

City Council Meeting



**May 4, 2009
7:30 p.m.**

Dinner provided by Carrabba's

House Salad

Lasagne

Carrabba's Boule Bread

Mely's Ice Cream Cake

COUNCIL COMMITTEE
May 4, 2009
6:00 p.m.
Council Chamber

AGENDA

MICHAEL KELLY, COUNCIL PRESIDENT

CONSENT AGENDA

AGENDA ITEMS FOR DISCUSSION

COU2009-50 Consider *Village Voice* Agreement
Dennis Enslinger

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

*COU2009-52 Consider Project 191023: 2009 Concrete Repair Program Construction Change
Order
Bob Pryzby

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

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

2010 Budget Presentation & Discussion
Quinn Bennion

Discussion of Appeal Procedure - Personnel Policy 1150

COU2007-51 Village Vision

*Council Action Requested the same night



ADMINISTRATION

Council Committee Meeting Date: May 4, 2009
Council Meeting Date: May 18, 2009

COU2009-50: Consider *Village Voice* Agreement

RECOMMENDATION

Staff recommends the City Council approve a contract with First Choice Associates & Communications, LLC for three bi-monthly issues of the *Village Voice*.

BACKGROUND

The contract with Alphagraphics for designing, printing and mailing the newsletter ended at the end of 2008. At their meeting on December 23, 2008, the Communications Committee discussed redesigning the newsletter and changing to a bi-monthly publication in full color. At the January 5th Council Meeting, the 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 5 responses. The attached bid summary is provided. Based on 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 contract is to fulfill the current year whereby we will renew for 2010.

FUNDING SOURCE

01-01-01-5160

RELATION TO VILLAGE VISION

LG1B Enhance communication between government officials and the public.
 Enhance transparency of processes and financial accountability.

ATTACHMENTS

1. Bid Summary
2. Contract
3. Specifications

PREPARED BY

Jeanne Koontz
Deputy City Clerk
4/24/2009

2009 Newsletter Bid Summary

Company/Contact Info	Initial Design Fee	Design Fee	Printing Fee	Mailing Fee	Total Fee	Insert Fee
Spaw & Associates David Spaw 8117 Rosewood Dr PV, KS 66208 dspaw@spaw.net 913-383-9595	\$250	\$700	\$2,475	\$595	\$3,770	\$1,375
Spangler Graphics Brian Thompson 2930 S 44th St KC, KS 66106 briant@spanglergraphics.com 913-428-2052		\$100/hour	\$3,700	\$600	\$4,300	\$300
Alphagraphics Fred Rock 7604 State Line Road PV, KS 66208 frock@alphagraphics.com 913-385-2679	No Cost	\$380	\$3,990	\$890	\$5,260	\$2,040
First Choice David Wyssmann 10579 Widmer Road Lenexa, KS 66215 dave@connectwithchoice.com 913-871-7625	\$400	\$440	\$2,216	\$410	\$3,066	\$386
PrintTekk Maggie Miller-Filkins 4312 Terrace KC, MO 64111 maggie@printtekk.com 816-931-4122		Not Included	\$3,549	\$997	\$4,546	\$1,810

AGREEMENT FOR PRODUCTION OF CITY NEWSLETTERS

THIS AGREEMENT is made this _____ day of _____, 2009.

BY AND BETWEEN the City of Prairie Village, Kansas, hereinafter called the "City", and **First Choice Associates & Communications, LLC**, hereinafter called the "Contractor".

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS AND AGREEMENTS, Herein contained, the parties agree as follows:

ARTICLE I SCOPE OF SERVICES

The Contractor shall perform the following services as identified in the following and the attached Specifications:

- A. Provide design services for four (4) rotating templates for a full-color, eight (8) page newsletter.
- B. Provide layout, design, and associated creative services necessary to ensure the publication of four (4) issues (June/July, August/September, October/November and December/January) of the *Prairie Village Voice*, to be distributed to each residence and business within the corporate limits of Prairie Village, Kansas within fourteen (14) days of the City's submission of all information pertaining to the newsletter to the Contractor beginning with the June/July, 2009 issue.
- C. Provide all paper and printing services necessary to ensure the production and distribution of all publications identified in B in accordance with the attached Specifications.
- D. Provide an ftp site for uploading digital pictures to be used in the newsletter.
- E. Provide an electronic version of each of the three (3) issues of the *Prairie Village Voice* and provide this electronic copy to the City at the time of publication of each issue. The electronic copy shall be in PDF format.
- F. Provide mailing services necessary to ensure labeling and sorting of publications for delivery by the United States Postal Service, Prairie Village substation, for distribution.
All postage costs shall be paid by the City.
- F. Provide the City with a minimum of one (1) and a maximum of three (3) drafts of each publication.
- G. Provide one (1) "blue-line" copy of each publication prior to printing.
- H. Provide the City with 250 copies of each publication for internal distribution.

- I. All newsletter copies representing printing overages will be delivered to the City for additional distribution.

No publications shall be delivered for printing without the authorization of the City Administrator or his appointee.

ARTICLE II COMPENSATION

The City agrees to compensate the Contractor for performing the services described in Article I and the attached Specifications according to the following schedule:

<i>Design Services – 3 templates</i>	\$400
<i>Prairie Village Voice – 8 page</i>	\$3,066 per issue
<i>Prairie Village Voice – 12 page</i>	\$3,452 per issue

After delivery of all copies of a publication to the United States Postal Service for distribution, the Contractor shall submit a statement to the City indicating the amount due as described above. The City shall make payment within thirty (30) calendar days of the date said statement is received by the City. Payment to the Contractor will be made only for services approved by the City Administrator or his appointee.

ARTICLE III MISCELLANEOUS PROVISIONS

Term of Contract

This agreement shall be effective from the 18th day of May, 2009 and shall continue until the 31st day of December, 2009. The parties may renegotiate or decrease or increase unit quantities or unit prices if the City elects to renew the contract on an annual basis, and the renewal of such contract shall accordingly be contingent on the ability of the parties to reach a satisfactory agreement on unit quantities and unit prices for the new contract term. If the City intends to renew the Contract pursuant to this Section, it shall provide the Contractor with written notice of such intent no later than sixty (60) days prior to the date on which each contract term is to expire. All renewal periods will be subject to satisfactory performance by the contractor of his/her contract the previous year and appropriation of funds.

Termination

The City or the Contractor may terminate this Agreement at any time and for any reason by giving to the other party a notice in writing at least sixty (60) days prior to the effective date of such termination. In the event the Agreement is terminated as herein provided, the City agrees to pay to the Contractor any and all sums due and owing for services rendered in accordance with the terms of this Agreement as of the effective date of such termination.

Assigning or Subletting the Contract

The Contractor shall not assign or sublet the contract or any portion of the contract without approval by the City. Any assignment or sublease agreement entered into by the Contractor shall not be construed as making the City a party of such subcontract or subjecting the City to liability of any kind to any subcontractor. No subcontract shall under any circumstances relieve the Contractor of his liability and obligation under the contract. All transactions will be made through the Contractor. Subcontractors will be recognized and dealt with only as workers and representatives of the Contractor and as such shall be subject to the same requirements of Contractor.

Proprietary Rights

The Contractor acknowledges that any and all writings, documents, information, data, and other tangible or intangible materials (whether reduced to written form or otherwise) which are protectable under copyright or trademark law, and all associated intellectual property rights, that City creates, develops or delivers in connection with any printing and publication services contemplated by this Agreement, shall be the sole and exclusive property of City ("City Property"). The parties acknowledge and agree that any new graphics or artwork to be placed upon

any publications produced by Contractor for City under this Agreement which are protectable under copyright or trademark law, and all intellectual property rights associated therewith, that Contractor and City jointly create, develop or deliver, shall be the sole and exclusive property of City and are included in the definition of City Property as used herein. Upon request of City, Contractor hereby agrees to execute and deliver such documentation as may reasonably be requested to transfer any ownership rights which it has in such jointly created, developed or delivered graphics or artwork to City to permit City to perfect its intellectual property rights in such items. Contractor and its agents are not authorized to and may not use City Property for any purpose without the express written consent of City.

IN WITNESS WHEREOF, said parties have affixed their name, the day and year first written above.

CONTRACTOR:

CITY:

Signature

Ronald L. Shaffer, Mayor

Date

Date

APPROVED AS TO FORM

ATTEST:

City Attorney

Joyce Hagen Mundy, City Clerk

Village Voice Specifications

Design

- 8 pages
- 8 ½ X 11 – layout using 11 X 17 format
- Graphic-based
- 4 rotating templates

Printing

- Size:** 11” X 17” flat
8.5” X 11” folded (If trim size is smaller than this listed measurement, please advise of size.)
- Ink Colors:** Full Color
Non-toxic inks are to be used
RFP should include all color matching and ink charges, copy bleed off all sides
- Quantity:** 12,500 (Average printing quantity, based on current mailing address count.)
- Extra Copies:** A **minimum** of 250 copies and 2 large print copies will be delivered to City Hall.
- No. of Issues:** Three (Bi-monthly)
- No. of Pages:** 8 is the standard, 12 if more content is needed
- Paper Stock:** 60# offset, white; 10% post-consumer content
- Binding:** Fold, stitch and trim to 8.5” X 11”; bound insert, nothing loose
- Packaging/Delivery:** Copies are to be delivered in appropriate packaging to a mailing house as specified by the City.

Mailing

Provide mailing services necessary to ensure labeling and sorting of publications for delivery by the United States Postal Service and delivery to the United States Postal Service, Prairie Village substation, for distribution. All postage costs shall be paid by the City.

The City will provide a list of all businesses and their addresses. All residential address lists shall be provided by the Vendor. City and Vendor will negotiate a process to remove people from the mailing list who receive an electronic copy.



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: May 4, 2009

Council Meeting Date: May 4, 2009

COU2009-51: CONSIDER MUNICIPAL CODE CHAPTER XIV ARTICLE 3 FLOODPLAIN MANAGEMENT

RECOMMENDATION

Staff recommends the City Council approve a new Chapter XIV Article 3 Floodplain Management code.

COUNCIL ACTION REQUESTED ON MAY 4, 2009

BACKGROUND

The Federal Emergency Management Agency has advised the City that a final flood elevation determination for the City of Prairie Village, Johnson County, Kansas, that it will be issuing a Flood Insurance Rate Map that identifies the Special Flood Hazard Areas, and the areas subject to inundation by the base (1-percent annual chance) flood. This map will become effective August 3, 2009. 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. One of the requirements is that the new code be reviewed and approved by the Chief Engineer in the Kansas Department of Agriculture, Division of Water Resources, Floodplain Management prior to the City Council adopting the code. Attached in pdf format is the approved code.

FUNDING SOURCE

No funds required.

RELATION TO VILLAGE VISION

CCS2 Parks and Green Space

CC2a Preserve and protect natural areas.

CFS3 Streets and Sidewalks

CCF3a Ensure streets and sidewalks are in good condition by conducting maintenance and repairs as needed.

TR1 Bike and Pedestrian Friendly

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

PUBLIC NOTICE

The City Clerk will advertise the adoption of this new code.

PREPARED BY

S Robert Pryzby, Director of Public Works

Date April 28, 2009

ORDINANCE NO. 2194

AN ORDINANCE FOR THE CITY OF PRAIRIE VILLAGE, JOHNSON COUNTY, KANSAS, AMENDING CHAPTER XIV, ENTITLED "STORMWATER" BY AMENDING ARTICLE 3 ENTITLED "FLOOD PLAIN MANAGEMENT" ESTABLISHING FLOODPLAIN MANAGEMENT FOR CONSTRUCTION, ANY NEW DEVELOPMENT OR REDEVELOPEMMENT PROJECTS LOCATED IN THE FLOODPLAIN.

WHEREAS, the following floodplain management regulations, as written, were approved in draft form by the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture on _____, 2009; and

WHEREAS, the legislature of the State of Kansas has in K.S.A. 12-741 *et seq*, and specifically in K.S.A. 12-766, delegated the responsibility to local governmental units to adopt floodplain management regulations designed to protect the health, safety, and general welfare; and

WHEREAS, the Governing Body of the City of Prairie Village, Kansas, ordains as follows:

Flood Losses Resulting from Periodic Inundation. The special flood hazard areas of the City of Prairie Village, Kansas, are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety and general welfare.

General Causes of these Flood Losses. These flood losses are caused by (1) the cumulative effect of development in any delineated floodplain causing increases in flood heights and velocities, and (2) the occupancy of flood hazard areas by uses vulnerable to floods or hazardous to others, inadequately elevated or otherwise unprotected from flood damages.

Methods Used to Analyze Flood Hazards. The Flood Insurance Study (FIS) that is the basis of this article uses a standard engineering method of analyzing flood hazards, which consists of a series of interrelated steps.

