

City Council Meeting

August 4, 2008



Dinner provided by:



O'Neill's
Restaurant & Bar



Caesar Salad
Irish Pot Roast
Mashed Potatoes
Rolls & Butter
Brownie Tray

COUNCIL COMMITTEE
August 4, 2008
6:00 p.m.
Council Chamber

AGENDA

DAVID VOYSEY, COUNCIL PRESIDENT

AGENDA ITEMS FOR DISCUSSION

**Presentation of the 2007 Comprehensive Annual Financial Report
Brian Nyp, Lowenthal, Singleton, Webb & Wilson, P.A.**

**Presentation on Parks Master Plan
Indigo Design**

**KOMA Legislative Update
Katie Logan**

**COU2008-57 Consider Revisions to Council Policy 046 - Reservation of City
Facilities to Allow for the Serving of Cereal Malt Beverages (Wine
and Beer) at Selective City Events.
Dennis Enslinger**

**COU2008-58 Consider Project 190721: 2009 Storm Drainage Repair Program -
Engineering Change Order #1
Bob Pryzby**

**COU2008-59 Consider FY 2009 Solid Waste Management Fee and Solid Waste
Exemption Fee
Dennis Enslinger**

**COU2008-60 Consider 2009 Stormwater Utility Fee
Bob Pryzby**

COU2008-61 Consider 2009 Fee Schedule

COU2007-51 Village Vision

***Council Action Requested the Same Evening**



MEMO

To: Quinn Bennion, City Administrator
City of Prairie Village City, Kansas

From: Catherine P. Logan

Date: May 19, 2008

Subject: **Impact of Recent Amendments to Kansas Open Meetings Act (KOMA)
on Governing Body of Prairie Village**

For several years, the Kansas Press Association and other public media special interest groups have promoted amendments to the KOMA intended to require that "serial meetings" of public bodies be open to the public. Most of those efforts have involved egregious amendments which were not supported by the Legislature. During the veto session of the 2008 Kansas Legislature, interested parties, including the Kansas League of Municipalities, agreed on compromise language for amendments to the KOMA. Senate Substitute for House Bill No. 2947 ("Bill") is the product of that compromise.

The amendment will allow more latitude for members of the governing body to gather for the purpose of discussing the business or affairs of the City.

Section 1 of the Bill amends the definition of "meeting" as that term is used throughout the KOMA. As amended (new language shown in italics, deleted language shown as strike through), the word "meeting" is defined to mean "any gathering *or assembly in person or through the use of a telephone call* or any other ~~means of medium~~ *for interactive communication by a majority of a quorum* of the membership of a body or agency subject to this act for the purpose of discussing the business or affairs of the body or agency." Prior to the amendment, a "meeting" occurred only if attended by a majority of a quorum of the membership of a body or agency subject to the KOMA.

In attorney General Opinion No. 86-110, the Kansas Attorney General concluded that the "membership of the body" in a mayor-council form of government does not include the mayor for purposes of determining the minimum number of persons that can constitute a meeting under KOMA. Accordingly, under the existing version of KOMA five council members constitutes a majority of a quorum (eight by charter ordinance). So until July 1, 2008, the presence of or an interactive discussion among four council members and the Mayor does not constitute a "meeting" under KOMA. Under the Bill, seven council members constitutes a majority of the "membership of the governing body" (twelve) subject to KOMA. Accordingly, effective July 1, 2008, the presence of or an interactive discussion among six council members and the Mayor does not constitute a "meeting" under KOMA.

The other changes to the definition of "meeting" are not substantive. Interactive discussions may still, depending on the facts and circumstances, constitute "meetings" if

the other requirements are met, i.e. now a majority of the body participates, and the discussion relates to the business or affairs of the body. The Kansas Attorney General has opined that emails among members of a governing body can be extensive enough to constitute a “meeting.”

The second amendment made in the Bill is intended to limit the opportunity for non-public “serial meetings.” Section 2(f) of the Bill adds the following new provision:

“[M]eetings in a series shall be open if they collectively involve a majority of the membership of the body or agency, share a common topic of discussion concerning the business or affairs of the body or agency, and are intended by any or all of the participants to reach agreement on a matter that would require binding action to be taken by the body or agency.”

Put another way, “serial meetings” of the City Council are not required to be open to the public if (1) they do not collectively involve a majority of the members of the City Council, or (2) do not share a common topic of discussion concerning the business or affairs of the City, or (3) are not intended by any or all of the participants to reach agreement on a matter that would require binding action to be taken by the City Council. In other words, all of the elements must be present if “serial meetings” are required to be open to the public.

New Section 2(f) of the Bill in part merely codifies a 1998 Kansas Attorney General Opinion, which concluded: “In summary, a series of meetings each of which involves less than a majority of a quorum of a public body, but collectively totaling a majority of a quorum, at which there is a common topic of discussion of the business or affairs of that body constitutes a meeting for purposes of the KOMA.” Attorney General Opinion No. 98-26.

New Section 2(f) of the Bill differs from prior law in two respects:

First, now the series of meetings collectively must involve a majority of the public body i.e. seven members of the Council (before was a majority of a quorum, i.e. five members of the Council); and

Second, it adds a third element, i.e. the series of meetings must be “intended by any or all of the participants to reach agreement on a matter that would require binding action to be taken by the body or agency.”

Enclosed please find copies of the Bill and the Supplemental Notes for your review. The Bill has been signed by the Governor and will become effective on July 1, 2008.

Please share copies of this letter and the enclosures with the Mayor and members of the Council. If you, the Mayor or members of the Council have further questions regarding this matter, please do not hesitate to contact me.

cc: Joyce Hagen Mundy

SENATE Substitute for HOUSE BILL No. 2947

By Committee on Federal and State Affairs

5-1

10 AN ACT concerning open meetings; relating to serial meetings; amend-
11 ing K.S.A. 75-4317a and K.S.A. 2007 Supp. 75-4318 and 75-4320 and
12 repealing the existing sections.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 75-4317a is hereby amended to read as follows: 75-
16 4317a. ~~(a)~~ As used in ~~this the open meetings~~ act, "meeting" means any
17 gathering; or assembly; in person or through the use of a telephone call
18 or any other means of medium for interactive communication by a
19 majority of a quorum of the membership of a body or agency subject to this
20 act for the purpose of discussing the business or affairs of the body or
21 agency.

22 Sec. 2. K.S.A. 2007 Supp. 75-4318 is hereby amended to read as
23 follows: 75-4318. (a) Subject to the provisions of subsection ~~(f)~~ (g), all
24 meetings for the conduct of the affairs of, and the transaction of business
25 by, all legislative and administrative bodies and agencies of the state and
26 political and taxing subdivisions thereof, including boards, commissions,
27 authorities, councils, committees, subcommittees and other subordinate
28 groups thereof, receiving or expending and supported in whole or in part
29 by public funds shall be open to the public and no binding action by such
30 bodies shall be by secret ballot. Meetings of task forces, advisory com-
31 mittees or subcommittees of advisory committees created pursuant to a
32 governor's executive order shall be open to the public in accordance with
33 this act.

34 (b) Notice of the date, time and place of any regular or special meet-
35 ing of a public body designated hereinabove shall be furnished to any
36 person requesting such notice, except that:

37 (1) If notice is requested by petition, the petition shall designate one
38 person to receive notice on behalf of all persons named in the petition,
39 and notice to such person shall constitute notice to all persons named in
40 the petition;

41 (2) if notice is furnished to an executive officer of an employees' or-
42 ganization or trade association, such notice shall be deemed to have been
43 furnished to the entire membership of such organization or association;

1 and

2 (3) the public body may require that a request to receive notice must
3 be submitted again to the body prior to the commencement of any sub-
4 sequent fiscal year of the body during which the person wishes to continue
5 receiving notice, but, prior to discontinuing notice to any person, the
6 public body must notify the person that notice will be discontinued unless
7 the person resubmits a request to receive notice.

8 (c) It shall be the duty of the presiding officer or other person calling
9 the meeting, if the meeting is not called by the presiding officer, to furnish
10 the notice required by subsection (b).

11 (d) Prior to any meeting hereinabove mentioned, any agenda relating
12 to the business to be transacted at such meeting shall be made available
13 to any person requesting ~~said~~ the agenda.

14 (e) The use of cameras, photographic lights and recording devices
15 shall not be prohibited at any meeting mentioned by subsection (a), but
16 such use shall be subject to reasonable rules designed to insure the or-
17 derly conduct of the proceedings at such meeting.

18 *(f) Except as provided by section 22 of article 2 of the constitution of*
19 *the state of Kansas, meetings in a series shall be open if they collectively*
20 *involve a majority of the membership of the body or agency, share a*
21 *common topic of discussion concerning the business or affairs of the body*
22 *or agency, and are intended by any or all of the participants to reach*
23 *agreement on a matter that would require binding action to be taken by*
24 *the body or agency.*

25 ~~(g)~~ (g) The provisions of the open meetings law shall not apply:

26 (1) To any administrative body that is authorized by law to exercise
27 quasi-judicial functions when such body is deliberating matters relating
28 to a decision involving such quasi-judicial functions;

29 (2) to the parole board when conducting parole hearings or parole
30 violation hearings held at a correctional institution;

31 (3) to any impeachment inquiry or other impeachment matter re-
32 ferred to any committee of the house of representatives prior to the report
33 of such committee to the full house of representatives; and

34 (4) if otherwise provided by state or federal law or by rules of the
35 Kansas senate or house of representatives.

36 Sec. 3. K.S.A. 2007 Supp. 75-4320 is hereby amended to read as
37 follows: 75-4320. (a) Any member of a body or agency subject to this act
38 who knowingly violates any of the provisions of this act or who intention-
39 ally fails to furnish information as required by subsection (b) of K.S.A.
40 75-4318, and amendments thereto, shall be liable for the payment of a
41 civil penalty in an action brought by the attorney general or county or
42 district attorney, in a sum set by the court of not to exceed \$500 for each
43 violation. In addition, any binding action which is taken at a meeting not

1 in substantial compliance with the provisions of this act shall be voidable
2 in any action brought by the attorney general or county or district attorney
3 in the district court of the county in which the meeting was held within
4 21 days of the meeting, and the court shall have jurisdiction to issue
5 injunctions or writs of mandamus to enforce the provisions of this act.

6 (b) Civil penalties sued for and recovered hereunder by the attorney
7 general shall be paid into the state general fund. Civil penalties sued for
8 and recovered hereunder by a county or district attorney shall be paid
9 into the general fund of the county where the proceedings were
10 instigated.

11 ~~(c) No fine pursuant to subsection (a) shall be imposed for violations~~
12 ~~of subsection (f) of K.S.A. 75-4320, and amendments thereto, until July 1,~~
13 ~~2009.~~

14 *[(c) No fine shall be imposed pursuant to subsection (a) for vi-*
15 *olations of subsection (f) of K.S.A. 75-4320, and amendments*
16 *thereto, which occur prior to July 1, 2009.]*

17 Sec. 4. K.S.A. 75-4317a and K.S.A. 2007 Supp. 75-4318 and 75-4320
18 are hereby repealed.

19 Sec. 5. This act shall take effect and be in force from and after its
20 publication in the statute book.

SESSION OF 2008

**SUPPLEMENTAL NOTE ON
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2947**

As Amended by Senate Committee of the Whole

Brief*

Senate Sub. for HB 2947 deals with the Kansas Open Meetings Act (KORA).

The bill would define "meeting" under the KORA as any gathering or assembly in person or through the use of a telephone or any other medium or any other interactive communication by a majority of the membership of a body or agency subject to the Act for the purpose of discussing the business or affairs of the body or agency.

The bill would require all meetings in a series to be open if they collectively involve a majority of the membership of the body or agency, share a common topic of discussion concerning the business or affairs of the body or agency, and are intended by any or all of the participants to reach agreement on a matter that would require binding action to be taken by the body or agency. Exempted from this provision would be legislative meetings as provided by Article 2, Section 22 of the *Kansas Constitution*.

The penalty imposed under KSA 75-4320 for violation of KORA as defined by this Act would not be imposed prior to July 1, 2009 (penalty not to exceed \$500).

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Background

Proponents of the bill included: Don Moler, League of Kansas Municipalities; Judy Moler, Kansas Association of Counties; and Doug Anstaett, Kansas Press Association.

No opponents testified in opposition to the bill.

The Senate Committee of the Whole clarified when the penalty would be imposed.

The provisions of HB 2947 were deleted and the provisions dealing with KORA were inserted.

No fiscal note was available at the time of passage of the bill.

SESSION OF 2008

**SUPPLEMENTAL NOTE ON
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2947**

As Recommended by Senate Committee on
Federal and State Affairs

Brief*

Senate Sub. for HB 2947 deals with the Kansas Open Meetings Act (KORA).

The bill would define "meeting" under the KORA as any gathering or assembly in person or through the use of a telephone or any other medium or any other interactive communication by a majority of the membership of a body or agency subject to the Act for the purpose of discussing the business or affairs of the body or agency.

The bill would require all meetings in a series to be open if they collectively involve a majority of the membership of the body or agency, share a common topic of discussion concerning the business or affairs of the body or agency, and are intended by any or all of the participants to reach agreement on a matter that would require binding action to be taken by the body or agency. Exempted from this provision would be legislative meetings as provided by Article 2, Section 22 of the *Kansas Constitution*.

The penalty imposed under KSA 75-4320 for violation of KORA as defined by this Act would be enforced on July 1, 2009 (penalty not to exceed \$500).

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Background

Proponents of the bill included: Don Moler, League of Kansas Municipalities; Judy Moler, Kansas Association of Counties; and Doug Anstaett, Kansas Press Association.

No opponents testified in opposition to the bill.

The provisions of HB 2947 were deleted and the provisions dealing with KORA were inserted.

No fiscal note was available at the time of passage of the bill.

2-2947



ADMINISTRATION

Council Committee Meeting Date: August 4, 2008

City Council Meeting Date: August 18, 2008

COU2008-57: Consider Revisions to Council Policy 046 - Reservation of City Facilities to Allow for the Serving of Cereal Malt Beverages (Wine and Beer) at Selective City Events.

RECOMMENDATION

Staff Recommends the Council review the attached revised City Council Policy 046 - Reservation of City Facilities, to allow for the serving and consumption of wine and beer in City Hall and the adjacent Municipal Courtyard for City sponsored events. Staff also recommends that the City Council direct staff to draft a Resolution Designating 2008 City Sponsored Events.

SUGGESTED MOTION

First Motion: The City Council approve a revised City Council Policy 046 - Reservations of City Facilities, to allow for the serving and consumption of wine and beer in City Hall and the Municipal Courtyard for City sponsored events.

Second Motion: The City Council approved Resolution # (insert number) designating 2008 City Sponsored Events. This resolution will be prepared based upon on the discussion at the Council Committee meeting and presented at the August 18, 2008 City Council Meeting.

BACKGROUND

At the July 21, 2008 City Council Committee meeting, the Counsel directed staff to evaluate existing policy and code provisions related to the serving of wine in City Hall at specific city events. The request was initiated by the Prairie Village Arts Council which would like to serve wine at the annual State of the Arts event and possibly at R.G. Endres Gallery opening receptions.

Currently there are no ordinance provisions which prevent the serving of alcoholic beverages in City Hall. However, the City Council has adopted Council Policy 046 (Reservation of City Facilities) which restricts the serving of alcoholic liquor in all city owned structures and limits the serving of cereal malt beverages (as defined as beer and wine) to only the Prairie Village Community Center with a valid permit. This permit is issued by the City Clerk.

Staff has checked with surrounding communities to determine how they have addressed this issue. The following is a summary:

- Overland Park: Allows the serving of alcoholic beverages in their City Hall for city sponsored events with the issuance of a temporary license
- Mission: Allows for serving of alcoholic beverages at the Community Center with proper security and Community events such as Spirit of Mission Days. Each year the City Council passes a resolution which identifies which community events are officially sponsored by the city.
- Leawood: Allows for serving of alcoholic beverages at the Ironhorse Golf Club, Ironwoods Park, City Hall (in certain locations), and the Leawood Community Center. Events are approved at the staff level either by the City Administrator, Parks and Recreation Director, or manager of the golf club.

After reviewing the City's current policy and how other communities have addressed the issue of allowing wine and beer at city sponsored events, staff recommends Section E of Council Policy 046 be modified to read:

E. Special Requirements:

Park Facilities:

1. *Possession and consumption of cereal malt and/or alcoholic beverages prohibited, except provided for in Ordinance 2010, which allows for sale and consumption of alcoholic beverages in Harmon Park in conjunction with an approved City function, upon the approval of the Governing Body.*

City Hall and Municipal Courtyard:

1. *Serving and consumption of beer and wine may be authorized in conjunction with an approved City function, upon the approval of the Governing Body by resolution.*

Prairie Village Community Center:

1. *Serving and consumption of beer and wine may be authorized by permit as approved by the City Clerk.*

All other Facilities:

1. *Amplified sound prohibited except by written permit from the City.*
2. *Alcoholic liquor prohibited.*

ATTACHMENTS:

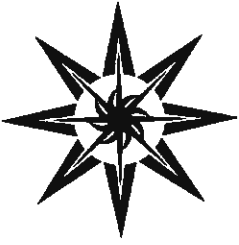
Strike-Through Version of Council Policy 046 - Reservations of City Facilities

FUNDING SOURCE

N/A

PREPARED BY

Dennis J. Enslinger
 Assistant City Administrator
 Date: July 31, 2008



City Council Policy 046 - RESERVATION OF CITY FACILITIES

Effective Date: February 6, 2006

Amends: COPOL 051 dated August 20, 2001

Approved By: Governing Body

I. SCOPE

II. PURPOSE

The City of Prairie Village maintains certain indoor and outdoor facilities for the purpose of conducting the business of the City and providing meeting and recreational opportunities for its residents. When these facilities are not scheduled for use by the Governing Body, or its committees, they may be made available at reasonable times and reasonable rates to groups which fall within the categories below.

III. RESPONSIBILITY

The City Clerk is delegated the authority and duty to consider and approve or disapprove the requests for the use of facilities, according to policies established herein, and previously established policies and applicable law. Reports will be made to the Governing Body annually by the City Clerk regarding the reservation of City facilities during the previous year. The City Administrator will report annually the amount of revenue received from such usage, estimated actual costs to the City and any recommended changes in this policy.

IV. DEFINITIONS

V. POLICY

VI. PROCEDURES

A. Rental Categories:

The City Clerk will determine which category applies to each application and charge the applicable fee according to the Fee Schedule on file.

Internal: Prairie Village Governing Body, Committees, Boards, City Personnel, and other governmental entities, residents and groups participating in City-Sponsored programs and homes association meetings.

Resident: A person residing within the City limits of Prairie Village or owning a business with a physical location in Prairie Village.

Non-Resident: An individual whose primary living domicile is outside City limits of Prairie Village.

B. General Rules:

Groups or organizations using the facility will comply with the laws and ordinances of the City of Prairie Village and the State of Kansas. In addition, they will comply with all requirements specifically set forth in the Application for Facility Reservation Permit.

No items may be sold by outside individuals/groups reserving City facilities.

Application for the reservation of a City facility must be made on the appropriate form available from the City Clerk's office. Applications must be signed by an adult who will be present and in charge while the facility is in use, and who will assume responsibility for payment of charges for use of the facility. The organization will be required to assume responsibility and pay for any damage or loss which may occur to the facility, equipment and grounds. In addition, the group will be required to sign a hold-harmless affidavit.

C. Facilities:

1. Community Center 28' x 31' (approx.) Occupant Load of 45 people

Prairie Village Community Center

Any person, group or organization making advance reservation for the Prairie Village Community Center may request a permit authorizing consumption of beer and/or wine on the premises. A permit may be issued by the City Clerk if it is determined that such use will not be detrimental to the City property or the health or safety of the citizens of Prairie Village.

2. Municipal Building

Council Chamber 30' x 50' (approx.) Occupant Load of 150 people

Multi-Purpose Room Occupant Load of 52 people

Reservations of the City Council Chamber to groups classified as Internal will be permitted under the following conditions:

1. The group makes its facility reservation request within 30 days of the date the group intends to use the City Council Chamber
2. Multiple reservations of the City Council Chamber will not be permitted (i.e. monthly meetings) on the same facility reservation request.
3. A City employee is on duty during the entire time the Council Chamber is being used by the group; or
4. A City Council member or City employee will be present at the meeting.

