the 85-foot height has already been denied. It has been said that many of those opposing the tower are NIMBY's (not in my back yard). It is not an issue for him about not wanting it in his backyard. If towers are needed, he feels they should be placed in a location where they would do the greatest good for the greatest amount of people. Clearly areas that are at higher elevations are going to do the City the most good because they are going to provide the most coverage - for example, McCrum Park or Nall Baptist Church.

Mr. Housley distributed to the Council a handout discussing the alternative locations in a chart format listing the other sites that have been discussed listing the positive characteristics of the location, site input, T-Mobile's information, and the public perspective. This demonstrates that there are many other viable locations that would serve the overall community better. He feels the McCrum Park location is the best location. There have been discussions with Nall Avenue Baptist Church expressing their interest as a site, but T-Mobile walked away from those negotiations, as well as a location at Village Presbyterian Church. Mr. Housley stated he believes the impact of placing facilities at these sites will lower the heights on all of these locations - even if multiple towers are then used.

He feels the water tower at McCrum Park deserves special consideration as it sets topographically high in the City, the antenna could be placed on the water tower or the tower could be taken down and a monopole constructed. This would be an opportunity to generate revenue for the City in that if the City were to be proactive in constructing a tower at this site, it could lease space on that tower and have an ongoing revenue source. Mr. Housley stated that if the Council votes tonight out of fear of the

lawsuit you will be doing the citizens of the City a disservice. The residents have stated many times they are willing to assist in fighting the lawsuit. He said he would start a legal defense fund and he would put \$1,000 into it tonight. Don't vote out of fear of the law suit. Vote based on the criteria as set out in the City's ordinances.

Charlotte White, 6805 Cedar, acknowledged both the work of the City Council and the neighbors on this issue. She noted that she has been a full-time real estate professional for the past six years and knows from experience how cell towers affect both buyers and sellers of properties. She stated as follows:

- Appraisals: Quoting a different appraiser "Cell Towers and their out buildings adjacent to residential property are considered a visual obsolescence when completing a property value appraisal." She said the appraiser said it had the same impact as being next to a shopping center.
- Buyers: She had two buyers in the last two months drive away from properties without even getting out of the car; one had massive electrical wires next door and the other a cell tower.
- Sellers: When she does a property analysis for a listing, she always takes visual obsolescence's into consideration in pricing, making adjustments to the listing price.
- Disclosures: She said sellers must disclose any material defects or issues affecting the property value. Sellers must also disclose if they have received any notice of conditions or proposed change in the neighborhood and surrounding area. She as an agent must disclose any such information or she is liable.

Mrs. White stated she supports cellular communication and better service. However, she feels the towers should be placed at lower heights, concealed in structures or placed on existing facilities for the benefit of all residents.

Wyatt Cobb, 6615 Hodges Drive, referenced a letter from Brant Tidwell urging the City Council to preserve the integrity of the community. The letter referenced several other alternative locations (McCrum Park, Nall Baptist Church, Village Presbyterian Church and the cemetery), and urged the City Council to select the most appropriate location for this facility, and not to buckle under the pressure of pending litigation and

override the recommendation of the Planning Commission. Mr. Tidwell also expressed support to move forward with a new wireless communications facility ordinance applying appropriate criteria for the location of these facilities. Mr. Cobb added his concern with the impact of this application on his property value and his decision as whether to rebuild or sell. He said it is easier to explain a bell tower than a cell tower.

Cindy Worthy, 4306 Homestead Drive, feels the City Council needs to consider how they feel about the need for cellular service in the City. She uses her phone a lot but does not get cell service at her home. However, she would rather have the existing level of pool service than to have a large tower constructed. She acknowledged she did not want one in her backyard and can understand the residents' opposition to having one in their backyard.

Kate Faerber, 4806 West 68th Street, noted that after the last application, the City discovered its insurance does not cover the pending litigation. She noted her homeowners' insurance does not cover cell towers either. She feels that living in Prairie Village is their insurance policy, as the City carefully studies and reviews applications for wireless facilities before approve the required permits. Mrs. Faerber presented a picture taken from their backyard of a simulated 145-foot tower. The impact on their home is significant. She would not buy a home with this tower at the proposed site. At the first neighborhood meeting of the 15 persons present, only 2 people supported the application. Mrs. Faerber pointed out that five of the 26 landowners required to be notified did not claim their certified notices.

The proposed equipment area for this 145-foot tower is 30' x 28', with additional equipment structures of 16' x 20' and 16' x 20' for the other carriers' facilities which is about the size of a small 7-11 and would be highly unlikely to be approved in a

residential community. In the City of Leawood, when the proposal for Leawood Golf Course was presented, it was presented as a 95-foot tower. That City said 65-feet and they compromised at 75-feet, but said it had to be an alternative structure because it was too close to residential properties. So they created a monopine with realistic branches and a height in line with the existing trees. That is what the residents are seeking, that the facility be in tune with the surrounding architecture, and if it can't be done, they feel there are other better locations. Mrs. Faerber stated this is a long-term decision for the City and they feel it will set precedence for future applications. She asked the Council to deny the proposed application.

Harold Neptune, 4722 West 68th Street, submitted a representation of the proposed tower using dimensions of the church in the same plane as the tower. The proposed monopole is 28' from the church parking lot, the distance of the monopole from the building is 28 inches with a base of 42 inches. The second picture is taken from the back of their home with the differing height levels marked. Looking at the photos, they cannot see how anyone can say this structure is characteristic of the neighborhood. He said they now cannot sell their house without getting sued or disclosing this tower.

Pat Kauffman, 4307 West 63rd Terrace, noted this application is not in her backyard nor several of the other residents in the area. This is about Prairie Village.

Mary Cordill, 4904 West 68th Street, made the following statements:

- The neighbors are not opposed to cell towers in the neighborhood. They agree they are important. They are promoting thoughtful installations that maintain the aesthetics of the neighborhood and value of their properties. They want coverage, but also to protect their property values.
- Tall co-location towers are good in commercial areas and in some residential areas. However, they feel that primarily in low density residential areas there needs to be shorter towers that can be disguised; noting samples of sites in the

area that have been very successful in doing this - St. Ann's Church and the Lutheran Church at Tomahawk & Stateline particularly. There are also creative installations such as the monopines.

- They feel setback requirements for residential areas are very important. The proposed 145-foot tower would not meet the proposed setback requirements of the proposed ordinance. There is no other city in the area that would accept the proposed setback.
- She feels the financial stability of the site needs to be considered as this is a long-term installation.
- They have spent over a year dealing with this issue. The Planning Commission has recommended denial of three separate applications. Follow their recommendation. This does not meet Special Use Permit criteria and does not fit in this neighborhood.
- She also agrees the 85-foot tower is only a pacifier and assured the Council the next five years will be spent fighting additional applications to add height to that structure.

Paige Price, 6730 Fonticello, lived here as a child and has returned because of the community. She did not buy next to a shopping center or a 14 ½ story structure. She recently improved her home of 18 years and stated she would not have ever done so if she knew this cell tower would be constructed. She stated she would have sold and moved to Leawood where there are ordinances to protect the citizens. This is not a commercial area and the cell tower is commercial. She said the proposed compound footprint for the equipment units would be larger than some of the houses across the street. This is not in keeping with Prairie Village.

Mary Cordill, 4904 West 68th Street, added the following comments:

- Nall Avenue Baptist Church is interested in having a tower on their property and they sit 90 feet higher in elevation. Logically you would think there could be a shorter tower at that location and get the same level of coverage. Their administrator stated today, they agree with shorter towers integrated into structures and were willing to work with T-Mobile.
- Brant Tidwell talked with Pastor Tom Are at Village Presbyterian Church who confirmed they were interested and did in fact talk with T-Mobile regarding locating on their property. However, when the Board gave them a lease rate, they walked away without any negotiation. Mrs. Cordill stated this documents that T-Mobile has not fully explored other available options.
- McCrum Park has been discussed as an option, and with the new ownership of the Prairie Village Shopping Center this may be another alternative.

Audrey Webber, 6832 Granada Road, stated she lives in a house where she does not get cell phone coverage and does not have a landline. Her elderly mother lives in the county where she gets cell phone coverage and can get EMT communication. Her mother always carries her phone in case she needs help. She would like to move her mother into the area but is concerned about the lack of cell phone coverage and related emergency communication. This is a serious safety issue and she asked the Council to consider this in their decision and, if not here, to do something to allow all Prairie Village residents to have dependable coverage that is needed.

Randy Cordill, 4904 West 68th Street, in response to the issue of 9-1-1 safety, he secured the following information from the FCC website: "Basic 9-1-1 rules require wireless service providers to transmit all 9-1-1 calls to public safety answering points regardless of whether the caller subscribes to the providers service or not."

The thing that bothers him the most is that T-Mobile decided to use their creativity to sue the City to get approval of a bad application at a bad location when there are better alternatives. He is not opposed to cell towers, but there are better ways to do this. If you decide there needs to be a tower, allow them to build a 65-foot tower made into a flagpole replacing the existing flagpole at this location today. He is ready to write a check. Do not let them intimidate and bully the City into approving this application.

Pastor Peter Rehwaldt, Faith Lutheran Church, made the following comments in response to comments by others:

- The structure of their church building does not have a peak roof that meets in the middle - the west side does not meet the east side except for windows. Therefore, to create a structure on top of that (a steeple) would require reconstructing the entire roof. He noted the decision not to do so was not

because of the inconvenience, it was because the design of the church was how they wanted it.

- This leaves the option of a free-standing bell tower. He asked that you take the picture presented by Mr. Neptune and instead of taking a 42" wide pole, picture a fifteen or twenty foot wide building in that same space. The opinion of the church is that a bell tower of that width and dimension and the height of 85, 120 or 145 feet would not be architecturally consistent for their property or for the neighborhood.
- The church is not opposed to working with its neighbors, but you must recognize that the church facility is not the same as a residential lot. While the church is residential in function and purpose, they are commercial in concept and nature. They have two parking lots the size of 3-4 house lots. In addition, if you have been to church on a Sunday there is more traffic than is typically found in a residential neighborhood.
- There are certain things that would not work. Putting a steeple on this facility will not work and constructing a freestanding bell tower would be problematic at best. The church at Tomahawk is approximately 50 feet tall and they have constructed a bell tower that is 65 feet tall. With the style of their building those proportions work. However, if you were to take that building and double the size of the bell tower to 120 feet, it would not work. It would not be architecturally consistent with the neighborhood.

Pat Daniels, 8000 Juniper, stated he does not live in this area and his property would not be impacted; however, he is very interested in what happens in Prairie Village. He stated it is only common sense that you do not put a tower at the lowest portion of the service area. There has to be another answer, a better location for this tower. The City can comply with federal regulations and law by working constructively to find a better location. He feels a better location would be McCrum Park, noting you would be replacing a tower that already exists. He recognizes there are economic issues involved that have to be worked out; but this is the logical answer as to how to work it out in the long term.