Selection of a base flood that is based upon engineering calculations, which permit a consideration of such flood factors as its expected frequency of occurrence, the area inundated, and the depth of inundation. The base flood selected for this ordinance is representative of large floods, which are reasonably characteristic of what can be expected to occur on the particular streams subject to this ordinance. The base flood is the flood that is estimated to have a one percent chance of being equaled or exceeded in any one year, as delineated on the Federal Insurance Administration's FIS, and illustrative materials dated August 3, 2009, as amended, and any future revisions thereto.

Calculation of water surface profiles that are based on a standard hydraulic engineering analysis of the capacity of the stream channel and over-bank areas to convey the regulatory flood.

Computation of a floodway required to convey this flood without increasing flood heights more than one (1) foot at any point.

Delineation of floodway encroachment lines within which no development is permitted that would cause **any** increase in flood height.

Delineation of floodway fringe, i.e., that area outside the floodway encroachment lines, but still subject to inundation by the base flood.

WHEREAS, it is the purpose of this ordinance to promote the public health, safety, and general welfare; to minimize those losses described herein; (b); to establish or maintain the community's eligibility for participation in the National Flood Insurance Program (NFIP) as defined in 44 Code of Federal Regulations (CFR) 59.22(a) (3); and to meet the requirements of 44 CFR 60.3(d) and K.A.R. 5-44-4 by applying the provisions of this ordinance to:

Restrict or prohibit uses which are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities;

Require that uses vulnerable to floods, including public facilities that serve such uses, be provided with flood protection at the time of initial construction; and,

Protect individuals from buying lands that are unsuited for the intended purposes due to flood hazard.

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

Section1. The entire Article 3 of Chapter XIV of the Prairie Village Municipal Code entitled "FLOODPLAIN MANAGEMENT" is deleted in its entirety and in lieu thereof, the following Article of the same name and number is hereby adopted:

Chapter XIV Article 3

FLOODPLAIN MANAGEMENT

Sections:

14-301 General Provisions

14-302 Administration

14-303 Provisions for Flood Hazard Reduction

14-304 Floodplain Management Variance Procedures

14-305 Penalties for Violation

14-306 Amendments

14-307 Definitions

14-301 GENERAL PROVISIONS

A. LANDS TO WHICH ARTICLE APPLIES

1. This article shall apply to all lands within the jurisdiction of the City of Prairie Village, Kansas, identified as unnumbered and numbered A Zones, AE, AO and AH Zones, on the Index Map dated August 3, 2009, of the Flood Insurance Rate Map (FIRM) as amended and any future revisions thereto. In all areas covered by this article, no

development shall be permitted except through the issuance of a floodplain development permit, granted by the Governing Body or its duly designated representative under such safeguards and restrictions as the Governing Body or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community and where specifically noted in Section 14-303. (Ord. 2032; Ord. 2169, Sec. 13, 2008)

B. COMPLIANCE

1. No development located within known flood hazard areas of this community shall be located, extended, converted or structurally altered without full compliance with the terms of this article and other applicable regulations.

C. ABROGATION AND GREATER RESTRICTIONS

1. It is not intended by this article to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where this article imposes greater restrictions, the provisions of this article shall prevail. All other ordinances inconsistent with this article are hereby repealed to the extent of the inconsistency only.

D. INTERPRETATION

1. In their interpretation and application, the provisions of this article shall be held to be minimum requirements and shall be liberally construed in favor of the Governing Body and shall not be deemed a limitation or repeal of any other powers granted by Kansas statutes.

E. WARNING AND DISCLAIMER OF LIABILITY

1. The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions or the flood height may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This article does not imply that areas outside the floodway and flood fringe or land uses permitted within such areas will be free from flooding or flood damage. This article shall not create liability on the part of the City of Prairie Village, Kansas, any officer or employee thereof, for any flood damages that may result from reliance on this article or any administrative decision lawfully made there under.

F. SEVERABILITY

1. If any section, clause, provision or portion of this article is adjudged unconstitutional or invalid by a court of appropriate jurisdiction, the remainder of this article shall not be affected thereby.

14-302 ADMINISTRATION

A. FLOODPLAIN DEVELOPMENT PERMIT

1. A floodplain development permit shall be required for all proposed construction or other development, including the placement of manufactured homes, in the areas described in Section 14-302.A.1. No person, firm, corporation, or unit of government shall initiate any development or substantial improvement or cause the same to be done without first

obtaining a separate floodplain development permit for each structure or other development.

B. DESIGNATION OF FLOODPLAIN ADMINISTRATOR

1. The Director of Public Works is hereby appointed to administer and implement the provisions of this article.

C. DUTIES AND RESPONSIBILITIES OF FLOODPLAIN ADMINISTRATOR

1. Duties of the floodplain administrator shall include, but not be limited to:
 - a. Review of all applications for floodplain development permits to assure that sites are reasonably safe from flooding and that the floodplain development permit requirements of this article have been satisfied;
 - b. Review of all applications for floodplain development permits for proposed development to assure all necessary permits have been obtained from Federal, State or local governmental agencies from which prior approval is obtained by Federal, State, or local law;
 - c. Review all subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding;
 - d. Issue floodplain development permits for all approved applications;
 - e. Notify adjacent communities and the Division of Water Resources, Kansas Department of Agriculture, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);
 - f. Assure that the flood-carrying capacity is not diminished and shall be maintained within the altered or relocated portion of the watercourse; and;
 - g. Verify and maintain a record of actual elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures;
 - h. Verify and maintain a record of the actual elevation (in relation to mean sea level) that the new or substantially improved non-residential structures have been flood proofed;
 - i. When floodproofing techniques are utilized for a particular non-residential structure, the floodplain administrator shall require certification from a registered professional engineer or architect.

D. APPLICATION FOR FLOODPLAIN DEVELOPMENT PERMIT

1. To obtain a floodplain development permit, the applicant shall first file an application in writing on a form furnished for that purpose. Every floodplain development permit application shall:
 - a. Describe the land on which the proposed work is to be done by lot, block and tract, house and street address, or similar description that will readily identify and specifically locate the proposed structure or work;
 - b. Identify and describe the work to be covered by the floodplain development permit;
 - c. Indicate the use or occupancy for which the proposed work is intended;

- d. Indicate the assessed value of the structure and the fair market value of the improvement;
- e. Specify whether development is located in designated flood fringe or floodway;
- f. Identify the existing base flood elevation and the elevation of the proposed development;
- g. Give such other information as reasonably may be required by the floodplain administrator;
- h. Be accompanied by plans and specifications for proposed construction; and,
- i. Be signed by the permittee or his or her authorized agent who may be required to submit evidence to indicate such authority.

14-303 PROVISIONS FOR FLOOD HAZARD REDUCTION

A. GENERAL STANDARDS

1. No permit for floodplain development shall be granted for new construction, substantial improvements and other improvements including the placement of manufactured homes within all unnumbered and numbered A zones, AE, AO and AH zones, unless the conditions of this section are satisfied.
2. All areas identified as unnumbered A zones on the FIRM are subject to inundation of the 100-year flood; however, the base flood elevation is not provided. Development within unnumbered A zones is subject to all provisions of this article. If Flood Insurance Study (FIS) data is not available, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from federal, state or other sources.
3. Until a floodway is designated, no new construction, substantial improvements, or other development, including fill, shall be permitted within any unnumbered or numbered A zones or AE zones on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
4. All new construction, subdivision proposals, substantial improvements, prefabricated buildings, placement of manufactured homes and other developments shall require:
 - a. Design or anchorage to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 - b. Construction with materials resistant to flood damages;
 - c. Utilization of methods and practices that minimize flood damages;
 - d. All electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
5. New or replacement water supply systems and/or sanitary sewage systems be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from

- the systems into flood waters, and on-site waste disposal systems be located so as to avoid impairment or contamination from them during flooding: and
6. Subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, located within special flood hazard areas are required to assure that:
 - a. All such proposals are consistent with the need to minimize flood damage;
 - b. All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;
 - c. Adequate drainage is provided so as to reduce exposure to flood hazards; and
 - d. All proposals for development, including proposals for manufactured home parks and subdivisions, greater than five acres or 50 lots, whichever is lesser, include within such proposals base flood elevation data.
 7. Storage, material, and equipment.
 - a. The storage or processing of materials within the special flood hazard area that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal, or plant life is prohibited.
 - b. Storage of other material or equipment may be allowed if not subject to major damage by floods, if firmly anchored to prevent floatation, or if readily removable, from the area within the time available after a flood warning.
 - c. All hazardous material storage and handling sites shall be located out of the special flood hazard area.
 8. Non Conforming Use
 - a. A structure, or the use of a structure or premises that was lawful before the passage or amendment of amendment of the article, but which is not in conformity with the provisions of this article, may be continued subject to the following conditions:
 - (1) If such structure, use or utility service is discontinued for six consecutive months, any future use of the building shall conform to this article.
 - (2) If any nonconforming use of structure is destroyed by any means, including flood, it shall not be reconstructed if the cost is more than fifty (50) percent of the pre-damaged market value of the structure. This limitation does not include the cost of any alteration to comply with existing state or local health, sanitary, building, safety codes, regulations or the cost of any alteration of a structure listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination.

B. SPECIFIC STANDARDS

1. In all areas identified as unnumbered and numbered A zones, AE, and AH zones, where base flood elevation data have been provided, as set forth in section 14-302A, the following provisions are required:
 - a. *Residential Construction* New construction or substantial improvement of any residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above the base flood

elevation. **The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.**

- b. *Non-Residential Construction* New construction or substantial improvement of any commercial, industrial, or other non-residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, be flood proofed to a minimum of one (1) foot above the base flood elevation. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. **The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.** Such certification shall be provided to the floodplain administrator as set forth in section 14-302.C, g, h, i.
2. Require, for all new construction and substantial improvements that fully enclosed areas below lowest floor used solely for parking of vehicles, building access, or storage in an area other than a basement and that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
 - a. A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided; and
 - b. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

C. CRITICAL FACILITIES

1. All new or substantially improved critical non-residential facilities including, but not limited, to government buildings, police stations, fire stations, hospitals orphanages, penal institutions, communications centers, water and sewer pumping stations, water and sewer treatment facilities, transportation maintenance facilities, places of public assembly, emergency aviation facilities, and schools shall be elevated above the 0.2 percent annual chance flood event, also referred to as the 500-year flood level or together with attendant utility and sanitary facilities, be so that below the 500-year flood level the structure is water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered engineer or architect shall certify that the standards of this section are satisfied. Such certification shall be provided to the flood plain administrator as set forth in 14-302.C, g, h, i.
2. All critical facilities shall have access routes that are above the elevation of the 500-year flood.
3. No critical facilities shall be constructed in any designated floodway.

D. MANUFACTURED HOMES

1. All manufactured homes to be placed within all unnumbered and numbered A zones, AE, and AH zones on the community's FIRM shall be required to be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-

the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

2. Require manufactured homes that are placed or substantially improved within unnumbered or numbered A zones, AE, and AH zones, on the community's FIRM on sites:
 - a. Outside of a manufactured home park or subdivision;
 - b. In a new manufactured home park or subdivision;
 - c. In an expansion to an existing manufactured home park or subdivision; or
 - d. In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated a minimum of one (1) foot above base flood elevation and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. **The elevation of the lowest floor shall be certified by a licensed land surveyor or Professional Engineer.**
3. Require that manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within all unnumbered and numbered A zones, AE and AH zones, on the community's FIRM, that are not subject to the provisions of section 14-303.C.2 of this article, be elevated so that either:
 - a. The lowest floor is elevated a minimum of one (1) foot above base flood elevation; or
 - b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. **The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.**

E. AREAS OF SHALLOW FLOODING (AO and AH zones)

1. Locate within the areas of special flood hazard as described in section 14-401.A are areas designated as AO zones. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions apply:
 - a. AO Zones
 - (1) All new construction and substantial improvements of residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified).
 - (2) All new construction and substantial improvements of any commercial, industrial, or other non-residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community FIRM (at least two (2) feet if no depth number is specified) or together with attendant utilities and sanitary facilities be completely floodproofed so that the structure is watertight with walls substantially

impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(3) Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

b. AH Zones.

(1) The specific standards for all areas of special flood hazard where base flood elevation has been provided shall be required as set forth in sections 14-303.B.

(2) Adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

F. FLOODWAY

1. Located within areas of special flood hazard established 14-301.A, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters that carry debris and potential projectiles, the following provisions shall apply:
 - a. The community shall select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood without increasing the water surface elevation of that flood more than one (1) foot at any point.
 - b. The Community shall prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in **any** increase in flood levels within the community during the occurrence of the base flood discharge.
 - c. If Section 14-303.E.b, is satisfied, all new construction and substantial-improvements shall comply with all applicable flood hazard reduction provision of 14-303.
 - d. In unnumbered A zones, the community shall obtain, review, and reasonably utilize any base flood elevation or floodway data currently available from Federal, State, or other sources as set forth in 14-303.A.2.