3. Park Facilities

Tennis Courts

Swimming Pool

Soccer Fields

Park Pavilions

Volleyball Courts

Baseball Diamonds

4. Park Pavilions

- a) All reservation requests for the use of the park pavilions must be made in writing.
- b) Reservations will be recognized by receipt of a Facility Use Permit.
- c) Groups of 20 or less may reserve part of the Harmon Park structure.
- d) Groups of 21 to 100 may reserve all of the Harmon Park structure.
- e) The park pavilions may be reserved throughout the year between the hours of 7:00 a.m. to 11:00 p.m. for a maximum of six hours except for special hours approved by the Park Board.
- f) A member of the sponsoring group must be responsible for the actions of group members.
- g) Cleanup after use shall be done by the group using the Pavilion.
- h) The City Clerk may require a Special Use Permit be issued by the Council for the use of the parks by large groups, which may require parking that would exceed normal park use.

D. Applications and Permits:

Applications should be completed and filed with the City Clerk. Upon approval, the organization/individual will be given a permit showing the hours and facilities approved. All fees are due at the time of the reservation.

E. Special Requirements:

All Facilities:

1. ~~Amplified sound prohibited except by written permit from the City.~~
2. ~~Alcoholic liquor prohibited.~~
3. ~~Cereal malt beverages prohibited, except at Prairie Village Community Center where beer and wine may be authorized by permit.~~

Park Facilities:

1. ~~Possession and consumption of cereal malt and/or alcoholic beverages prohibited.~~

Municipal Building:

1. ~~Possession and consumption of cereal malt and/or alcoholic beverages prohibited.~~

Park Facilities:

Marked Version COPOL046 - Reservation of City Facilities

1. *Possession and consumption of cereal malt and/or alcoholic beverages is prohibited except as provided for in Ordinance 2010 which allows for sale and consumption of alcoholic beverages in Harmon Park in conjunction with an approved City function upon the approval of the Governing Body.*

City Hall and Municipal Courtyard:

1. *Serving and consumption of beer and wine may be authorized in conjunction with an approved City function upon the approval of the Governing Body by resolution.*

Prairie Village Community Center:

1. *Serving and consumption of beer and wine may be authorized by permit as approved by the City Clerk.*

All other Facilities:

1. *Amplified sound prohibited except by written permit from the City.*
2. *Alcoholic liquor prohibited.*

Draft



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: August 4, 2008

Council Meeting Date: August 18, 2008

COU2008-58 CONSIDER PROJECT 190721: 2009 STORM DRAINAGE REPAIR PROGRAM - ENGINEERING CHANGE ORDER #1

RECOMMENDATION

Move to approve the engineering change order #1 with George Butler Associates for Project 190721: 2009 Storm Drainage Repair Program for \$65,000.00

BACKGROUND

The consultant, George Butler Associates, Inc., has completed the concept phase of this project. Engineering Change Order #1 is to begin phases for preliminary design, final design and bidding services.

FUNDING SOURCE

Funds are available in the Capital Infrastructure Program Project 190721 with a transfer of \$5,000.00 from Drainage Unallocated.

RELATED TO VILLAGE VISION

- CC1a. Make streetscape improvements to enhance pedestrian safety and attractiveness of the public realm.
- TR3a. Ensure the quality of the transportation network with regular maintenance as well as efficient responses to seasonal issues such as snow removal.

ATTACHMENTS

1. Engineering Change Order #1 with George Butler Associates.

PREPARED BY

S Robert Pryzby, Director of Public Works
July 16, 2008

Bb

**CITY OF PRAIRIE VILLAGE
PUBLIC WORKS DEPARTMENT**

CHANGE ORDER NO. 1

Consultant's Name George Butler Associates, Inc.

Project Title: 2009 Storm Drainage Repair Program Owner's Project No. 190721

Date Requested July 11, 2008 Consultant's Project No. 11475.10

Original Agreement Date April 7, 2008

The scope of work in the above Service Agreement has been modified as follows:

Preliminary and Final Design of Structural, Curb Inlet Replacement and Bidding Phase Services have been added to the project scope.

(Attach additional pages as necessary)

Original Agreement Amount	\$ <u>34,000.00</u>
Net Previous Change Orders	\$ <u>0.00</u>
Subtotal	\$ <u>34,000.00</u>
Net Increase or Decrease this Change Order	\$ <u>65,000.00</u>
New Agreement Amount	\$ <u>99,000.00</u>

The Agreement Completion Date has been changed from June 1, 2008 to January 2nd, 2009.

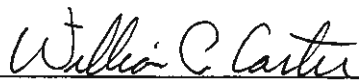
MANAGER OF ENG. SERVICES

CITY OF PRAIRIE VILLAGE, KANSAS

By 
Tom Trienens, P.E.

By _____
Ronald L. Shaffer, Mayor

CONSULTANT

By 
William C. Carter, P.E.



ADMINISTRATION

Council Committee Meeting Date: August 4, 2008
City Council Meeting Date: August 18, 2008

COU2008-59: Consider FY 2009 Solid Waste Management Fee and Solid Waste Exemption Fee.

RECOMMENDATION

Staff recommends the Council establish a fee for FY 2009 of \$13.93 per month/per household for the collection of solid waste, recyclable material, yard waste, and bulky item pickup.

Staff recommends the Council establish a fee of \$8.00 per year/per household for those subdivisions/homes associations that wish to be exempt from Solid Waste Management Fee.

SUGGESTED MOTION

The City Council approve a fee of \$13.93 per household/per month for the collection of solid waste, recyclable material, yard waste and bulky item pickup and an exemption fee of \$8.00 per year/per household for those subdivisions/homes associations which have applied for exemption from the Solid Waste Management Program.

BACKGROUND

Since 1976, the City has provided collection of solid waste for residences in the city. Although some homes associations opt-out of the city program and obtain their own service, the vast majority of Prairie Village residents receive solid waste, recyclable collection, and yard waste collection services through this city sponsored program.

Because not all Prairie Village residents are served by this program, it is funded through user fees in the form of special assessments placed on the property tax bills for each participating household. Revenues from these assessments, in addition to interest earnings, are accounted for in the Solid Waste Management Fund. The current assessment rate for these services is \$13.10 per month/per household.

For FY 2009 Deffenbaugh plans to increase the cost of its service for weekly service by 4% to \$13.47 per month, as permitted by the City's solid waste management contract (increases are capped at a 4% increase). As part of the 2009 budget discussion, it was decided to include the costs associated with the bulky item pickup program (\$40,125) in the household assessment. In previous years, the cost of the bulky item pickup was covered by the general fund.

To cover the increase proposed by Deffenbaugh, the bulky item pick-up program costs, and the administrative costs associated with the solid waste management program, staff is recommending an assessment of \$13.93 per month/per household or about a 6% increase.

Ideally, the Solid Waste Management Fund should maintain a balance of one to two month's worth of trash collection costs, which in 2009 will be approximately \$111,000/month. At the recommended 2009 assessment rate, the projected 2009 year-end balance in the Solid Waste Management Fund would be \$140,796, which is within an acceptable range.

The City Council will also need to establish a fee associated for those properties which opt-out of the weekly solid waste, recycling and yard composting services provided under the city's contract with Deffenbaugh. The current fee is \$3.00 per household/per year. Staff is recommending the fee be increased to \$8.00 per household/per year. This increase will cover additional administrative costs and the costs associated with bulky item pick-up program which is provided city wide.

ATTACHMENTS:

Solid Waste Management Fund Budget Expenditures and Estimates for FY 2006-2009

FUNDING SOURCE

N/A

PREPARED BY

Dennis J. Enslinger
Assistant City Administrator
Date: July 31, 2008

**City of Prairie Village
Solid Waste Management Fund**

	2006 Actual	2007 Actual	2008 Budget	2008 Estimate	2009 Budget
Fund Balance 1/1	\$ 78,478	\$ 144,861	\$ 147,037	\$ 164,542	\$ 153,124
Revenues:					
Licenses & Permits	2,569	-	-	2,000	4,000
Charges for Services	1,229,102	1,239,178	1,287,000	1,274,130	1,381,630
Interest on Investments	37,114	32,251	37,000	15,000	10,000
Total Revenue	1,268,785	1,271,429	1,324,000	1,291,130	1,395,630
Total Funds Available	1,347,263	1,416,290	1,471,037	1,455,672	1,548,754
Expenditures:					
Personal Services	18,078	20,041	21,430	21,430	22,616
Contract Services	1,184,324	1,231,707	1,290,061	1,281,118	1,384,842
Commodities	-	-	-	-	500
Total Expenditures	1,202,402	1,251,748	1,311,491	1,302,548	1,407,958
Fund Balance @ 12/31	\$ 144,861	\$ 164,542	\$ 159,546	\$ 153,124	\$ 140,796
Households				8,250	8,250
Monthly contract price:					
Regular trash pick up				\$ 12.95	\$ 13.47
Large item pick up				-	0.42
Total contract price				\$ 12.95	\$ 13.89
Monthly assessment:					
Regular trash pick up				\$ 13.10	\$ 13.52
Large item pick up				-	0.42
Total assessment				\$ 13.10	\$ 13.93
Administration costs:				1.16%	0.34%
Annual assessment:				\$ 157.20	\$ 167.20

Notes

- Increase reflects paying Large Item Pick Up costs from this fund instead of the General Fund as had been past practice.



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: August 4, 2008
Council Meeting Date: August 18, 2008

COU2008-60: CONSIDER 2009 STORMWATER UTILITY FEE

RECOMMENDATION

Staff recommends the City Council approve the 2009 Stormwater Utility Fee of \$0.037 per square foot of impervious area.

COUNCIL ACTION REQUESTED ON AUGUST 18, 2008

BACKGROUND

As part of the Stormwater Utility Code, the City Council is required to set the Stormwater Utility Fee. Public Works is recommending a fee of \$0.037 per square foot of impervious area.

FUNDING SOURCE

The Stormwater Utility Fee will collect \$ 1,443,413.00 based on 39,029,700 square feet of impervious area.

RELATION TO VILLAGE VISION

None

PUBLIC NOTICE

None

ATTACHMENTS

None

PREPARED BY

S Robert Pryzby, Director of Public Works
Date July 30, 2008



ADMINISTRATION DEPARTMENT

Council Committee Meeting Date: August 4, 2008

Council Meeting Date: August 18, 2008

COU2008-61: CONSIDER 2009 FEE SCHEDULE

RECOMMENDATION

Recommend the City Council amend the City's Fee Schedule on file in the office of the City Clerk to the fees listed below to take effect on January 1, 2009 or with the Issuance of 2009 Licenses/Permits.

Revenue Source	New Fee
Animal License - Non-neutered	\$25
Rental Property Apartment	\$.01 per sq. ft.
Rental Property	\$75
Arborist/Pesticide	\$65
Non-Domiciled	\$65
Security Police Company	\$100
Security Police Agent	\$25
Solid Waste Commercial	\$125
Solid Waste Residential	\$60
Solid Waste Fee per Truck	\$30
Solicitation Permit	\$12/day/person
Animal Boarding Fee - Dog	\$20/day
Animal Boarding Fee - Other	\$20/day
Ballfield Reservation	\$75/team
Ballfield Reservation Hourly	\$5/hour
Park Shelters	\$7.50 - Resident \$12 - Nonresident
<u>Residential and Commercial Building Permits</u>	
\$1-\$500	\$25
\$501 - \$2000	\$25 for first \$500 plus \$1.5 for each additional \$100
\$2,001 - \$25,000	\$47.5 for first \$2,000 plus \$5 for each additional \$1,000
\$25,001 - \$50,000	\$162.5 for first \$25,000 plus \$3.5 for each additional \$1,000
\$50,001 - \$100,000	\$250 for first \$50,000 plus \$2.5 for each additional \$1,000
\$100,001 - \$500,000	\$385 for first \$100,000 plus \$2.25 for each additional \$1,000
\$500,001 - \$1,000,000	\$1,285 for first \$500,000 plus \$2 for each additional \$1,000
\$1,000,001 and up	\$2,281 for first \$1,000,000 plus \$2 for additional each \$1,000

Residential Decks	\$40
Foundation Repair	\$30
Lawn Irrigation	\$30
Residential Re-Roof	\$45
Fences	\$45
Spas/Hot Tubs	\$40
Commercial Re-Roof	Based on Building Permit Fee Schedule
Sign Permits	Based on Building Permit Fee Schedule
Plan Review - Residential	10% of building permit - \$25 minimum
Plan Review - Commercial	65% of building permit - \$30 minimum
Certificate of Occupancy	\$20
Temporary Certificate of Occupancy	\$100
New Footing/Foundation	\$55
Demolition/Residential	\$50
Demolition/Commercial	\$100
Moving Structures	\$100 plus City Costs
Re-inspection	\$50
After Hours Inspection	\$50/hour - \$100 minimum
Administrative Court Fee	\$15
Police Reports	\$5/report
Finger Print Fees	\$5/card

BACKGROUND

As part of the 2009 budget discussion, staff recommended increases to 2009 fees. The recommended fee increases were presented at the June 9th Budget Worksession. The fee increases will not take effect until January 1, 2009 or Issuance of 2009 Licenses/Permits to coincide with the 2009 budget.

ATTACHMENTS

1. 2009 Recommended Fee Increases

PREPARED BY

Jeanne Koontz, Deputy City Clerk
July 30, 2008

**City of Prairie Village
2009 Recommended Fee Increases**

Revenue Source	Last Increase	Current Fee	Additional Information	# of Licenses	Recommended Change	Estimated Revenue Generated	Estimated Increase 2009
Animal Licensing	1991	\$6 Neutered & \$12 for Non Neutered	Lenexa, Olathe & Leawood - \$25 for non-neutered animals, Merriam - \$30, other cities charge \$10	183	Increase to \$25 for non-neutered (\$6 for neutered - no change)	\$4,575	\$2,379
Admin/Retail License	Base fee 94 Others 88	\$60 Base & increasing scale		487	\$65 Base & increasing scale	\$101,437	\$4,401
Family Day Care	1994	\$35		19	\$40	\$760.00	\$95
Home Occupation	1994	\$45		284	\$50	\$14,200	\$1,420
Rental Property Apt.	9/15/2003	\$.009 sq. foot		8	\$0.01	\$7,793	\$779
Rental Property	9/15/2003	\$60	Leawood & Fairway charge \$75	658	\$75	\$49,350	\$10,017
Arborist/Pesticide	9/15/2003	\$60		38	\$65	\$2,470	\$190
Non-Domiciled	4/21/2003	\$62		730	\$65	\$47,450	\$2,190
Security Police	12/20/1993						
Company License		\$75		1	\$100	\$100	\$25
Agent Fee		\$20		12	\$25	\$300	\$60
Solid Waste License							
Commercial	1/16/1989	\$105	OP - \$25; Lenexa, \$135	2	\$125	\$250	\$40
Residential	1/16/1989	\$54	OP - \$25; Lenexa, \$55	3	\$60	\$180	\$18
Per Truck	1/16/1989	\$11	OP - \$75; Lenexa \$31	57	\$30	\$1,710	\$1,083
Exemption Fee	6/16/1997	\$3	Increase to include Large Item Pickup		\$8		
Solicitation Permit	9/15/2003	\$10/day/person		94 permits 316 days	\$12/day person	\$3,792	\$632
Animal Boarding Fees							
Dogs	3/7/2007	\$10			\$20		\$2,000
Other	3/7/2007	\$7.50			\$20		
Ballfield Reservation	1/17/2006	\$50 Team 1-time \$1/hr	See Attached One-time fee	72 Teams 5 single	\$75 \$5	\$5,500	\$1,800
Park Shelters	1/17/2006	\$5/hr - Res \$10/hr - NR	Overland Park - \$5 R&NR Lenexa \$7.85 R & \$11.75 NR; Merriam \$9.25 R & \$11.75NR; Leawood; \$7R & \$9N, Olathe \$7.50 R & \$11.25 NR	895 hours \$4,475 105 hours \$2,865	\$7.50R \$12.00NR Harmon doubled	\$6,712.50 \$1,260.00 \$595.00 est	\$2237.50 \$210.00 \$595.00

**City of Prairie Village
2009 Recommended Fee Increases**

Revenue Source	Last Increase	Current Fee	Additional Information	# of Licenses	Recommended Change	Estimated Revenue Generated	Estimated Increase 2009
Building Permits:							
\$1 - \$500	1994	\$20.00			\$25.00		
\$501 - \$2000	1994	20 for \$500 plus 1 for each 1000			25 for \$500 plus 1.50 for each 1000		
\$2001 - \$25,000	1994	35 for \$2001 plus 4.50 for each 1000			47.50 for \$2000 plus 5.00 for each 1000		
\$25,001 - \$50,000	1994	138.50 for \$25,001 then 3.25 for each 1000			162.50 for \$25,000 then 3.50 for each 1000		
\$50,001 - \$100,000	1994	219.75 for 50,001 the 2.25 for 1000			250 for 50,000 the 2.50 for 1000		
\$100,001 - \$500,000	1994	332.50 for 500,001 then 1.75 for 1000			385 for 500,00 then 2.25 for 1000		
\$500,001 - \$1,000,000	1994	1032.25 for 5000 then 1.50 for 1000			1285 for 5000 then 2.00 for 1000		
\$1,000,001 and up	1994	1782.25 for 1,000,001 then 1.00 for \$1000			2281 for 1,000,001 then 2.00 for \$1000		
Residential Decks	1994	\$25.00			\$40.00		
Foundation Repair Res	1994	\$25.00			\$30.00		
Lawn Irrigation	1994	\$25			\$30.00		
Residential Roofs	1994	\$40			\$45.00		
Fences	1994	\$40.00			\$45.00		
Spas/Hot Tubs	1994	\$25.00			\$40.00		
Roofing Permit	1994	\$40.00			Based on Fee Schedule		
Residential Revenue						\$75,000	\$15,000
Commerical Revenue						\$40,000	\$20,000
(See table above)							

**City of Prairie Village
2009 Recommended Fee Increases**

Revenue Source	Last Increase	Current Fee	Additional Information	# of Licenses	Recommended Change	Estimated Revenue Generated	Estimated Increase 2009
Other Permits:							
Sign Permits	1994	\$30.00			Based on Fee Schedule	\$20,000	\$19,000
Plan Review Fees:							
Residential	1994	5% of building permit \$25.00 min			10% of building permit \$25.00 min		
Commerical	1994	65% of building permit \$30.00 minimum			65% of building permit \$30.00 minimum		
					Total Plan Review Fees	\$20,000	\$5,000
Occupancy Permits:							
Certificate of Occupancy	1994	\$10			\$20	\$800	\$100
Other Building Fees:							
Moving Structures	1994	\$100			\$100 plus City Costs	\$0	\$0
Inspection Fees:							
Re-inspection	1994	\$42			\$50		
After Hours	1994	\$20.00/hour \$40.00 min			\$50.00/hour \$100 min		
Court Fees :							
Admin Fee	11/17/1997	\$10.00			\$15.00	Last Year \$59,000	\$1,000
Police Reports	1993	\$3.00 per report	Avg Johnson County area: \$5.00		\$5 per report	\$6,000	\$1,000
Finger Print Fees	New	\$5.00 per card	Avg Johnson County area: \$5.00; currently no charge for residents or PV businesses		n/a	\$2,500	\$2,500

**COUNCIL MEETING AGENDA
CITY OF PRAIRIE VILLAGE
August 4, 2008
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 – July 21, 2008
- 2. Approve disposal of asset 0613 trailer and asset 1308 water pump by auction
- 3. Adopt Resolution 2008-04 proclaiming the week of September 22-26, 2008 as Prairie Village Peanut Butter Week

By Committee:

- 4. Adopt an Ordinance granting a Telecommunications Franchise to Everest Midwest, Authorize the Mayor to send the proposed letter requesting video service fees, and Approve the video service provider ROW agreement (Council Committee of the Whole – July 21, 2008)
- 5. Approve the City's Participation in the Kansas City Power & Light M-Power Program at the Municipal Offices and Public Works Facility and Authorize the Mayor to execute the agreements (Council Committee of the Whole – July 21, 2008)
- 6. Adopt Ordinance 2170 Amending Chapter XI of the Prairie Village Municipal Code Entitled "Public Offense and Traffic" by adding a new Article 5 entitled "Criminal Littering" (Council Committee of the Whole – July 21, 2008)

VI. 2009 BUDGET HEARING – 8 :00 PM

VII. STAFF REPORTS

Semi-Annual ADA Report – Bob Pryzby

Stormwater Utility Ordinance – Second Reading – Bob Pryzby

First Half Crime Report – Chief Wes Jordan

VIII. COMMITTEE REPORTS

IX. OLD BUSINESS

Cell Tower Record of Denial – Dennis Enslinger

X. NEW BUSINESS

Executive Session

Cell Tower Moratorium – Dennis Enslinger and Steve Horner

XI. ANNOUNCEMENTS

XII. ADJOURNMENT

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

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

CONSENT AGENDA

CITY OF PRAIRIE VILLAGE, KS

August 4, 2008

**CITY COUNCIL
CITY OF PRAIRIE VILLAGE
JULY 21, 2008**

The City Council of Prairie Village, Kansas, met in regular session on Monday, July 21, 2008, at 7:30 p.m. in the Council Chambers of the Municipal Building.