David Hickman, 5101 West 68th Street, noted he has been doing commercial real estate for 22 years and noted that almost every transaction has a contingency or city approval. He finds it strange that T-Mobile would enter into an agreement without having determined that this was an acceptable use at this location. He feels the

residents are being forced into this position. He distributed a photo of an antenna at 60th & Roe in Mission and asked those involved to look at this objectively, listen to the residents, and to take the time necessary to determine the best decision on this application. It has a significant long-term impact on the community.

Bob Kalkofen, 5011 West 69th Terrace, said the dominant feature on the horizon by his work was a cell tower at 93rd and Antioch, and that it stood out as a prominent feature. He had the following questions:

- How do you disguise a 145-foot tower that rises about the tree line?
- Why does this have to be 145 feet, and noted that the St. Ann's tower at 65 feet sits lower than Faith Lutheran?
- Why has T-Mobile entered into a lease before securing the necessary approvals; does T-Mobile think this is a foregone conclusion that they will be able to construct the tower as desired?

He said he was stuck with his house now because the City was being bullied by T-Mobile and the church.

Mayor Shaffer called upon Curtis Holland to respond to the comments and questions raised by the public.

Mr. Holland said he disagreed with the neighbors on a number of points. He responded that Nall Avenue Baptist Church would be available if T-Mobile would place the monopole five feet from the south property line adjacent to residential properties. He does not see that as an option, and therefore they did not enter into a lease agreement with that Church. Regarding Village Presbyterian Church that site is in a different search ring and would provide coverage for a different area. Mr. Holland noted they may go back to that site, but it is not an alternative location for this application.

Many of the comments made addressed a 145-foot structure, although it was stated at the beginning of his presentation that T-Mobile proposed to construct an 85-

foot structure with the capability for future extensions of height. Prairie Village is unique because of the abundance of mature, tall trees that require a minimum height to 85' to get coverage. If the City wants to meet the coverage needs that have been documented by other carriers in addition to T-Mobile, the City would end up with multiple structures with a minimum height of 85-feet. Their charge is to try to work with facilities to make them as compatible with the areas they cover. In order to provide service in residential areas, the towers have to be in residential areas.

He noted, contrary to comments made regarding locating in a hole, when you need to serve an area in a hole, it is best to locate within that area. The installation at the church on State Line was done to provide coverage in a hole at that area.

Mr. Holland stressed the proposed structure is not a 145-foot tower, but an 85-foot structure with possible extensions to 145 feet. The City has complete control as to whether or not it goes one-inch higher as that would require an additional Special Use Permit with the required notices and hearings.

He noted one suggestion was to approve a 65-foot tower because that is only 20 feet taller than the church. He said 85 feet is only 20 feet taller than that.

With respect to the claim that the Council has not overridden a Planning Commission recommendation in 22 years, which he cannot confirm, he noted the charge of the City Council is broader than looking at the immediate area which the Planning Commission must consider, but to look at the entire community at-large. Mr. Holland stated the lack of coverage in this community is an important issue and one that is experienced by every major carrier. They have all indicated that they would like to have improved coverage in this area. You may end up with one taller structure or four additional smaller structures located in this area.

Mr. Holland noted that when the earlier application by Cingular for antenna at McCrum Park was before the City, (former Council member). Daniels stated he did not think it was a good idea.

Mr. Holland stated the comments made regarding real estate sales disclosure were untrue and that individuals did not have to disclose if they were living near a cell tower or that a rezoning is pending. In response to tall structures north of College Blvd, he noted the 150-foot cell tower located behind City Hall, the 250-foot radio tower down the street and the 120-foot tall McCrum water tower. These facilities are in the area. The Federal Communications Act requires that you consider and provide for and allow wireless coverage. You can not prohibit these facilities or carriers from providing these services in an area. Mr. Holland also noted a misstatement on the requirement to provide for 9-1-1 calls. Companies are required to do so if the phone is compatible with the technology that is providing the service; however, every provider uses a different technology/engineering platform. If you are in an area where all the providers need improved coverage, which has been documented for this area, you will not be able to make these calls.

The decision before the City Council is whether you will allow wireless coverage in this area. They have rights to provide wireless service to Prairie Village and all the areas when they have a license. This application is not about trying to bully the City and its not about a pending lawsuit. It's about trying to provide coverage to their customers so they can use the services they are demanding. Mr. Holland stated much of the population is going to solely wireless phone coverage. He said many are cord cutters and need service. As a community, the City Council should think larger than this little area and about the community at large.

In closing Mr. Holland stated if there was a better solution, they would have found it by now. He requested the Council's approval of the application for an 85-foot structure at this location noting, the City does not have to improve it one-inch higher.

Al Herrera stated it is not a matter of not wanting a cell tower and they understand the need. His problem with the application has been the contradicting information that has been received and the level of mistrust that has been raised. He said he spoke with Nall Baptist and was told no one had approached them in two years. He does not see any compromise made by the applicant to fit in with the community. He does not understand why a tower would be located at this site to provide coverage to the west. Mr. Herrera noted the Planning Commission serves as an arm of the Council. He said he felt bullied. When they met with T-Mobile in January, they told T-Mobile to compromise and to talk to Nall Baptist. He expressed to Rev. Rehwaldt that he does not feel the church has been willing to work with the neighbors for an acceptable compromise. He questioned the church entering into an agreement prior to Council approval. He does not feel T-Mobile has been truthful in response to questions raised by the City or the residents. He noted the denial of McCrum lease (in 2006 with Cingular) was based not on the proposed antenna, but on the size and location of the equipment compounds. The City is trying to attract new families and encourage residents to make improvements to their property. Improvements are taking place in this area; however, the residents have all stated they would not have made their purchases or improvements to property if the proposed tower was in place.

Mr. Holland responded that a letter was submitted to the Council last Thursday with an email from Nall Avenue Baptist Church which indicated that they did not want the facilities where T-Mobile wanted it. The decision was made based on where Nall

Baptist wanted to place the tower, immediately adjacent to the south property line which abuts residential properties. T-Mobile had already experienced the City's denial of an application at this current site with the placement being adjacent to a residential property line. Therefore, they did not want to file another application that would be rejected because of its closeness to residential properties. T-Mobile feels that Nall Baptist is not an option. T-Mobile requested a location deeper onto the church property in the parking area and away from the adjacent residential properties and that was not acceptable to the Church.

The propagation maps submitted indicate a significant coverage gap in this immediate area. The gap also extends to the west, but the significant gap is also where the current tower is proposed. Mr. Holland noted that McCrum Park would not be a bad idea, but noted all those surrounding residents would oppose the installation just as they did before. Also, if a tower were placed where the existing water tower is at McCrum Park, it would not meet the setback being proposed in the City's new ordinance.

Mr. Holland stated entering into a lease prior to gaining City approval is the standard operating procedure in the industry. The lease has a contingency that provides an out if the application is not approved. The City requires approval of the property owner for an application to even be filed.

In response to the statement that a cell tower installation would stop the redevelopment of the neighborhood and property improvements, Mr. Holland stated a building permit was issued for a property on this street on March 26th, after this application was filed and the proposed installation was public knowledge. He understands the difficulty of this application and again noted they are asking for an 85-foot structure, not an inch taller if the City does not want it any taller.

The Mayor confirmed with Mr. Holland that T-Mobile only needs 85 feet, and that under their proposal, should another carrier need to locate above 85 feet, it would be at that carrier's expense.

Dale Beckerman confirmed the 85-foot structure would accommodate T-Mobile's needs for both data and voice applications and that the two antennas would be located within the monopole.

Diana Ewy Sharp confirmed that McCrum Park meets the coverage needs of T-Mobile and that antennas could be placed on the water tower. She asked where the equipment compound would then be located. Mr. Holland stated none of the equipment facilities are underground as they are susceptible to water and moisture in the clay soil in Johnson County. The proposed structure in the Cingular application was a custom-made small equipment building placed outside the fenced area surrounding the base of the tower. The Water District would not allow any access underneath the tower because of the underground pipes and the foundation located beneath the tower. If T-Mobile were to use this site, he feels their equipment building would also need to be placed outside the fence.

Mrs. Ewy Sharp asked, knowing that current estimates are approximately \$400,000 to tear down the water tower and that WaterOne will not be able to budget for that until 2014, is there a possibility that T-Mobile and the other carriers would be willing to absorb those costs? Mr. Holland stated he could not speak for the other carriers and stated it depends on how willing they are today to contribute to the removal of that facility. He added there are a lot of liability issues because of the lead-based paint that is on the tower. Mrs. Ewy Sharp asked if T-Mobile would be willing to allow a period of time to explore that possibility.

Mr. Holland responded T-Mobile would not withdraw this application. He feels a decision needs to be made about this facility. He stated this would be a tremendous task that would require the cooperation of each of the different carriers, with Federal rules that must be considered, and Johnson County Water District and the City as players, which is at least six parties.

Mrs. Ewy Sharp asked if the Water Department is not using the tower would the equipment box be able to go within the fenced area. Mr. Holland responded that he did not think so and noted the cost to repaint the structure is over a million dollars. Mr. Holland noted he had supplied e-mail communications with Mike Armstrong of the Water District indicating the costs and requirements.

Mrs. Ewy Sharp stated she is really interested in co-location and the possible revenue stream if a tower could be located on City property. She needs to know if the site would meet their needs and if they would be willing to allow for that exploration. Mr. Holland responded they want a decision on this application. They would not withdraw this application. He feels there needs to be a decision made on this application.

Dale Beckerman asked if there were any proposed co-locators at Faith Lutheran for which McCrum does not work. Mr. Holland responded he does not know relative to all four carriers, but three have indicated that it could work for them. Mr. Beckerman asked what the construction costs are for an 85-foot tower. Mr. Holland clarified the costs would be only for the construction of the tower and responded about \$80,000. Mr. Beckerman noted this is approximately a fifth of the cost to take down the water tower. Mr. Holland repeated any action at that location would take the cooperation of several parties and noted the residents surrounding that site were as passionately against the earlier application as those present tonight.

Mayor Shaffer noted the City was instrumental in getting the Water District to allow antennas on the tower in Harmon Park.

Laura Wassmer asked if a 65-foot structure would work. Mr. Holland stated it would not because of the 60 to 70-foot trees in this area and the signals need to be above the tree canopy to work.

David Morrison asked if there had been any discussion on using the monopine design or a free standing cross. He feels that would be more aesthetically acceptable than a pole. Mr. Holland responded there is a free standing 95-foot cross at 55th and Metropolitan in Kansas City, Kansas, and that it would not be more attractive than the monopole proposed.