G. RECREATIONAL VEHICLES

1. Require that recreational vehicles placed on sites within all unnumbered and numbered A Zones, AH, and AO Zones on the community's FIRM either:
 - a. Be on the site for fewer than 180 consecutive days, *or*
 - b. Be fully licensed and ready for highway use*; *or*
 - c. Meet the permitting, elevation, and anchoring requirements for manufactured homes of this article.

* A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions.

14-304 FLOODPLAIN MANAGEMENT VARIANCE PROCEDURES

A. ESTABLISHMENT OF APPEAL BOARD

1. The Prairie Village Board of Zoning Appeals, as established by the City of Prairie Village shall hear and decide appeals and requests for variances from the floodplain management requirements of this article.

2. RESPONSIBILITY OF APPEAL BOARD.

3. Where an application for a floodplain development permit is denied by the Floodplain Administrator, the applicant may apply for such floodplain development permit directly to the Appeal Board, as defined in section 14-304.A.

4. The Appeal Board shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this article.

B. FURTHER APPEALS

1. Any person aggrieved by the decision of the Appeal Board or any taxpayer may appeal such decision to the District Court as provided in K.S.A. 12-759 and 12-760.

C. FLOODPLAIN MANAGEMENT VARIANCE CRITERIA

1. In passing upon such applications for variances, the Appeal Board shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this article and the following criteria:

a. Danger to life and property due to flood damage;

b. Danger that materials may be swept onto other lands to the injury of others;

c. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

d. Importance of the services provided by the proposed facility to the community;

e. Necessity to the facility of a waterfront location, where applicable;

f. Availability of alternative locations, not subject to flood damage, for the proposed use;

g. Compatibility of the proposed use with existing and anticipated development;

h. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

i. Safety of access to the property in times of flood for ordinary and emergency vehicles;

j. Expected heights, velocity, duration, rate of rise and sediment transport of the flood waters, if applicable, expected at the site; and,

k. Cost of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, streets, and bridges.

D. CONDITIONS FOR APPROVING FLOODPLAIN MANAGEMENT VARIANCES

1. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood elevation, providing items two (2) through six (6) below have been fully considered. As the lot size increases beyond the one-half acre, the technical jurisdiction required for issuing the variance increases.

2. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, or local inventory of historic places upon determination provided the proposed activity will not preclude the structure's continued historic designation and the variance is the minimum necessary to preserve the historic character and design of the structure.
3. Variances shall not be issued within any designated floodway if any increase in flood discharge would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. Variances shall only be issued upon (a) a showing of good and sufficient cause, (b) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (c) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
6. A community shall notify the applicant in writing over the signature of a community official that: (a) the issuance of a variance to construct a structure below base flood elevation will result in increase premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage and (b) such construction below the base flood elevation increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this article.

E. CONDITIONS FOR APPROVING VARIANCES FOR ACCESSORY STRUCTURES

1. Any variance granted for an accessory structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth in 14-304.D and 14-304.E of this Article.
2. In order to minimize flood damages during the one percent annual chance flood event, also referred to as the 100-year flood and the threat to public health and safety, the following conditions shall be included for any variance issued for accessory structures that are constructed at-grade and wet-proofed:
 - a. Use of the accessory structures must be solely for parking and limited storage purposes in zone A only as identified on the community's Flood Insurance Map (FIRM).
 - b. For any new or substantially damaged accessory structures, the exterior and interior building components and elements (i.e., foundation, wall framing, exterior and interior finishes, flooring, etc.) below the base flood elevation, must be built with flood-resistant materials in accordance with 14-303.A.4.b of this Code.
 - c. The accessory structures must be adequately anchored to prevent floatation, collapse, or lateral movement of the structure in accordance with 14-303.A.4.a of this Code. All of the building's structural components must be capable of resisting specific flood-related forces including hydrostatic, buoyancy, and hydrodynamic and debris impact forces.
 - d. Any mechanical, electrical, or other utility equipment must be located above the base flood elevation or flood-proofed so that they are contained within, flood-proofed enclosure that is capable of resisting damage during flood conditions in accordance with 14-303.A.4.d of this Code.

- e. The accessory structures must meet all NFIP opening requirements. The NFIP requires that enclosure of foundation walls, subject to the one percent annual chance flood event, also referred to as the 100-year flood, contain openings that will permit the automatic entry and exit of flood waters in accordance with 14-303.B.1.c of this Code.
- f. The accessory structures must comply with the floodplain management floodway encroachment provisions of 14-403.E.2. No variances may be issued for accessory structures within any designated floodway, if any increase in flood level would result during the 100-year flood.
- g. Equipment, machinery, or other contents must be protected from any flood damage.
- h. No disaster relief assistance under any program administered by any Federal agency shall be paid for any repair or restoration costs of the accessory structures.
- i. A community shall notify the applicant in writing over the signature of a community official that (1) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25,000 for \$100.00 of insurance coverage and (2) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this Code.
- j. Wet-proofing construction techniques must be reviewed and approved by the community and registered engineer or architect prior to the issuance of any floodplain development permit for construction.

F. CONDITIONS FOR APPROVING VARIANCES FOR TEMPORARY STRUCTURES

1. Any variance granted for a temporary structure shall be decided individually based on a case by case analysis of the building's unique circumstances. Variances granted shall meet the following conditions as well as those criteria and conditions set forth in 14-403.D and 14-403.E of this Code.
2. A temporary structure may be considered for location within the one percent annual chance flood event, also referred to as the 100-year floodplain only when all of the following criteria are met:
 - a. Use of the temporary structure is unique to the land to be developed and cannot be located outside of the flood plain nor meet the NFIP design standards;
 - b. Denial of the temporary structure permit will create an undue hardship on the property owner;
 - c. Community has adopted up-to-date NFIP and building regulations to direct placement and removal of the temporary structure; and,
 - d. Community has sufficient staff to monitor the placement, use, and removal of the temporary structure throughout the duration of the permit.
3. Once all of the above conditions are met, the application for a special use permit must be made to City of Prairie Village Planning Commission. The Planning Commission shall consider all applications for special use permits for a temporary structure based on the following criteria:
 - a. The placement of any temporary structure within the special flood hazard areas as shown on the community's adopted FEMA/NFIP map shall require an approved

special use permit. The special use permit shall be valid for a period not to exceed 180 days.

- b. Special use permits applications, for a temporary structure to be located in special flood hazard areas, shall conform to the standard public hearing process prior to any community action on the permit request.
- c. An emergency plan for the removal of the temporary structure that includes specific removal criteria and time frames from the agency or firm responsible for providing the manpower, equipment, and the relocation and disconnection of all utilities shall be required as part of the special use permit application for the placement of any temporary structure.
- d. On or before the expiration of the end of the 180 day special use permit period, the temporary structure shall be removed from the site. All utilities, including water, sewer, communication, and electrical services shall be disconnected.
- e. To ensure the continuous mobility of the temporary structure for the duration of the permit, the temporary structure shall retain it wheels and tires, licenses, and towing appurtenance on the structures at all times.
- f. Under emergency flooding conditions, the temporary structure shall be removed immediately or as directed by the community and as specified in the emergency removal plan.
- g. Location of any temporary structure within the regulatory floodway requires the provision of a "no-rise" certificate by a registered professional engineer.
- h. Violation of or non-compliance with any of the stated conditions of the special use permit during the term thereof, shall make the permit subject to revocation by resolution of the governing body of the community. Issuance of permit revocation notice shall be made to the landowner, the occupant of the land, and to the general public.
- i. Any deviation from the approved site plan shall be deemed a violation of the special use permit approval and the uses allowed shall automatically be revoked. The subsequent use of the land shall be as it was prior to the special permit approval. In event of any violation, all permitted special uses shall be deemed a violation of this article and shall be illegal, non-conforming uses and shall be summarily remove and abated.
- j. If the temporary structure is to be returned to its previously occupied site, the process for issuing a special use permit must be repeated in full. Any subsequent permit shall be valid for 180 days only.

14-305 PENALTIES FOR VIOLATION

- A. Violation of the provisions of this article or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with granting of variances) shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction therefore, be assessed a penalty in accordance with Article 1-116, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues, shall be considered a separate offense. Nothing herein contained shall prevent the City of Prairie Village or

other appropriate authority from taking such other lawful action as is necessary to prevent or remedy any violation.

14-306 AMENDMENTS

- A. The regulations, restrictions and boundaries set forth in this article may from time to time be amended, supplemented, changed, or appealed to reflect any and all changes in the National Flood Disaster Protection Act of 1973, provided however, that no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in a newspaper of general circulation in the City of Prairie Village. At least twenty (20) days shall elapse between the date of this publication and the public hearing. A copy of such amendments will be provided to the Region VII office of the FEMA Region VII office. The regulations of this article are in compliance with the NFIP regulations.

14-307 DEFINITIONS

- A. Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the same meaning they have in common usage and to give this article its most reasonable application.

"100-year Flood" see *"base flood"*.

"Accessory Structure" means the same as *"appurtenant structure"*.

"Actuarial Rates" see *"risk premium rates"*.

"Administrator" means the Federal Insurance Administrator.

"Agency" means the Federal Emergency Management Agency (FEMA).

"Appeal" means a request for review of the Floodplain Administrator's interpretation of any provision of this article or a request for a variance.

"Appurtenant Structure" means a structure that is on the same parcel of property as the principle structure to be insured and the use of which is incidental to the use of the principal structure.

"Area of Shallow Flooding" means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Area of Special Flood Hazard" is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

"Base Flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

"Basement" means any area of the structure having its floor sub-grade (below ground level) on all sides.

"Building" see *"structure"*.

“Chief Engineer” means the chief engineer of the division of water resources, Kansas Department of Agriculture.

“Chief Executive Officer” or “Chief Elected Official” means the official of the community who is charged with the authority to implement and administer laws, ordinances, and regulations for that community.

“Community” means any State or area or political subdivision thereof, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

“Development” means any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, levees, levee systems, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Elevated Building” means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

“Eligible Community” or “Participating Community” means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program (NFIP).

“Existing Construction” means for the purposes of determining rates, structures for which the *“start of construction”* commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. **“Existing Manufactured Home Park or Subdivision”** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

“Expansion to an Existing Manufactured Home Park or Subdivision” means the preparation of additional sites by the construction facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

“Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland; (2) the unusual and rapid accumulation or runoff of surface waters from any source; and (3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a nature body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined above in item (1),

“Flood Hazard Boundary Map (FHBM)” means an official map of a community, issued by the Administrator, where the boundaries of the flood areas having special flood hazards have been designated as (unnumbered or numbered) A Zones.

“Flood Hazard Map” means the document adopted by the governing body showing the limits of: (1) the floodplain; (2) the floodway; (3) street; (4) stream channel; and (5) other geographic features.

"Flood Insurance Rate Map (FIRM)" means an official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

"Flood Insurance Study (FIS)" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

"Floodplain Development Permit" means a Drainage Permit issued by the City of Prairie Village, Kansas

"Floodplain or Flood-Prone Area" means any land area susceptible to being inundated by water from any source (*see flooding*).

"Floodplain Management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

"Floodplain Management Regulations" means zoning ordinances, subdivision regulations, building codes, health regulations, special purposes ordinances (such as floodplain and grading ordinances) and other applications of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.

"Flood proofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, or structures and their contents.

"Floodway" or "Regulatory Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

"Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. *"Freeboard"* tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as bridge openings and the hydrological effect of urbanization of the watershed.

"Functionally Dependent Use" means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities and facilities that are necessary for the loading and unloading of cargo or passengers, but does not include long-term storage or related manufacturing facilities.

"Governing Body" means the duly elected City Council of the City of Prairie Village, Kansas.

"Highest Adjacent Grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic Structure" means any structure that is (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either (1) by an approved state program as

determined by the Secretary of the Interior or (2) directly by the Secretary of the Interior in states without approved programs.

"Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, **provided** that such enclosure is not built so as to render the structure in violation of the applicable flood proofing design requirements of this article.

"Manufactured Home" means a structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when attached *to the required utilities*. *The term "manufactured home" does not include a "recreational vehicle"*.

"Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Map" means the Flood Hazard Boundary Map (FHBM), Flood Insurance Rate Map (FIRM), or the Flood Boundary and Floodway Map (FBFM) for a community issued by the Federal Emergency Management Agency (FEMA).

"Market Value or Fair Market Value" means an estimate of what is fair, economic, just and equitable value under normal local market conditions.

"Mean Sea Level" means, for purposes of the National Flood Insurance Program (NFIP), the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map (FIRM) are referenced.

"New Construction" means, for the purposed of determining insurance rates, structures for which the *"start of construction"* commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *"new construction"* means structures for which the *"start of construction"* commenced on or after the effective date of the floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

"New Manufactured Home Park or Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

"(NFIP)" means the National Flood Insurance Program (NFIP).

"Participating Community" also known as an *"eligible community"*, means a community in which the Administrator has authorized the sale of flood insurance.