ROLL CALL

Mayor Ron Shaffer called the meeting to order and roll call was taken with the following Council members present: Al Herrera, Ruth Hopkins, David Voysey, Michael Kelly, Andrew Wang, Laura Wassmer, Dale Beckerman, David Morrison, Charles Clark 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 City Administrator; Steve Horner, Assistant City Attorney; and Joyce Hagen Mundy, City Clerk.

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

PUBLIC PARTICIPATION

Charles Schollenberger, 3718 West 79th Terrace, urged the City Council to approve the franchise agreement with Everest noting the benefits that will result from the competition between providers for city residents. Mr. Schollenberger also stated he would have liked to have seen more public involvement in the selection of the City Administrator. He noted during the selection of the president of Johnson County Committee College, the final candidates were interviewed in public meeting and the newspaper published information on each of the candidates.

Randy Kronblad addressed the Council as chairman of the Arts Council to ask the Council to consider taking action to allow for wine to be served at the 2nd annual State of the Arts exhibit this fall. The wine would be served and allowed only on the outdoor patio area of the municipal offices. Mr. Kronblad noted this is done by several other cities at their art exhibit openings.

Mayor Shaffer directed staff to investigate what is done in other cities and what action can be taken to address this request and present it to the City Council at the August 4th Council meeting.

CONSENT AGENDA

David Voysey moved the approval of the Consent Agenda for Monday, July 21, 2008:

1. Approve Regular Council Meeting Minutes - July 7, 2008
2. Approve Claims Ordinance 2649
3. Approve School Resource Officer Agreement with the Shawnee Mission School District for the 2008-2009 school year
4. Exempt the following Homes Associations from City provided Solid Waste Collection Services for 2009: Countryside East Homes Association; Normandy Square Homes Association and Town & Country Homes Association
5. Authorization to publish public hearing on 2009 budget
6. Adoption of Ordinance 2169 renumbering and reorganizing certain sections of the Prairie Village Municipal Code
7. Approve the contract with Barry Strock Consulting Associates, Inc. for consulting services related to the City's RFP for Financial/Budget Software

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

Mayor Shaffer announced a change in the agenda to continue the consideration of the special use permit for a communications tower at 67th & Roe from the earlier Council Committee of the Whole meeting. All of the comments made at the Council Committee of the Whole are hereby incorporated into these records.

Scott Beeler, 10851 Mastin, Overland Park, attorney for T-Mobile, expressed concern with this application being brought forward at this meeting, noting he and others had been told action would not be taken until August 4th.

Mr. Beeler stated he would be able to provide answers to the questions raised at the earlier meeting regarding the impact of a possible tower at the Fire District Property on August 4th and the impact if the tower were to be higher than 120 feet. He felt that some Council members indicated they would like to have those questions answered prior to taking action.

Charles Clark asked Stephen Horner if it would be appropriate to take action this evening. Mr. Horner responded the only public notice required is for the public hearing before the Planning Commission, so there is no legal issue with notice. Whether there are people planning to attend and speak on this issue on August 4th is not known. In response to the concerns raised that if a tower was constructed on this site others would also have to be approved, Mr. Horner did not feel that was accurate. He noted that in an approval of the application the Council could require that if another tower were to locate at this site or a nearby site, T-Mobile could be required to co-locate on that tower and remove their structure.

Mr. Horner also advised the Council the issues of co-location have been addressed by other cities by requiring the tower to be constructed so that it could be expanded in height at a later date, if needed. This could also be placed as a condition of approval. Mr. Beeler noted the foundation for such a tower would be significantly larger.

Laura Wassmer stated that she moved forward this issue to a vote for the benefit of those present who noted they had already attended several meetings. Ruth Hopkins stated that if it has been announced that action would take place on August 4th, it should not be taken this evening.

Andrew Wang stated his concerns have been addressed by staff. He noted others could come on the 4th, but he does not feel it will change anything. David Belz stated in theory he agrees with Mrs. Hopkins, but feels Mr. Wang is correct in his analysis.

Casey Housely, 4900 West 68th Street, does not feel there would be any prejudice in taking action this evening and asked that comments and information submitted to the Planning Commission earlier be incorporated into the record. He noted there was no interest by other carriers with an 85' tower and no one was present to speak in support of the application.

Kate Faerber, 4806 West 68th Street, stated Prairie Village is like a large homes association with people choosing to live here because of the neighborhoods. Residents take pride in maintaining and improving their properties. The proposed tower is an objectionable use of property adjacent to residential homes. At both of the neighborhood meetings, residents told the applicant they would not have any objection to the tower if it was incorporated into the building or a bell tower, but the applicant has not done that.

Mary Cordill, 4904 West 68th Street, presented to the City Clerk petitions signed by 69 neighborhood residents within the last two weeks opposing this application. She feels there has been ample opportunity for T-Mobile to present information.

Amy Culp, 5100 West 68th Street, noted the cell tower is one block from the eastern boundary of Overland Park and will service primarily the area to the west, which is part of Overland Park, not Prairie Village.

Steve Horner noted the Planning Commission records are already part of the official record. Charles Clark moved to incorporate by reference the discussion from the July 21st Council Committee of the Whole meeting as part of the official record. The motion was seconded by Laura Wassmer and passed unanimously.

Scott Beeler noted historically hearings before governing bodies are dominated by people opposing an application. He noted he has submitted several written documents in support of this application both to the Planning Commission and at the meeting this evening. Mr. Beeler stated this application is an example of an effective compromise and stated if the Council still has concerns or questions, he asks that this be continued to allow him the opportunity to get the answers previously requested.

Ruth Hopkins feels it is wrong to deny Prairie Village residents the technology provided by the tower. She feels this is truly a "not in my backyard" reaction and that the Special Use Permit should be approved. Mr. Herrera stated if Mrs. Hopkins wants it, put it in her backyard. Mrs. Hopkins noted the proposed tower is not as unattractive as it has been presented. Mr. Herrera responded the applicant should place the tower in Mrs. Hopkins backyard.

Andrew Wang stated he agrees with Mrs. Hopkins; however, he feels the city's policy on co-location needs to be upheld. He can not support this application without co-location.

David Belz agreed with Mrs. Hopkins. He is confident that an 85' stealth tower, over a period of time will become part of the landscape. However, he does not like towers that do not allow for co-location and would ask that it be built to allow for the height to be increased.

Al Herrera stated this is not about towers in all of Prairie Village. It is about aesthetics. If this could be enclosed so it would not be intrusive to the neighborhood, there would not be any objection and he would support it. However, he said it must blend in. It is not an opposition to towers, but to towers that do not blend with the surrounding community.

David Voysey believes the tower would not be noticed after a period of time, nor will its construction lower property values; however, he does not feel this is the right

location. He noted the combination of the low elevation and the tall trees. He is bothered by the possibility that if a tower is constructed at the fire station, this one may not be necessary. He said first the City was told that this location would not be an issue if T-Mobile could use the fire station, but tonight when it is available they are now being told that is not enough. He thinks there are better locations available than the proposed site. He does not feel it is the Council's place to disagree with the recommendation of the Planning Commission.

Charles Clark confirmed it would require a two-thirds vote of the Governing Body to override the recommendation of the Planning Commission and a majority vote to accept the recommendation, to return it to the Planning Commission, or to continue.

Stephen Horner noted if the Council votes to deny the special use permit, a written statement documenting the substantial evidence on which the denial was based must be created and asked Council to include direction for staff to prepare this documentation in their motion.

Dale Beckerman stated with two Council members absent, and a requirement of a two-thirds vote to override the recommendation, he does not feel it is fair to the applicant to take action and moved to table action to the August 4th City Council meeting. The motion was seconded by Charles Clark. The motion was defeated by a vote of 3 to 7.

Michael Kelly moved the Governing Body adopt the recommendation of the Planning Commission and deny the Special Use Permit for a wireless communication tower and equipment compound at 4805 West 67th Street. The motion was seconded by David Morrison. Mr. Williamson noted the Council could adopt the findings of the Commission or make their own findings. The motion was voted on and passed by a vote of 7 to 3 with Belz, Beckerman, & Hopkins voting "nay".

STAFF REPORTS

Public Works - Bob Pryzby

Bob Pryzby introduced the first reading of the proposed ordinance establishing a stormwater utility fund for the City of Prairie Village. This will be a dedicated fund for stormwater activities undertaken by the City. The stormwater service fee imposed by this ordinance is calculated by multiplying the impervious area on the property by a square footage rate. The impervious area is identified from Johnson County aerial photos and the land records are used to identify parcel identification numbers. The fee will be billed in conjunction with property tax billing prepared and sent by the County. Mr. Pryzby noted the city's website will post fees by parcel ID with a link to the Johnson County website for residents to determine their property ID. Letters were sent out this week to all property owners with a fee of more than \$500.

This fee will be applicable to all properties in the City - public, private, residential and commercial. Mr. Pryzby stated 9645 parcels of land registered with the county have been assessed a stormwater utility fee.

Mr. Pryzby noted one of the questions being asked regards possible credits. He stated these are currently being studied in the Kansas City Chapter of APWA 'Best Management Practices' and language will be brought before the Council at a later date to address this issue.

Mayor Shaffer opened the floor to comments on this issue.

Charles Schollenberger, 3718 West 79th Terrace, stated he is not opposed to the fee; however, he does not feel it has been well presented to the public. He noted the first he'd heard of it was in the July issue of the Village Voice and an article in the KC STAR a week ago. He feels there should have been more public involvement and input. He would have liked to see a public hearing early in the process.

Bob Pryzby confirmed for single family residential properties the footprint of the house and all impervious surfaces were measured based on the parcel as identified by county records. The public streets are not included. Mr. Schollenberger asked if private streets were included in the calculations. Mr. Pryzby replied they were. Mr. Schollenberger asked the reason for the difference. Mr. Pryzby replied that City right of ways (streets) contained the storm water system into which the private streets discharge their stormwater. The City does not maintain drainage systems located within private streets but does maintain the drainage system within City streets.

Charles Schollenberger stated he felt there were several issues that need to be worked out such as private streets and common ground particularly in relation to homes associations. Mr. Pryzby reviewed the process which follows that used by the county. Mayor Shaffer asked that comments are restricted to general comments and noted specific questions can be discussed individually with Mr. Pryzby. Mr. Schollenberger closed, stating the process needs more transparency.

Monroe Taliaferro, 7925 Pawnee, addressed the Council as President of the Paddock Court Homes Association, asking what the funds would be used for. Mr. Pryzby responded this is a dedicated fee to be used for stormwater management and noted this is clearly stated in the code. Mr. Taliaferro requested a copy of the proposed code. Mr. Taliaferro took exception to the Council evoking taxes on the citizens without input and appropriate public hearings. He questioned the fees stated in publications and at this meeting.

Charles Clark clarified the fee of \$149.65 is the average of all property assessed. It is not the fee for the average residential household. Mr. Pryzby added 85% of the properties will have fees less than \$149.65.

Quinn Bennion noted the letters that were mailed were sent by parcel identification, not by property owner. An individual property owner of multiple properties may have a total assessment of more than \$500; however, if no individual parcel had an assessment of more than \$500 a letter would not have been sent.

Joel Chapman, 4314 West 78th Terrace, confirmed the assessment for a 1000 square foot home or area of impervious surface would be \$37 per year. He also confirmed the funds for this work previously would have come out of the general fund and asked if the mill levy was being reduced this amount. Quinn Bennion stated the proposed mill levy will remain the same because city costs have increased and continue to increase. Mr. Chapman noted that instead of raising the mill levy, this fee has been

added. Mr. Bennion noted the fee option was selected because it levels the playing field. All property owners, commercial and residential/public and private, will be assessed this fee based on impervious area and not value of property, including those who are exempt from property tax.

Roe Taliaferro asked how this fund related to SMAC funds. Mr. Pryzby responded if SMAC funds are available the fund will be reduced by the amount of the grant. Charles Clark noted this is a fluctuating fee. It will be determined each year as the budget is set and stormwater costs are determined. He restated this fund is permitted by state statute and limited to only be used for stormwater costs.

Quinn Bennion noted there will be public information meetings, the website will be updated to provide the most recent information as well as articles in the local papers. He added public comments will be received again on August 4th prior to the adoption of the ordinance.

Public Safety

- Chief Jordan noted they have been experiencing problems with traffic in the new construction zones at 75th & Mission and the 83rd & Nall corridors. Police are visible at the locations; however, that has not deterred violators.

Administration

- Quinn Bennion reminded the Council of the Special City Council meeting on Monday, July 28th at 7:30 for the consideration of the application to rezone the Meadowbrook Country Club property. Mayor Shaffer added the normal procedures will be followed with the applicant and the public being able to make comment. Mr. Bennion noted the time of the meeting was kept the same for consistency.

Codes Administration

- Dennis Enslinger reported the City has received notification of acceptance for the Safe Routes to School Grant. Mr. Enslinger noted concerns expressed by some Councilmember's as to the time that would be involved in administering this program, so staff will come back with additional information before formally accepting the grant. The grant program is designed to outline ways to make schools more accessible.

COMMITTEE REPORTS

Park & Recreation Committee - Al Herrera

Al Herrera called upon Wes Jordan to discuss the recent problems experienced at the Santa Fe Pavilion. Chief Jordan stated he met with the Park & Recreation committee to discuss the significant damage being done at the Santa Fe Pavilion caused by juveniles. Public Works Superintendent Mike Helms has improved the lighting in the area and the trees around the pavilion have been trimmed to enhance visibility. The Police Department recommends restricting usage of the Santa Fe Trail Park pavilion to anyone under the age of 18 without adult supervision. After much discussion, the Park & Recreation Committee adopted this recommendation.

Laura Wassmer questioned if this action would merely move the problem elsewhere. Chief Jordan stated if so they would be moving to areas less susceptible to damage. He added enforcement would be an initial verbal warning with a list of names maintained by the department. Upon a second offense the individual could be charged with trespassing. If approved signage would be placed at the pavilion.

David Belz confirmed this action would only be for the Santa Fe Park Pavilion. He asked if the signage would be revisited at a later date to determine its effectiveness. Chief Jordan responded this has been an on-going problem and he would like to see the signage be permanent.

Al Herrera moved the City Council approve a resolution authorizing the posting of the Santa Fe Park pavilion as restricted to anyone under the age of 18 without adult supervision. The motion was seconded by Ruth Hopkins and passed unanimously.

Sister City Committee

Michael Kelly announced that four representatives from Dolyna will be visiting Prairie Village August 15th to 20th and introduced the Sister City Committee Chairman Jim Hohensee to give more information on the visit. Mr. Hohensee stated he has created a cd with the schedule for the week including tours, activities, meetings, and a

formal dinner hosted by the Mayor on August 16th. He noted the committee is working very hard on plans and raising money for this event.

Mr. Hohensee noted the Sister City International Conference was held in Kansas City last weekend. Prairie Village was represented by Carole Mosher and Bob McGowan, with the Mayor and other committee members also attending. Mr. Kelly shared with the Council a plaque given to Mayor Shaffer by the Mayor of the Newry & Mourne District in Ireland. Mayor Shaffer, Jim Hohense, Cindy Dwigans and Bob McGowan met with Michael Carr, councilor for Newy on Saturday afternoon.

Mayor Shaffer announced the Council will now consider those items needing Council action forwarded from the Council Committee of the Whole agenda earlier this evening.

COU2008-56 Consider Professional Services Agreement with Indigo Design for Park Master Plan

Al Herrera reported the 2008 budget includes funds for the creation of a Park Master Plan. Staff, with assistance of the Park Master Plan Subcommittee, created an RFP for a firm to develop a 15 to 20 year comprehensive parks plan. The City received several responses and interviewed four firms. After interviews, the firms were narrowed to two and an expanded scope of services was sent to each finalist for cost figures. Only Indigo Design replied and was selected. They are a small firm that will provide more personalized service and have responded to the very comprehensive scope of services at a cost very close to the amount budgeted.

This commitment is to the creation of a Master Plan, it does not commit to any additional spending on the parks. The plan will be used as a point of reference when enhancements are wanted or needed in the parks. It will provide an idea of what the citizens want and how it can be attained. This study will also address the feasibility of a community center.

On behalf of the Park & Recreation Committee, Al Herrera moved the City Council approve a contract with Indigo Design to develop a park master plan as written. The motion was seconded by David Belz and passed by a vote of 9 to 1 with David Voysey voting “nay”.

COU2008-53 Consider Project 190867: Traffic Calming Program Change Order #1

Bob Pryzby stated the City Council previously approved funding for the design of Traffic Calming projects in the City. The residents along Cherokee Drive have met the requirement of 60% approval for the construction of three speed tables from West 71st Terrace to Chadwick Drive. The contractor, Musselman & Hall, is currently under contract with the City and would construct the asphalt speed tables. The signing and pavement markings would be completed by Public Works and the city’s pavement marking contractor. Two quotes were received for the work with Musselman & Hall being the lower of the two. Mr. Pryzby stated funding is available in the City’s budget.

Michael Kelly recognized the work of the committee, who were in attendance, over the past two years for not only finding a solution for their problem, but creating a process for others to follow. This action will make this street safer and more pedestrian friendly as identified in the Village Vision.

Michael Kelly moved the City Council approve construction change order #1 with Musselman & Hall Contractors for the construction of three speed tables on Cherokee Drive for Project 190867: Traffic Calming Program in the amount of \$13,450. The motion was seconded by Andrew Wang.

Ruth Hopkins asked if down the road the Council will be faced with residents wanting the speed tables removed. She also asked how residents were involved in the

process. Mr. Pryzby responded an initial petition was received signed by the residents on Cherokee, the petitioners were required to contact the churches and homes associations in the area. Their focus has been solely on Cherokee Drive.

Al Herrera raised the following concerns: 1) this action will move the problem from Cherokee to another street; 2) this action will have a negative impact on the response time for police and emergency vehicles responding to the area and he feels there is a better solution.

Mayor Shaffer noted this committee has been studying this situation for more than two years, looking at several options. He stressed speed tables are not the same as speed bumps. Bob Pryzby responded speed bumps are prohibited in the City. Speed tables are ten feet to six feet wide and will not cause any problems for vehicles traveling at or near the speed limit and should not increase the potential for accidents. Mr. Pryzby added 71st Street has already formed a committee to address traffic calming on their street.

Police Chief Wes Jordan stated he was initially concerned with traffic relocation to other areas. Staff and the committee have spent considerable time evaluating options and ideas. He feels this is the best option to address problems on this street. Al Herrera asked about a round-about. Chief responded the cost is very high and it would require the taking of personal property.

David Belz stated he likes the fact that the residents are involved in this process. He asked if the committee would continue and look at new ways that may become available. Mr. Kelly responds the program is such that once the area is studied and a traffic calming device approved, the committee's work is completed. Mr. Belz asked if there was signage to advise drivers of the speed tables. Mr. Pryzby noted signage is identified by the MUTCD and will be installed.

The motion approving the change order for the construction of the speed tables was voted on and passed by a vote of 9 to 1 with Al Herrera voting “nay”.

Kisa White thanked the Council for their support throughout this process.

COU2007-27 Consider Project 190864: 2008 Street Resurfacing Program Construction Change Order #4

Bob Pryzby stated the concrete pavement, constructed in 2004, is failing at four intersections along Mission Road (Somerset Drive, 79th Street, 77th Street and 75th Street). The reason for the failure has not been determined despite much investigation. Mr. Pryzby recommended the concrete in these intersections be replaced to prevent the significant pavement failure that has been experienced.. He noted the unit bid price for this work is below average so delaying the work may increase the cost. He added the concrete bases for all the stamped crosswalks are also showing signs of deterioration and may need to be addressed in the future. Funding is available in the Capital Infrastructure Program as staff has reserved funds in anticipation of this work.