Bill Griffith confirmed the Homestead application was withdrawn by the Country Club. Dennis Enslinger stated both the provider and the property owner must agree to the filing of an application and his understanding is that Homestead withdrew their consent for the application to be filed making the application no longer valid. Mr. Griffith confirmed the application for McCrum Park was made by Cingular represented by Selective Sites. His concern is that the church has been the only site for which an application has been submitted by T-Mobile to meet this coverage gap, and he is unconvinced that all available options have been fully explored.

Mr. Enslinger responded there have been three separate applications at this location, all filed by T-Mobile, with the first application for 120-foot structure being withdrawn by the applicant. The second application was for 85 feet at the same property with a different site plan location, with that application being denied by both the Planning Commission and Council. This is the third application and no other sites have been proposed by T-Mobile except this location.

Dennis Enslinger summarized the following options available to the City Council:

- The current motion is to override the recommendation for denial and would take a vote of eight members of the Council with the Mayor being able to cast the deciding vote if needed. He added based on the recommended motion from the Council Committee of the Whole, there is a draft ordinance in the packet listing the 18 conditions of approval found in the Planning Commission Staff Report. He clarified that motion proposes the tower to be 140 feet, not 145 feet, as one of the conditions of approval.
- The second option the Council has is to uphold the Planning Commission recommendation which would take a vote of seven members with the Mayor having the ability to cast the deciding vote if necessary. He added that if the Council goes with this option, the Council needs to add a caveat to be in compliance with the Federal Regulations and direct staff to prepare a written record of denial for consideration by resolution by the City Council at a future date.
- The third option is to by a majority of those present to remand back to the Planning Commission the current application, asking the Planning Commission to reconsider specific items that you feel are relevant.
- The final option is by simple majority to continue the application to a future date.

Mr. Enslinger stated the City Council has received a number of items this evening and there have been other items referenced by both the applicant and the neighborhood indicating that they sent information directly to Council members. Typically, those items would be considered new information and information that the Planning Commission did not have in reaching their determination for denial of the application. It is very important that this be considered in any motion that is made. If the motion is to remand back to the Planning Commission, it is essential that all the information provided to the Council be provided to the Planning Commission for consideration. He noted as part of the public hearing process before the Planning Commission, information is to be presented and the Council's review should be limited to the record and focused on what was presented at the Planning Commission public hearing, as opposed to things stated at the previous Council Committee of the Whole meeting or at tonight's meeting.

Mayor Shaffer reminded the Council there is currently a motion on the floor to override the recommendation of the Planning Commission.

David Belz stated the possibilities at McCrum Park have sparked his interest because of the potential revenue implications and asked if he wanted to pursue these, how he should vote on the motion on the floor and what the next steps would be.

Dennis Enslinger stated there is not an easy answer to that question, noting part of it depends on if the applicant is willing to allow some delay, also noting the Federal regulations require the City to act on the application in a timely fashion, and therefore, he does not feel it could be delayed unless the applicant agrees. He feels the next step would be to have the City (as the McCrum Park property owner) to clarify with the Water District what they are actually asking for. He noted the \$450,000 mentioned this evening is not only for taking down the water tower but also includes improvements necessary afterwards to the water system to enable the removal of the water tower. He noted that roughly half of those costs are for a PRV valve that has to be installed.

Another important question staff has asked is how big of a footprint would the Water District need after the tower is removed, keeping in mind there is a large amount of infrastructure below grade at that location. It would be important to know if all their infrastructure would then be below grade or would they need an additional above grade pump and if so how big would that area be and then how much area would need to be provided for cellular providers. This would be the next step from his perspective. In terms of the motion, there would be some time to do this exploration if the application is remanded back to the Planning Commission to consider specific items. He would not direct them to look at McCrum Park, but at other options related to this application such as whether a monopine would be acceptable, integration into the church, etc. This

would go to the Planning Commission at their June 2nd meeting and would not come back to the City Council until June 15th.

Mr. Enslinger stressed a zoning application is to be reviewed on the merits of the current application and just because McCrum has been suggested as a alternative, the focus needs to remain on what has been presented and review the application based on its merits.

Steve Horner, Assistant City Attorney, added if the Council chooses to deny the application a chain reaction process is started - first requiring staff to prepare the written record of denial, and then T-Mobile has 30 days to file a lawsuit for this application. Mr. Horner stated an alternative would be to continue the application to allow time for investigation of the McCrum Park option. Then if it was discovered after speaking with WaterOne and others that McCrum Park is not a viable option, this application could be picked back up without starting over. He feels this is the better option.

Charles Clark confirmed the City is already in Federal Court on the denial of the second application and asked what the implication would be if this application was also denied. Mr. Horner responded that he would prefer not to address the pending lawsuit at this time. Dale Beckerman confirmed the on-going lawsuit is on-hold while this application is being considered. Mr. Horner noted, however, they are to report back to the Federal Court this week with regards to the status of this application.

Dale Beckerman noted that the City may be required by the Federal Court to allow the construction of the 85-foot tower previously requested and if that were to occur, there would not be any potential for co-location. Based on the indicated need for coverage in this area by other providers, it would then seem likely that without the possibility for co-location, there would be additional applications by other carriers. He

does not view this as a positive situation. Mr. Horner stated that typically in these suits if the court overturns the decision of the City, the application as submitted is approved, which in this case would be an 85-foot tower.

Al Herrera confirmed that if the application was continued and it was determined that McCrum Park was not feasible, the application process would continue where in left off seeking action by the City Council.

Steve Horner noted by ordinance the only public comment that is required is that at the public hearing before the Planning Commission, although the City has allowed public comment both at the Committee level and the Council level.

Mr. Herrera confirmed an application to locate at McCrum Park would require a new application and the required notifications and public hearings.

Michael Kelly stated he felt the best way to utilize this delay would be to send the application back to the Planning Commission for reconsideration allowing staff time to further investigate McCrum Park.

Charles Clark confirmed that if the application is denied this evening the applicant does not have to wait thirty days on the pending lawsuit against the City.

Laura Wassmer stated she feels this is a decision for the City Council noting they have heard all the information and she does not support sending it back to the Planning Commission. She would like to hear more about possibilities at McCrum Park.

Curtis Holland stated they are not opposed to the City continuing their application and looking further at McCrum, and coming back to the City Council at the next meeting on May 18th. They would make a sincere effort to evaluate the McCrum site with the City actively involved in the process and would be willing to delay action for three weeks to do so.

Steve Horner asked if this also included remanding the application to the Planning Commission. Mr. Holland responded he agrees with Ms Wassmer that the Planning Commission has already considered this item. Ms Wassmer stated she feels the application should be continued because there is information that is valuable for everyone to know before a final decision made. She is hearing the same message from other Council members that they would like to have the McCrum location fully explored before they make a final decision. Laura Wassmer moved to table action on this application to allow for further exploration of McCrum Park as a possible site. The motion was seconded by Al Herrera.

Mayor Shaffer stated the motion to table overrides the motion on the floor and is not debatable. City Attorney Katie Logan stated the motion must include a date for reconsideration. Laura Wassmer amended her motion to include the meeting date of June 1st with the amendment accepted by Mr. Herrera.

Mayor Shaffer asked Mr. Holland if he felt June 1st was sufficient time to gather the necessary information. Mr. Holland responded he felt the information could be gathered by that time and perhaps sooner. It was suggested that the motion be reworded for reconsideration no later than June 1st in case the investigation was completed earlier. Katie Logan stated a specific date is required. Laura Wassmer suggested May 18th to not delay the consideration longer than needed. Steve Horner noted he has a previous commitment on May 18th and cannot be in attendance. Mayor Shaffer noted he would not be in attendance June 1st. Alternate dates were discussed.

Mayor Shaffer called for a vote on the motion on the floor to table consideration of this application until Monday, June 1st. The motion was voted on with the following votes cast: "aye" Herrera, Wassmer, Ewy Sharp, Belz; "nay" Griffith, Hopkins, Voysey,

Kelly, Wang, Beckerman, Clark and Wassmer. Mayor Shaffer declared the motion defeated by a vote of 4 to 8.

Laura Wassmer moved to table consideration of this application until Monday, May 18th. The motion was seconded by Al Herrera. The motion was voted on with the following votes cast: “aye” Herrera, Wassmer, Ewy Sharp, Belz; “nay” Griffith, Hopkins, Voysey, Kelly, Wang, Beckerman, Clark and Wassmer. Mayor Shaffer declared the motion defeated by a vote of 4 to 8.

David Voysey stated the City Council needs to deal with this application now. It is too late to bring McCrum Park into consideration. He feels the City needs to give T-Mobile the minimum they will accept and address the citizens concerns and move forward approving an 85-foot monopine and then get the new ordinance on the books to prevent this situation in the future

Ruth Hopkins called the question on the motion on the floor. Mayor Shaffer noted that this was undebatable and does not require a second.

Michael Kelly repeated the motion on the floor as follows: that the City Council override the recommendation of the Planning Commission and approve the Special Use Permit as presented subject to the 18 conditions of approval recommended in the Planning Commission Staff Report.

Katie Logan confirmed the vote is to approve the application as originally submitted to the Planning Commission with the conditions recommended by Planning Staff which lowers the height of the tower from 145 feet to 140 feet.

Mayor Shaffer stated as a motion to override the recommendation of the Planning Commission eight votes are required for approval and it would be the adoption of an ordinance for approval a roll call vote will be taken.

The following votes were cast: “aye” Hopkins, Wang, Beckerman, Clark, Ewy Sharp and Belz; “nay” Herrera, Griffith, Voysey, Kelly, Wassmer and Morrison. Mayor Shaffer stated the 6 to 6 vote does not meet the required eight for adoption and therefore, the motion fails.

Michael Kelly feels there are still a lot of questions that need to be answered to ensure we maintain the characteristics of Prairie Village and noted that new information has been presented that has not be heard by the Planning Commission; therefore, he moved the City Council remand the Special Use Permit for the wireless communications facility at 4805 West 67th Street back to the Planning Commission with the following instructions: 1) review the installation of a wireless communications facility in a stealth manner such as a “monopine” or integrated into the architecture of the church structure; 2) review an appropriate location for the proposed structure if a monopine is appropriate for this area; 3) review the height of the structure and 4) review any all new information presented to the City Council. The motion was seconded by Andrew Wang.

David Belz confirmed that no specific height recommendation is included in the motion.

Michael Kelly stated his concern is with the setting of precedence, therefore, he wants the Planning Commission to determine what is in the best interest of the City in the long-term. He wants to hear back from the Planning Commission about integrated wireless facilities and do they work at this location. This also gives the City time to further investigate McCrum Park. Laura Wassmer asked if he would include in the directions to the Planning Commission to consider McCrum location. Katie Logan advised that would be a separate application.