"Permit" means a signed document from a designated community official authorizing development in a floodplain, including all necessary supporting documentation such as: (1) the site plan; (2) an elevation certificate; and (3) any other necessary or applicable approvals or authorizations from local, state, or federal authorities.

"Person" includes any individual or group of individuals, corporation, partnership, association, or any other entity, including Federal, State, and local governments and agencies.

“Principally Above Ground” means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

“Reasonably Safe From Flooding” means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

“Recreational Vehicle” means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projections; (c) designed to be self-propelled or permanently towed by a light-duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

“Remedy a Violation” means to bring the structure or other development into compliance with Federal, State, or local floodplain management regulations; or, if this is not possible, to reduce the impacts of its noncompliance.

“Risk Premium Rates” means those rates established by the Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with Section 1307 of the National Flood Disaster Protection Act of 1973 and the accepted actuarial principles. *“Risk premium rates”* include provisions for operating costs and allowances.

“Special Flood Hazard Area” see *“area of special flood hazard”*.

“Special Hazard Area” means an area having special flood hazards and shown on an FHBM, FIRM or FBFM as zones (unnumbered or numbered) A, AO, AE, or AH.

“Start of Construction” includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvements were within 180 days of the permit date. The *actual start* means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, any work beyond the state of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, the installation of streets and/or walkways, excavation for a basement, footings, piers, foundations, the erection of temporary forms, nor installation on the property of accessory structures such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the *actual start of construction* means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

“State Coordinating Agency” means the Division of Water Resources, Kansas Department of Agriculture, or other office designated by the governor of the state or by state statute at the request of the Administrator to assist in the implementation of the Nation Flood Insurance Program (NFIP) in that state.

“Structure” means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. *“Structure”* for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation or a travel trailer, without wheels on a permanent foundation. For the latter purpose, the term included a building while in the course of construction, alteration or repair, but does not include

building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

“Substantial Damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

“Substantial Improvement” means any reconstruction, rehabilitation, addition, or other improvement of the structure, the cost of which equals or exceeds 50 percent of the market value of the structure before *“start of construction”* of the improvement. This term includes structured which have incurred *“substantial damage”*, regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a *“historic structure”*, provided that the alteration will not preclude the structure’s continued designation as a *“historic structure”*.

“Temporary Structure” means a structure permitted in a district for a period not to exceed 180 days and is required to be removed upon the expiration of the permit period. Temporary structures may include recreational vehicles, temporary construction offices, or temporary business facilities used until permanent facilities can be constructed, **but at no time shall it include manufactured homes as residents.**

“Variance” means a grant of relief by the community from the terms of a floodplain management regulation. Flood insurance requirements remain in place for any varied use or structure and cannot be varied by the community.

“Violation” means the failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this article is presumed to be in violation until such time as that documentation is provided.

“Water Surface Elevation” means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplain.

CERTIFICATION OF ADOPTION

This Chapter XIV Article 3 - FLOODPLAIN MANAGEMENT for the City of Prairie Village, Kansas, PASSED AND ADOPTED by the Governing Body of the City of Prairie Village, Kansas, this _____ day of _____, 2009.

Chief Engineer Draft Approval Seal Here:

APPROVED:

Ronald L. Shaffer, Mayor

Date

ATTEST:

Joyce Hagen Mundy, City Clerk

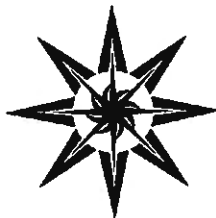
Date

APPROVED AS TO FORM:

Catherine P. Logan, City Attorney

Date

City of Prairie Village, Kansas, Seal Here:



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: May 4, 2009

Council Meeting Date: May 4 2009

COU2009-52: CONSIDER PROJECT 191023 2009 CONCRETE REPAIR PROGRAM CONSTRUCTION CHANGE ORDER #2

RECOMMENDATION

Staff recommends the City Council approve Construction Change Order #2 for Project 191023 2009 Concrete Repair Program

COUNCIL ACTION REQUESTED ON MAY 4, 2009

BACKGROUND

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 normal practice would be to trim the roots. The City Arborist viewed the site and recommended against trimming the roots. The alternative was to install an asphalt sidewalk over the root area. The asphalt sidewalk is flexible and permits easier and quicker replacement in the future.

The accepted bid does not have a pay item for asphalt sidewalk. This construction change order establishes a unit cost for asphalt sidewalk.

FUNDING SOURCE

The existing project funding will be used.

RELATION TO VILLAGE VISION

CC1 Attractive Environment

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

CCS2 Parks and Green Space

CC2a Preserve and protect natural areas.

CFS3 Streets and Sidewalks

CCF3a Ensure streets and sidewalks are in good condition by conducting maintenance and repairs as needed.

TR1 Bike and Pedestrian Friendly

TR1a Provide sidewalks in new and existing areas to allow for continuous pedestrian movement around Prairie Village

PREPARED BY

S Robert Pryzby, Director of Public Works

Date: April 28, 2009



**CITY OF PRAIRIE VILLAGE
PUBLIC WORKS DEPARTMENT
CONSTRUCTION CHANGE ORDER NO. 2**

City's Project: #191023 2009 Concrete Repair Program

Date Requested: April 20, 2009

Contract Date: January 20, 2009

Consultant's Name: None

Contractor's Name: McAnany Construction

REQUIRED CHANGES TO PRESENT CONTRACT

Contract Quantity	Previous Amount	Unit	Item Description	Adj. Quant.	Unit Price	Adjusted Amount
0	\$0.00	SF	4' Wide Pavement Repair adjacent to Curb (Quantities to be determined in the field)	1	\$5.00	\$0.00

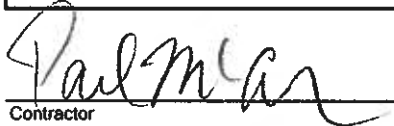
TOTAL

TOTAL	\$0.00
NET Increase	\$0.00

EXPLANATION OF CHANGE - This change order is to cover the following items:
Add 4' wide pavement repair adjacent to the curb as a pay item. Actual quantities will be determined in the field.

The Consultant does not anticipate a related Engineering Change Order.

	Contract Value	Contract Days
Original Contract	\$585,000.00	169
Current Contract including previous Change Orders	\$585,000.00	169
NET This Change Order	\$0.00	0
New Contract Price	\$585,000.00	169


Contractor

4/22/09
Date

Engineer

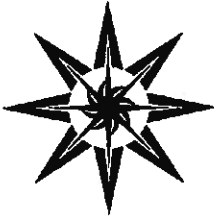
Date

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

Date

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

Date



ADMINISTRATION DEPARTMENT

Council Committee Date: May 4, 2009
Council Meeting Date: May 18, 2009

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

RECOMMENDATION

Staff recommends the adoption of Resolution 2009-03 adopting of the Johnson County Multi-Hazard Mitigation Plan.

BACKGROUND

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 within the county and has recently been approved by the Federal Emergency Management Agency (FEMA).

Once approved by the City, the plan will be in force and potential mitigation funding becomes available at the state level. The considerable length of the plan prevents its inclusion here in its entirety. However, the plan is available in digital form and available upon request.

ATTACHMENTS

Resolution adopting Johnson County Multi-Hazard Mitigation Plan and Chapter One - Executive Summary (partial).

PREPARED BY

Chris Engel
Assistant to the City Administrator
Date: 4/28/09

RESOLUTION 2009-03

WHEREAS, the City of Prairie Village recognizes the threat that natural hazards pose to people and property within our community; and

WHEREAS, undertaking hazard mitigation actions will reduce the potential for harm to people and property from future hazard occurrences; and

WHEREAS, the U.S. Congress passed the Disaster Mitigation Act of 2000 ("Disaster Mitigation Act") emphasizing the need for pre-disaster mitigation of potential hazards;

WHEREAS, the Disaster Mitigation Act made available hazard mitigation grants to state and local governments; and

WHEREAS, an adopted Multi-Hazard Mitigation Plan is required as a condition of future funding for mitigation projects under multiple FEMA pre- and post-disaster mitigation grant programs; and

WHEREAS, the City of Prairie Village fully participated in the FEMA-prescribed mitigation planning process to prepare this Multi-Hazard Mitigation Plan; and

WHEREAS, the Kansas Division of Emergency Management and the Federal Emergency Management Agency Region VII officials have reviewed the "Johnson County Multi-Hazard Mitigation Plan," and approved it contingent upon this official adoption of the participating governing body; and

WHEREAS, the City of Prairie Village desires to comply with the requirements of the Disaster Mitigation Act and to augment its emergency planning efforts by formally adopting the Johnson County Multi-Hazard Mitigation Plan; and

WHEREAS, adoption by the governing body for the City of Prairie Village demonstrates the jurisdictions' commitment to fulfilling the mitigation goals and objectives outlined in this Multi-Hazard Mitigation Plan.

WHEREAS, adoption of this legitimizes the plan and authorizes responsible agencies to carry out their responsibilities under the plan;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS, that the City of Prairie Village adopts the "Johnson County Multi-Hazard Mitigation Plan" as an official plan; and

BE IT FURTHER RESOLVED, that the City of Prairie Village will submit this Resolution to the Kansas Division of Emergency Management and Federal Emergency Management Agency Region VII officials to enable the plan's final approval.

ADOPTED AND PASSED by the Governing Body of the City of Prairie Village, Kansas, the 23rd day of March, 2009.

Ronald L. Shaffer, Mayor
City of Prairie Village

ATTEST: _____
Joyce Hagen Mundy, City Clerk

(Seal)

DRAFT

**Johnson County
Multi-Hazard Mitigation Plan**



March 2009

Developed by Johnson County with professional planning assistance from
AMEC Earth and Environmental
Hazard Mitigation and Emergency Management Program
Topeka, Kansas





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EXECUTIVE SUMMARY

The purpose of natural hazards mitigation is to reduce or eliminate long-term risk to people and property from natural and man-made hazards. Johnson County and participating jurisdictions developed this multi-hazard mitigation plan to reduce future losses to the County and its communities resulting from natural and man-made hazards. The plan was prepared pursuant to the requirements of the Disaster Mitigation Act of 2000 and to achieve eligibility for the Federal Emergency Management Agency (FEMA) Flood Mitigation Assistance, Pre-Disaster Mitigation, and Hazard Mitigation Grant Programs.

The Johnson County Multi-Hazard Mitigation Plan is a multi-jurisdictional plan that covers the following local governments that participated in the planning process:

- Johnson County
- City of De Soto
- City of Edgerton
- City of Fairway
- City of Gardner
- City of Lake Quivira
- City of Leawood
- City of Lenexa
- City of Merriam
- City of Mission
- City of Mission Hills
- City of Mission Woods
- City of Olathe
- City of Overland Park
- City of Prairie Village
- City of Roeland Park
- City of Shawnee
- City of Spring Hill
- City of Westwood
- City of Westwood Hills
- Unified School District 229 Blue Valley
- Unified School District 230 Spring Hill
- Unified School District 231 Gardner/Edgerton
- Unified School District 232 De Soto
- Unified School District 233 Olathe
- Unified School District 512 Shawnee Mission
- Kansas School of the Deaf
- Johnson County Community College
- University of Kansas Edwards Campus
- Special Districts
 - Consolidated Fire District #2
 - Fire District #1
 - Fire District #2
 - Rural Fire District #3

The County’s planning process followed a methodology prescribed by FEMA, which began with the formation of a Hazard Mitigation Planning Committee (HMPC) comprised of participating jurisdictions, and state and federal agencies. The HMPC conducted a risk assessment that identified and profiled hazards that pose a risk to Johnson County, assessed the County’s vulnerability to these hazards, and examined the capabilities in place to mitigate them. The County is vulnerable to several hazards that are identified, profiled, and analyzed in this plan. Tornadoes, floods, winter storm, and major disease outbreak are among the hazards that can have a significant impact on the County.

Based upon the risk assessment, the HMPC identified goals and objectives for reducing risk from hazards. The goals and objectives of this multi-hazard mitigation plan are to:

Goal 1: Reduce risk to the people and property of Johnson County from the impacts of natural and man-made hazards

- Manage growth and development in hazard-prone areas, including flood hazard areas
- Mitigate existing structures in identified flood hazard areas
- Identify and address community safe room and sheltering needs
- Strengthen emergency response capabilities

Goal 2: Protect critical facilities and other community assets from the impacts of hazards

- Assess vulnerability and prioritize projects to mitigate damage to critical facilities and infrastructure
- Protect transportation and access routes to all communities
- Reduce damage to utility lines due to severe weather events

Goal 3: Improve education and awareness about hazards and risk

- Use existing outreach methods to educate public about risk and preparedness measures
- Coordinate new workshops, exercises, and public forums to provide education about hazard risk and mitigation activities
- Continue and enhance partnerships with the business community

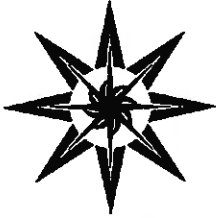
Goal 4: Strengthen communication between agencies and with the public

- Improve information dissemination to the public during and after emergency events
- Enhance sirens and warning systems
- Strengthen cooperation and mutual aid agreements
- Improve outreach and communication methods to all parts of Johnson County

To meet identified goals and objectives, the plan recommends the mitigation actions summarized in chapter 4. The HMPC also developed an implementation plan for each action, which identifies

priority level, background information, ideas for implementation, responsible agency, timeline, cost estimate, and potential funding sources.