David Belz asked if this was the fault of the contractor. Mr. Pryzby noted the problem is with the concrete aggregate content and stated concrete specifications have been changed to address this issue. Mr. Belz asked if the City should expect to have to replace concrete again in four years. Mr. Pryzby responded he would hope for more than a four-year life. Dale Beckerman asked what the life expectancy was for concrete. Mr. Pryzby replied 20 to 50 years.

Ruth Hopkins moved the City Council approve Construction Change Order #4 with O'Donnell & Sons Construction for an increase of \$222,421 for Project 190864L 2008 Street Resurfacing Program. The motion was seconded by Charles Clark and passed unanimously.

COU2008-51 Consider Business License Fees

David Enslinger noted the 2009 budget proposed changes to several fees for services and licenses during 2009. To create a more balanced and efficient work load in the City Clerk's office the licensing of animals and the various businesses is staggered. The 2009 licensing years for home based business and administrative/retail business are September 1 and October 1 respectively. Therefore, the City Clerk is asking for approval of the proposed fee increases from the 2009 budget to be enacted this evening for home day care licenses, home occupation licenses and administrative/ retail licenses.

Ruth Hopkins moved the City Council amend the City's Fee Schedule on file in the office of the City Clerk increasing the Family Day Care License fee to \$40; the Home Occupation License fee to \$50 and the Administrative/Retail Business License fee as follows: The base fee increase to \$65 with all other categories increased by 5% and a later penalty of 10% be assessed each month the license is delinquent. The motion was seconded by David Belz and passed unanimously.

OLD BUSINESS

Consider Moratorium on Cell Tower Applications

Quinn Bennion stated that residents have requested the city place a moratorium on the consideration of special use permits for cell towers to allow time for the Planning Commission to reconsider the City's zoning regulations on this. The moratorium was not pursued while the City was still considering an active application. Now that the application before the City has been resolved it is an appropriate time to consider the moratorium.

Charles Clark confirmed a moratorium must be for a specified length of time. Mr. Bennion added it must also be completed in a timely fashion. Dennis Enslinger stated at the last Planning Commission meeting the Commission did direct staff to look at other city's regulations and bring back information for consideration. He would expect the

process of revising the ordinance, which will require a public hearing to take four to five months.

Dale Beckerman stated he felt it would be inappropriate to do so this evening. Katie Logan noted the action must be taken by ordinance which has not been prepared so it can not happen this evening.

Mayor Shaffer asked if staff could draft an ordinance for consideration at the next meeting. Ms. Wassmer stated she would support a six month moratorium. Ruth Hopkins stated she felt six months was too long a period.

David Belz moved the City Council direct staff to prepare an ordinance instituting a moratorium on the consideration of cell tower applications for consideration on August 4th. The motion was seconded by Laura Wassmer and passed unanimously.

Point of Decorum

In response to comments made earlier , Ruth Hopkins stated that while opinions may differ, Council members should show respect to one another during meetings.

NEW BUSINESS

Michael Kelly moved the City Council direct staff to prepare a written summary of the basis for the decision to deny the application for a wireless communication facility at Faith Evangelical Church. The motion was seconded by David Morrison and passed by a vote of 8 to 2 with Ruth Hopkins and Dale Beckerman voting “nay”.

Executive Session.

David Voysey moved pursuant to KSA 75-4319(b)(6) that the Governing Body, recess into Executive Session for a period not to exceed ten minutes for the purpose of discussing with the City Attorney preliminary discussions relating to the acquisition of real property.

Present will be the Mayor, City Council, Police Chief, City Administrator, PW Director, Assistant City Administrator, Finance Director, City Clerk, HR Specialist, Asst. to the City Administrator and City Attorney. The motion was seconded by David Belz and passed unanimously.

Mayor Shaffer reconvened the meeting at 9:47 p.m.

ANNOUNCEMENTS

Committee meetings scheduled for the next two weeks include:

VillageFest Committee	07/24/2008	7:00 p.m.
Special Council Meeting	07/28/2008	7:30 p.m.
Council Committee	08/04/2008	6:00 p.m.
Council	08/04/2008	7:30 p.m.

The Prairie Village Arts Council is pleased to an exhibit by the Senior Arts Council during the month of July.

49th Annual Synchronized Swimming Show is July 27th at 8:30 p.m.

Remember the Kansas League of Municipalities Conference October 11-15th at Wichita. RSVP Jeanne if you plan to attend so rooms can be reserved

The 50th Anniversary books, **Prairie Village Our Story**, and Prairie Village Gift Cards continue to be 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

(EXHIBIT A)
COUNCIL COMMITTEE OF THE WHOLE
July 21, 2008

The Council Committee of the Whole met on Monday, July 21, 2008 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, Laura Wassmer, Charles Clark, David Morrison and David Belz. Staff members present: Quinn Bennion, City Administrator; Wes Jordan, Chief of Police; Bob Pryzby, Director of Public Works; Karen Kindle, Finance Director; Dennis Enslinger, Assistant to the City Administrator; Steve Horner, Assistant City Attorney; and Joyce Hagen Mundy, City Clerk.

COU2008-49 Consider Special Use Permit for Communications Tower at 4805 W 67th St

Ron Williamson stated at the June 2, 2008 City Council meeting, the applicant withdrew its application for the 120' high cell tower and stated that they would refile an application for a shorter tower. An application was refilled with the Planning Commission and a public hearing held for an 85' high monopole. The proposed tower has four antenna locations, 80', 70', 60' and 50'. T-Mobile will use the top two locations. T-Mobile has had the trees surveyed in the area and they are 47'-67' in height. This means that the bottom two locations on the monopole have little if any coverage for additional carriers. The consequences of this are that if other carriers need to provide service in this area more towers will need to be constructed. This raises the issue of fewer taller towers versus more shorter towers. The equipment compound and tower have been relocated adjacent to the west end of the church and the compound also includes an equipment area for an additional carrier.

The Planning Commission identified four major issues with the previous application. They were as follows:

- Co-location with other providers had not been adequately addressed.
- The 120' height was a major objection of the neighbors.
- The availability of the alternative locations was not recently confirmed and propagation maps needed to be provided for potential locations.
- The monopole equipment compound needed to be integrated into the existing church building rather than being an island location in the parking lot. (Some thought the tower should actually be integrated into the building such as a steeple or bell tower.)

With the exception of co-location, these issues have been addressed by the applicant as a part of this application.

T-Mobile is requesting a Special Use Permit to construct a telecommunications tower and install supporting equipment cabinets at 4805 West 67th Street. The tower is proposed to be 85 feet in height with a 4-foot lightning rod on top. The tower is proposed to be a stealth pole with the antennae mounted inside the pole. The tower is designed to accommodate two carriers but because of the tree heights, T-Mobile will probably be the only user. The proposed equipment compound will be 28' x 30'

surrounded by an eight-foot tall brick screening wall which has been relocated adjacent to the west end of the church. The brick will match that of the existing church building. This compound will accommodate T-Mobile equipment and possibly one additional carrier.

Mr. Williamson stated most of the applications in Prairie Village have either been the installation of antennae and their associated equipment cabinets on buildings or water towers. There are only two towers and they are located at City Hall and at the Fire Station at 90th and Roe Avenue. Towers are more controversial and create more neighborhood concerns. The Telecommunications Act of 1996 established some limitation when considering a wireless facility and the primary points are as follows:

- A city shall not discriminate among providers.
- A city shall not prohibit or have the effect of prohibiting the installation of wireless services.
- An applicant must be acted on within a reasonable period of time.
- A decision to deny an applicant for wireless communications must be in writing and supported by substantial evidence.
- The Federal Communications Commission regulates the environmental effects of radio frequency emissions and a city cannot consider this issue as approving or denying an applicant.

The 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 Planning Commission discussed each of the nine factors that must be considered and made its findings as follows:

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

The location of the tower appears to meet all the setback requirements of the regulations. The compounds for T-Mobile and other carriers must be 25' from the rear property line. The proposed tower is to be 85 feet in height, which is less than the 150 foot maximum height set out in the City's policy.

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

Marlene Nagel stated this is a typical Prairie Village neighborhood which Village Vision encourages preservation and investment. This is happening and she feels this proposal would have a detrimental effect on the welfare of the neighborhood. Mr. Kronblad agreed.

Nancy Vennard stated she can not say it "adversely affect the welfare or convenience of the public". The real estate reports from professional are contradictory in their findings. Ken Vaughn stated this finding does not relate to property value.

- 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 submitted a Proximity Analysis prepared by Integra Realty Resources which included four case studies. Integra found no meaningful difference in value between properties abutting and those not abutting a cell tower site. Those opposing the cell tower provided testimony that the tower would adversely affect the property values but did not provide any expert testimony to that issue. The opposition also pointed out that the tower would slow down and perhaps stop plans of nearby residents to remodel, enlarge or renovate the homes.

Mrs. Vennard stated with the conflicting real estate reports, she can not clearly say property values will be adversely affected. Marlene. Nagel stated she feels approving this application would send a message to both current and prospective property owners that the city is not as concerned about maintaining the high quality of neighborhoods. This may not necessarily result in property values declining, but have a negative impact in terms of individuals reinvesting in properties, maintaining properties and seeing property values maintained. Randy Kronblad stated that's fairly well emphasized with the understanding that additional towers could certainly be proposed. He agrees with Mrs. Nagel regarding the message that would be sent to the residents of Prairie Village.

- 4. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it, are such that this special use will not dominate the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood, consideration shall be given to: (a) the location, size and nature of the height of building structures, walls and fences on the site; and (b) the nature and extent of landscaping and screening on the site.**

The Faith Evangelical Lutheran Church is on a site of approximately three acres. It also should be pointed out that the neighborhood is totally developed; the closest residence is approximately 130 feet away and therefore, not immediately adjacent to the installation itself. There is a significant amount of vegetation on the site that screens the facility from the south, but additional plant materials may need to be added as part of this application. The location and size have been changed which should make the location more acceptable to the neighborhood. The compound is now attached to the church building which helps to integrate it into the existing development.

Ken Vaughn stated he did not see how this particular structure would have an impact on somebody if they wanted to develop. It's a matter of whether or not it will inhibit their desire to do so. Mr. Kronblad agreed.

- 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 area may or may not have additional impervious surface and that a storm drainage master plan should be prepared and submitted to Public Works for their review and approval.

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

Existing church parking lot will be used for access will be more than adequate to handle the traffic generated by this use.

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

The proposed tower and equipment installation will not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that will affect the general public.

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

The architectural style and materials are typical of those used for utility type electrical poles and towers that are frequently found in urban neighborhoods. This tower will be a stealth pole which will have more of the appearance of a flagpole and no antennas will be visible from the exterior. The screening wall surrounding the equipment compound at the base of the tower will be brick and the brick will match the building on the site. Having the compound attached to the church will improve the appearance of the site and present a more compatible site plan.

Randy Kronblad stated the enclosure is certainly in character with the structure of the church at ground level, but he is disappointed that the tower could not be incorporated into the actual structure like St. Ann's.

Mr. Williamson noted 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 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 and 9 are the most pertinent.

Marlene Nagel noted the Commission as a whole has determined this application does not meet finding #2, #3 and #9. She continues to have concerns with the poor location due to the topography of the site, the architecture of the structure in this residential areas; inability of this facility to truly accommodate co-location and its potential impact for future applications.

Randy Kronblad stated his primary concern is the inability for co-location. There is the possibility, but it is not practical based on information received; therefore, the Commission would be approving the installation of a single tower for a single carrier.

Marlene Nagel moved the Planning Commission recommend denial of the Special Use Permit to the City Council. The motion was seconded by Randy Kronblad and passed by a unanimous vote.

Mr. Williamson stated in making its decision, The City Council must make findings of fact based on the nine factors. It can adopt the findings of the Planning Commission or make its own findings of fact. The City Council shall make its findings of fact and either:

- o Adopt the recommendation of the Planning Commission and deny the Special Use Permit based on the findings of fact of the Planning Commission, or
- o Override the recommendation of the Planning Commission by a 2/3 vote of the Governing Body (9 votes), or
- o 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 consider the City Council's statement.
- o Continue the item to a designated meeting by a simple majority.

Scott Beeler, 10851Mastin, attorney representing Selective Site Consultants and T-Mobile. Mr. Beeler noted for both the previous application for a 120' tower and the application before the Council this evening had the full support of staff. The earlier application was withdrawn after the initial publication and hearing the concerns of the residents and the Planning Commission. As Mr. Williamson noted there were four primary concerns expressed at that meeting. The Planning Commission felt the 120' height was an issue because of the residential character of the neighborhood. During that hearing Mr. Beeler advised the Commission the proposed height was necessary to provide the city's desired co-location and that reducing the height would reduce the options for co-location. However, T-Mobile lowered the height of the proposed tower by 35 feet to 85 feet in an area with tree height of 67 feet.

The second concern given was the closeness to the residential property lines. T-Mobile asked the church (property owner) if they could move the tower and equipment compound closer to the church, construct the compound with bricks similar to those used on the church and paint the tower. The church board reluctantly agreed and the

requested changes were made. By moving the tower there is no property within 100' of the tower.

In response to questions as to whether all other options for locations had been investigated, Selective Site Consultant representatives re-visited all previous site locations and re-verified no other locations were available.

Mr. Beeler stated he had presented to the Planning Commission written statements of support from clients residing within this area. He noted they also had unsolicited individuals speak in support of their application at the hearing. T-Mobile is making this request because their service is not appropriate for in-house coverage. T-Mobile has not claimed to not have coverage, but has documented areas where there are coverage gaps and difficulties. He noted many homes no longer have land lines requiring in house coverage. He also referenced the important role cell phones place in emergency communications with more than 40% of the 911 calls throughout the country being placed through cell phones.

Mr. Beeler repeated the application has the approval of the city's professional staff and has addressed the concerns raised by the Commission and neighbors.

Al Herrera when they communicated with Nall Avenue Baptist Church. Cheri Edwards with Selective Site Consultants stated she spoke with the pastor the first of June regarding the construction of a bell tower or cell tower and were unable to come to an agreement. Mr. Herrera asked about the fire station.

They received a call from the New Fire Chief expressing an interest and met with them on July 17th. This is a preferred location to the Village Presbyterian site, which is now also available and which they have been considering for a separate application. He said T-Mobile no longer considers the fire station or the Village Presbyterian site in the same ring as the proposed site.

Laura Wassmer asked what impact this would have on the area covered by the current application. Mr. Beeler stated a 120' tower at the fire station location would increase coverage but he did not think it would take the place of the proposed site. In response to Dale Beckerman's question, Mr. Beeler said they would need to run the simulations but that he thought a 120' tower at the fire station would probably not supplant the need for the proposed tower at Faith Lutheran. Ms. Wasserman asked if the tower could be higher, such as 150'. Mr. Beeler responded he could not respond but noted there are 150' towers with co-location.

Ron Williamson confirmed the maps submitted reflect coverage with an 85' tower.

Casey Housley, 4900 West 68th Street, stated the proposed tower is an eight and a half foot structure and is not in character with the surrounding area. It is adjacent to residential properties. The structure may be 100' from neighboring homes, but not from neighboring property lines. Mr. Housley stated that topographically this is a poor location. The property has one of the lowest elevations in the area.

Although safety concerns were raised by the inability to place and receive calls, Mr. Housley stated there has been no evidence presented of dropped 911 calls. In response to the letters of support, many of those individuals, when contacted by residents and given specific information on the proposed tower, signed their petition opposing the tower. They submitted to the Planning Commission evidence from a professional appraiser that the construction of the tower will have a detrimental effect on property values. Mr. Housley noted the Planning Commission has unanimously voted to deny both applications. Mr. Housley suggested T-Mobile's needs might be resolved with the fire station location.

Mary Cordill, 4904 West 68th Street, noted at earlier meetings with the applicant residents were explicitly shown the ring and the possible other sites, and told if other sites were available this location would not be necessary. Now they are being told the rings have changed and even with other locations now available at Village Presbyterian and the fire station, the tower is still needed. She asked why their story is changing. She is concerned that the 85' tower does not allow for co-location which increases the probability for more and larger equipment compounds and other towers.

Kate Faerber, 4806 West 68th Street, stated the FCC allows local governments to make decisions on towers. Mrs. Faerber stated the proposed tower is 80' from her west property line and 83' from her south property line.

Harold Neptune, 4722 West 68th Street, distributed a photograph of the location of the 85' tower in relation to the trees noting the tower will be several feet taller than the tallest tree. He expressed frustration with the number of meetings he has had to attend to protect his property from this negative impact.

Ryan Reid, 4905 West 67th Street, five houses from the church property stated this is a family orientated neighborhood. The proposed application does not fit. He noted this is Prairie Village, not Leawood, Overland Park or Mission.

Randy Cordill, 4904 West 68th Street, stated when the tower was proposed at 120 feet the resident went through the neighborhood and would be able to get 300 signatures within a four block radius of the site opposed to the tower. The proposed tower is designed to cover an area west of Nall, yet the location they have chosen will not allow the tower to even reach above the crest of the hill to the west. He contents the area to the north and east would be served by a tower located at the fire station. Mr. Cordill stated residents choose to live in Prairie Village because of the aesthetics of the community and part of that is the multitude of mature trees. He noted the FCC regulations do not guarantee a level of service that provides in-house coverage.

Bill Flora, 4908 West 68th Street, stated he is adamantly opposed to application and was confident that if the community was polled it would clearly reflect opposition to this project. This is not a necessity; it is something T-Mobile wants. He asked the Council to deny the application and then move forward with a moratorium to draft a stronger ordinance relative to towers in residential locations.

Kate Faerber noted that many of the residents present this evening will not be able to be in attendance on August 4th because of previous commitments.

Scott Beeler responded to the comments that the site is a poor location. He reviewed for an application to be made three factors all have to be present—the site was be available, acceptable and agreeable. This site is available, the property owner is agreeable to the location and the engineers' studies reflect that the site is acceptable to provide coverage where it is needed.

Mr. Beeler noted six of the nine conditions for a special use permit have been met without question. He stated he has never seen an eight and a half story structure that has a base of 42" and 28" at the top. This tower will essentially be invisible after a period of time to the general public. They submitted to the Planning Commission an independent study conducted the Integra Realty Resources that determined there is no significant or measurable impact on the market value of single family residential lots or residences as a result of proximity to cell tower sites. They believe the concerns with architectural style have been addressed by the relocation and brick exterior on the equipment compound. The nearest surrounding structures are 128' to the north, 327' to the east, 101'6" to the south (85' further than the original application) and 83.6' to the west property line.

Mr. Beeler stated the Governing Body must judge this application on the evidence submitted, not on the emotions of the neighborhood.

Mayor Shaffer closed the public comment period at 7:00 p.m.

Laura Wassmer asked to see a picture taken from the new location. Mr. Beeler identified the picture submitted reflecting the new location taken from 67th Street looking south.

Al Herrera stated more than 300 people signed a petition opposing this application. He also expressed concerns about the topography. He feels this application should be placed on hold and T-Mobile continue its search. Mr. Beeler responded the 300 signatures were in response to the 120' tower at a different location. They have presented evidence that this site will work to provide the coverage needed and have documented and re-documented that other sites are not available.

Michael Kelly asked for clarification of the propagation maps. He feels that if the City is to approve this application more areas of coverage should be provided to Prairie Village residents so multiple towers are not required.

David Morrison asked how the design was determined and asked about alternative methods to mask or camouflage the tower. Mr. Beeler responded that they believe this design will have the least impact on the property. A bell tower design requires a base of 25 feet. Tree designs are much larger than poles. This is the best option for this property and the design approved by the property owner.

Laura Wassmer stated she does not want five or six more towers. She noted she has a land line because she does not have in-house coverage. She is frustrated that this application will not allow for co-location and would rather have that option available. She would rather see one tower at the fire station for multiple providers.

Dale Beckerman asked what the practical essentials for co-location on this site are. Mr. Beeler responded he does not have that information, but early research indicates only one carrier. He will confirm that with T-Mobile's engineers. Mr. Beckerman also asked that he find out what coverage could be reached by a tower location at the fire station.