Bill Griffith feels if this is sent back it would simply be playing political football with the Planning Commission and their time. They've recommended it be denied, and he feels the Council should affirm that decision and let the Federal Courts and the pending suit run its course.

David Voysey stated he would be open to the motion if there was a height requirement, such as 85 feet.

Michael Kelly moved to amend his motion adding that the height of the tower not exceed 85 feet. Andrew Wang accepted the amendment.

Al Herrera stated this is a good example of being proactive and not reactive. He supports this motion. He feels it is also fair to the applicant.

Ruth Hopkins does not agree with sending the application back to the Planning Commission noting that a height restriction of 85 feet prohibits co-location and the City would be looking at applications at multiple locations. Mayor Shaffer stated he is not sure the Planning Commission would accept an 85-foot monopine.

Charles Clark noted the applicant does not have to wait and could go to Federal Court tomorrow. He understands the sentiments of the residents but unfortunately, feels the City will lose based on the Federal Communications Act and the past decisions of the court. Al Herrera asked why he did not vote to pursue McCrum Park if he felt the City was going to lose the lawsuit. Mr. Clark responded that at 85 feet there will be at least three more applicants still needing to provide service in this area. They will easily fill up McCrum Park.

Laura Wassmer stated the City Council is the ultimate decision making body and she feels the decision making should be kept at the Council, noting the Council has heard all the information from the applicant and the residents and knows what it would

like to see. She feels the additional information should be gathered and the decision made by the Council. She does not feel at this point the Planning Commission will be able to make a better decision than the City Council.

Dale Beckerman noted this is the third trip through Faith Lutheran in a year and he feels if there were other options available they would have been discovered by now and that has not occurred. He feels it would be a delaying step to send it back to the Planning Commission as he does not feel anything new will result. He ultimately feels the decision on this application will be made by the Federal courts without the residents or the City having any input.

David Voysey asked if the monopine would work, why it was not discussed in previous Planning Commission meetings. Mr. Holland responded it was discussed at the Planning Commission level and at the time they were trying to accommodate four carriers and that could not be accomplished with an 85-foot monopine. During the January meeting with the City, T-Mobile was directed to maximize the facility for co-location opportunities and to revisit with the carriers. Each one of them had different height requirements with some up to 130 feet, making a multiple provider monopine structure necessary. Because of the vertical and horizontal separation required, it was not felt that four monopine structures on this site would be a viable solution. The Planning Commission's primary focus was on co-location. Dale Beckerman stated a 140-foot monopine is not feasible. Ms. Wassmer stated she wanted a 65-foot monopine.

Ruth Hopkins called the question on the motion on the floor as amended. The following votes were cast: "aye" Herrera, Voysey, Kelly, Wang and "nay" Griffith, Hopkins, Wassmer, Beckerman, Clark, Morrison, Ewy Sharp and Belz. Mayor Shaffer stated the motion failed.

Laura Wassmer stated she would like to direct staff to get additional information on McCrum Park. Mayor Shaffer stated that is not applicable to the application on the floor and the Council has already voted on this.

Katie Logan stated a definitive motion needs to be made, such as approving the Planning Commission recommendation. Defeating the motion to override the Planning Commission recommendation and to send the application back to the Planning Commission does not conclude action on this application.

Dennis Enslinger stated the Council has the following two options:

- Amend the ordinance as it is written to however the Council would like it to read specifying the conditions required by the City. For example, he mentioned a different height or form of tower. This would be a motion to modify the recommendation of the Planning Commission and therefore, as a change to the Commission's recommendation it would require eight votes for adoption; or
- Adopt the Planning Commission's recommendation with direction to staff to prepare a written record of denial for consideration by resolution at a future Council meeting, setting a specific meeting date. He stated seven votes would be necessary for approval of that motion.

Bill Griffith moved the City Council affirm the recommendation of the Planning Commission as stated in their April 4, 2009 minutes and to direct staff to include in the written record of denial the reasons based on the factors listed by the Commission being #2, #3, #4 and #9 to be presented by resolution at the May 18, 2009 meeting of the City council. The motion was seconded by David Belz.

Mayor Shaffer confirmed if this motion is approved the City would be finished with this application except for the consideration of the Resolution of denial confirming the findings of the Planning Commission and formalizing this action.

Michael Kelly stated a positive vote on this motion will almost ensure that the City will get what it does not want to happen.

The following votes were cast: "aye" Herrera, Griffith, Voysey, Wang, Wassmer, Morrison, Ewy Sharp and Belz; and "nay" Hopkins, Kelly, Beckerman and Clark. Mayor Shaffer declared the motion approved by a vote of 8 to 4 and announced to the public the vote finalizing this action will take place on Monday, May 18th at the City Council meeting.

Mayor Shaffer stated that due to the lateness of the evening the remaining agenda items will be carried over to the May 18th City Council meeting.

ANNOUNCEMENTS

Committee meetings scheduled for the next two weeks include:

Planning Commission	05/05/2009	7:00 p.m.
Park & Recreation Committee	05/13/2009	7:00 p.m.
Sister City Committee	05/11/2009	7:00 p.m.
Council Committee of the Whole	05/18/2009	6:00 p.m.
City Council	05/18/2009	7:30 p.m.

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The Prairie Village Arts Council is pleased to announce a photography exhibit by Kay Trieb for the month of May. The reception will be held on Friday, May 8th from 6:30 - 7:30 p.m.

Recreation memberships are now for sale in the City's Clerk's office. The pool will open on May 23rd.

The City offices will be closed on Monday, May 25th in observance of Memorial Day. Deffenbaugh also observes this holiday and trash pick-up will be delayed one day.

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 10:50 p.m.

Joyce Hagen Mundy
City Clerk

MAYOR'S ANNOUNCEMENTS

Monday, May 18, 2009

Committee meetings scheduled for the next two weeks include:

Prairie Village Arts Council	05/20/2009	7:00 p.m.
Planning Commission	05/27/2009	7:00 p.m.
Environmental Recycle	05/27/2009	7:00 p.m.
VillageFest	05/28/2009	7:00 p.m.
Council Committee	06/01/2009	6:00 p.m.
Council	06/01/2009	7:30 p.m.

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INFORMATIONAL ITEMS
May 18, 2009

1. Planning Commission Agenda - May 27, 2009
2. Planning Commission Minutes - April 7, 2009
3. Tree Board Minutes - April 1, 2009
4. Mark Your Calendars
5. Committee Agenda

**PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
MUNICIPAL BUILDING - 7700 MISSION ROAD
WEDNESDAY, MAY 27, 2009
Council Chambers
7:00 P. M.**

I. ROLL CALL

II. APPROVAL OF PC MINUTES - May 5, 2009

III. PUBLIC HEARINGS

PC2009-07- Request to Rezone the property from C-1 (Restricted Business District) to C-3 (Special Use Business District) for the approved C-1 District Uses & Veterinary Hospital/Clinic Use) at 9410 - 9420 Mission Road
Current Zoning : C-1 (Restricted Business District)
Proposed Zoning: C-3 (Special Use Business District)
Applicant: Andrew Gatchell

IV. NON-PUBLIC HEARINGS

PC2009-102 Revised Final Plat Approval
Northwest Corner of 95th & Mission Road
Zoning: C-2
Applicant: Mission River, LLC for Walgreens

V. OTHER BUSINESS

VI. ADJOURNMENT

Plans available at City Hall if applicable

If you can not be present, comments can be made by e-mail to
Cityclerk@Pvkansas.com

***Any Commission members having a conflict of interest, shall acknowledge that conflict prior to the hearing of an application, shall not participate in the hearing or discussion, shall not vote on the issue and shall vacate their position at the table until the conclusion of the hearing.**

PLANNING COMMISSION MINUTES MEETING OF APRIL 7, 2009

ROLL CALL

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

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; Steve Horner, Assistant City Attorney; and Joyce Hagen Mundy, City Clerk/Planning Commission Secretary.

APPROVAL OF MINUTES

Marlene Nagel moved the approval of the minutes of March 3, 2009 as submitted. The motion was seconded by Dirk Schafer and passed by a vote of 4 to 0 with Randy Kronblad abstaining due to his absence on March 3.

Bob Lindeblad stated, as a member of Faith Lutheran Church, he would be recusing himself from participation in the consideration of application PC2009-06. Therefore, it is necessary for the Commission to elect a Temporary Chairman for this evening's meeting. Marlene Nagel nominated Randy Kronblad to serve as temporary Chairman. The nomination was seconded by Dale Warman and passed unanimously.

Mr. Kronblad assumed the Chair and Mr. Lindeblad left the meeting.

PUBLIC HEARINGS

Randy Kronblad reviewed the rules of procedure to be followed for the public hearing and subsequent consideration of PC2009-06.

PC2008-06 Request for Special Use Permit for Communications Tower and related equipment structure 4805 West 67th Street

Curtis Holland, with Polsinelli Shughart, 6001 College Blvd, Suite 500, Overland Park, presented the application on behalf of T-Mobile. Also in attendance for the applicant were Garth Adcock, Real Estate & Zoning Manager for T-Mobile; Luke Willenbring, RF Engineering Manager for T-Mobile; Trevor Wood with Selective Site Consultants and Rev. Dr. Peter Rehwaldt, Interim Pastor at Faith Lutheran Church.

Mr. Holland stated this application is the third application for a wireless facility to serve T-Mobile at the southwest corner of 67th and Roe. It is the fourth attempt by a carrier to locate a facility to serve this area, with Cingular Wireless submitting an application for a facility at 69th Terrace & Roe (McCrum Park) in 2005. (*Note - the 2005 Cingular application was voluntarily withdrawn before any action was taken by the City.*) Mr. Holland stated all major carriers providing cellular service have identified general gaps in coverage as well as gaps in in-building coverage in the immediate area of 67th & Roe.

For the benefit of the new Commission members, Mr. Holland reviewed the process followed by cellular providers in selecting a site location.

- RF engineers analyze where in a geographic area they need to provide the desired coverage and then develop a search ring geographic map of the area.
- A site acquisition team then searches that geographic area for possible locations following an established priority of criteria with the top priority for all carriers being to locate on an existing structure or to co-locate. Creating a new structure is the last alternative chosen by providers.
- If the coverage gap is in a totally residential area, they first seek out parks, churches, golf courses and other non-residential uses in residential areas so the impact can be mitigated. He noted the towers need to be of significant height as the antenna operates in direct line of sight and therefore have to be placed above trees and other buildings. Mr. Holland noted this area is both residential and heavily treed with trees from 40 feet to 70 feet in height. Leaves also cause radio signal alteration.
- Once possible sites are identified, the providers need to reach an agreement with the property owner for the use of their property.