The multi-hazard mitigation plan will be formally adopted by the Johnson County Commissioners and the governing bodies of each participating jurisdiction and will be updated within a five-year timeframe.



CITY CLERK DEPARTMENT

Council Committee Meeting Date: May 4, 2009
Council Meeting Date: May 4, 2009

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

RECOMMENDATION

Move the City Council adopt an Ordinance amending Chapter 1 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 REQUESTED: MAY 4, 2009

BACKGROUND

At the April 20, 2009, 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 Mayor from voting is found in the City's Personnel Policy as it relates to appeal hearings. The results of the vote in question did not change. The motion would fail with of 4 to 4 tie or on the 3 to 4 vote with Mr. Voysey not voting.

The Mayor is currently not included by definition as a member of the Council Committee of the Whole.

The City Attorney has prepared the following language change to the City's ordinance adding 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. The proposed ordinance also includes the requirement for a quorum is seven members. The new language is shown below with the additions underscored.

(a) The council committee of the whole shall consist of 12 members of the city council and the mayor. The council president shall serve as chairman of the council committee of the whole. Attendance by seven of the councilmembers elected shall constitute a quorum to do business, but a number fewer than seven may adjourn from day to day. Except as otherwise provided by City Council Policies, only council members, including the council president, may vote, except that the mayor may vote to cast a tiebreaking vote on questions when the council members present are equally divided.

ATTACHMENTS:

Ordinance 2186

PREPARED BY

Joyce Hagen Mundy

City Clerk

Date: April 30, 2009

ORDINANCE NO. 2193

AN ORDINANCE AMENDING CHAPTER I 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."

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

Section I.

Subsection (a) of Section 1-804 of the Prairie Village Municipal Code entitled "COUNCIL COMMITTEE OF THE WHOLE; MEMBERSHIP, DUTIES AND MEETINGS" is deleted in its entirety and in lieu thereof, the following section of the same name and number is hereby adopted:

(a) The council committee of the whole shall consist of 12 members of the city council and the mayor. The council president shall serve as chairman of the council committee of the whole. Attendance by seven of the councilmembers elected shall constitute a quorum to do business, but a number fewer than seven may adjourn from day to day. Except as otherwise provided by City Council Policies, only council members, including the council president may vote, except that the mayor may vote to cast a tiebreaking vote on questions when the council members present are equally divided.

Section II.

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 4th day of May, 2009

Mayor Ronald L. Shaffer

ATTEST:

Joyce Hagen Mundy, City Clerk

APPROVED AS TO FORM

Catherine P. Logan, City Attorney



ADMINISTRATION

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 budget gap exists in the 2010 budget due to decreases in revenue as a result of the economy, housing market and State budget cuts.

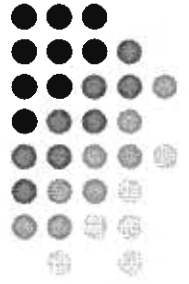
Attached is the list of 2010 Budget Gap Reduction Strategies. These are the strategies that staff recommends be implemented to reduce the 2010 budget gap. Staff anticipates that the majority of the discussion will occur on items 17 - 24 where policy direction is needed. The list was reviewed by the Finance Committee at their April 27th meeting.

ATTACHMENTS:

2010 Budget Goals & Objectives
2010 Budget Gap Reduction Strategies List

Prepared By:
Karen Kindle
Finance Director
Date: April 30, 2009

2010 Budget Goals & Objectives



- Maintain quality level of service
- Sustainable budget impact
- Expenditures less than or equal to revenues
- Identify and meet technology needs
- Attend to infrastructure needs
- Be mindful of tax burden
- Continue implementation of Village Vision

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 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 Kindler, 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 Kindie, 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.

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
May 4, 2009
7:30 p.m.**

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

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

By Staff:

- 1. Approve Regular Council Meeting Minutes – April 20, 2009
- 2. Approve four VillageFest 2009 contracts.
- 3. Consider Proclamation in recognition of “Police Week”
- 4. Consider appointment to Park & Recreation Committee

VI. MAYOR’S REPORT

VII. STAFF REPORTS

VIII. COMMITTEE REPORTS

Council Committee of the Whole – David Voysey

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

COU2009-52 Consider Project 191023: 2009 Concrete Repair Program Construction Change Order

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

COU2009-49 Consider Special Use Permit for Wireless Communications tower and equipment compound at 4805 W 67th Street

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”

IX. OLD BUSINESS

X. NEW BUSINESS

XI. ANNOUNCEMENTS

XII. ADJOURNMENT

XII. ADJOURNMENT

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

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

CONSENT AGENDA

CITY OF PRAIRIE VILLAGE, KS

May 4, 2009

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
April 20, 2009**

The City Council of Prairie Village, Kansas, met in regular session on Monday, April 20, 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: Ruth Hopkins, David Voysey, Michael Kelly, Andrew Wang, Laura Wassmer, Dale Beckerman, 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; Karen Kindle, Finance Director; Chris Engel, Assistant to the City Administrator and Joyce Hagen Mundy, City Clerk.

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

PUBLIC PARTICIPATION

There was no one present to address the Council on issues other than the cell tower application by T-Mobile. Mayor Shaffer announced the earlier Council Committee of the Whole was unable to complete their business and it has been recommended that the City Council suspend their meeting to allow for the conclusion of the committee meeting.

David Voysey moved the City Council suspend the regularly scheduled City Council meeting and reconvene the Council Committee of the Whole with the City Council meeting reconvening at the conclusion of the committee meeting. The motion was seconded by Michael Kelly and passed unanimously.

David Belz moved to reconvene the City Council meeting. The motion was seconded by Michael Kelly and passed unanimously.

Mayor Shaffer reconvened the City Council meeting at 9:09 p.m.

CONSENT AGENDA

David Voysey moved the approval of the Consent Agenda for Monday, April 20, 2009.

1. Approve Regular Council Meeting Minutes - April 6, 2009
2. Approve Claims Ordinance 2858
3. Approve the issuance of Cereal Malt Beverage Licenses for Hen House #22 and Hen House #28
4. Ratify the Mayor’s execution of proclamations for “National Public Works Week” and Municipal Clerks Week”
5. Ratify the Mayor’s reappointment of members to the following City Committees:

		<u>Term Ends</u>
Board of Code Appeals	Dick Kaufman	4/2014
Board of Zoning Appeals/PC	Ken Vaughn	4/2012
Board of Zoning Appeals/PC	Nancy Vennard	4/2012
Environment/Recycle	Margaret Thomas	4/2012
Environment/Recycle	Pete Jarchow	4/2012
Environment/Recycle	Margaret Goldstein	4/2012
Environment/Recycle	Tom Heintz	4/2012
Environment/Recycle	Cheryl & Don Landes	4/2012
Environment/Recycle	Kathy Riordan	4/2012
Park & Recreation	Joe Nolke	4/2012
Park & Recreation	Peggy Couch	4/2012
Park & Recreation	Clarence Munsch	4/2012
Park & Recreation	Sally Holmes	4/2012
Prairie Village Arts Council	Pam Marshall	4/2012
Prairie Village Arts Council	Daniel Andersen	4/2012
Prairie Village Arts Council	Jack Shearer	4/2012
Sister City Committee	Carole Mosher	4/2012
Sister City Committee	Cindy Dwigans	4/2012
Tree Board	Jack Lewis	4/2012
Tree Board	Art Kennedy	4/2012

6. Approve Project 190871 2009 Mission Lane Bridge Construction Change Order #1 for an increase of \$1,750
7. Approve the discontinuing of the City’s Gift Card Program with Store Financial, LLC

A roll call vote was taken with the following members voting “aye”: Hopkins, Voysey, Kelly, Wang, Wassmer, Morrison, Ewy Sharp and Belz.

MAYOR'S REPORT

- Mayor Shaffer distributed the annual paychecks of \$1 for Council representatives acknowledging the number of years each has served on the City Council. Council President David Voysey presented Mayor Shaffer with his check.
- Mayor Shaffer urged the Council to attend the 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.
- A special Arbor Day celebration will be held 10 a.m. Saturday, April 25th at Franklin Park honoring Bob & Maggie Weed.

STAFF REPORTS

Public Safety

- Chief Jordan announced that Captain Wes Lovett is currently attending a ten-week professional development course in Chicago at Northwestern University.
- The massage therapy related arrest made earlier this week continues to get coverage. Chief explained the process by which different news agencies receive information which will often result in the same story being covered by different agencies at different times. He also confirmed the property where the activity was occurring was not a rental property.
- The detective unit continues to be busy as they continue their investigation of the recent robbery in the Hy-Vee parking lot on State Line Road.

Public Works

- Bob Pryzby announced demolition will begin for the Mission Lane Bridge Replacement Project on May 4th.
- Nineteen applications have been received for the Project Manager position and he hopes to be able to begin interviewing early in May.
- The preliminary design for the grates for the pool have been approved by Johnson County and most of the work can be done by public works crews, except for the slide pool, which may result in a later opening date for that pool.
- There is a leak in the diving well return line resulting in the loss of 604,000 gallons of water per year.

David Belz stated he has received complaints about broken brick and concrete at the intersection of 75th & Mission Road. Mr. Pryzby stated he does not have a solution at this time, but will be coming back with a recommendation after more investigation.

Administration

- Karen Kindie reported City Staff is going through the first step for the implementation of the financial software. Staff is meeting with Springbrook representatives to review all of the city's processes.
- Dennis Enslinger reminded Council that the Large Item Pick-up will be held this Saturday in Prairie Village with an e-recycling event being held at Shawnee Mission South High School.
- Katie Logan clarified her earlier comments regarding the voting of the Mayor and President of the Council resulted from her recent review of the City's codes for the appeal that will be heard by the Council at their next meeting. In the City's code the Council Committee of the Whole is defined as only the Council members with the chair only voting in the case of a tie. She stated that if the Council wishes to change this, she could prepare the necessary ordinance revision.

- Quinn Bennion reported on the Leadership Lab he attended last week in Wichita.
- The new Council laptops have arrived. Council would be receiving an e-mail with instructions on turning in their existing units. There will be 9 units that will be available for council and employees to bid on with an established minimum bid. If you are one of the successful bidders, Council can keep your existing unit for your personal use. Any information you want transferred from the existing unit to the new laptop should be placed in your "My Documents" file.
- New laptops will be delivered prior to the next Council meeting.
- An appeal has been filed by a former employee, it will be heard by the Council Committee of the Whole in a special meeting to be held after the conclusion of the City Council meeting on May 4th in executive session.

COMMITTEE REPORTS

Council Committee of the Whole

COU2009-45 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, David Voysey moved the City Council approve the interlocal agreement with the City of Overland Park for Project 190724: Drainage on Reeds Drive from 70th Terrace to 71st Street. The motion was seconded by Ruth Hopkins and passed unanimously.

COU2009-47 Consider Bid Award for Highway Rock Salt

On behalf of the Council Committee of the Whole, David Voysey moved the City Council approve the bid of Central Salt, LLC for Highway Rock Salt at a cost of \$48.10 per ton delivered. The motion was seconded by Ruth Hopkins and passed unanimously.

COU2009-48 Consider agreement with Johnson County to administer the Edward Byrne Memorial Justice Assistance Grant (JAG) on behalf of the City of Prairie Village

On behalf of the Council Committee of the Whole, David Voysey moved the City Council approve a memorandum of Understanding giving Johnson County the authority to administer the Edward Byrne Memorial Justice Assistance Grant (ARRA Stimulus Funding) on behalf of the Prairie Village Police Department. The motion was seconded by Ruth Hopkins and passed unanimously.

Insurance Committee

David Voysey noted at the Council Committee of the Whole meeting held on April 20th the Committee recommended the city's 2009-2010 insurance coverage be awarded to Traveler's unless Argonaut submitted a bid for comparable coverage at a significant price difference prior to this Council meeting. The bid received from Traveler's was for \$315,260. The bid received from Argonaut was \$293,937.

Shari Gilliam, with Cretcher-Heartland, confirmed the services offered by both companies are very similar with no significant differences. Their experience with Argonaut has been positive.

David Voysey moved the City Council accept the bid of Argonaut to provide 2009-2010 Property and Casualty Insurance for the City at a cost of \$293,937. The motion was seconded by Ruth Hopkins and passed unanimously.

OLD BUSINESS

Discussion on Solid Waste, Recycling and Composting Contract Options.