David Belz noted he does not want to see this application continued; however, he would like to have the answers to Mr. Beckerman's questions.

Ron Williamson advised the Council that in considering the application they can not raise the height of the tower that would require a new application to be filed. Mr. Wang confirmed that T-Mobile could come back with another application.

Michael Kelly stated Mr. Belz had valid questions, but they were out of the whelm of this application.

Ruth Hopkins moved to continue this application. The motion died for the lack of a second.

Laura Wassmer moved to take action on this application at the City Council meeting this evening. The motion was seconded by Michael Kelly and passed. Mayor Shaffer stated this item will be added to the Council agenda.

COU2008-55 First Reading of Everest Midwest Franchise

Quinn Bennion stated Everest Midwest d/b/a SureWest has applied for a telecommunication franchise to begin providing services within Prairie Village. They plan to provide internet, phone and cable services in Prairie Village and utilize the right of way. Everest plans to begin the construction in fall of 2008 encompassing approximately 2000 homes. Unlike Everest's current facilities in surrounding cities, Everest plans to construct a fiber network to the homes.

In addition to the city's franchise ordinance, Everest plans to obtain a state video services provider from the Kansas Communications Commission. As per state statute, cities have no negotiation authority associated with the video service provider and are limited to simply notifying the provider of the expectation that fees will be remitted and the right-of-way regulations. The video service provider right-of-way agreement will be provided at the August 4th meeting.

Mr. Bennion stated as with other providers, Everest will remit 5% of gross receipts for local exchange (telephone) services and video services. Mr. Bennion noted Ken

Johnson, Chief Technology Officer with Everest and Assistant City Attorney Stephen Horner were in attendance to answer any questions.

Ruth Hopkins stated she has received more complaints from residents that they were unable to get service from Everest over the past few years. She and the residents of Prairie Village welcome them into the City.

Ruth Hopkins made the following motion, which was seconded by Laura Wassmer and passed unanimously:

RECOMMEND THE GOVERNING BODY ADOPT AN ORDINANCE GRANTING A TELECOMMUNICATIONS FRANCHISE TO EVEREST MIDWEST, AUTHORIZE THE MAYOR TO SEND THE PROPOSED LETTER REQUESTING VIDEO SERVICE FEES AND APPROVE THE VIDEO SERVICE PROVIDER RIGHT-OF-WAY AGREEMENT.

COUNCIL ACTION REQUIRED

Council President David Voysey announced that the Council Committee of the Whole would reconvene after the conclusion of the City Council Meeting to consider those items remaining on its agenda. The meeting was recessed at 7:30 p.m.

Council President David Voysey reconvened the meeting at 9:50 p.m. and called upon City Attorney Katie Logan for the presentation of a review of the Planning & Zoning Process

Ms Logan advised the Council that zoning proceedings are quasi-judicial in nature meaning they are similar to judge tried cases. The Planning Commission and Governing Body must make their recommendations/determinations based upon fact. These facts include:

- The application and supporting information submitted by the applicant
- Public notice and public hearing before the Planning Commission. Applicant and public comments include "relevant facts" as well as advocacy.
- "Relevant facts" are those which are related to land use and effect it has on public welfare.
- Planning Commission makes findings of fact and conclusions of law which it forwards, with its recommendation to the Governing Body
- Record of the Planning Commission proceedings, including minutes (transcript if one is made), application, reports, and exhibits are forwarded to the Governing Body.
- The Governing Body can technically make a determination based solely on the "record" from the Planning Commission.
- In practice, the Governing Body will typically receive information staff, applicant and allow public comment (although not a "public hearing")

Ms Logan stated since the decision of the Governing Body is quasi-judicial, ex parte communications with members of the Governing Body may create challenges based on “due process” or “impartiality”. To avoid this, it is best to make sure that any new and relevant factual information communicated ex parte is shared with all members of the Governing Body.

There are no statutory imposed standards on rezoning applications; however, Kansas case law suggests so called “Golden Factors” be considered which are specified in the City’s zoning regulations. Not all “Golden Factors” may apply and these are not the only factors for consideration. The “Golden Factors” address the following issues:

- Character of the neighborhood
- Zoning and uses of property nearby
- Suitability of the property for the uses to which it has been restricted under its current zoning
- Extent that a change will detrimentally affect neighboring property
- Length of time the subject property has remained vacant as zoned
- The relative gain to the public health, safety and welfare by the destruction of the value of the applicant’s property as compared to the hardship on other individual landowners
- City staff recommendations
- Conformance with the Comprehensive Plan. Ms Logan noted this is only one factor and the comprehensive plan can be deviated from.

The City’s zoning regulations identify the following nine findings of factor in consideration of an application for a Special or Conditional Use Permit:

- The proposed special use complies with all applicable provisions of these regulations including intensity use regulations, yard regulations and use limitations.
- The proposed special use at the specified location will not adversely affect the welfare or convenience of the public.
- 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 location and size of the conditional use, the nature and intensity of the operation involved in and conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the conditional 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 conditional use will dominate the immediate neighborhood, consideration shall be given to: a) the location, size and nature of the height of building structures, wall and fences on the site and b) the nature and extent of landscaping and screening on the site.
- Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations, and said areas shall be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effects.
- Adequate utility, drainage and other necessary facilities have been or will be provided.

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

Votes Required

Ms. Logan stated if the Governing Body does not follow the recommendation of the Planning Commission and this action is triggered by a motion to approve the recommendation of the Planning Commission, and the motion fails because there are insufficient votes, the application is denied because of lack of a sufficient majority for approval. In this case the Governing Body is not making an affirmative finding to deny, so there are no Governing Body “findings of fact and conclusions of law”. The motion to approve requires a simple majority of the Governing Body (including the Mayor) or 7 votes in Prairie Village, unless a protest petition has been filed, in which case it requires a $\frac{3}{4}$ majority or ten votes.

The Governing Body may affirmatively vote not to follow the recommendation of the Planning Commission. This action requires a $\frac{2}{3}$ majority of the Governing Body, including the Mayor or nine votes. In this case, the Governing Body would be required to make its own “findings of fact and conclusions of law” so that there is a record in case the decision is challenged in court.

Ms Logan recommended, although not required, if a challenge is anticipated the Governing Body should direct staff to prepare written findings of fact that are typically approved at the next meeting.

In closing, Ms Logan stressed in the quasi-judicial character of zoning proceeding impartiality is required by all members of the Planning Commission and the Governing Body. A member must recuse from the proceedings if not impartial or if they have an “interest” - but this does not modify voting requirements.

Ron Williamson reviewed a chart prepared by Dennis Enslinger summarizing the roles and responsibilities on community development, planning commission and board of zoning and code appeals decisions.

Mr. Williamson presented a summary of planning items that are addressed by the Planning Commission and City Council and the roles each plays in the particular issues.

The following issues come to the City Council for action with a recommendation from the Planning Commission:

- Zoning Text Amendments
- Zoning District Changes
- Special Use Permits
- Appeals of Site Plan Applications
- Final Plats only for the acceptance of easements, right-of-way and to guarantee the installation of improvements.
- The Comprehensive Plan
- In Planned zoning - the preliminary development plan

The Planning Commission has the sole authorization for the following:

- Conditional Use Permits
- Site Plan Approval
- Monument Signs & Sign Standards
- Compatibility Review
- Building Elevation Changes
- Preliminary Plats
- Final Plats outside of acceptance of easements and right-of-ways
- Building Setback Line Modifications

The Board of Zoning Appeals, which consists of the members of the Planning Commission, acting in separate roles considers three types of applications:

- Appeals - where it is alleged that there is an error in any order, decision or determination made by the Building Official
- Variances - where an applicant feels that he should be allowed to exceed the physical restrictions of the zoning regulations because of special circumstances unique to his property.
- Exceptions - to grant as an exception the establishment of those specific uses that are expressly authorized in the zoning regulations.

Dennis Enslinger stressed that final development plans for planned zoning developments do not come back to the City Council for review. Their review is limited to the preliminary development plan.

Katie Logan noted the City can impose conditions or stipulations on a zoning approval to give the City control and to minimize potentially negative impacts of the rezoning on public and nearby properties and to address public health, safety and welfare. The conditions should be related to "land use" in the broad sense, including design, materials, landscaping, aesthetic considerations. She gave the following examples of acceptable conditions:

- Completion of public improvements/infrastructure to support the rezoned use
- Developer financing of public infrastructure
- Timing of development
- Aesthetic requirements
- Matters to be covered by restrictive covenants

Ms Logan stressed "Contract zoning" (an agreement of the city to grant zoning in exchange for agreement of developer to do something) is not permitted in Kansas. A development

agreement in zoning context is appropriate only if city has an obligation. She noted a development agreement to confirm zoning conditions is unnecessary as the developer is already bound by the conditions of approval. In the context of public financing and incentives, a development agreement is necessary to set forth mutual obligations - City to give the incentive and Developer to develop the qualified project as well as related matters.

Public Financing

Ms Logan stated there are numerous public financing mechanisms available to the City. These include, but are not limited to, Industrial Revenue Bonds for property tax abatements, Tax Increment Financing, General Assessment Law Financing and others. All are discretionary with the City and are **separate** from zoning proceedings. Financing factors and conditions in zoning proceedings should be limited to public infrastructure. Typically proceedings governing request for public financing run parallel to zoning proceedings, even though the project may be practically conditioned on public finance.

Quinn Bennion asked if the City could require the applicant to maintain a for-profit status. Ms Logan responded it can not be required as a condition of zoning; however, it could be included in a financing agreement.

Quinn Bennion asked can the City condition a zoning on the approval of a future development agreement. Mrs. Logan responded, no.

Laura Wassmer left at 10:15 p.m.

COU2008-50 Consider enrollment in Kansas City Power and Light M-Power Program

Bob Pryzby noted he participated in a similar program in Connecticut. KCP&L is looking for cities and companies with stand-by generators to use them during high demand periods between June and September. The City has emergency generators at all three of its locations; however, at this time, only City Hall and Public Works will be participating in the program. KCP&L will issue a notice of curtailment event a minimum of four hours before the start of the event and the length of time for the event. Public Works staff would then switch the generators off the KCP&L power grid and use the emergency generators for electricity.

KCP&L has established a payment program for participating in the M-Power Program. The annual guaranteed payments are \$3,375 for the Municipal Offices and \$1,215 for Public Works. Additional, there will be variable payments based on the actual reduction in electric demand for each event. There has been one event to date. Mr. Pryzby noted this would also provide the city with the opportunity to test the emergency generators.

David Morrison asked what it cost to operate on the emergency generators. Mr. Pryzby responded he has not done the calculations but is confident the reduced bill for not running under KCP&L and the payment received for participating in the program will offset any costs.

Andrew Wang confirmed if there was a problem with the generators the City would be able to reconnect with KCP&L for power. Charles Clark stated he felt this was a good program

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

APPROVE THE CITY'S PARTICIPATION IN THE KANSAS CITY POWER & LIGHT M-POWER PROGRAM AT THE MUNICIPAL OFFICES AND PUBLIC WORKS FACILITY AND AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENTS

**COUNCIL ACTION REQUIRED
CONSENT AGENDA**

2009 Budget Considerations Follow-up

Quinn Bennion stated at the last Council Committee of the Whole meeting there was not sufficient time for the Council to discuss the 2009 budget considerations and noted staff would like to have verification from the Council on these issues prior to the public hearing on the budget.

Consideration #1: The addition of the Stormwater Utility Fee as a dedicated funding source for the stormwater management program. The budgeted amount \$1,443,413. Council approved.

Consideration #2: The proposed 2009 Capital Improvement Program budget with the use of accumulated reserve, some projected reduced in scope and stormwater related projects funded by proposed stormwater utility fee. Council approved.

Consideration #3: The use of the projected funds from the public safety sales tax initiative on the August ballot. These funds are included in the proposed 2009 budget. The proposed use is for one-time technology upgrades as identified. The estimated revenue is \$462,000. Quinn Bennion advised if this initiative does not pass, the Council will need to come and determine how these items will be funded. Council approved.

Consideration #4: The addition of a traffic officer at a projected cost of \$88,000 with projected ticket revenue of \$100,000.

David Voysey noted other cities are cutting staff or have hiring freezes in place while we are adding staff. He stated the budget cannot be balanced if the city continues spending. He also noted the earlier approval of an agreement for a consultant to do a parks master plan.

Michael Kelly stated departments need to show how the addition of a new staff person will pay for itself in the long run including the cost of benefits and pension. He does not feel current positions should be cut; however, he would consider a moratorium on new

hires. Quinn Bennion responded staff does look at ways personnel needs very closely and to cut staff would cut services. Mr. Kelly suggested the integration of technology improvements would make staff more efficient. Mr. Bennion agreed technology does increase staff efficiency.

Andrew Wang stated because of his stance on the school zones he struggles with the formation of the traffic unit and its proposed expansion. He noted neither the size nor the population of the city has increased. However, he acknowledges a reduction in staff will have an impact on services.

Chief Jordan responded he has two school crossing guard positions that have to be staffed and when they are running short crews officers can not be in two places at once and may be called away to cover an accident. Chief Jordan sees it as a public safety issue. The highest demand for services at both locations is during rush hours which conflicts with the opening of schools. He added street traffic is not limited to Prairie Village residents.

Al Herrera stated he does not feel the city should be cutting staff because other cities are. He feels staffing levels for the city are at the minimum level now.

Andrew Wang questioned the need to place someone as highly trained and valuable as a commissioned police officer to cover crossing guard positions. He felt the rate for crossing guards could certainly be increased to fill those positions without coming close to the cost of a commissioned officer. Chief Jordan responded the crossing guards are paid approximately \$11 per hour and many of them are retired individuals. He noted the crossing guard program budget is \$40,000. He noted several years back the department explored contracting it out but the costs were significantly higher.

Quinn Bennion stated staff continues to look at improving staff efficiency and will be looking at budget costs by service

Consideration #5: The budget includes costs for Court and Council security at a cost of \$16,000. If approved, this will begin immediately. Council approved.

Consideration #6: Many of the city's current fees for permits and licenses have not been updated in a number of years. These were reviewed by staff and fee increases recommended. The increase revenue from these fees has been included in the budget. These fees will become effective in 2009 or for 2009 licensing. Quinn Bennion noted one of the increases is to increase the license fee for non-neutered animals from \$12 to \$25. This has been done by other cities and is a significant increase for the approximately 180 non-neutered animals in the city. Council approved.

Karen Kindle stated the notice of hearing on the budget will be published July 22nd in the Legal Record. The budget hearing will be held in conjunction with the City Council meeting on August 4th with formal adoption of the budget taking place at the August 18th City Council meeting.

COU2008-54 Consider the Criminal Littering Ordinance

Chief Wes Jordan stated the Standard Traffic Ordinance (STO) and the Uniform Public Offense Code (UPOC) were amended in 2004 and the violation for littering was removed due to a conflict with State Statutes. Since the City adopts both the STO and UPOC, there is no current ordinance to cover littering. The proposed ordinance was written to cover both littering and littering from a motor vehicle. The City Attorney has reviewed and approved the ordinance.

David Belz made the following motion, which was seconded by Andrew Wang and passed unanimously:

**RECOMMEND THE CITY COUNCIL ADOPT ORDINANCE 2170 AMENDING
CHAPTER XI OF THE PRAIRIE VILLAGE MUNICIPAL CODE ENTITLED
"PUBLIC OFFENSES AND TRAFFIC" BY ADDING A NEW ARTICLE 5
ENTITLED "CRIMINAL LITTERING"**

**COUNCIL ACTION REQUIRED
CONSENT AGENDA**

ADJOURNMENT

With no further business to come before the Council Committee of the Whole, Council President David Voysey adjourned the meeting at 10:50 p.m.

David Voysey
Council President

ORDINANCE NO. 2170

AN ORDINANCE AMENDING CHAPTER XI OF THE PRAIRIE VILLAGE MUNICIPAL CODE ENTITLED "PUBLIC OFFENSES AND TRAFFIC" BY ADDING A NEW ARTICLE 5 ENTITLED "CRIMINAL LITTERING"

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

Section 1. A new Article 5 entitled "Criminal Littering" of Chapter 11 of the Prairie Village Municipal Code is hereby added to read as follows:

ARTICLE 5. CRIMINAL LITTERING.

11-501. Criminal Littering is intentionally or recklessly depositing or causing to be deposited any object or substance into, upon or about:

- A. Any public street, highway, alley, road, right-of-way, park or other public place, or any lake, stream, watercourse, or other body of water except by direction of some public officer or employee authorized by law to direct or permit such acts; or
- B. Any private property without the consent of the owner or occupant of such property.

11-502. Should such object or substance be deposited from a motor vehicle, the driver may be cited for any litter thrown, placed or dropped from the motor vehicle, unless any other person in the motor vehicle admits to or is identified as having committed the act.

11-503. Criminal Littering is an unclassified misdemeanor punishable:

- A. Upon a first conviction by a fine of not less than \$250 nor more than \$1,000.
- B. Upon a second conviction by a fine of not less than \$1,000 nor more than \$2,000.
- C. Upon a third conviction by a fine of not less than \$2,000 nor more than \$4,000.

11-504. In addition to the fines in subsection 11-503, a person convicted of criminal littering may be required to pick up litter for a time prescribed by and a place within the jurisdiction of the court.

Section 2. 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 August, 2008.

Mayor Ronald L. Shaffer

ATTEST:

Joyce Hagen Mundy, City Clerk



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date:
Council Meeting Date: August 4, 2008

CONSENT AGENDA: CONSIDER DISPOSAL OF ASSET 0613 TRAILER AND ASSET 1308 WATER PUMP

RECOMMENDATION

Staff recommends the City Council approve disposal of asset 0613 trailer and asset 1308 water pump by auction.

BACKGROUND

The trailer is a 1994 trailer that has been replaced by another trailer as part of downsizing the number of trailers. The original purchase price was \$1,695.00. The water pump is a 1995 KAAZ 2-inch centrifugal pump that was given to the City. It is no longer dependable. The estimated original cost is \$1,500.00.

FUNDING SOURCE

The auction revenue will be deposited in the City revenue account.

RELATION TO VILLAGE VISION

No Village Vision statement applies.

PUBLIC NOTICE

None required.

ATTACHMENTS

None

PREPARED BY

S Robert Pryzby, Director of Public Works
July 24, 2008



ADMINISTRATION DEPARTMENT

Council Committee Meeting Date:
Council Meeting Date: August 4, 2008

CONSENT AGENDA: Consider Resolution 2008-04 proclaiming the week of September 22-26, 2008 as Prairie Village Peanut Butter Week

RECOMMENDATION

Staff recommends the City Council adopt Resolution 2008-04 proclaiming the week of September 22-26, 2008 as Prairie Village Peanut Butter Week.

BACKGROUND

Since 1985, the City of Prairie Village has annually held a Peanut Butter Drive for the Harvesters Community Food Network. Our community participates in the drive through our churches and schools. The 2008 dates will be September 22-26, 2008. This will be the 24th Annual Peanut Butter Week.

ATTACHMENTS

1. Resolution 2008-04

PREPARED BY

Jeanne Koontz, Deputy City Clerk
July 28, 2008

Resolution 2008-04

WHEREAS, the citizens of Prairie Village take great civic pride in their community and the good deeds performed therein; and

WHEREAS, the citizens of Prairie Village strive to maintain the high quality of life now enjoyed by most citizens and also recognize there are less fortunate in the Greater Kansas City area; and

WHEREAS, Prairie Village has a unique opportunity to lend its support to Harvesters in their efforts to lessen some of the hunger of the people in the Greater Kansas City area (including Johnson and Wyandotte Counties) by supporting them in their goal of distributing the high protein food, peanut butter, to social and charitable agencies, serving over 22,000 households; and

NOW, THEREFORE, BE IT RESOLVED, that I, Ronald L. Shaffer, Mayor of the City of Prairie Village, do hereby designate September 22-26, 2008 as

PEANUT BUTTER WEEK

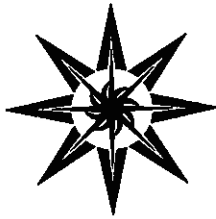
in the City of Prairie Village, Kansas, and call upon all citizens to support this worthwhile cause by donating jars of peanut butter or by providing a cash donation for the purchase of peanut butter.

Adopted this _____ day of August, 2008.