Curtis Holland displayed a map of the search area identified and reviewed the following the potential sites they considered for their application:

- Woodson Avenue Bible Church (67th & Woodson)
- St. Michaels & All Angels (67th & Nall)
- Nall Avenue Baptist Church (67th & Nall)
- Water Tower at McCrum Park (69th Terrace & Roe)
- Faith Evangelical Church (67th & Roe)
- Homestead County Club (Homestead & Mission)
- Village Presbyterian Church (67th & Mission)
- Johnson County Fire District #2 (63rd & Mission)

Mr. Holland noted all sites were considered and T-Mobile entered into significant negotiations with three of the property owners, and Faith Lutheran Church agreed to enter into a lease agreement.

Curtis Holland noted after Application two was denied by the City Council, T-Mobile filed an appeal in the District Court of that action that is still pending.

Mr. Holland showed a photograph of the site and identified the proposed location of the first application, a proposed 120-foot stealth monopole on the south property line with an equipment cabinet built at the base of the cabinet. This location met with resistance from the neighbors in close proximity and the Planning Commission recommended denial. Following the recommendation T-Mobile re-evaluated their

application based on what they heard (proposed pole was too close to property line and too tall), and withdrew the application. A second application was submitted reducing the height to 85 feet and relocating the facility adjacent to the west side of the Church. This application was submitted as a compromise even though it would be less effective but it would still have a positive impact on the quality of service provided. This application was recommended for denial by the Planning Commission and then denied by the City Council.

Curtis Holland stated that during the appeal process, the Court ordered mediation. T-Mobile was directed to visit with all of the other carriers to determine: whether they also had a need in this area; if this location would be a potential site for co-location; and what would be the minimum height they would need to address their coverage needs.

They have received letters of intent to co-locate from Cingular (AT&T) for two canisters at a requested height of 85 feet to 95 feet, and from Sprint at a requested height of 130 feet. Mr. Holland stated that other providers expressed interest, but did not submit letters of intent. This attests to the need for coverage in this area. This location and application can provide service to multiple providers. T-Mobile was asked to provide a facility at the minimum height to include as many carriers as possible.

Mr. Holland stated since T-Mobile is constructing the facility they want to place their antennas (2 canisters) in the highest positions in order to achieve the best coverage for their customers. Therefore, they are requesting a 145-foot monopole with the capability of providing service for four providers. They did not change the design of the facility. They are proposing a monopole with all antennas located within the pole. Mr. Holland showed photo simulations of the proposed monopole from all directions initially at 85 feet; and later at 145 feet. The proposed pole is to be painted a brownish copper to blend with the existing church structure.

Mr. Holland noted the applicant had submitted a certified disk with copies of the two previous applications. In closing, Mr. Holland stated they have done their best to try to work out a facility that would meet the goals and desires of the City and attempts to address the neighborhood issues by moving the proposed pole off the south property line. He added the equipment cabinet will be covered to have the appearance of a building and landscaping will be provided as required by the City to buffer the view from the neighboring residents.

A proximity analysis study by Integra Realty Resources of the impact of cellular facilities on neighboring property values was also submitted with the application. The study found there was no negative impact on neighboring property values. Mr. Holland stated there is a large amount of silent support for this facility and submitted for the record a number of e-mails received from T-Mobile customers supporting this facility.

Randy Kronblad asked if Mr. Holland had received and agreed with the eighteen conditions stated in the staff recommendation. Mr. Holland responded they had received the report and are agreeable with the conditions recommended by Mr. Williamson, the City's Planning Consultant.

Dale Warman confirmed the proposed 145-foot height would be adequate for four carriers. Mr. Warman asked if the application was denied, would the City likely receive requests for similar structures in this area. Mr. Holland responded if a 130-foot pole is approved it is probable that one or more of the other carriers would not be able to use this facility and would be looking at this or other locations in this area. He stated any new facilities will need to be at sufficient height due to the mature trees in the area. If a structure was approved for 120 feet or less, you could have requests to amend the permit for a taller tower or pole extension. If nothing is approved, there are multiple carriers needing coverage in this area so there will likely be additional requests made for sites in this area.

Dirk Schafer asked if the 145-foot height could be lowered. Mr. Holland responded that each carrier's antenna height varies as it is dependent on where existing facilities are located as they work together to submit signals, and it also depends on the technology and engineering platforms used by the carrier. It is very common for carriers to have antennas at different heights at the same location. They are relying on the information provided by Sprint and AT&T on their height needs. It would be possible to have four carriers, and definitely could have the three carriers, at the 145-foot height proposed.

Dirk Schafer asked Mr. Holland to quantify their silent support. Mr. Holland responded he is submitting an additional 30 or so e-mails from T-Mobile customers to the 200 submitted during the earlier applications.

Marlene Nagel asked if they had revisited potential sites for this application or was the information presented based on past discussions. Mr. Holland stated the only site they were able to lease is the site before the Commission for consideration. They had discussions with all of the property owners for the locations listed in the report as part of the new application. Mr. Holland reviewed the site map again, noting the three sites shown on the right are outside of the search area. Nall Avenue Baptist and McCrum Park locations have been revisited. There is not sufficient room on the St. Michael's property. They did not revisit the Bible Church because they received a firm no initially, and after discussions with other carriers this site does not have the potential for co-location.

The Nall Avenue Baptist site was also of interest to Sprint for co-location, but was not for AT&T and the other carriers they spoke to. Agreement could not be reached with WaterOne for placement on their tower at McCrum Park because the tower is planned to be removed when budget allows, but there is no current timetable. Given what is known, the proposed site is not only the preferred site, but the only site.

Marlene Nagel noted that in earlier applications it was stated that the Fire District site was an option and now it is not. When and why have the boundaries changed? Mr. Holland responded that there was some confusion about this site, but their engineers never felt that this site was suitable to provide coverage for this area; however, it could be used to provide coverage in another search area. This is the same with the Village Presbyterian and Homestead sites.

Marlene Nagel asked about locating on commercial property in the Prairie Village Shopping Center. Mr. Holland stated if that location would serve this area, if it could be leased and if an agreement could be worked out, they would, as they prefer commercial locations over residential areas. However, that location does not meet their needs.

Curtis Holland stated 15% to 20% of telephone customers no longer have a land line and are being supported totally by wireless coverage. The challenge is these services have to be provided to residents where they live and that is in residential areas.

Randy Kronblad asked about the site plan shown on page A-0-3 where you start at the bottom with a centerline at 90 feet. If that is lowered to 80 feet then it would provide AT&T with an 85-foot spot, placing T-Mobile center lines at 125 feet & 135 feet, leaving two slots in the middle - one at 105 feet and one at 115 feet. Sprint would likely then be out as they want 130 feet. Who else is available to co-locate - do we have commitments from any other providers? Mr. Holland responded the diagram was made when they initiated the third application and it wasn't clear where the other carriers he has needed to be at the time. He doesn't agree that Sprint is necessarily out. Although they indicated their desired antenna height, if this is the only option, he believes there might be compromises on their part. He can't disclose the other major carrier he has had discussions with because it has not provided a letter of intent or authorized him to identify it. He noted there are also two new carriers in the market (Cricket & Clearwire) who are building their systems and, although they may not need a facility immediately, he feels they may in the long term.

He understands that height is an issue and noted that T-Mobile identified in the first application where they wanted to be at 120 feet. This would allow for at least one, and maybe another carrier, plus themselves. They presented the 145-foot height in response to the desire they heard to maximize the co-location possibilities. They do not need a 145-foot tower, and the Commission can approve something at a lower height, possibly at 120 feet, as this would still ensure multiple carriers and would be a better height for T-Mobile purposes. Mr. Holland stated it is not their battle to go to 145 feet in order to provide co-location opportunities desired by other providers, although they are willing to do so. It is their battle to secure a facility for T-Mobile and to provide service to their customers. It is up to the City what in the end may be acceptable.

Randy Kronblad asked if T-Mobile could locate lower on the pole allowing Sprint to have their needed 130-foot height and ensuring co-location. Mr. Holland responded if a facility were approved, T-Mobile would take the two highest locations. They have already submitted applications at lower heights. The foundation for the monopole could also be designed to accommodate a taller pole in the future.

He noted that if a facility were approved at a lower height and at a later time Sprint wanted to go on the tower, the existing tower would have to be replaced with a taller tower, taking everyone off-line while the pole was being replaced and T-Mobile would be located on the top of that pole as the owner of the pole.

Randy Kronblad stated one of the significant reasons the application for an 85-foot pole was denied was because it did not allow for co-location which is a requirement of

the City. Mr. Holland disagreed. He noted the pole would be constructed for co-location. The height of the trees nearby dictate and influence whether co-location is possible; other carriers will have the same challenge to provide service in this area and he feels if this was the option, they would attempt to find a solution. He does feel due to the height that co-location at that height is unlikely, but he stated it was not an absolute no. However, he does feel that in lieu of compromising their signal, it is likely that they would make an application for their own facility in the area.

Dale Warman clarified AT&T stated they needed heights of 85 feet and 95 feet, Sprint a height of 130 feet, and that T-Mobile wants the top two positions.

Curtis Holland stated he is comfortable stating a 145-foot pole would accommodate four providers; however, he is not at all comfortable saying an 85-foot pole could serve the needs of a different carrier and provide for multiple carriers. He feels if a pole was approved at 85 feet it is likely that the City would receive additional applications from other providers.

Ron Williamson briefly reviewed the staff report:

Most of the wireless communications facility applications in Prairie Village have either been the installation of antennae and their associated equipment cabinets on buildings or water towers. There are only two towers located in the City; one is located at City Hall, which is 150 feet in height and the other is at the Fire Station at 90th and Roe Avenue, which is 100 feet in height. The Telecommunications Act of 1996 established some parameters when considering a wireless facility and the primary points are as follows:

- A city shall not discriminate among providers.
- A city shall not prohibit or have the effect of prohibiting the installation of wireless services.
- An applicant must be acted on within a reasonable period of time.
- A decision to deny an applicant for wireless communications must be in writing and supported by substantial evidence.
- The Federal Communications Commission regulates the environmental effects of radio frequency emissions and a city cannot consider this issue as approving or denying an applicant.

The Staff has reviewed the application based on the City's existing policy for wireless communication towers as well as the new wireless communications facility ordinance. It should be noted that this application was filed prior to adoption of the new ordinance so it technically is only required to be considered under the current wireless communication policy.

The proposed wireless communications facility is for a 145-foot monopole and equipment compound with potential for four carriers. T-Mobile is the applicant and will use the top two canisters which center at 130 feet and 140 feet. T-Mobile uses two canisters because one is for voice communication and the other is for data. AT&T has requested two lower canisters, one centered at 85 feet and the other at 95 feet. Sprint has also requested a location at 130 feet and needs only one canister. Sprint is requesting the same height T-Mobile plans to use so this will need to be

worked out among the carriers. There is a possibility for a fourth carrier at the 105 foot level, but it is not known who that will be. Since AT&T is at the 85 foot height, the monopole could be reduced five feet in height and the canisters for T-Mobile and Sprint lowered five feet.