Dennis Enslinger noted the city's current contract with Deffenbaugh Industries for these services expires at the end of 2009. The City has two options regarding how to proceed. One option would be to directly negotiate with Deffenbaugh Industries for an amendment to the existing contract. This was the approach followed in 2003 for the existing contract. A second option would be for staff to compile bid documents to cover the services and solicit bids from interested parties.

Mr. Enslinger noted there are only two local vendors that can provide all three services: Deffenbaugh Industries and Town and Country. Both parties have expressed an interest in providing the services. Staff recently learned that the City of Olathe, which provides similar services for their City, may also be interested. This would need to be investigated further both in terms of services and if such an arrangement could be handled through an interlocal agreement or if they would have to submit a formal bid.

Ruth Hopkins stated she has concerns regarding the level of service that could be provided by Town & Country based on conversations she has had with others who have contracted with them. She does not want to go out to bid.

David Belz noted the City went out to bid several years ago and it resulted in a significant rate increase. Laura Wassmer and Diana Ewy Sharp expressed concerns with going out to bid. Mrs. Ewy Sharp noted she has not heard positive comments regarding Town & Country.

David Morrison stated he felt the Council owed it to the residents to get the best possible service at the lowest cost. He also stated he would like to get the environment/recycle committee involved in the process and get their input.

Ruth Hopkins noted that Town & Country does not currently have a large contract. They provide services for smaller cities and homes associations. David Belz said he would like more information about the Olathe possibility.

Dennis Enslinger stated that needs further investigation both on their interest, costs, how it would be contracted, etc. Mr. Belz stated he would like to have that information before making a decision

Mr. Enslinger confirmed with the exception of Mr. Morrison the Council's preference is not to go out to bid. Mayor Shaffer added that Deffenbaugh's service has improved under its new ownership.

NEW BUSINESS

COU2009-49 Consider granting a general utility easement related to the Walgreens Development at 3910 West 95th Street

Dennis Enslinger reported on March 23rd the City Council approved the final plat for the Walgreen's development at 3910 West 95th Street. After the plat was filed Johnson County Wastewater indicated they would need additional easements related to the development. To facilitate the dedication of easements, the City will need to execute

a separate easement agreement dedicating a general utility easement that could be used by any utility provider.

David Voysey moved the City Council authorize the Mayor to execute a separate easement agreement granting a general utility easement to provide additional easement access for Johnson County Wastewater and other utility providers. The motion was seconded by Michael Kelly and passed unanimously.

Stimulus Information

Michael Kelly reported that he attended an Economic Stimulus meeting last week that was also attended by Representative Dennis Moore, other Prairie Village residents and small business owners. During discussions it was clear that there was still a great deal of misunderstanding regarding the City's failure to receive stimulus money through the STP program. He asked the City Administrator to draft a memo stating the facts. The memo would cover what went wrong, what has been done, what steps have been taken by the City, what can be done by the Council and the City. He feels the media reporting has not been accurate and has led to misunderstanding. This memo could be placed on the City's website, given to Council members for reference in answering questions of constituents or even mailed to residents. Mr. Bennion stated the memo will not include personnel information especially with the pending appeal. Andrew Wang confirmed the appeal would be heard and completed in the same evening.

Diana Ewy Sharp stated she agreed with Mr. Kelly, noting she too, has had many questions from residents. She would support an all-city mailing. Quinn Bennion stated there will be an article in the Village Voice coming out in May. Ruth Hopkins asked if it was a full article or comments in the Mayor's Report. Mr. Bennion stated it was a separate article, but noted it would not be as complete as Mr. Kelly is requesting.

Mrs. Ewy Sharp asked how much additional staff time does the City want Mr. Bennion to spend on this. Mr. Kelly stated this is not intended to be something that

would take him away from his other responsibilities. He does not have a specific length for the document or established timeframe, but he feels there should be a memorandum issued giving factual information that is not currently getting out to the public.

David Morrison suggested the article in the Village Voice could reference that more detailed information is available on the City's website.

Election of Council President

David Voysey nominated Michael Kelly to serve as Council President for the coming year. The motion was seconded by David Belz and passed by a vote of seven to 0. Mayor Shaffer and the Council thanked Mr. Voysey for his excellent service as Council President during the past year.

ANNOUNCEMENTS

Committee meetings scheduled for the next two weeks include:

VillageFest	04/23/2009	7:00 p.m.
Municipal Foundation	04/30/2009	5:30 p.m.
Council Committee	05/04/2009	6:00 p.m.
Council	05/04/2009	7:30 p.m.

The Prairie Village Arts Council is pleased to announce an oils exhibit by Christi Roberts-Bony for the month of April.

An Arbor Day event will be held at Franklin Park on April 25th at 10 a.m. to honor Maggie and Bob Weed.

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

The annual large item pick-up has been scheduled for April 25th.

The 2009 LKM Annual Conference will be held in Topeka, October 3-6, 2009. Conference events will be held at the Topeka Expocentre and Capitol Plaza Hotel. Please let Jeanne know if you are interested in attending.

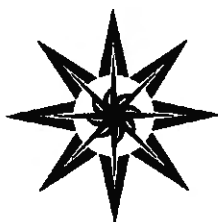
The 50th Anniversary books, Prairie Village Our Story, are being sold to the public.

ADJOURNMENT

With no further business to come before the Council, the meeting was adjourned

at 9:50 p.m.

Joyce Hagen Mundy
City Clerk



VILLAGEFEST COMMITTEE

Council Meeting Date: May 4, 2009

CONSENT AGENDA: Consider Approval of VillageFest Contracts

RECOMMENDATION

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

Beaks N Wings	Exotic Bird Display	\$0
Diane Robertson	Vocal Performance	\$100
Fun Services of Kansas City	Ferris Wheel & Rock Wall	\$1,310
Rolland Love	Storyteller	\$100

FUNDING SOURCE

VillageFest Fund

ATTACHMENTS

1. Contracts

PREPARED BY

Jeanne Koontz, Deputy City Clerk
April 28, 2009

ENTERTAINMENT/ VENDOR AGREEMENT

THIS ENTERTAINMENT/VENDOR AGREEMENT, (hereinafter "Agreement") is made and entered into this 3 day of April, 2009, by and between the City of Prairie Village, Kansas (hereinafter "the City") and Beaks 'N' Wings, (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:

Minimum of 10 x 20 (larger if possible)
2. Type of Service Provided: the Vendor agrees to provide the following services:
Education on care of owning exotic birds
Handing out literature on owning exotic birds
Showing different species of exotic birds
3. Hours of Operation: The Vendor shall provide services to the general public from 10:00 a.m. to 2:00 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 from 7:00 a.m. to 9:00 a.m. and for breakdown after 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 \$0.00, 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.

- 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.**
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 evidence 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: Bernie Bradley
(signed)

Bernie Bradley
(typed name)

V.P. Events
(typed title)

Beak 'N Wings Inc.
(typed company name)

P.O. Box 9228
(typed address)

Shawnee Mission, KS. 66201
(typed city, state, zip)

913-322-3398 or 913-271-422
(typed telephone number)

April 3-'09
(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 6 day of April, 2009, by and between the City of Prairie Village, Kansas (hereinafter "the City") and Diane Robertson, (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:

Vocal performance at Patriotic Service

3. Hours of Operation: The Vendor shall provide services to the general public from 9:00 a.m. to 9:45 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 and breakdown between 7:00 a.m. and 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 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 \$100, 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.

- 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.**
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 evidence 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 Diane Robertson
(signed)

Diane H. Robertson
(typed name)

Singer
(typed title)

(typed company name)

10709 W. 13th St
(typed address)

OP, KS 66213
(typed city, state, zip)

913-620-5057
(typed telephone number)

4-6-09
(date of execution)

APPROVED BY:

City Attorney, Catherine P. Logan

*Thank you!
See you
Then
D.*



7803 Meadow View Dr
 Shawnee, KS 66227
 913-441-9200
 F 913-441-6396
 1-800-477-9119
 www.funservicesmidwest.com

4/28/2009

CUSTOMER AGREEMENT

This contract is made and entered into by City of Prairie Village, and Fun Services of KC LLC, and it mutually agreed that the contract shall be subject to the information on this contract.

DEPOSIT: A non-refundable, 50% deposit of \$655.00 (50%) shall be remitted to and in the name of Fun Services of KC LLC at 7803 Meadow View Dr Shawnee, KS 66227, upon signing of this contract. Price includes cost (\$1,310.00) and (7%) sales tax (\$0.00), totaling (\$1,310.00). If entity is a non-profit organization, please apply tax id number _____, and waive taxes.

BALANCE: The remaining balance of \$655.00 is due to Fun Services of KC LLC upon delivery.

POWER REQUIREMENTS: It is City of Prairie Village's responsibility to find out how much power is needed to safely operate the items rented from Fun Services of KC LLC and to have that power available to us upon arrival for set-up. City of Prairie Village, must have one 20-amp circuit breaker for each blower or equipment rented in order to run effectively. If City of Prairie Village, does not have 20-amp circuit breaker, Fun Services of KC LLC will not be responsible for inconsistent running of the blowers or equipment. However generators may be rented from Fun Services of KC LLC at an additional fee, prior to event set-up. In addition, Fun Services of KC LLC equipment cannot be set up further than 80 feet away from the electric source. If items cannot be set-up due to insufficient power, City of Prairie Village agrees to be obligated to pay the total due under this agreement once delivery of the rental equipment has been undertaken, as per cancellation policy below.

PICK UP REQUIREMENTS: If City of Prairie Village is picking up any item from our offices, it is City of Prairie Village's responsibility to find out what type of vehicle is needed to pick it up. Fun Services of KC LLC can load your vehicle for you, but is not responsible for damage caused to vehicle in doing so. If a vehicle is too small to be loaded, you may be asked to come back with a bigger vehicle so as not to damage the rental item or the vehicle.

SERVICES, FEES, LOCATION: On 7/4/2009 from 08:30AM-02:30PM, at 7700 Mission Road Prairie Village, KS 66208. Fun Services of KC LLC will provide : City of Prairie Village with the following:

Items	Quantity and Special Notes (if applicable)
Ferris Wheel	1 -
Rock Wall (Westside)	1 -
Generator	1 -
Additional Delivery Fee	1 -

***** This event will take place at above address, unless mentioned otherwise *****

CONTACT INFO: : City of Prairie Village, 913-381-6464 City of Prairie Village, agrees to be responsible for any damage to Fun Services of KC LLC equipment, if damage is caused by City of Prairie Village, expressly assumes the responsibility of informing all person(s) who use, operate or rent the above specified rental equipment that they do so at their own risk and that if any injury occurs to the person(s) using the equipment, Fun Services of KC LLC, it's employees, officers, directors, shareholders, agents, successors and assigns shall not be held liable for any such injuries, and/or resulting damages and, further, shall indemnify Fun Services of KC LLC in the event they are held liable for any injuries and/or resulting damages. Fun Services of KC LLC shall be responsible for set up and take down of all equipment delivered. This contract contains the entire agreement between the parties and shall not be enlarged or modified except in writing, and signed by all appropriate parties.

CANCELLATION / INCLEMENT WEATHER POLICY: If event is cancelled outside of 30 days from the start date of the event, the 50% deposit will be refunded, upon customer's request. Otherwise it will be applied to a future event within 12 months of the cancelled event. If event is cancelled, for any reason, within 30 days of the event, deposit cannot be refunded but will be applied to a future event within 12 months.

Created on 3/27/2009 2:19:00 PM



7803 Meadow View Dr
 Shawnee, KS 66227
 913-441-9200
 F 913-441-6396
 1-800-477-9119
 www.funservicesmidwest.com

4/28/2009

In case of a cancellation due to rain or inclement weather, please call Fun Services of KC LLC at least 12 hours before your event so that we can cancel the delivery of your rental and save you the delivery / service charge.

If delivery drivers, entertainers, or other Fun Services Representatives arrive to your event and are sent away due to a last minute cancellation, and haven't been told to set up yet, or haven't begun to unload their vehicle, then deposit will be credited, no balance will be due on the event, but a delivery/service charge will apply. Entertainers are reserved for your event when you book them. So, if an entertainer is cancelled last minute, a full fee for that entertainer may be charged. If delivery drivers, entertainers, or other Fun Services Representatives arrive to your event and are told to set up and begins to unload vehicle, full payment is due at that time. Fun Services reserves the right to not set up if payment, in full, has not been made prior to the event. Any other special cancellation provisions are at the determination of Fun Services Management and Owner. All credits are only good for Fun Services owned equipment.

COLLECTION PROCEDURES: Accounts should be paid in full prior to event. Invoices will be sent up to 30 past event date. If account goes over 30 days past due, Fun Services has the right to turn your bill over to collections. City of Prairie Village agrees to pay any additional fees associated with collection (40%-50%) above the amount due to allow Fun Services to pay its collection agency. 30 days after bill is sent to collections, if undisputed, it will be attached to City of Prairie Village's credit report.

IMPORTANT INFORMATION: Please provide a cell phone number for a contact on your event site and initial sections below.