Ronald L. Shaffer, Mayor

ATTEST:

Joyce Hagen Mundy
City Clerk



COUNCIL COMMITTEE

Committee Meeting Date: July 21, 2008

Council Meeting Date: Aug. 4, 2008

Agenda Item: Consider approval of an ordinance granting a telecommunications franchise to Everest Midwest.

SUGGESTED MOTION

Move that the Governing Body adopt an ordinance granting a telecommunications franchise to Everest Midwest, authorize the Mayor to send the proposed letter requesting video service fees, and approve the video service provider ROW agreement (to be provided by Aug. 4th).

BACKGROUND

Everest Midwest dba SureWest contacted city staff in May expressing interest in securing a telecommunication franchise with the anticipation of providing services within Prairie Village.

The City manages and maintains the public rights-of-way. Utility and telecom providers work with the city to secure ROW construction permits and franchise agreements. In early June, Everest representatives met with city staff to discuss their plans to provide internet, phone and cable services in Prairie Village and utilize the ROW. Everest plans to begin the construction in fall 2008 encompassing approximately 2000 homes (see attached plan). Unlike Everest's current facilities in surrounding cities, Everest plans to construct a fiber network to the home.

In addition to the city's franchise ordinance, Everest plans to obtain a state video services provider from the KCC (state-wide franchise). As per state statute, cities have no negotiation authority associated with the video service provider and are limited to simply notifying the provider of the expectation that fees will be remitted and the ROW regulations. The video service provider ROW agreement will be provided at the Aug. 4th meeting.

As with the other providers, Everest will remit 5% of gross receipts for local exchange services (telephone) and video services.

Assistant City Attorney, Steve Horner will be in attendance on Monday, July 21st to answer questions. Ken Johnson, Chief Technology Officer, from Everest is also expected to be in attendance.

FUNDING SOURCE

Not applicable.

ATTACHMENTS:

- 1) Proposed letter from Mayor Shaffer requesting payment of video franchise fee
- 2) Proposed build-out plan for 2008
- 3) Ordinance prepared by Steve Horner, Asst. City Attorney granting a telecommunications franchise to Everest Midwest dba SureWest

Prepared By:

Quinn Bennion

City Administrator

Date: July 18, 2008

August 4, 2008

Everest Midwest Licensee LLC
dba SureWest
9647 Lackman
Lenexa, Kansas 66219
Attn: Legal

Everest Midwest Licensee LLC
dba SureWest
Attn: External Relations
8150 Industrial Avenue
Roseville, California 95678

Re: Everest / Sure West Video (Cable) Service – City of Prairie Village, Kansas

Dear Sir or Madam:

Please accept this letter as the City of Prairie Village's written notice instructing Everest / SureWest to calculate and pay to the City a video service provider fee, as provided for by K.S.A. 12-2024 (b). Said video service provider fee shall be due on a quarterly basis, and shall be calculated in the amount of 5% of gross revenues, as defined by K.S.A. 12-2024 (d).

Please also accept this letter as the City's written notice that, pursuant K.S.A. 12-2023 (k), Everest / SureWest shall have 90 days to comply with customer service requirements consistent with 47 C.F.R. § 76.309(c).

This letter shall also constitute the City's request, pursuant to K.S.A. 12-2023 (m), for Everest / SureWest to provide when available information regarding its process for receiving requests for the extension of video service.

All payments for the video service provider fee should be directed to the attention of Joyce Mundy, City Clerk, City of Prairie Village, 7700 Mission Road, Prairie Village, Kansas 66208. All other notices and information should also be directed to the attention of Ms. Mundy, with a carbon copy to Steve Horner, Assistant City Attorney, 10740 Nall Avenue, Suite 200, Overland Park, Kansas 66211.

Finally, the City requests that you provide the City with timely notice of when Everest / SureWest actually begins providing service within the City so that we may respond appropriately to citizen inquiries.

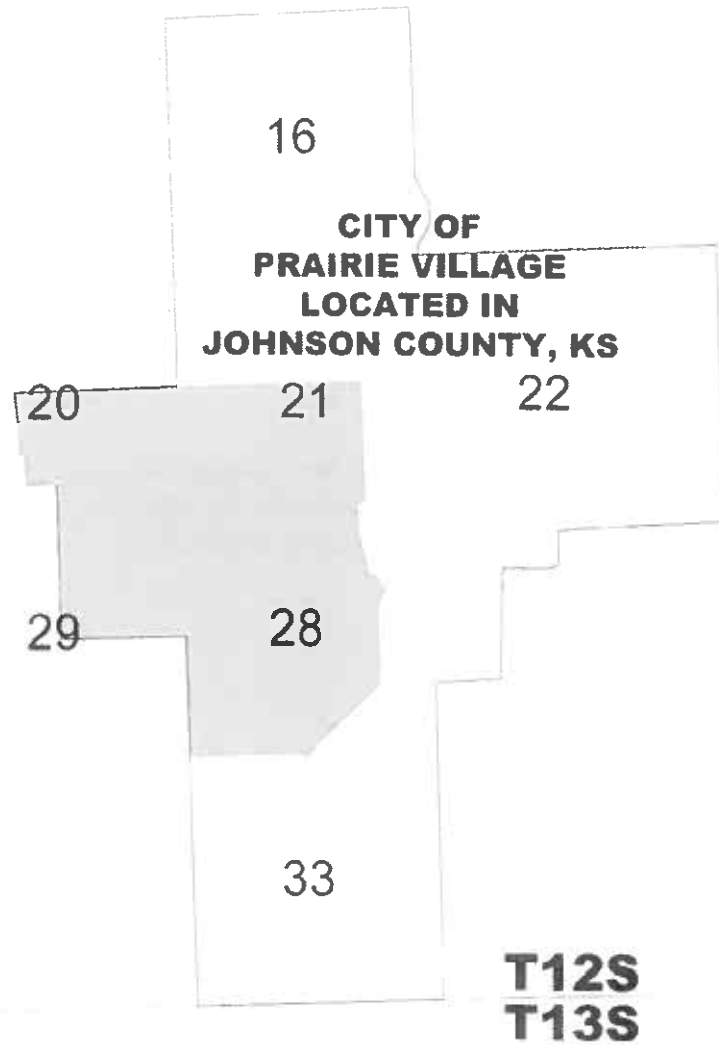
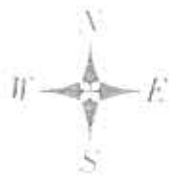
Thank you for your attention to these matters.

Sincerely,

Ronald L. Shaffer, Mayor

Geographic Map of Buildout: Question: Part B.1.a.

R24E
R25E



ORDINANCE NO. _____

AN ORDINANCE GRANTING TO EVEREST MIDWEST LICENSEE LLC DBA SUREWEST, A CONTRACT FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM IN THE CITY OF PRAIRIE VILLAGE, KANSAS AND PRESCRIBING THE TERMS OF SAID CONTRACT FRANCHISE.

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

SECTION 1. DEFINITIONS.

For the purposes of this Ordinance the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

- a. "Access line" - shall mean and be limited to retail billed and collected residential lines; business lines; ISDN lines; PBX trunks and simulated exchange access lines provided by a central office based switching arrangement where all stations served by such simulated exchange access lines are used by a single customer of the provider of such arrangement. Access line may not be construed to include interoffice transport or other transmission media that do not terminate at an end user customer's premises, or to permit duplicate or multiple assessment of access line rates on the provision of a single service or on the multiple communications paths derived from a billed and collected access line. Access line shall not include the following: Wireless telecommunications services, the sale or lease of unbundled loop facilities, special access services, lines providing only data services without voice services processed by a telecommunications local exchange service provider or private line service arrangements.
- b. "Access line count" - means the number of access lines serving consumers within the corporate boundaries of the City on the last day of each month.
- c. "Access line fee" - means a fee determined by the City, up to a maximum as set out in K.S.A. 12-2001(c)(3), and amendments thereto, to be used by Grantee in calculating the amount of Access line remittance.
- d. "Access line remittance" - means the amount to be paid by Grantee to City, the total of which is calculated by multiplying the Access line fee, as determined in the City, by the number of Access lines served by Grantee within the City for each month in that calendar quarter.
- e. "City" - means the City of Prairie Village, Kansas.
- f. "Contract franchise" - means this Ordinance granting the right, privilege and franchise to Grantee to provide telecommunications services within the City.
- g. "Facilities" - means telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide telecommunication services.

- h. "Grantee" - means Everest Midwest Licensee LLC dba SureWest, a telecommunications local exchange service provider providing local exchange service within the City. References to Grantee shall also include as appropriate any and all successors and assigns.
- i. "Gross Receipts" - shall mean only those receipts collected from within the corporate boundaries of the City enacting the contract franchise and which are derived from the following: (1) Recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (2) Recurring local exchange access line services for pay phone lines provided by Grantee to all pay phone service providers; (3) Local directory assistance revenue; (4) Line status verification/ busy interrupt revenue; (5) Local operator assistance revenue; (6) Nonrecurring local exchange service revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills; and (7) Revenue received by Grantee from resellers or others which use Grantee's Facilities. All other revenues, including, but not limited to, revenues from extended area service, the sale or lease of unbundled network elements, nonregulated services, carrier and end user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other services not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If Grantee offers additional services of a wholly local nature which if in existence on or before July 1, 2002 would have been included with the definition of Gross Receipts, such services shall be included from the date of the offering of such services within the City.
- j. "Local exchange service" - means local switched telecommunications service within any local exchange service area approved by the state corporation commission, regardless of the medium by which the local telecommunications service is provided. The term local exchange service shall not include wireless communication services.
- k. "Public right-of-way" - means only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.
- l. "Telecommunication services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

SECTION 2. GRANT OF CONTRACT FRANCHISE.

- a. There is hereby granted to Grantee this nonexclusive Contract franchise to construct, maintain, extend and operate its Facilities along, across, upon or under any Public right-of-way for the purpose of supplying Telecommunication services to the consumers or recipients of such service located within the corporate boundaries of the City, for the term of this Contract franchise, subject to the terms and conditions of this Contract franchise.

- b. The grant of this Contract franchise by the City shall not convey title, equitable or legal, in the Public right-of-way, and shall give only the right to occupy the Public right-of-way, for the purposes and for the period stated in this Contract franchise. This Contract franchise does not:
 - (1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;
 - (2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public right-of-way, specifically including, but not limited to, parkland property, City Hall property or public works facility property; or
 - (3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party.
- c. As a condition of this grant, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity, including, but not limited to, the City, the FCC or the Kansas Corporation Commission (KCC). Grantee shall also comply with all applicable laws, statutes and/or city regulations (including, but not limited to those relating to the construction and use of the Public right-of-way or other public property).
- d. Grantee shall not provide any additional services for which a franchise is required by the City without first obtaining a separate franchise from the City or amending this Contract franchise, and Grantee shall not knowingly allow the use of its Facilities by any third party in violation of any federal, state or local law. In particular, this Contract franchise does not provide Grantee the right to provide cable service as a cable operator (as defined by 47 U.S.C. § 522 (5)) within the City. Grantee agrees that this franchise does not permit it to operate an open video system without payment of fees permitted by 47 U.S.C. § 573(c)(2)(B) and without complying with FCC regulations promulgated pursuant to 47 U.S.C. § 573.
- e. This authority to occupy the Public right-of-way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with state or federal law.

SECTION 3. USE OF PUBLIC RIGHT-OF-WAY.

- a. Pursuant to K.S.A. 17-1902, and amendments thereto, and subject to the provisions of this Contract franchise, Grantee shall have the right to construct, maintain and operate its Facilities along, across, upon and under the Public right-of-way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities.
- b. Grantee's use of the Public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its home rule powers in its administration and regulation related to the management of the Public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions

and ordinances adopted by the City, relating to the construction and use of the Public right-of-way, including, but not limited to, the City's Ordinance for Managing the Use and Occupancy of Public Right-of-way, adopted as Ordinance No. 2047, and amendments thereto.

- c. Grantee shall participate in the Kansas One Call utility location program.

SECTION 4. COMPENSATION TO THE CITY.

- a. In consideration of this Contract franchise, Grantee agrees to remit to the City a franchise fee of 5% of Gross Receipts. To determine the franchise fee, Grantee shall calculate the Gross Receipts and multiply such receipts by 5%. Thereafter, subject to subsection (b) hereafter, compensation for each calendar year of the remaining term of this Contract franchise shall continue to be based on a sum equal to 5% of Gross Receipts, unless the City notifies Grantee prior to ninety days (90) before the end of the calendar year that it intends to switch to an Access line fee in the following calendar year; provided, such Access line fee shall not exceed the maximum Access line fee allowed by Statute. In the event the City elects to change its basis of compensation, nothing herein precludes the City from switching its basis of compensation back; provided the City notifies Grantee prior to ninety days (90) before the end of the calendar year.
- b. Beginning January 1, 2004, and every 36 months thereafter, the City, subject to the public notification procedures set forth in K.S.A. 12-2001 (m), and amendments thereto, may elect to adopt an increased Access line fee or gross receipts fee subject to the provisions and maximum fee limitations contained in K.S.A. 12-2001, and amendments thereto, or may choose to decline all or any portion of any increase in the Access line fee.
- c. Grantee shall pay on a quarterly basis without requirement for invoice or reminder from the City, and within 45 days of the last day of the quarter for which the payment applies franchise fees due and payable to the City. If any franchise fee, or any portion thereof, is not postmarked or delivered on or before the due date, interest thereon shall accrue from the due date until received, at the applicable statutory interest rate.
- d. Upon written request by the City, but no more than once per quarter, Grantee shall submit to the City a certified statement showing the manner in which the franchise fee was calculated.
- e. No acceptance by the City of any franchise fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any franchise fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.
- f. The City shall have the right to examine, upon written notice to Grantee no more often than once per calendar year, those records necessary to verify the correctness of the franchise fees paid by Grantee.
- g. Unless previously paid, within sixty (60) days of the effective date of this Contract franchise, Grantee shall pay to the City a one-time application fee of One Thousand Dollars (\$1000.00). The parties agree that such fee reimburses the City for its reasonable, actual and verifiable costs of reviewing and approving this Contract franchise.

- h. The franchise fee required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001 and 17-1902, and amendments thereto. The franchise fee is compensation for use of the Public right-of-way and shall in no way be deemed a tax of any kind.
- i. Grantee shall remit an access line (franchise) fee or a gross receipts (franchise) fee to the City on those access lines that have been resold to another telecommunications local exchange service provider, but in such case the City shall not collect a franchise fee from the reseller service provider and shall not require the reseller service provider to enter a contract franchise ordinance.

SECTION 5. INDEMNITY AND HOLD HARMLESS.

It shall be the responsibility of Grantee to take adequate measures to protect and defend its Facilities in the Public right-of-way from harm or damage. If Grantee fails to accurately or timely locate Facilities when requested, in accordance with the Kansas Underground Utility Damage Prevention Act, K.S.A. 66-1801 et seq., it has no claim for costs or damages against the City and its authorized contractors unless such parties are responsible for the harm or damage by its negligence or intentional conduct. The City and its authorized contractors shall be responsible to take reasonable precautionary measures including calling for utility locations and observing marker posts when working near Grantee's Facilities.

Grantee shall indemnify and hold the City and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of Grantee, any agent, officer, director, representative, employee, affiliate or subcontractor of Grantee, or its respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining Facilities in the Public right-of-way.

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

Grantee or City shall promptly advise the other in writing of any known claim or demand against Grantee or the City related to or arising out of Grantee's activities in the Public right-of-way.

SECTION 6. INSURANCE REQUIREMENT AND PERFORMANCE BOND

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

- (1) Workers' compensation as provided for under any worker's compensation or similar law in the jurisdiction where any work is performed with an employers' liability limit equal to the amount required by law.
 - (2) Commercial general liability, including coverage for contractual liability and products completed operations liability on an occurrence basis and not a claims made basis, with a limit of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage liability. The City shall be included as an additional insured with respect to liability arising from Grantee's operations under this Contract franchise.
- b. As an alternative to the requirements of subsection (a), Grantee may demonstrate to the satisfaction of the City that it is self-insured and as such Grantee has the ability to provide coverage in an amount not less than one millions dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) 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 Grantee, or alleged to so have been caused or occurred.
 - c. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a certificate of insurance or evidence of self-insurance, satisfactory in form and content to the City, evidencing that the above insurance is in force and will not be cancelled or materially changed with respect to areas and entities covered without first giving the City thirty (30) days prior written notice. Grantee shall make available to the City on request the policy declarations page and a certified copy of the policy in effect, so that limitations and exclusions can be evaluated for appropriateness of overall coverage.
 - d. Grantee shall, as a material condition of this Contract franchise, prior to the commencement of any work and prior to any renewal thereof, deliver to the City a performance bond in the amount of \$50,000, as required by the City's right-of-way ordinance referenced in Section 3b of this Contract franchise. The bond is to ensure the appropriate and timely performance in the construction and maintenance of Facilities located in the Public right-of-way and must be issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance.

SECTION 7. REVOCATION AND TERMINATION.

In case of failure on the part of Grantee to comply with any of the provisions of this Contract franchise, or if Grantee should do or cause to be done any act or thing prohibited by or in violation of the terms of this Contract franchise, Grantee shall forfeit all rights, privileges and franchise granted herein, and all such rights, privileges and franchise hereunder shall cease, terminate and become null and void, and this Contract franchise shall be deemed revoked or terminated, provided that said revocation or termination, shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Contract franchise, it shall first serve a written notice upon Grantee, setting forth in detail the neglect or failure complained of, and Grantee shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Contract franchise. If at the end of such sixty (60) day period the City deems that the conditions have not been complied with, the City shall

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

SECTION 8. RESERVATION OF RIGHTS.

- a. The City specifically reserves its right and authority as a customer of Grantee and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee's rates and services to ensure the rendering of efficient Telecommunications service and any other services at reasonable rates, and the maintenance of Grantee's property in good repair.
- b. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, its Home Rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- c. In granting its consent hereunder, Grantee does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, or under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.
- d. In entering into this Contract franchise, neither the City's nor Grantee's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into the Contract franchise, neither the City nor Grantee waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Grantee may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances (e.g. the City's right-of-way ordinance referenced in Section 3b of this Contract franchise), and/or rulings.

SECTION 9. FAILURE TO ENFORCE.

The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Contract franchise shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been

made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee.

SECTION 10. TERM AND TERMINATION DATE.

- a. This Contract franchise shall be effective for a term beginning on the effective date of this Contract franchise and ending on April 1, 2010. Thereafter, this Contract franchise will automatically renew for up to fourteen (14) additional one (1) year terms, unless either party notifies the other party of its intent to terminate the Contract franchise at least one hundred and eighty (180) days before the termination of the then current term. The additional term shall be deemed a continuation of this Contract franchise and not as a new franchise or amendment.
- b. Upon written request of either the City or Grantee, this Contract franchise shall be renegotiated at any time in accordance with the requirements of state law upon any of the following events: changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee, including but not limited to the scope of the Contract franchise granted to Grantee or the compensation to be received by the City hereunder.
- c. If any clause, sentence, section, or provision of K.S.A. 12-2001, and amendments thereto, shall be held to be invalid by a court or administrative agency of competent jurisdiction, provided such order is not stayed, either the City or Grantee may elect to terminate the entire Contract franchise. In the event of such invalidity, if Grantee is required by law to enter into a Contract franchise with the City, the parties agree to act in good faith in promptly negotiating a new Contract franchise.
- d. Amendments under this Section, if any, shall be made by contract franchise ordinance as prescribed by statute. This Contract franchise shall remain in effect according to its terms, pending completion of any review or renegotiation provided by this section.
- e. In the event the parties are actively negotiating in good faith a new contract franchise ordinance or an amendment to this Contract franchise upon the termination date of this Contract franchise, the parties by written mutual agreement may extend the termination date of this Contract franchise to allow for further negotiations. Such extension period shall be deemed a continuation of this Contract franchise and not as a new contract franchise ordinance or amendment.

SECTION 11. POINT OF CONTACT AND NOTICES

Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the Public Works Director. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

The City:

The City of Prairie Village, Kansas
7700 Mission Road
Prairie Village, Kansas 66208
Attn: City Clerk
(913)381-7755 fax

Grantee:

Everest Midwest Licensee LLC
dba SureWest
9647 Lackman
Lenexa, Kansas 66219
Attn: Legal
(913) 322-9729 fax

and

Everest Midwest Licensee LLC
dba SureWest
Attn: External Relations
8150 Industrial Avenue
Roseville, California 95678
(916) 786-1877

or to replacement addresses that may be later designed in writing.