The equipment compound laid out at the base of the monopole will accommodate the T-Mobile needs only, and the other users will need to add new walled compounds to accommodate their equipment needs. The proposed T-Mobile compound is 28 feet by 30 feet and includes the monopole and an emergency standby generator as well as their operating equipment.

Ron Williamson advised the Commission that they can reduce the height of the pole if desired in taking action or place any additional conditions or restrictions. The Staff Report does not address the Integra Study which was received after the staff report was prepared. Mr. Williamson noted the staff recommendation specifies 18 conditions for approval. He noted the findings of fact need to be addressed in the Commission's actions on the Special Use Permit. He added in addition to the request for the Special Use Permit if approved, the Commission must also take separate action on the proposed site plan. Mr. Williamson stated most of the items under the site plan approval are also covered under the Special Use Permit.

Mr. Williamson stated that the staff has asked the carrier to provide a roof over the walled structure, which has not been done in the past. This will give the structure more of the appearance of a building and better screening.

Marlene Nagel confirmed there are no specific setback requirements in the existing policy under which the application is being considered. She noted the plan presented shows the location of the pole 82 feet from the south property line and 90 feet from the west property line. Mrs. Nagel also confirmed if the tower were to fall, it would fall on itself, not on adjacent residences. Mr. Williamson noted the nearest residence is located 116 feet from the tower.

Marlene Nagel asked if it would be better to delay action until the approval of the new "Wireless Communications Facilities" ordinance is adopted. Mr. Williamson responded the City Council tabled the ordinance and directed staff to present additional information on four issues. It is unknown what changes will be made.

Mr. Williamson noted the attendance of Assistant City Attorney Stephen Horner who is well versed in FCC and Telecommunications Regulations and can also address any questions of the Commission.

Randy Kronblad asked if the existing policy stated a minimum number of co-locations required. Mr. Williams stated it does not. Its intent is to encourage co-location whenever possible.

Randy Kronblad called for a five minute recess. Mr. Kronblad reconvened the meeting at 8:30 p.m. and invited the public to speak.

Pat Archer, 4611 West 66th Terrace, former board member Indian Hills Homes Association, also indicated she was active in the former tower application at

Homestead. She expressed concern with this commercial endeavor and the monetary gain to the Church. She does not feel it is appropriate for them to sell out the neighborhood. She has asked if the Commission members had driven around and viewed other towers in the area. Mrs. Archer noted that she did not receive any communication from the carrier regarding this application although she is located only one block away. This commercial endeavor is going to seriously impact the surrounding residential properties.

Mrs. Archer noted that during consideration of the Homestead application it was stated that the Fire District site was not considered because of the unknown health concerns for the children at the neighboring schools. She asked what about the children residing in this neighborhood?

She is upset with this commercial venture taking place in a residential neighborhood and the money being made by the carrier from the co-locating providers and to the Church. This is strictly business and the residential homes surrounding the property will receive no monetary gain, but rather have their property values lowered by the presence of a 145 foot tower. She asked why the commercial property at 63rd and Shawnee Mission Parkway was not considered. How is it that the tower would not work in Prairie Village Shopping Center, but would work a few blocks away. Mrs. Archer felt Mr. Holland's comment about the trees was understated, stating the average tree in Prairie Village is 60 to 90 feet and to go above the trees he does need the requested height - this is not going to get shorter. She questioned if the e-mails presented in support of the tower were from residents, noting there is a difference between supporting this and supporting this when it is in your neighborhood. She is not willing to live under a tower so someone else can make money at their expense. She stated the Commission's job is to help the area grow, but not at other's expense.

Casey Housley, 4900 West 68th Street, quoted "The cell phone tower does not meet the value of the neighborhood and would not fit the character of the neighborhood. Approving this application would tell current and future property owners that Prairie Village is not maintaining its neighborhoods, which would have a detrimental affect on the residents." This is not a quote from a neighboring property owner addressing this or previous applications. It is a quote from Ms. Nagel on the 85-foot application. This application only compounds the problems not addressed in the first two applications. The factors that the Commission should consider are:

- This tower does not fit in this neighborhood.
- Co-location does not make sense in this area because of the height of the pole needed for co-location. This is acceptable in commercial areas. Co-location is a preference from the communications policy, not a criteria for a Special Use Permit. The Commission's first obligation is to follow the nine criteria in the ordinance.

Mr. Housley stated the driving force behind the neighborhood opposition to the applications for a communications tower on this site have been:

- Height of the tower;
- Consistency with the architectural character of the neighborhood; and
- Impact on property values of adjacent property values.

He said co-location is important, but these other factors are more important. Looking at those factors, this application was denied at 120 feet, and at 85 feet, and it should be denied at 145 feet regardless of any pending legal action. This is a 14 story structure, higher than the water tower or the cell tower behind City Hall. It may well be the highest structure in the entire City and located in the heart of a residential neighborhood.

Mr. Housley reviewed a chart he prepared listing the following height comparisons to the proposed structure.

- A Prairie Village Ranch is 21 feet in height.
- The average Prairie Village Home is 25 feet in height.
- The maximum height of a Prairie Village Home is 35 feet in height.
- Faith Lutheran Church is 54 feet in height.
- St. Ann's Tower is 65 feet in height.
- The water tower is 120 feet in height.
- The proposed monopole is 145 feet in height.

If he were coming before the Commission to build a new structure that was 14 stories tall, he is confident that the request would be denied.

It was stated that this tower is necessary because T-Mobile customers are demanding in-home coverage. It is not a God-given right to have cell phone coverage in your home. It is something that some people want, and you are being asked to allow them to do so at other people's expense.

Mr. Housley noted coverage maps at 65 feet or 75 feet have not been shown. He noted the applicant originally said 120 feet was minimum coverage area to allow for co-location, and then it was 85 feet. There are other cell phone towers in this City and in other cities where 65 feet has been the maximum height allowed.

Mr. Housley asked for evidence of alternative site locations. When asked what the status of alternative locations was or if they had been revisited. Mr. Holland responded "We can't lease anywhere else." Follow-up questions need to be asked. He said the residents received an e-mail from Nall Avenue Baptist Church within the last two weeks stating that they would welcome the opportunity to talk with T-Mobile and always have - T-Mobile broke off negotiations. Have they looked at the cemetery at 67th Street? Mr. Holland stated no one wants them in their back yard. These need to be placed where they do the most good for the most people. This location is not at site because this property sits at a low point in the City. If placed at the lowest point in the City, it has to be taller and becomes more offensive and more inconsistent with the existing architecture of the area. This is not a good location for the rest of the City. The FCC does state that you cannot prohibit cell phone communication everywhere; however, local zoning ordinances are specifically preserved by that Act. Cities have the ability to apply criteria and cities across the country are doing so. Mr. Housley referenced several examples of denials by cities that were challenged in court and upheld. He urged the Commission to not let the pending litigation impact their decision. The application has already been denied twice and now they are back seeking an even higher monopole.

In addressing the impact on neighboring property values, Mr. Housley submitted an affidavit by Donald Gossman of Metro Real Estate Services stating cell phone towers are called "visual obsolescence." He acknowledged the Commission has received contradicting reports on the impact on property values; however, it is not that whether you give more credibility to one appraiser's opinion vs. another's, it is that there is evidence in the form of an Affidavit that says the property values will be affected. You will hear from home owners and real estate agents that will say it does affect property values and a decision to buy in this neighborhood. He also submitted a study by Professor Sandy Bond of the University of Florida in which he concluded cell phone towers can decrease property values by as much as 20 percent.

It is the Commission's duty to preserve the property values of this neighborhood and to preserve the architectural style of this neighborhood. He also noted that when property values go down, the City's tax revenues also decrease.

It is not Prairie Village's job to serve the cell phone needs of surrounding cities. In opposition to the 200 silent majority supporting the tower, they will resubmit signatures of more than 300 people residing in this area opposing the tower. The Commission needs to listen to the voice of the people.

In conclusion, Mr. Housley stated the Planning Commission needs to focus on the nine factors, particularly the ones that apply to this application. These factors clearly support the denial of this application. If the Commission is inclined to grant some specific height of a tower at this location, questions need to be asked of this applicant or of the property owners of alternative sites such as the Fire District and WaterOne to determine the true status of those sites. If approved, this will be an eyesore for many years to come.

Wyatt Cobb, 6615 Hodges, who resides two houses from the parking lot, stated the majority of the residents on his street are adamantly against the tower. He agrees this is clearly about money. At the original neighborhood meeting with the residents, Selective Site Consultants identified this location as the least optimal location, number eight of eight, and now it has become number one. He has concerns with the impact on his property value, and he said that he plans to sell in the next two years. Mr. Cobb stated that T-Mobile in its own line of products offers a solution to in-home cell phone uses. They sell for \$100 a Wi-Fi phone and a \$20 router allowing you to make phone calls over the Internet. This works well for him. He noted the applicant has to provide exact evidence regarding the tower, detailed designs of the tower, or it can be denied. A 145-foot tower at this location does not make sense. He feels this is the worst proposed solution considered so far and encouraged the Commission to hold their ground for a better solution regardless of the pending litigation.

Kate Faerber, 4806 West 68th Street, showed pictures of cell tower sites in Prairie Village and at other locations to demonstrate what has been approved in the City and what has been done elsewhere. The photos showed both freestanding towers, antenna on top of office buildings, antenna incorporated into other structures, particularly locations at Tomahawk and State Line, the monopine in Leawood, two Capital Federal locations, 103rd and Nall, 95th Street between Roe and Nall, City Hall, and St. Ann's Church on Mission Road.

Mrs. Faerber stated a 20% reduction in property value is significant. The new ordinance will require a one foot to one foot setback requirement. (She acknowledged the new regulations are not applicable to this application.) She noted the base structure for four providers will be approximately the size of a small 7-11 - that is not residential use of property to her. T-Mobile is late to the punch. In reviewing files at City Hall on Friday, she noticed some of the signatures on the postcards from T-Mobile customers were not from residents within the search ring, or even within the City. The certified mailing that goes out to property owners within 200 feet goes out to only 26 residents. On the last application, five of those notices were never received. Sixty-five feet worked at St. Ann's, 65 feet worked at the church on State Line, 65 feet worked at Leawood South. She feels the City needs to question the experts as to what their needs really are.