Name of Contact: _____ Cell Phone Number: _____

PLEASE CHECKMARK WHAT SURFACE ALL INFLATABLE RIDES WILL BE ON (if applicable)

GRASS

HARD SURFACE

CUSTOMER/ORGANIZATION IS RESPONSIBLE FOR ELECTRICITY TO EACH ATTRACTION. EACH FAN REQUIRES 20 AMPS. POWER MUST BE WITHIN 80 FEET OF EACH ATTRACTION. FAILURE TO DO SO WILL RESULT IN OUR INABILITY TO SET UP THE ATTRACTION.

If Power Requirements are understood, please initial here _____ and check the box

CUSTOMER/ORGANIZATION MUST PROVIDE PROPER ADULT SUPERVISION AT ALL TIMES DURING EVENT FOR ALL ITEMS IN THIS CONTRACT UNLESS FUN SERVICES IS CONTRACTED TO PROVIDE LABOR.

If Staffing Requirements are understood, please initial here _____ and check the box

ADDITIONAL SPECIAL NOTES FOR EVENT:

If there are Additional Special Notes and they are understood, please initial here _____ and check the box

Zach Wilson

City of Prairie Village - Sign and Print

Sales Representative: Adam Brown

Zach Wilson (President and Owner)
 Fun Services of KC LLC



7803 Meadow View Dr
 Shawnee, KS 66227
 913-441-9200
 F 913-441-6396
 1-800-477-9119
 www.funservicesmidwest.com

4/28/2009

Fun Services of Kansas City
 7803 Meadow View Dr
 Shawnee, KS 66227
 913-441-9200
 www.funservicesmidwest.com

Page #:3
 Invoice #:3381
 Date: Tuesday, April 28, 2009

Invoice

Customer Information

Event Information

City of Prairie Village
 7700 Mission Road
 Prarie Village, KS 66208

City of Prairie Village
 7700 Mission Road
 Prarie Village, KS 66208

Phone 1:913-381-6464
 office
 Phone 2: 913-544-4581 cell
 Phone 3:

Event Dates/Times
 7/4/2009 - 7/4/2009
 08:30AM - 02:30PM

Unit Name	Price	Sup Fee	Qty	Line Total
Ferris Wheel	\$495.00	\$0.00	1	\$495.00
Rock Wall (Westside)	\$725.00	\$0.00	1	\$725.00
Generator	\$0.00	\$0.00	1	\$0.00
Additional Delivery Fee	\$90.00	\$0.00	1	\$90.00

Equipment Fees:	\$1,310.00
Delivery Fees:	\$0.00
Supply Fees:	\$0.00
Additional Fees:	\$0.00
Waiver Fee:	
Discount:	\$0.00
Sub-Total:	\$1,310.00
Tax:	\$0.00
Total:	\$1,310.00
Deposit Required:	\$655.00
Payments:	
Balance Due:	\$1,310.00

Sales Representative: Adam Brown

Created on 3/27/2009 2:19:00 PM

ENTERTAINMENT/ VENDOR AGREEMENT

THIS ENTERTAINMENT/VENDOR AGREEMENT, (hereinafter "Agreement") is made and entered into this 22nd day of APRIL, 2009, by and between the City of Prairie Village, Kansas (hereinafter the "City") and Fun Services of Kansas City, (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:

Ferris Wheel – (LxWxH) 10'x15'x17'

Rock Wall – (LxWxH) 25'x12'x25'

Generator – (LxWxH) 3'x3'x2' (placed near Ferris Wheel)

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

Ferris Wheel – (Fun Services to provide power)

Rock Wall – (No Additional power required from City)

Generator

3. Hours of Operation: The Vendor shall provide services to the general public from 8:30 a.m. to 2:30 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 between 7:00 a.m. and 9:00 a.m. and for breakdown after 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 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 \$1,310.00, 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.
 - 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

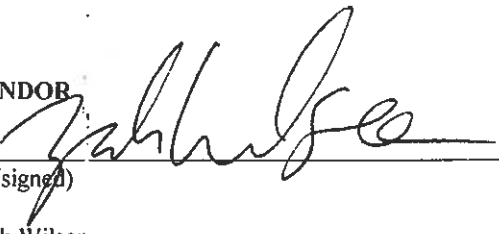
913-381-6464

(date of execution)

ATTEST:

City Clerk, Joyce Hagen-Mundy

VENDOR

By: 
(signed)

Zach Wilson

Owner and President

Fun Services of KC

7803 Meadow View Drive

Shawnee KS 66227

913-441-9200

(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 29 day of April, 2009, by and between the City of Prairie Village, Kansas (hereinafter the "City") and Rolland Love, (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:

Harmon Park Pavilion Shelter

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

Silas Goodrich Reenactment

3. Hours of Operation: The Vendor shall provide services to the general public from 10:45 a.m. to 11:45 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 10:00 a.m. and 10:30 a.m. and for breakdown after 12:00 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 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 \$100, 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.
- 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.

Not
Require

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: Rolland Love
(signed)

Rolland Love
(typed name)

(typed title)

Rolland Love & Associates
(typed company name)

6720 W. 66th Terr
(typed address)

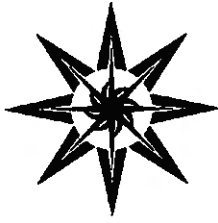
OKS 66202
(typed city, state, zip)

913-831-1909
(typed telephone number)

4/28/09
(date of execution)

APPROVED BY:

City Attorney, Catherine P. Logan



POLICE DEPARTMENT

Council Meeting Date: May 4, 2009

Consent Agenda: Consider Proclamation in recognition of "Police Week"

RECOMMENDATION

Recommend the City Council authorize the Mayor to execute a proclamation recognizing May 10 - May 16, 2009 as Police Week and recognizing May 15, 2009 as Peace Officers Memorial Day

BACKGROUND

The Congress and the President of the United States have designated May 15 as Peace Officer Memorial Day and the week in which it falls as Police Week.

ATTACHMENTS

Proclamation

PREPARED BY

Captain Tim Schwartzkopf

Date: April 30, 2009

CITY OF PRAIRIE VILLAGE

Proclamation

**Police Week
May 10 through May 16, 2009**

WHEREAS, the Congress and President of the United States have designated May 15 as Peace Officers Memorial Day, and the week in which it falls as Police Week; and

WHEREAS, the members of the Prairie Village Police Department play an essential role in safeguarding the rights and freedoms of the citizens of Prairie Village; and

WHEREAS, it is important that all citizens know and understand the problems, duties and responsibilities of their police department, and that members of our police department recognize their duty to serve the people by safeguarding life and property, by protecting them against violence or disorder, and by protecting the innocent against deception and the weak against oppression or intimidation; and

WHEREAS, the Prairie Village Police Department has grown to be a modern and scientific law enforcement agency which unceasingly provides a vital public service,

Now, therefore, I, Ronald L. Shaffer, Mayor of the City of Prairie Village, do hereby proclaim the week of

May 10 through 16, 2009 as "Police Week"

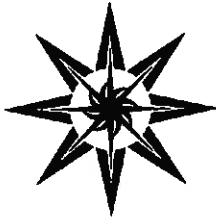
with appropriate ceremonies in which all of our people may join in commemorating police officers, past and present, who by their faithful and loyal devotion to their responsibilities have rendered a dedicated service to their communities and, in doing so, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens.

I FURTHER call upon all citizens of Prairie Village to observe Friday, May 15, 2009, as Peace Officers Memorial Day in honor of those peace officers who, through their courageous deeds, have lost their lives or have become disabled in the performance of duty.

Mayor Ronald L. Shaffer

City Clerk

Date



MAYOR

Council Meeting Date: May 4, 2009

Consent Agenda: Consider appointment to Park & Recreation Committee

RECOMMENDATION

Mayor Shaffer requests Council ratification of the appointment of Dan Searles to the Park & Recreation Committee with his term expiring in April, 2010.

BACKGROUND

Dan Searles has been a resident for over 8 years and enjoys using the park system with his children. Mr. Searles replace Shelly Trewolla on the Park & Recreation Committee

ATTACHMENTS

1. Volunteer application

PREPARED BY

Jeanne Koontz
Deputy City Clerk

Date: April 30, 2009



City of Prairie Village APPLICATION TO VOLUNTEER

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

Name DAN SEARLES Spouse's Name JENNY
 Address 4907 W. 63RD TERRACE Zip 66208 Ward 1
 Telephone: Home 219-9515/677-6668 Work N/A Fax N/A
 E-mail FISHFITZ@AOL.COM Other Number(s): _____
 Business Affiliation SOUTHWEST AIRLINES
 Business Address DALLAS, TX
 What Committee(s) interests you? PARKS & RECREATION

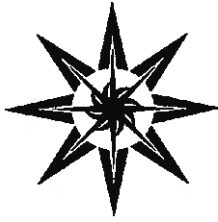
Please tell us about yourself, listing any special skills or experiences you have which would qualify you for a volunteer with the City of Prairie Village.

I have been a resident of Prairie Village for over 8 years and have used the park system extensively with my 9 and 5 year olds. I am interested in volunteering for the parks and recreation committee because I enjoy being involved in community activities and think my contribution would best be served there. I was on the Countryside East Homes Association board for four years, past president, and have been active in the maintenance and improvement of the playground at my children's elementary school.

I think it is important to provide a safe, interactive, and well maintained environment for the resident's recreation needs, both young and old.

Thank you for your interest in serving our community. And I would welcome the opportunity to be a part of the city's efforts to provide that.

Thank You —



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



6201 College Boulevard, Suite 500
Overland Park, KS 66211
(913) 451-8788
Facsimile: (913) 451-6205
www.polsinelli.com

Curtis M. Holland
(913) 234-7411
cholland@polsinelli.com

April 30, 2009

BY ELECTRONIC MAIL

City of Prairie Village 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 Communication Facility to be Located at Faith Evangelical Lutheran Church, 4805 W. 67th Street

Dear Ron:

It has come to my attention that the Mayor may not be in attendance at the City Council meeting on Monday, May 4. Given that the Mayor's vote may be necessary in this case, and either side may be prejudiced by his absence, I would respectfully request that a vote on this matter be continued until such time as the Mayor can be present to vote.

Sincerely,

POLSINELLI SHUGHART PC

Curtis M. Holland
Attorney

cc: Stever Horner, Esq.
Dennis Ensigner
Joyce Mundy
City Council Members
Garth Adcock
Trevor Wood
Casey Housley, Esq.

051032/129496
CMHOL 311022

ORDINANCE _____

AN ORDINANCE APPROVING A SPECIAL USE PERMIT FOR THE INSTALLATION OF WIRELESS COMMUNICATIONS FACILITY AND EQUIPMENT AT FAITH EVANGELICAL LUTHERAN CHURCH ON THE PROPERTY DESCRIBED AS FOLLOWS: 4805 WEST 67th STREET, PRAIRIE VILLAGE, KANSAS.

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

Section I. **Planning Commission Recommendation.** At its regular meeting on April 7, 2009, the Prairie Village Planning Commission held a public hearing, found the findings of fact not to be favorable and recommended that the City Council deny the request for a Special Use Permit for wireless communications facility and equipment at Faith Evangelical Lutheran Church at 4805 West 67th Street for reasons contained in the minutes of the Planning Commission for that date.

Section II. **Findings of the Governing Body.** The Governing Body found the findings of fact to be favorable as contained in the minutes of the May 4, 2009 City Council Meeting relating to the application for a Special Use Permit, docketed as PC2009-06 and approved a Special Use Permit for a wireless communication facility and equipment at 4805 West 67th Street subject to the following conditions:

- 1) The initial approval of the Special Use Permit shall be for a maximum of five years. At the end of the five year period, 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 140 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 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 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.

Section III. Granting of Special Use Permit. Be it therefore ordained that the City of Prairie Village grant a Special Use Permit for a wireless communications facility and related equipment at 4805 West 67th Street, Prairie Village, Kansas, subject to the specific conditions listed above.

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

PASSED AND ADOPTED THIS ____ DAY OF _____, 2009.

CITY OF PRAIRIE VILLAGE, KANSAS

By: _____
 Ronald L. Shaffer., Mayor

ATTEST:

APPROVED AS TO FORM:

 Joyce Hagen Mundy, City Clerk

 Catherine P. Logan, City Attorney



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

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**

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 effects 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 monopole 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 monopine installation.

Mayor Shaffer asked if the monopine 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 monopines 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 monopine 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 Nail 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

COU2009-46 – Wireless Communications Tower

Additional Attachments in separate PDF's due to file size.



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.

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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

Redlined Ordinance From Neighborhood Group

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.

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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
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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	Private Sites
Indian Hills Middle School	St. Ann School
Corinth Elementary School	Homestead Country Club
Belinder Elementary School	The Village Center
Briarwood Elementary School	Corinth Square
Belinder Elementary School	Hy-Vee Center
Somerset Elementary School	Meadowbrook Village
Prairie Elementary School	
City Hall	
Porter Park	
Harmon Park	
Franklin Park	

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."