SECTION 12. TRANSFER AND ASSIGNMENT.

This Contract franchise is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City; provided that such transfer or assignment may occur without written consent of the City any entity controlling, controlled by or under common control with Grantee. The parties acknowledge that said City consent shall only be with regard to the transfer or assignment of this Contract franchise, and that, in accordance with Kansas Statute, the City does not have the authority to require City approval of transfers of ownership or control of the business or assets of Grantee. In the event of any transfer or assignment of either this Contract franchise or Grantee's business or assets, Grantee shall: timely notify the City of the successor entity; provide a point of contact for the successor entity; and advise the City of the effective date of the transfer or assignment. Additionally, Grantee's obligations under this Contract franchise with regard to indemnity, bonding and insurance shall continue until the transferee or assignee has taken the appropriate measures necessary to assume and replace the same, the intent being that there shall be no lapse in any coverage as a result of the transfer or assignment. In the event an entity acquires substantially all of the assets of Grantee, said successor entity shall be allowed to operate under this Contract franchise for up to one hundred and eighty (180) days from the date of transfer; provided, within thirty (30) days from the date of transfer said successor entity makes application with the City for either a new ordinance or the transfer of this Contract franchise, and provides the City with written evidence satisfying the obligations under this Contract franchise with regard to indemnity, bonding and insurance.

SECTION 13. CONFIDENTIALITY.

Information provided to the City under K.S.A. 12-2001 shall be governed by confidentiality procedures in compliance with K.S.A. 45-215 and 66-1220a, et seq., and amendments thereto. Grantee agrees to indemnify and hold the City harmless from any and all penalties or costs, including attorney's fees, arising from the actions of Grantee, or of the City at the written request of Grantee, in seeking to safeguard the confidentiality of information provided by Grantee to the City under this Contract franchise.

SECTION 14. ACCEPTANCE OF TERMS.

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

SECTION 15. PAYMENT OF PUBLICATION COSTS.

In accordance with statute, Grantee shall be responsible for payment of all costs and expense of publishing this Contract franchise, and any amendments thereof.

SECTION 16. SEVERABILITY.

If any clause, sentence, or section of this Contract franchise, or any portion thereof, shall be held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared invalid; provided, however, the City or Grantee may elect to declare the entire Contract franchise is invalidated if the portion declared invalid is, in the judgment of the City or Grantee, an essential part of the Contract franchise.

SECTION 17. FORCE MAJEURE.

Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

PASSED by the Governing Body of the City of Prairie Village, Kansas this 4th day of August, 2008.

APPROVED by the Mayor this 4th day of August, 2008.

Ronald L. Shaffer, Mayor

ATTEST:

APPROVED AS TO FORM:

Joyce Hagen Mundy, City Clerk

Stephen B. Horner, Assistant City Attorney

**Video Service Provider Notice
and Right-of-Way Agreement**

WHEREFORE, pursuant to K.S.A. 12-2024, this Video Service Provider Notice is hereby filed with the city clerk of the City of Prairie Village on July 31, 2008.

Everest Midwest Licensee LLC dba SureWest ("SureWest") was granted authorization by the state of Kansas to provide video service in the City of Prairie Village on July 1, 2008 and hereby executes this agreement with the City of Prairie Village.

SureWest will begin providing video service in the City of Prairie Village on or after October 1, 2008.

SureWest may be contacted by the City of Prairie Village at the following telephone number (916) 786-1440.

SureWest may be contacted by customers at the following telephone number (913) 825-3000.

SureWest agrees to update this contact information with the City of Prairie Village within 15 calendar days in the event that such contact information changes.

SureWest acknowledges and agrees to comply with the City of Prairie Village's local right-of-way ordinance to the extent the ordinance is applicable to SureWest and not contrary to state and federal laws and regulations. SureWest hereby reserves the right to challenge the lawfulness or applicability of such ordinance to SureWest.

By entering into this agreement, neither the City of Prairie Village's nor SureWest's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived.

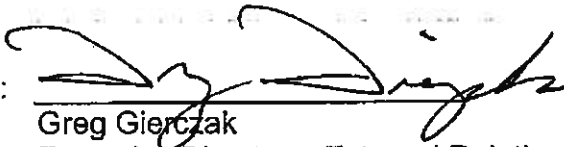
By entering into the agreement, neither the City of Prairie Village nor SureWest waive any rights, but instead expressly reserve any and all rights, remedies and arguments the City of Prairie Village or SureWest may have at law or equity, without limitation, to argue, assert and/or take any position as to the legality or appropriateness of any present or future laws, ordinances and/or rulings.

IN WITNESS WHEREOF, the Parties have hereunder set their hands.

The City of Prairie Village, Kansas

Everest Midwest Licensee LLC
dba SureWest

By: _____
Ronald L. Shaffer
Mayor

By: 

Greg Gierczak
Executive Director – External Relations
SureWest
916.786.1440
g.gierczak@surewest.com

ATTEST TO:

Joyce Hagen Mundy
City Clerk

APPROVED AS TO FORM:

Stephen B. Horner
Assistant City Attorney



ADMINISTRATION

Council Meeting Date: August 4, 2008

Public Hearing 2009 Proposed Budget

RECOMMENDATION

None.

SUGGESTED MOTION

None.

BACKGROUND

State statutes require that the City hold a public hearing on the proposed budget at least ten days prior to the date the budget is certified to the County Clerk - August 25th. The attached Budget Summary page was published in The Legal Record on Tuesday, July 22, 2008, per state statute guidelines.

The proposed budget maintains the mill rate of 18.166, which is comprised of the General Fund mill levy and the Bond & Interest Fund mill levy. State statutes require the City Council adopt an ordinance increasing the mill levy if the total dollars levied in the General Fund are higher than allowed by the state's formula. While the mill rate was maintained in the proposed budget, the total dollars levied in the General Fund exceed the limit established by the state's formula, so an ordinance is required.

ATTACHMENTS: Budget Summary, Presentation Slides

Prepared By:
Karen Kindle
Finance Director
Date: 7/31/08

NOTICE OF BUDGET HEARING

The governing body of
City of Prairie Village
will meet on the 4th day of August, 2008, at 8:00 p.m. at 7700 Mission Road for the purpose of
hearing and answering objections of taxpayers relating to the proposed use of all funds and the amount of ad valorem tax.

Detailed budget information is available at the Prairie Village Municipal Offices, 7700 Mission Road
and will be available at this hearing.

BUDGET SUMMARY

Proposed Budget 2009 Expenditures and Amount of 2008 Ad Valorem Tax establish the maximum limits of the 2009 budget.
Estimated Tax Rate is subject to change depending on the final assessed valuation.

FUND	Prior Year Actual for 2007		Current Year Estimate for 2008		Proposed Budget for 2009		
	Expenditures	Actual Tax Rate *	Expenditures	Actual Tax Rate *	Expenditures	Amount of 2008 Ad Valorem Tax	Estimate Tax Rate *
General	18,284,248	14.081	18,468,817	16.418	20,057,180	4,940,230	16.882
Bond & Interest	554,862	1.639	554,771	1.748	443,436	375,790	1.284
Special Highway	598,889		624,110		636,540		
Solid Waste Management	1,251,748		1,302,548		1,407,958		
Stormwater Utility					1,443,413		
Special Parks	100,000		86,000		104,717		
Special Alcohol	98,463		83,420		99,616		
Non-Budgeted Funds-A	7,650,698						
Totals	28,538,908	15.720	21,119,666	18.166	24,192,860	5,316,020	18.166
Less: Transfers	7,173,939		6,627,110		8,254,445		
Net Expenditure	21,364,969		14,492,556		15,938,415		
Total Tax Levied Assessed	4,459,764		5,223,069		XXXXXXXXXXXXXXXXXXXX		
Valuation	283,700,000		287,445,118		292,632,953		

Outstanding Indebtedness,	2006	2007	2008
January 1,			
G.O. Bonds	2,570,000	2,135,000	1,680,000
Revenue Bonds	0	0	0
Other	0	0	0
Lease Purchase Principal	0	0	0
Total	2,570,000	2,135,000	1,680,000

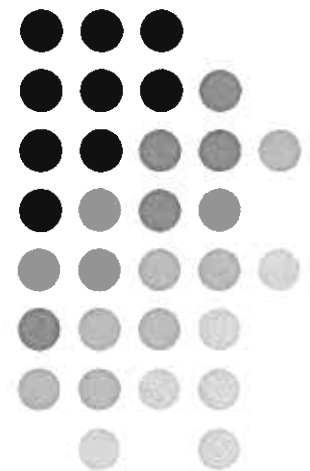
*Tax rates are expressed in mills

City Official Title: City Clerk

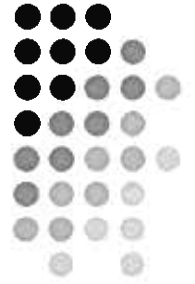
City of Prairie Village

2009 Budget Public Hearing

August 4, 2008

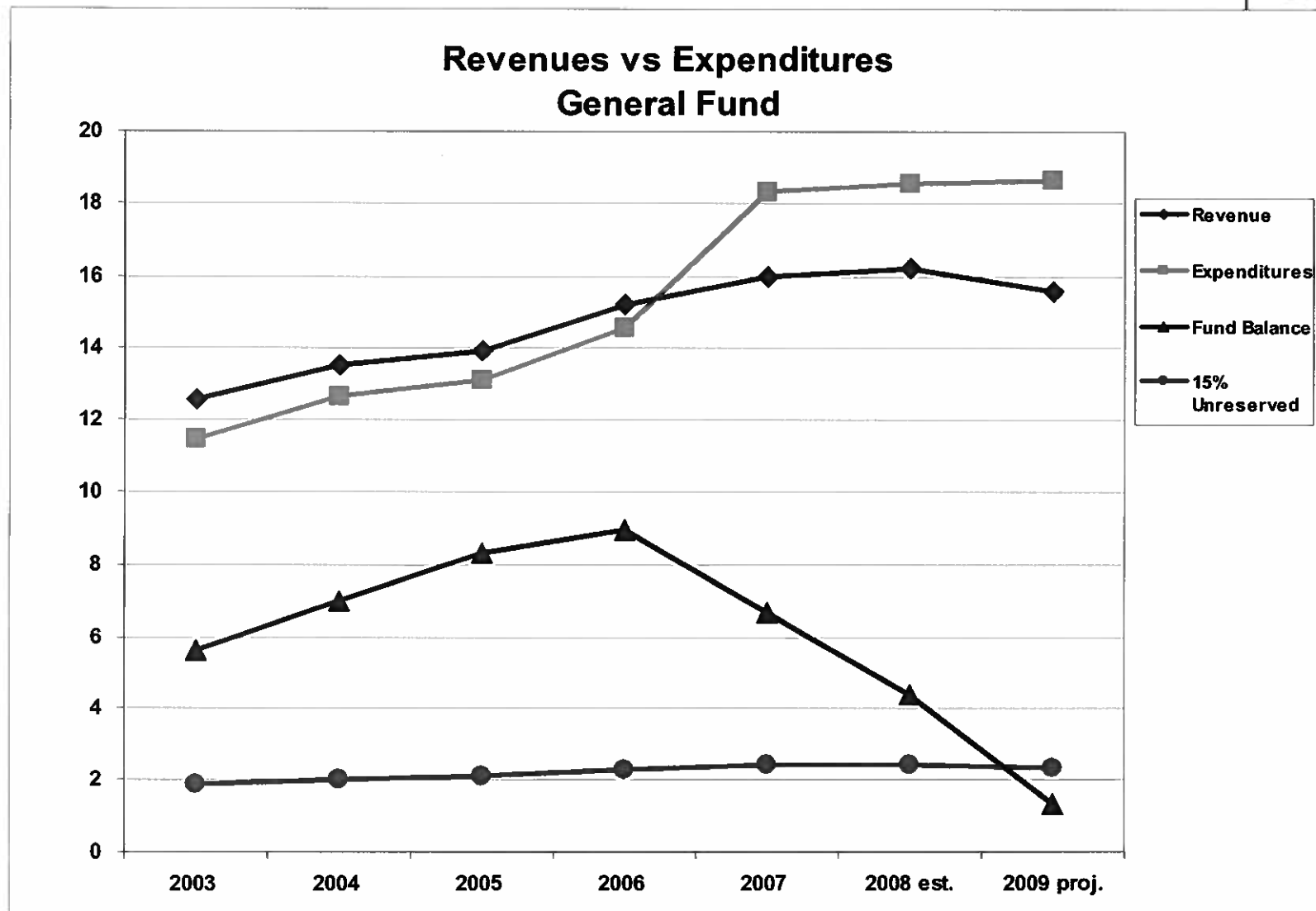
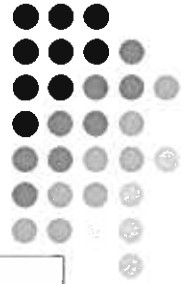


2009 Budget Goals & Objectives

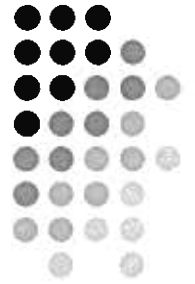


- Maintain quality level of service
- Sustainable budget impact
- Expenditures less than or equal to revenues
- Identify and meet technology needs
- Attend to infrastructure needs
- Be mindful of tax burden
- Continue implementation of Village Vision

The Budget Outlook – May 5th

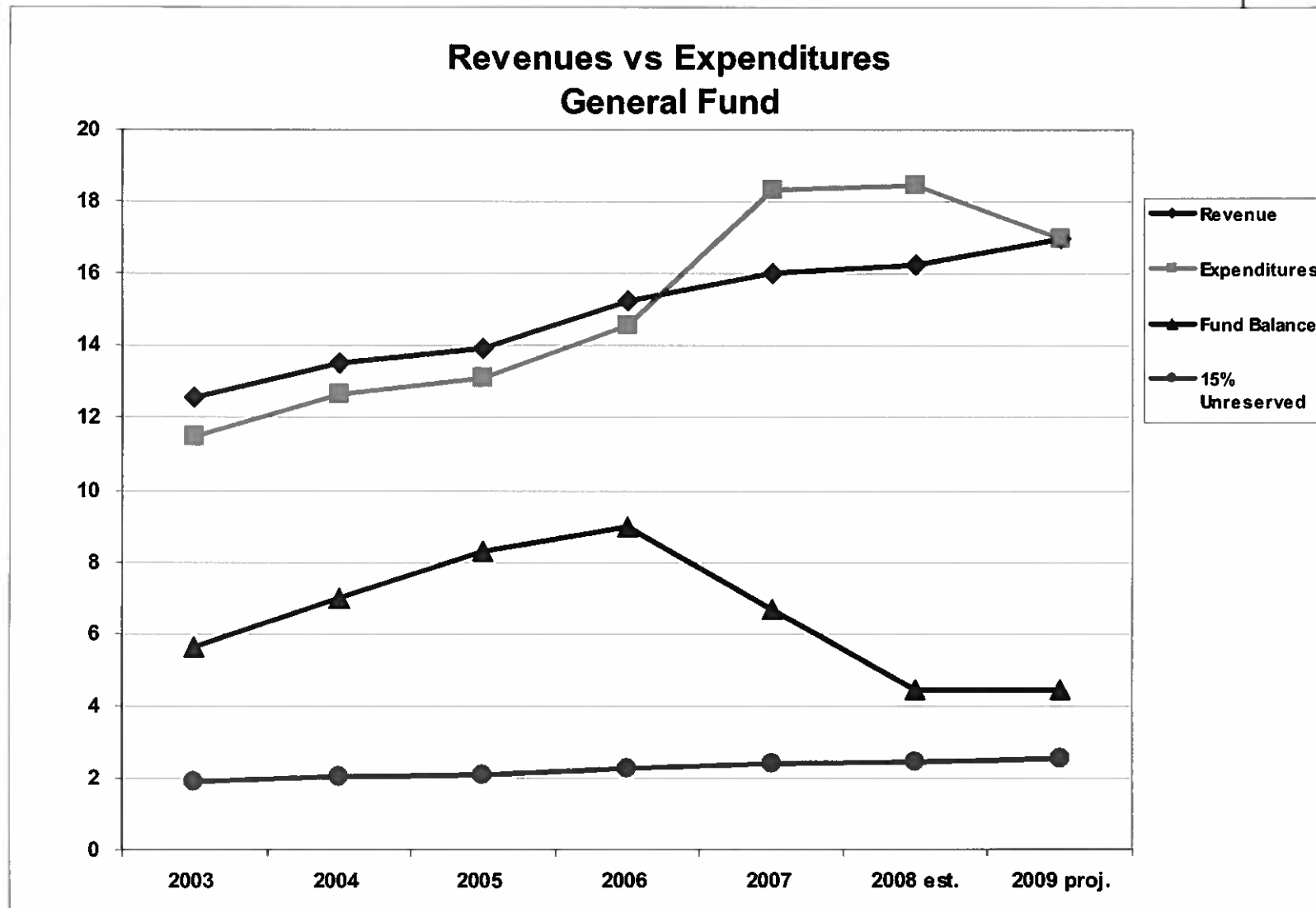
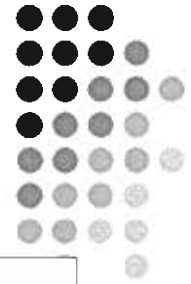


Closing the Gap

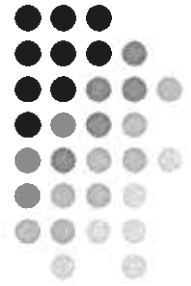


- Revenue
 - Increase in Assessed Valuation
 - Increased Fees
 - Jail Sales Tax
 - Stormwater Utility Fee
- Expenditures
 - Thorough Review of Operating Expenditures
 - Decrease in CIP Expenditures/use of CIP Reserve

The Budget Outlook – Now

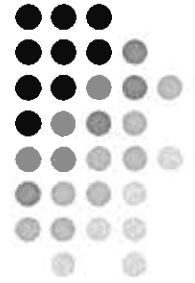


City of Prairie Village 2009 Budget



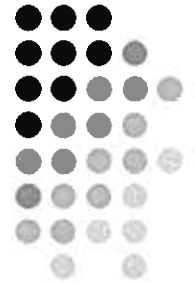
Fund	2009 Budget
General	20,057,180
Solid Waste	1,407,958
Special Highway	636,540
Stormwater Utility	1,443,413
Special Parks & Rec	104,717
Special Alcohol	99,616
Bond & Interest	443,436
	<hr/>
	24,192,860
	<hr/>

City of Prairie Village 2009 Budget



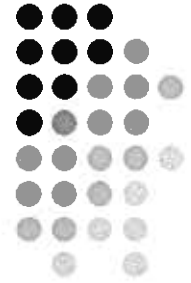
- Mill Levy
 - Comprised of General Fund levy and Debt Service Fund Levy
 - Total = 18.166
 - Same as the 2008 Budget
 - Total dollars levied in the General Fund are higher than allowed by the state's formula – ordinance required

Budget Challenges



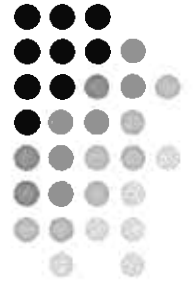
- Flat revenues
- High cost increases vs. 2008 – some examples
 - Fuel
 - Pavement
 - Ammunition
 - Salt
- Large Use Tax refunds issued by the State of Kansas
 - Estimated effect for PV in 2009: \$135,000 less revenue than originally estimated
 - Council decreased expenditures

Budget Highlights



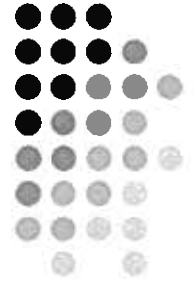
- Stormwater Utility
 - Dedicated funding source for the Stormwater Management Program
 - NPDES guidelines continue to increase the City's responsibilities regarding stormwater management
 - \$1,443,413
 - 9,645 parcels; 39 million square feet of impervious area
 - Fee per square foot of impervious area: 3.7¢