Randy Cordill, 4904 West 68th Street, stated he is adamantly opposed to this application and agrees with the comments made by earlier speakers. He questioned if there is such a driving need for coverage in this area, why the City has not received other applications over the past two years. He stated T-Mobile has turned down locations at a number of other locations and stopped negotiations at a number of places because they are receiving a below market lease rate from the Church. A 145-foot structure does not make sense in a residential area. Co-location is great in a commercial area, but don't force a residential area to become a commercial area by building a 145-foot tower because of co-location. If not the Planning Commission, who is going to stand up and protect the architectural integrity of Prairie Village neighborhoods. Other neighborhoods have held the height at 65 feet. Mr. Cordill stated the church property at State Line is very similar to this property in terms of size, topography and trees and they have made a 65-foot tower work. If this type of application is submitted, you will not get resistance of the residents in the neighborhood to towers integrated into existing structures or structures preserving the residential integrity of the neighborhood.

Mr. Cordill stated this application makes no sense because additional tower height is necessary at this location to provide the same level of service. Mr. Holland mentioned the water tower and stated that you go down the hill about 70 feet from McCrum Park to get to Faith Lutheran Church. He is correct and this lower location needs a taller tower to get the desired height for service. Going up approximately 100 feet to Nall Avenue, would provide the same level of service with an even a shorter tower.

Kate Faerber, 4806 West 68th Street, returned to share photographs taken from her back yard looking towards the proposed tower and submitted it for the record.

Steve Roth, 6801 Cedar, noted on the photograph presented by Mrs. Faerber, a ten foot basketball goal to provide perspective on the excessive height of the proposed pole. He noted the improvements occurring in their neighborhood to their homes and stated this will not continue if the proposed tower is allowed.

Michelene Krueger, 2809 West 71st Street, feels this action is premature and it is important for the Commission to come up with the ordinance that will address both this situation and future applications. Take the time to make Prairie Village the best it can be, as this decision can have a significant impact on future applications. This is a huge decision - do not rush into this. There is a way to find an appropriate location.

She is a big user of cell phones, but would not want to meet her needs at the expense of the neighbors.

Harold Neptune, 4722 West 68th, expressed appreciation for what the Commission does for the City. Statements have been made that locations ½ mile to the east, ½ mile to the west or ½ mile to the southeast will not cover this location; therefore the reverse must be true and this area will not cover those areas. You are about to get applications for cell towers every half mile. The neighbors have never been opposed to disguised cell towers. Pictures have been shown of wonderful ways to disguise them and have heard concerns with the negative impact on property values. It has been well documented that two of the criteria are not met by this application.

Douglas Dallman, 5312 West 64th Street, President of the Faith Lutheran Church Council, stated that Faith is a very viable Church and will continue to be so. He advised the Commission the tower located at 95th & Nall is very similar to the proposed tower and encouraged the Commission to take action on this application.

Rev. Dr. Peter Rehwaldt, Interim pastor of Faith Evangelical Lutheran Church, stated when he arrived in August, the first piece of mail he opened was the City's stormwater drainage fee assessment and the second was a letter from a neighbor opposing a cell tower at this location. Since that day he has spent a lot of time at the City offices and on the City website. Rev. Rehwaldt stated he was impressed with the City's Village Vision document not only for illustrating the joys and the challenges of not only living in this City, but also for guiding its future years. Infrastructure issues are not easy.

There is a growing use of cell phone use for the placement of emergency calls. MARC has identified cell phone connections to the 9-1-1 system to be one of their top legislative priorities. This kind of coverage is necessary. Sixty percent of all 9-1-1 calls in the metropolitan Kansas City area come through cell phones. This is a serious public safety issue and not something to be lost. Rev. Rehwaldt thanked the members of the congregation attending the meeting. He noted residents are impacted by the application, but added the Church has several people coming from throughout the metropolitan area to their facility for worship as well as for secular meetings and activities, such as Lion clubs, scouts and elections. They come with cell phones and they too will be impacted. They, and their safety, must also be considered as part of your charge.

Mary Cordill, 4904 West 68th Street, stated she adamantly opposes this tower for the reasons it has already been denied and disappointed that the City is even considering an application that is so far beyond the bounds of what was previously denied. Mrs. Cordill raised the following points:

- If this tower were to be placed in a neighboring city, the application would not be approved just based on the setback.
- She is concerned about the precedence that would be set by approving this application. This is a significant decision affecting the City for a long-time.
- Neighborhood aesthetics and residential property values must be protected in this process.
- Once a tower goes in, as Mr. Holland stated, there will be requests for additional antenna on the tower and added height.

- The letters of support for T-Mobile were people outside of Prairie Village and particularly outside the coverage area. During the earlier applications, they spoke with residents who had sent in e-mails of support that were totally against the proposed application. The surveys are vague and misleading with incomplete information.
- Mrs. Cordill is concerned with the threat of the lawsuit and the impact if the City caved in. She believes there are other options. They know Nall Avenue Baptist is interested, and it sits 90 to 100 feet higher than this church. There are more questions that need to be asked.
- Looking at the coverage maps, the areas showing zero coverage are actually located closer to Nall and the Nall Avenue Church.
- The stealth monopole at 94th & Nall is located on the south side of the building which abuts commercial property and is only 100 feet in height. It is not an accurate comparison. There are no houses in that area.
- They have spoken with the Prairie Village Chief of Police and he was not able to confirm that 9-1-1 calls have been dropped in this area.
- The Village Vision is a fantastic document, which they wish would have addressed cell towers. She does not believe the construction of cell towers will enhance the development of the City, rather she feels it would hinder redevelopment and enhancement of properties.
- She does not feel the Church should be in the position to make infrastructure decisions for the City. This is a decision to be made by the City.
- Please deny this application.

Paul Middleton, 6434 Hodges Drive, opposes this application. When they are talking cell phone coverage and gaps - he feels it is specific to T-Mobile. He has Verizon and has no problems.

Randy Kronblad called upon Curtis Holland to respond to the comments.

Mr. Holland acknowledged and thanked all present for their comments and time. The predominant theme from those that spoke against the tower was "there are other ways to do this, there are other locations to do this, this is the worst location to do this, Nall Avenue Baptist Church and McCrum Park are better locations." It seems everyone is saying it is horrible here, but not at Nall Avenue Baptist Church or McCrum Park. These other locations are similar, if not identically situated, in terms of being surrounded by residential properties. The only difference is that they are at higher elevations and therefore it is believed that you can have a shorter tower. However, that is not necessarily true. There are other factors that must be considered. There are extremely tall trees in those areas also, which would say, that an equally high tower would need to be constructed in those locations.

Another statement was made by a resident that "he was noticing as he drove around more cell towers", which means that he didn't notice them when he was driving around before which is much like all of us do. We drive around and do not see these things. These facilities blend in over time with the community such that over time you do not see them all the time. There is a diminishing aspect to the visual perception that is not being acknowledged.

When the carrier is looking at improving coverage and where they have gaps, they do not look at city boundaries. The poor coverage area drives the location and is determined by the RF engineering without any reference to the municipal boundaries. It is only after they determine where the coverage gaps are and when the search ring is created that they discover what city the gap lies in.

The point made by the pastor in regard to public safety it is a very, very important consideration with respect to this facility and to wireless facilities in general. They play a significant role in 9-1-1 situations.

Mr. Holland stated that you will see this facility from the south when there are no leaves on the trees; however, when the leaves are on, which is a majority of the year, they provide a significant buffering to the south.

Examples of facilities were presented to give the idea that only a 65 foot height is needed. Wireless facilities and coverage gaps are not always equal and if this could be done with a 65-foot pole it would be done. Those sites may serve a specific purpose in those specific locations. They have different topography issues and different foliage and other clutter issues. They may only be used to target a specific intersection or microcells. They all serve a different purpose and not all sites are equal.

The submittal for this location at 145 feet was made in response to the desires heard by T-Mobile to maximize co-location. If your desire is to reduce the height, T-Mobile is asking for an approval of a facility that would provide them with coverage to this area of Prairie Village. It is up to the Commission to determine what would be the most appropriate at this location. However, he stated that 65 feet is not an acceptable height from T-Mobile's standpoint.

Jane Ferber, 5111 West 68th Street, stated she does not understand why this request is being heard for the third time. She does not feel the Church should be able to dictate what is being done with the City. Say No.

Marsha Hansen, 6434 Hodges, stated the comments made suggesting the location at Nall Avenue Baptist Church were not saying "put it in someone else's backyard," it was that there would be a possibility for a shorter tower at that location because of the higher elevation. She is also concerned that the Church should have the opportunity to lower property values, disrupt the community and possibly set a dangerous precedent for the City. If it was such an ulterior motive for the good of the community, then why isn't that money going back to City or going to charity.

Pastor Rehwaldt noted the comment was made earlier that the pastor would get a check. He does not receive this money personally. In response to the comment about charity, Pastor Rehwaldt responded that Faith Lutheran Church served last year 3500 meals for the homeless out of their kitchen, this year that number will be 4000, maybe more. The school is using their facilities to better serve the children in the neighborhood. Faith Lutheran Church is deeply concerned with its neighbors, with the people in its area, both those with money and resources and also those without. There has been a lot of passionate discussion this evening, he would ask the Commission to base its decision on the guidelines presented by City Staff. He is

deeply offended at the notion that the people of Faith Lutheran Church are not committed to serving the people of this neighborhood and beyond.

Pat Archer, 4611 West 66th Terrace, stated the Commission should not be taking action of vagueness and generalities. The information must be presented clearly in black and white, and if it is not, it should not be approved.

Joyce Whitter, 3707 West 75th Street, spoke in favor of the application. She noted there is a policy in place and staff has made a recommendation. She does not feel the process should be delayed on the prospect of a new ordinance being developed. She has to go outside to talk with her children on her phone. She noted there are generalities being presented on both sides. She does not support delaying the decision.

Randy Kronblad closed the public hearing at 10:00 p.m.

Marlene Nagel stated she read the information in the packet and came this evening with an open mind for this new application. She feels it is a higher height than the last two applications and less in keeping with the architectural character of the neighborhood. It will certainly dominate the neighborhood in terms of the height of the facility. She noted there are differing studies about property values; however, she believes it could negatively impact future property investment in this neighborhood. She has seen three new homes completed and four more under construction and feels that if this facility were installed it would dampen further investment which is strongly promoted in the Village Vision. She does not support this application.

Dale Warman stated he does not disagree that there is a need. He complimented those who spoke on this emotional issue. He does not think this request for a cell tower will go away, and there will be others that will follow it. However, he does not feel the City would be diligent in approving this when there are other options that should be investigated. At this point, he is not in favor of the application.

Dirk Schafer said he appreciated the passion on both sides. He has heard a number of comments about "our Prairie Village" and he can assure you that the people on the Commission are there because they feel that Prairie Village is their town. A couple of things stuck out. The first is the comparison of building heights. When you look at 145 feet which is the equivalent to a fourteen story building and if there was an alternative use being proposed at that height it would not get much consideration. The second comparative height was the 120-foot tall water tower simply a few blocks away. He feels if there is a need for a structure over 100 feet, a structure approximately three times taller than the Church, there should be some consideration given to an existing structure located a few blocks away.