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Consider adding the following text:

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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.

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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.”

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2. The zoning and uses of property nearby;
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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:
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- 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*.

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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.
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 - 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 set out 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 omnidirectional 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

MAYOR'S ANNOUNCEMENTS
Monday, May 4, 2009

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	0/11/2009	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.

=====

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 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.

INFORMATIONAL ITEMS
May 4, 2009

1. Planning Commission Agenda - May 5, 2009
2. Prairie Village Arts Council Minutes - March 18, 2009
3. Prairie Village Environmental Committee Minutes - March 25, 2009
4. Prairie Village Environmental Committee Minutes - April 15, 2009
5. Committee Assignments - May 1, 2009
6. Mark Your Calendars
7. Committee Agenda

**PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
MUNICIPAL BUILDING - 7700 MISSION ROAD
TUESDAY, MAY 5, 2009
Council Chambers
7:00 P. M.**

I. ROLL CALL

II. APPROVAL OF PC MINUTES - April 7, 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 to September 1, 2009)**

**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**

**(Due to improper notification, this application can not be heard, but will be heard
At a Special Meeting on Wednesday, May 27th at 7 p.m.)**

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) to September 1, 2009)**

**PC2008-113 Amendment to Site Plan - Carport
3500 West 75th Street
Zoning: C-0
Applicant:: Joseph Wachtel**

V. OTHER BUSINESS

**Discussion of Amendment to Procedure for Zoning Text, Zoning and District
Changes and Special Use Permits**

Annual Review of Comprehensive Plan

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.**

**Prairie Village Arts Council
March 18, 2009
Minutes**

The Prairie Village Arts Council met at 7:00 pm in the City Council Chambers of City Hall. Members present: Randy Kronblad, Chairman, Angi Jones, Dan Andersen, Jack Shearer, Bill Rose, Annie Brabson, Jeff Preuss and David Morrison. Also present: Chris Engel, City Staff.

Randy welcomed new member Jeff Preuss.

Minutes

Committee approved minutes from the February 18th meeting with corrections.

Council Report

No report at this time.

Financial Report

Dan asked who made the recent \$500 donation under the name Midwest Trust.

Monthly Art Exhibits

Randy reported the March Show was great. There were a lot of young people who had a good time and didn't want the evening to end. The April Show will be Christi-Roberts Bony on Friday, April 10th at 6.30pm. Annie, Jack, Bill and Jeff all volunteered. Wine is approved but it was discussed the Council needs to find out if they are breaking even of wine. If not, raising the price or increasing the fee should be discussed.

Old Business

State of the Arts Event, October 9, 2009 (6.00pm to 8.00pm awards at 7.00pm)

Angi and Dan reported they had done some discussing of improvements to this years show. To make the event more about the artists the idea of individually awarding winners and specially bringing their pieces out at that time was discussed. A martini bar on the expanded patio was an idea. Dennis will be making sure that would be alright. David asked if there would be interest in getting some glasses donated with the State of the Arts logo screened on them. There was general consensus that wine glasses with the logo and no year would be a huge savings and potentially a revenue stream if sold for donations. David will be asking his contact for 200. Valet parking was discussed as long as the providers insurance covered it. A string section made up of students that would walk around the event was also considered.

Dan informed the Council Callahan Creek will not be participating this year but sent all of their data to be used again. He is also still in the process of bidding out all of the printing.

Shooting Stars Banquet

Five of the six tickets have been spoken for and Randy believes Dennis will be taking the last one.

Johnson County Arts Council Luncheon

Dan reported the luncheon was a roundtable discussion that will continue every other month at a different host venue. Lunch will not be provided and the hope is Prairie Village could host one in October to coincide with the State of the Arts.

Mural Event at PV Arts Show

There was discussion over the Monster Mural idea. Consensus is it is a good idea but too expensive and caters to a demographic that isn't aligned with the Council's mission. It was decided that there were other things the Council could do to help.

New Business

Kacico Dance Group

It was discussed that the visual arts is definitely something the Council should be supporting. However, this event is too last minute and the Council is not interested in just giving money. The hope is to play a larger part in this type of event in the future.

With no other business the meeting was adjourned at 8:00 p.m.

The next meeting will be at 7:00 pm on Wednesday, April 15, 2009.

Randy Kronblad
Chairman

PRAIRIE VILLAGE ENVIRONMENTAL COMMITTEE

MINUTES, March 25, 2009

Anne-Marie Hedge, of the steering committee, called the meeting to order at 7:00. Attending were: Cheryl Landes, Polly Swafford, Thomas O'Brien, Pete Jarchow, Ruth Hopkins, Dennis Enslinger, Don Landes, Kristin Carmody, Linda Smith, Deborah English, Margaret Goldstein, Penny Mahon, Anne-Marie Hedge, Karin McAdams, David Morrison, Mary Helen Korbelik, Kathy Riordan and Margaret Thomas. The minutes were not available.

Events and information:

- **Earthfest** from Bridging the Gap – Karin passed out flyers for distribution in the community.
- **Earth Hour** will be observed from 8:30 to 9:30 p.m. on Saturday, the 28th. We need to turn off electrical devices during that time.
- **Margaret T.** announced a meeting with Terrie Huntington on March 28; the Kansas Chamber of Commerce is pressuring her to vote for the coal plant expansion.
- **Polly** announced that the League of Women Voters is giving this year's Make Democracy Work award to Ruth Hopkins [applause].

Reports:

- **Shoe drive** – Margaret G. and Kristin C. reported that they already have about 2,000 pairs of shoes tied and boxed. Drive-in collection will be on April 11, and volunteers were solicited. The committee voted to donate \$500 toward transportation of shoes to Nashville.
- **Environmental Forum** – Kathy has reserved Friendship Hall at Village Church for October 8. The group brainstormed ideas for speakers and suggested having a dessert bar instead of dinner, thus lowering the cost.
- **Village Fest** – Deborah has attended planning committee meetings and reports a reluctance to use biodegradable dishware; they would like us to arrange for separated recycling. Perhaps we can borrow bins from Bridging the Gap. The committee is protective of the vendors, and perhaps next year we could find ways to help offset any financial detriment that our wishes caused the vendors. We can have a booth, but it must be child-friendly. Deborah, Linda and Karin will look into that.

New business

- **Earthfair** – We need to tell our traditional exhibitors that we won't have Earthfair '09 but are definitely having a forum. We can safely say that we *may* have Earthfair in '10.
- **Interest groups** - The overall category of sustainability, chosen at the last meeting, has several logical subgroups:

Composting	Home weatherization
Green awards	Stream revival
Community gardens	Glidepath to frugality
[Codes – an umbrella category]	Recycling

Members signed up for the groups of their choice. Groups can meet between regular meetings and perhaps at meetings as well. We can have an article in the next Village Voice, soliciting community members who would like to join our interest groups. Linda will email the lists of interest groups to us.

Next meeting – *Imagine KC* has been conducting focus groups to consider environmental issues in the KC metro area. Dennis or a substitute will conduct one with us on April 15, which will be a part of a regular meeting but a week early.

The meeting was adjourned at 8:35

Respectfully submitted, Karin McAdams

PRAIRIE VILLAGE ENVIRONMENTAL COMMITTEE

MINUTES, April 15, 2009

Anne-Marie Hedge, of the steering committee, called the meeting to order at 7:00. Attending were: Mary Helen Korbelik, Polly Swafford, Pete Jarchow, Ruth Hopkins, Dennis Enslinger, Linda Smith, Deborah English, Margaret Goldstein, Penny Mahon, Anne-Marie Hedge, Karin McAdams, David Morrison and Kathy Riordan. The minutes were approved as corrected.

Events and information:

- **April 18, 9:15 – 12:30** – “Awakening to the Earth; spirituality and ecology.” \$15 each; register with Carol Meyer, 913-677-8672.
- **May 1** – Blue River Watershed Association silent auction and party at the Van Noy Mansion in Swope Park. Call 816-739-2023 for tickets or information.
- **May 2, 6:30 – 9:30 p.m.** – Sierra Club annual fundraiser with healthy food and silent auction.
- **May 2, 1:30 – 5:00 p.m.** – Cool Congregations Workshop at St. Andrew’s Christian Church. Call Lynn Schlosser at 620-489-6496 for information and registration.

Reports:

- **Shoe drive** – Margaret G. was “moved and humbled” by the collection of 10,376 pairs of shoes. A huge and enthusiastic effort went into this event, which was made more successful by a last minute benefactor who transported the shoes at very low cost.
- **Environmental Forum** – Kathy announced that Nancy Jackson from the Climate and Energy Project has agreed to be the speaker.
- **Village Fest** – Deborah announced that some progress has been made in greening the fest. Chris Cakes has agreed to use biodegradable plates, and Hy-Vee will wrap some of their food in paper. Bridging the Gap has some ideas for a kid-friendly booth for us: fishing for recyclables.
- **Committees** – Linda passed out lists of people who have signed up for committees. Some names were arbitrarily marked with asterisks; those people are requested to call the first meeting. We hope that there will be progress reports by May or June.

Special program: Dennis Enslinger conducted a “Conversation in a Box:” a visioning process devised by KC One and Mid-America Regional Council called “Imagine KC.”

Visioning has been narrowed down to three areas:

- Red – a region of vibrant places
- Blue – a connected region
- Green – a green region

Our committee had fairly united opinions on the first two areas, especially favoring better public transportation. However, on the green issue, each sub-category appeared so critical to members of our group that in a voting process we split almost evenly between the various areas; to us, they all must be attended to.

Although conversations will continue until May, the culminating event will be an online version on KCPT on Earth Day, April 22, at 7:00 p.m.

The meeting was adjourned at 8:10 p.m.
The next meeting will be on May 27.

Respectfully submitted,

Karin McAdams

Memo

To: City Council
From: Mayor Ron Shaffer
Date: May 1, 2009
Re: **Committee Assignments for 2009-2010**

I have reviewed your responses regarding your committee interests. Based on your interests, experiences and expertise, I have made the following committee assignments:

Council President - Michael Kelly

Park & Recreation

Diana Ewy Sharp, Chair
Al Herrera, Vice-Chair

Supplemental Pension

Charles Clark, Chair
David Voysey, Vice-Chair

Prairie Village Arts Council

David Morrison - Council Liaison

Police Pension

Charles Clark, Chair

Communications Committee

Michael Kelly, Chair
Andrew Wang, Vice-Chair

Sister City Committee

Laura Wassmer, Council Liaison

Insurance Committee

Charles Clark, Chair
Andrew Wang, Vice-Chair

Tree Board

David Morrison, Council Liaison

Villagefest

Diana Ewy Sharp, Council Liaison

Jo. Co. Solid Waste Board

Ruth Hopkins

ADA Advisory Committee

Ruth Hopkins, Chair

Environment/Recycle Committee

Ruth Hopkins, Council Liaison
David Belz, Council Liaison

Jo Co Transportation Coop. Council

David Belz

Ad Hoc Community Center Committee

David Belz, Chair
Bill Griffith
Diana Ewy Sharp

Prairie Village Municipal Foundation

David Voysey, Council Rep.
Diana Ewy Sharp as Parks Chair
Michael Kelly as Communications Chair

Planning Commission

Dale Beckerman, Council Liaison

Homes Association Committee

Michael Kelly, Chair

Finance Committee

David Voysey, Chair

Charles Clark

Bill Griffith

Dale Beckerman

Attached are updated committee listings reflecting these assignments and committee reappointments approved in April, 2009.

**Council Members
Mark Your Calendars
May 4, 2009**

May 2009	Kay Trieb photography exhibit in the R. G. Endres Gallery
May 8	Artist reception in the R. G. Endres Gallery 6:30 - 7:30 p.m.
May 18	City Council Meeting
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 6:70 - 7:30
December 21	City Council Meeting
December 25	City offices closed in observance of Christmas

COMMITTEE AGENDA

May 4, 2009

ANIMAL CONTROL COMMITTEE

AC96-04 Consider ban the dogs from parks ordinance (assigned 7/15/96)

COMMUNICATIONS COMMITTEE

COM2008-01 Consider upgrade to City's Website (assigned 10/8/2007)

COUNCIL COMMITTEE

- 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)
- COU2009-46 Consider Special Use Permit for Wireless Communications tower and equipment compound at 4805 West 67th Street (assigned 4/15/2009)
- COU2009-50 Consider *Village Voice* Agreement (assigned 4/28/2009)
- COU2009-51 Consider Municipal Code Chapter XIV Article 3 Floodplain Management (assigned 4/30/2009)
- COU2009-52 Consider Project 191023: 2009 Concrete Repair Program Construction Change Order (assigned 4/30/2009)
- COU2009-53 Consider Resolution 2009-03 adopting the Johnson County Multi-Hazard Mitigation Plan (assigned 4/30/2009)
- COU2009-54 Consider Ordinance 2193 establishing membership & voting authority for Committee of the Whole (assigned 4/30/2009)

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)