Randy Kronblad stated his agreement with the other Commissioners. His primary issue is that it seems like this is a moving target - a 120-foot application has been considered, an 85-foot application, and now a 145-foot application. He is concerned that the Commission is not being provided the necessary information to determine what, if anything, should be placed at this location. He questions whether it fits into a residential neighborhood, but realizes the other areas are also residential

neighborhoods and if an application is made for either of those sites, the chamber will again be filled with residents opposing the application.

He is particularly concerned with the contradicting information that has been presented this evening. The Commission has received a huge packet of information which they have studied, they have visited the site and those of other towers; but this evening they have been told contrasting information, specifically regarding the possibly of location at another site. He does not feel the Commission can make a sincere decision based on incomplete information. If coverage is needed in this area, technology needs to get better than simply placing a taller pole at this location. He can not support the current application.

Marlene Nagel mentioned another point that needs to be communicated to the applicant and others is that the Commission believes there have been quality applications of wireless communications structures/facilities placed in our community in residential settings and integrated into buildings and there should be that kind of application to meet T-Mobiles needs. She believed that when the Commission recommended denial on the last two applications, it was their hope that if T-Mobile came back it would be with an application that would integrate a facility into the design of the Church.

Dirk Schafer stated during the hearing he heard several people who were opposed to the 145 foot tower say that could accept a tower of a much lower height. This issue is not going to go away and there is a need for better coverage. The City needs to find a way to deal with this issue, to find that middle ground, that aesthetic solution and minimum and effective height and encourage all parties to be open to finding that solution.

Randy Kronblad restated his appreciation of the input of all present to address this issue.

Dale Warman stated the Commission cannot and will not make a decision based on one group of home owners over another. When we say we need to look at another location it is to determine if it is a more appropriate location, we will not move this project to another location unless it makes sense.

The following criteria were considered by the Planning Commission in their review of the application:

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

The location of the monopole appears to meet all the setback requirements of the policy. The compounds for T-Mobile and others carriers must be 25 feet from the rear property line. The proposed monopole is 145 feet in height, which is less than the 150 foot maximum height set out in the City's policy and new ordinance.

2. **The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.**
It was the consensus of the Planning Commission that the proposed facility would adversely affect the area because it would not be in keeping with the character of the neighborhood and therefore would adversely affect the welfare to the public.
3. **The proposed special use will not cause substantial injury to the value of other properties in the neighborhood in which it is to be located.**
The applicant for the cell facility stated that it would not cause substantial injury to the value of other properties. Those opposing the cell facility have stated in their letters that the monopole would adversely impact property values. Expert testimony to both positions was submitted. Planning Commission members noted that although there were conflicting findings from the studies presented, the approval of the application would negatively impact the value of adjacent properties.
4. **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 that this special use will not dominate 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 so dominate the immediate neighborhood, consideration shall be given to: (a) the location, size and nature of the height of building structures, walls and fences on the site; and (b) the nature and extent of landscaping and screening on the site.**
Although Faith Evangelical Lutheran Church is on a site of approximately three acres, the surrounding neighborhood is totally developed with residential properties. The proposed monopole is 145 feet in height and will obviously be the tallest structure in the area. Planning Commission members noted that the size of the proposed tower at 145 feet would dominate the immediate neighborhood. The Planning Commission stated that the size and nature of the height of the structure along with the lack of integration into the adjacent structure and character of the neighborhood were the primary reasons it would dominate the immediate neighborhood. Planning Commission also stated that the proposed structure would also have a negative impact on the residential redevelopment and substantial remodeling, such as currently being undertaken in the neighborhood.
5. **Off-street parking and loading areas will be provided with standards set forth in these regulations, and areas shall be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.**
Additional off-street parking will not be necessary for this particular use because there will be no permanent staff on the site. Service people will be available on site periodically to maintain the equipments, and of course, when installation occurs. The existing church parking lot that is provided on the site will be adequate for this need.
6. **Adequate utility, drainage, and other such necessary facilities have been or will be provided.**

Water, sewer and power services to this site should be adequate because there will be no permanent occupancy by people. There will be a need for a gas line if the standby generator is approved. It should be noted however that the proposed installation may have additional impervious surface and that a storm drainage master plan will need to be prepared and submitted to Public Works for their review and approval.

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

Existing church parking lot will be used for access and will be more than adequate to handle the traffic generated by this use.

8. **Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing process, obnoxious odors, or unnecessary intrusive noises.**

The proposed tower and equipment installation will not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that will affect the general public. The proposed generator shall provide adequate sound attenuation.

9. **Architectural style and exterior materials are compatible with such style and materials used in the neighborhood in which the proposed structure is to be built or located.**

The Commission stated that a monopole structure at a proposed height of 145 feet and the associated related equipment to be situated on the site for the proposed multiple carriers were not compatible with the architectural style or residential character of the neighborhood.

Marlene Nagel moved the Planning Commission find criteria #2, #3, #4 and #9 to be negative as stated above and forward PC2009-06 to the City Council with a recommendation for denial. The motion was seconded by Dale Warman and passed unanimously.

Staff advised the public that the Planning Commission recommendation would be considered by the City Council on Monday, April 20th at the Council Committee of the Whole meeting at 6 p.m.

NON-PUBLIC HEARINGS

There were no Non-Public Hearings to come before the Planning Commission.

OTHER BUSINESS

Dennis Enslinger announced that the Mid America Regional Council (MARC) will hold a Planning Workshop on Form Based Codes on Thursday, May 14th from 6 to 8 p.m. at the MARC facility. Planning Commissioners interested in attending should contact Joyce.

The City Council tabled action on the proposed "Wireless Communication Facilities" ordinance until their May 4th meeting and asked staff to provide additional information and options to address the following four areas of concern: Setback Requirements,

Waiver, Co-location in residential areas and the types of facilities allowed in different areas.

ADJOURNMENT

With no further business to come before the Planning Commission, Acting Chairman Randy Kronblad adjourned the meeting at 10:15 p.m.

Randy Kronblad
Acting Chairman

TREE BOARD
City of Prairie Village, Kansas

MINUTES

Wednesday - April 1, 2009, 6:00PM Meeting
Public Works - Conference Room
3535 Somerset Drive

Board Members: Cliff Wormcke, Jack Lewis, Greg VanBooven, Luci Mitchell, Art Kennedy, Tony Rostberg

Other Attendees: Bob Pryzby

- 1) **Review and Approve minutes from March 4, 2009 meeting - approved on a motion by Jack Lewis and Cliff Wormcke**

- 2) **Sub-Committee Report**
 - 2.1) **Fall Seminar**
 - a) **General update - Alan Branhagen, Director of Horticulture at Powell Gardens has agreed to be the speaker. The meeting date is October 17 at 7PM in Community Center.**

 - 2.2) **Arboretum Committee**
 - a) **Update - Art Kennedy - Art reported that with the help of Greg VanBooven, he has completed the identification of Arboretum trees in the various parks. He will be finalizing his report.**

 - 2.3) **Arbor Day**
 - a) **Event Update - the event will be April 25th at 10AM in Franklin Park. Greg and Art will be coordinating the recognition of Mr. and Mrs. Robert Weed. Bob Pryzby reported that he has received the trees (metasequoia glyptostoboides - variegated dawn redwood and acer griseum - paperbark maple) from Jack Lewis and will have them planted this week.**

- 3) **Old Business - Bob Pryzby reported on the Walgreen development and that he has advised the developer that the landscaping plans being use for the bid are not the ones approved by the Tree Board.**

Bob Pryzby reported that the CVS development was withdrawn from the Planning Commission agenda due to a potential real estate transaction.

- 4) **New Business - Bob Pryzby reported that the City is pursuing two American Recovery Reinvestment Act of 2009 initiatives. One is the Innovative Green Infrastructure Project for greening right-of-ways and use of native vegetation. The other project is Green Infrastructure for planting 10,000 trees.**

- 5) **The next meeting agenda - September 2.**

**Council Members
Mark Your Calendars
May 18, 2009**

May 2009	Kay Trieb photography exhibit in the R. G. Endres Gallery
May 23	Pool opens for the season
May 25	City offices closed in observance of Memorial Day
May 27	Dedication of Porch Light Sculpture - 4:00 p.m. Somerset & Lee Blvd.
June 2009	L. Daniel Compton photography exhibit in the R. G. Endres Gallery
June 1	City Council Meeting
June 12	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
June 15	City Council Meeting
July 2009	Mark Raynes photography exhibit in the R. G. Endres Gallery
July 3	City offices closed in observance of Independence Day
July 4	VillageFest
July 6	City Council Meeting
July 10	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
July 20	City Council Meeting
August 2009	Senior Arts Council mixed media exhibit in the R. G. Endres Gallery
August 3	City Council Meeting
August 14	Artist reception in the R. G. Endres Gallery 6:30 - 7:30
August 17	City Council Meeting
September 2009	
September 7	City offices closed in observance of Labor Day
September 8 (Tues.)	City Council Meeting
September 21	City Council Meeting
October 2009	State of the Arts exhibit in the R. G. Endres Gallery
October 3-6	2009 LKM Annual Conference - Topeka Expocentre & Capitol Plaza Hotel
October 5	City Council Meeting
October 9	Artist reception in the R. G. Endres Gallery 6:00 - 8:00
October 19	City Council Meeting
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 6:00 - 8:00
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 4	Mayor's 2009 Holiday Party
December 7	City Council Meeting
December 11	Artist reception in the R. G. Endres Gallery 6:30 - 7:30
December 21	City Council Meeting
December 25	City offices closed in observance of Christmas

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

- COU2006-38 Consider Park & Recreation Committee Master Plan (assigned 09/27/2006)
- 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 Design Agreement (assigned 2/6/2009)
- COU2009-27 Consider Project 190871: Mission Lane Bridge Replacement (assigned 2/6/2009)
- COU2009-55 Consider Bid Award to Purchase Swimming Pool Chemicals (assigned 5/12/2009)
- COU2009-56 Consider Resolution of Support for CDBG application for 2010 funding (assigned 5/13/2009)
- COU2009-57 Consider Bid Award for Mowing Services Related to Abatement Services and Consider Revision to 2009 Prairie Village Fee Schedule-Adding an Administrative Fee for Mowing of Properties Related to Abatement Services (assigned 5/14/2009)
- COU2009-58 Consider Revision to 2009 Prairie Village Fee Schedule - Elimination of Administrative Court Fee (assigned 5/14/2009)

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)
- PC2008-01 Consider Cell Tower Policy (assigned 3/19/2008)
- 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)