Budget Highlights



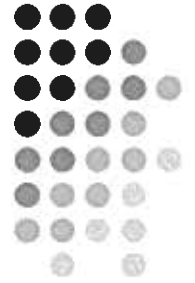
- Jail Sales Tax on August Ballot (0.25%)
 - Cities to receive 36% of tax
 - Included in Recommended Budget
 - Use 2009 revenue to pay for one-time technology/security upgrade projects
 - Amount would be transferred to the Equipment Reserve Fund – unspent amounts will remain in the Equipment Reserve Fund
 - 2010 Budget discussions would include future plans for this revenue source
 - If tax doesn't pass – discuss options

Budget Highlights



- Large Item Pick Up
 - Cost moved to the Solid Waste Management Fund and included in the assessment amount for 2009
 - Additional fee per household per year = \$5.00
 - Exemption fee = \$8 (\$3 + \$5)
- Court & Council Security
 - Council meeting security (\$3,000)
 - Prairie Village Court security (\$13,000)

Budget Highlights

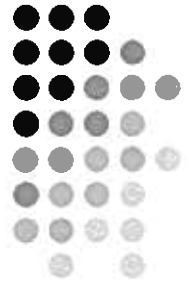


- Personnel Changes
 - Add one traffic officer
 - Salary, benefits, commodities and equipment (\$88,000)
 - Increased ticket revenue (\$100,000)
- Equipment Replacement
 - Computer Equipment – City-wide (\$11,000)

Budget Highlights

Police Department

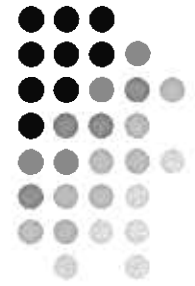
Equipment Replacement



Item to be Replaced	2009 Proposed Budget
Transfer to Equipment Reserve - Replace Police Radio System	\$ 180,000
Four (4) marked units	92,000
One (1) unmarked unit	21,000
Two (2) motorcycles	6,000
One (1) moving radar	2,500
One (1) mobile radio	3,000
Two (2) prisoner partitions	3,600
Emergency lights & equipment - marked cars	13,300
Total	<u>\$ 321,400</u>

Budget Highlights

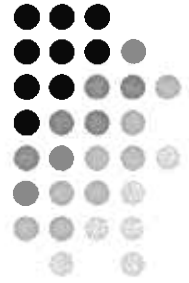
Public Works Equipment Replacement



**2009
Proposed
Budget**

Item to be Replaced	Budget
Pickup Truck #1050 - 2001 Ford 3/4 Ton 2WD	\$ 27,000
Pickup Truck #1596 - 1999 Chevy 3/4 Ton 2WD	27,000
1997 Champion Air Compressor (Shop)	21,000
Mower #1216 - 2004 61-inch Scag	13,000
Drinking Fountains (2) - Meadowlake Park	10,000
Picnic Tables (5) - Various Locations	4,000
Park Benches (3) - Various Locations	1,500
Total	\$ 103,500

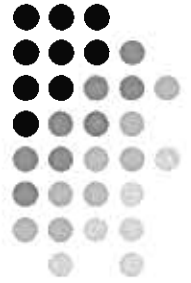
Budget Highlights
Public Works
Major Maintenance/Repairs



**2009
Proposed
Budget**

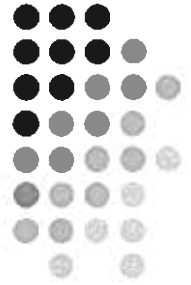
Item to be Maintained/Repaired	2009 Proposed Budget
Re-coat Basketball Court - Weltner Park	\$ 10,000
Pool Painting	25,000
Pool/Deck Caulking	10,000
Re-coat Tennis Courts - Harmon Park (2)	20,000
Repair South Wash bay Wall	4,000
Repairs to Highwoods Building	10,000
Total	\$ 79,000

Budget Highlights



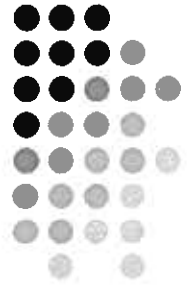
- Centralized the administration of some costs:
 - Legal services, IT, building maintenance and operations, pool and tennis operations and maintenance
- Reviewed fee schedule and proposed increases
 - Many fees had not been increased in over ten years

Proposed 2009 CIP Budget



- Total = \$5,609,000
- Use of accumulated reserve
- Some projects reduced
- CARS Funding = \$432,000

What's Next?



- August 18th - formal adoption of 2009 Budget
- 2009 Budget submitted to County Clerk before August 25th

M E M O R A N D U M

TO: Mayor and City Council Members
FROM: Bob Pryzby
DATE: July 17, 2008
RE: Semi-Annual Report on American with Disabilities Act (ADA) Activities

This report will cover my activities as ADA Coordinator from January through June 2008.

Activities during this period:

- Provided communication training using a DVD to swimming pool personnel
- 150 sidewalk sections were ground to eliminate an elevation change
- Project 190644: McCrum Park – improvements completed on the playground
- Project 190708: Tomahawk Road Drainage – several ramps will be replaced during construction
- Project 190719 2008 Drainage Repair – ADA ramps will be replaced during construction as needed
- Project 190655 Tomahawk Road Bridge Replacement – new ramps are constructed
- Project 190864 2008 Paving Program – ADA ramps will be replaced during construction as needed
- Project 191022 2008 Concrete Repair – ADA ramps will be replaced during construction as needed
- Responded to three telephones calls about ADA.

During this period, I spent 1.5 administration hours on ADA matters.



PUBLIC WORKS DEPARTMENT

Council Committee Meeting Date: July 21, 2008

Council Meeting Date: August 4, 2008

COU2008-52: CONSIDER ADOPTION OF AN ORDINANCE ESTABLISHING A STORMWATER UTILITY FUND FOR THE CITY OF PRAIRIE VILLAGE, KANSAS, BY ADDING TO CHAPTER XIV, STORMWATER, A NEW ARTICLE 4 ENTITLED "STORMWATER UTILITY" CONSISTING OF NEW SECTIONS 14-401 THROUGH 14-410.

RECOMMENDATION

Staff recommends the City Council approve the adoption of an Ordinance establishing a stormwater utility fund for the City of Prairie Village, Kansas, by adding to Chapter XIV Stormwater, a new article 4 entitled "Stormwater Utility" consisting of new sections 14-401 through 14-410.

COUNCIL ACTION REQUESTED ON AUGUST 4, 2008

BACKGROUND

This new municipal code provides for the establishment of a dedicated fund for stormwater activities undertaken by the City.

FUNDING SOURCE

No funding is required to approve the new municipal code.

RELATION TO VILLAGE VISION

CC1 Attractive Environment

CC1b Evaluate street cleaning and sanitation practices to identify potential gaps in service provision. Offer supplementary services as necessary to keep streets clean.

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.

TR3 Traffic Calming

TR3c Ensure the quality of the transportation network with regular maintenance as well as efficient responses to seasonal issues such as snow removal.

PUBLIC NOTICE

The new municipal code will be published by the City Clerk as required by State of Kansas law.

ATTACHMENTS

Ordinance No. 2171

PREPARED BY

S Robert Pryzby, Director of Public Works

Date July 16, 2008

ORDINANCE NO. 2171

AN ORDINANCE ESTABLISHING A STORMWATER UTILITY FUND FOR THE CITY OF PRAIRIE VILLAGE, KANSAS, BY ADDING TO CHAPTER XIV, STORMWATER, A NEW ARTICLE 4 ENTITLED "STORMWATER UTILITY" CONSISTING OF NEW SECTIONS 14-401 THROUGH 14-410.

WHEREAS, THE NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES), AS PART OF THE UNITED STATES CLEAN WATER ACT, HAS RAISED THE AWARENESS AND THE VISIBILITY OF STORMWATER REQUIREMENTS.

WHEREAS, THE LANDS AND WATERS OF THIS MUNICIPALITY ARE GREAT NATURAL RESOURCES; THE MANAGEMENT OF STORMWATER RUNOFF IS NECESSARY TO REDUCE POLLUTION, SILTATION, SEDIMENTATION, LOCAL FLOODING AND STREAM CHANNEL EROSION, ALL OF WHICH HAVE AN ADVERSE IMPACT OF LAND AND WATER RESOURCES, AND PUBLIC HEALTH, SAFETY AND WELFARE; THE REPAIR, REPLACEMENT AND REGULATION OF THE EXISTING STORMWATER MANAGEMENT SYSTEM IS NECESSARY TO PREVENT

WHEREAS, THE MUNICIPALITY MAINTAINS A SYSTEM OF STORMWATER MANAGEMENT FACILITIES, INCLUDING, BUT NOT LIMITED TO, INLETS, CONDUITS, MANHOLES, CHANNELS, IT IS NECESSARY AND IN THE BEST INTERESTS OF THE MUNICIPALITY, ITS CITIZENS AND THE USERS OF THE STORMWATER SYSTEM TO ESTABLISH A SPECIAL CHARGE FOR THE MUNICIPALITY'S STORMWATER FACILITIES, SYSTEMS AND SERVICES; THE MUNICIPALITY NEEDS TO UPGRADE ITS CAPABILITY TO MAINTAIN EXISTING AND FUTURE STORMWATER MANAGEMENT FACILITIES AND MEASURES; OWNERS OF IMPROVED REAL PROPERTY SHOULD FINANCE THE STORMWATER MANAGEMENT SYSTEM TO THE EXTENT THEY CONTRIBUTE TO THE NEED FOR THE SYSTEM

WHEREAS, THE STORMWATER MANAGEMENT PROGRAM OF THIS MUNICIPALITY IS MEANT TO BE COMPREHENSIVE IN THE SENSE OF ADDRESSING ALL ELEMENTS - NOT JUST DRAINAGE OR CONVEYANCE, BUT ALSO WATER QUALITY AND NATURAL RESOURCE CONSIDERATIONS RELATED TO STORMWATER.

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

SECTION 1. A NEW ARTICLE 4 OF CHAPTER XIV OF THE CITY OF PRAIRIE VILLAGE MUNICIPAL CODE IS HEREBY ADDED TO READ AS FOLLOWS:

**Article 4
STORMWATER UTILITY**

Sections:

- 14-401. Purpose and Findings.**
- 14-402. Definitions.**
- 14-403. Administration.**
- 14-404. Budget.**
- 14-405. Stormwater Service Fee.**
- 14-406. Appeal Procedure.**
- 14-407. Stormwater Service Fee Collection.**
- 14-408. Stormwater Utility Fund.**
- 14-409. Flooding Liability**
- 14-410. Severability.**

14-401 PURPOSE AND FINDINGS

- A. Pursuant to K.S.A. 12- 3101, et seq., as modified by CITY Charter Ordinance No.23, the CITY does hereby create a STORMWATER MANAGEMENT PROGRAM and does hereby establish a STORMWATER UTILITY and declares its intention to operate the same.
- B. A STORMWATER MANAGEMENT PROGRAM will provide both general and specific benefits to all property within the CITY and will include the provision of adequate systems of collection, conveyance, detention, retention, treatment and release of Stormwater; the reduction of hazards to property and life resulting from Stormwater runoff; improvement in general health and welfare through reduction of undesirable Stormwater conditions; improvement of water quality in the STORMWATER SYSTEM and its receiving waters; the provision of a planned and orderly system for managing and mitigating the effects of new development on Stormwater and appropriate balancing between development and preservation of the natural environment.
- C. The STORMWATER MANAGEMENT PROGRAM will also initiate innovative and proactive approaches to Stormwater management within the CITY to address problems in areas of the CITY that currently are prone to frequent major flooding, protect property in the CITY from stream bank erosion and the attendant loss of natural resources and the reduction of property values, conserve natural stream assets within the CITY, enhance water quality, and assist in complying with the mandates of the National Pollutant Discharge Elimination System as created under the Federal Clean Water Act and associated state and federal laws and their supporting regulations.
- D. Both standard and innovative stormwater management is necessary in the interest of the public health, safety and general welfare of the residents, businesses and visitors of the CITY.
- E. Implementation of the STORMWATER MANAGEMENT PROGRAM will require the expenditure of significant amounts of public money.
- F. All DEVELOPED PROPERTY in the CITY will benefit from the STORMWATER MANAGEMENT PROGRAM
- G. The CITY desires to distribute fairly costs of the STORMWATER MANAGEMENT PROGRAM implementation among all DEVELOPED PROPERTY.
- H. The CITY has determined that the establishment of a STORMWATER UTILITY is an appropriate method of funding the costs of implementing the STORMWATER MANAGEMENT PROGRAM.

- I. The CITY has adopted Charter Ordinance No. 23, which grants to the CITY the authority to adopt, by ordinance, rules and regulations providing for the management and operation of a STORMWATER UTILITY, fixing a STORMWATER SERVICE FEE, requiring security for the payment thereof, providing methods and rules relating to the calculation and collection of the fees and for credits against the fees, and providing for the disposition of the REVENUES derived therefrom.
- J. The STORMWATER SERVICE FEE imposed by this Ordinance, is calculated by calculating the IMPERVIOUS AREA on the property multiplied by square footage rate, and such fee is neither a tax nor a special assessment, but a charge (in the nature of tolls, fees or rents) for services rendered or available.
- K. The CITY has researched collection options and hereby determines that in order to promote efficiency, eliminate duplication of services, and utilize the most economically feasible method of fee collection, the STORMWATER SERVICE FEE should be included on City of Prairie Village ad valorem real property tax bills issued by Johnson County, in accordance with an agreement to be negotiated with the County, which will be placed on file in the office of the CITY clerk.

14-402 DEFINITIONS

- A. In addition to the words, terms and phrases elsewhere defined in this ordinance, the following words, terms and phrases, as used in this ordinance, shall have the following meanings:
 - a. "BONDS" means obligations of the CITY, for which the principal of and the interest on is paid in whole or in part from special assessments, service fees, sales tax, general ad valorem taxes, or any available CITY or STORMWATER UTILITY Fund REVENUES heretofore or hereafter issued to finance the COSTS OF CAPITAL IMPROVEMENTS.
 - b. "BUILDING PERMIT" means a permit issued by the Building Official of the City of Prairie Village that permits structure construction.
 - c. "CERTIFICATE OF OCCUPANCY" means a certificate issued by the Building Official of the City of Prairie Village that permits a newly constructed or a new addition to real property to be occupied.
 - d. "CITY" means the City of Prairie Village, Kansas.
 - e. "COSTS OF CAPITAL IMPROVEMENTS" means costs incurred by the STORMWATER UTILITY in providing capital improvements as part of the STORMWATER MANAGEMENT PROGRAM, including, without limitation, alteration, enlargement, extension, improvement, construction, reconstruction, and development of the STORMWATER SYSTEM, professional services and studies connected therewith; principal and interest on BONDS heretofore or hereafter issued, including payment of any delinquencies; studies related to the operation of the system; costs related to water quality enhancements, costs related to complying with federal, state or local regulations; acquisition of real and personal property by purchase, lease, donation, condemnation or otherwise; and for the costs associated with purchasing equipment, computers, furniture and all other items necessary or convenient for the operations of the STORMWATER UTILITY.
 - f. "DEBT SERVICE" means an amount equal to the sum of all issuance costs, any interest payable on BONDS during any FISCAL YEAR or years, and any principal installments payable on the BONDS during such FISCAL YEAR or years.
 - g. "DEVELOPED PROPERTY" means real property, other than Undeveloped Land.
 - h. "DIRECTOR" means the Director of Public Works Department of the City of Prairie Village or the DIRECTOR's designee.
 - i. "EXTENSION AND REPLACEMENT" means cost of extensions, additions and capital improvements in, or the renewal and replacement of capital units of, or purchasing and

- installing of equipment for, the STORMWATER MANAGEMENT PROGRAM, or land acquisition for the STORMWATER MANAGEMENT PROGRAM and any related costs thereto, or paying extraordinary maintenance and repairs, including the COSTS OF CAPITAL IMPROVEMENTS or any other expense that is not costs of operation and maintenance or DEBT SERVICE.
- j. **"FISCAL YEAR"** means a twelve-month period commencing on the first day of January of any year.
 - k. **"GOVERNING BODY"** means the governing body of the City of Prairie Village.
 - l. **"IMPERVIOUS AREA"** means the total number of square feet of hard surface area on a given property that either prevents or retards the entry of water into the soil matrix, and/or causes water to run off the surface in greater quantities or at an increased rate of flow, than it would enter under conditions similar to those on UNDEVELOPED LAND. IMPERVIOUS AREA includes but is not limited to, roofs, roof extensions, driveways, pavement, swimming pools and athletic courts.
 - m. **"NON-SINGLE FAMILY RESIDENTIAL PROPERTY"** means all property that is not classified as SINGLE FAMILY RESIDENTIAL PROPERTY by the Johnson County, Kansas Appraiser's Office.
 - n. **"OPERATING BUDGET"** means the annual budget established for the STORMWATER UTILITY for the succeeding FISCAL YEAR.
 - o. **"OPERATIONS AND MAINTENANCE"** means, without limitation, the current expenses, paid or secured, of operation, maintenance and repair and replacement of the STORMWATER MANAGEMENT PROGRAM or for implementing the STORMWATER MANAGEMENT PROGRAM, as calculated in accordance with generally accepted accounting practices, and includes, without limiting the generality of the foregoing, insurance premiums, administrative expenses including professional services, equipment costs, labor costs, and the cost of materials and supplies used for current operations.
 - p. **"PERSON"** shall mean any person, firm, corporation, association, partnership, political unit, or organization.
 - q. **"REVENUES"** means all rates, fees, assessments, rentals, or other charges or other income received by the STORMWATER UTILITY in connection with the management and operation of the STORMWATER MANAGEMENT PROGRAM, including amounts received from investment or deposit of monies in any fund or account, as calculated in accordance with sound accounting practices.
 - r. **"SERVICE FEE RATE"** means the fee rate per square foot of IMPERVIOUS AREA as determined by the resolution of the GOVERNING BODY.
 - s. **"SEWER", "SEWER SYSTEM"** shall mean STORMWATER SYSTEM that exist at the time this Charter Ordinance is adopted or that are hereafter.
 - t. **"SINGLE FAMILY RESIDENTIAL PROPERTY"** means property used primarily for one-family intended for occupancy as separate living quarters for one (1) family, with a kitchen plus sleeping and sanitary facilities in single family detached residential unit located thereon within the CITY limits, as established by the GOVERNING BODY of the CITY.
 - u. **"STORMWATER MANAGEMENT PROGRAM"** means all aspects of work necessary to perform and provide storm and surface water services in the CITY, including but not limited to administration, planning, engineering, operations, maintenance, best management practices, control measures, public education, citizen participation, regulation and enforcement, protection, and capital improvements, plus such non-operating expenses as reserves and bond DEBT SERVICE coverage as are associated with provision of the Stormwater Management Program.
 - v. **"STORMWATER SERVICE FEE"** means a fee authorized by Charter Ordinance 23 and this ordinance, charged to owners of property served and benefited by the STORMWATER

UTILITY, and shall be the product of multiplying the IMPERVIOUS AREA by the SERVICE FEE RATE.

- w. "STORMWATER SYSTEM" means surface water and storm SEWERS and all appurtenances necessary in the maintenance, operation, regulation, and improvement of the same, including, but not limited to, pumping stations; enclosed storm SEWERS; outfall SEWERS; surface drains; street, curb and alley improvements associated with storm or surface water improvements; natural and manmade wetlands; channels; ditches; rivers; streams; detention and retention facilities; and other flood control facilities and works for the collection, conveyance, pumping, infiltration, treating, controlling, managing and disposing of water carried pollutants or storm or surface water.
- x. "STORMWATER UTILITY" means the utility created by this ordinance for the purpose of implementing and funding the STORMWATER MANAGEMENT PROGRAM.
- y. "UNDEVELOPED LAND" means land that has not been built upon or altered from its natural condition in a manner that disturbed or altered the topography or soils on the property to the degree that the entrance of water into the soil matrix is prevented or retarded.

14-403 ADMINISTRATION

- A. The Public Works DIRECTOR shall manage the STORMWATER UTILITY. Public Works DIRECTOR shall be responsible for developing and implementing stormwater management plans and solely managing facilities STORMWATER SYSTEMS and storm SEWERS. This utility shall charge a STORMWATER SERVICE FEE based on individual contribution of runoff to the system, benefits enjoyed and service received. The STORMWATER UTILITY shall be administered by the Stormwater Coordinator under the direction and supervision of the DIRECTOR and shall have the power to undertake the following activities to implement the STORMWATER MANAGEMENT PROGRAM:
 - a. Advise the GOVERNING BODY on matters relating to the STORMWATER MANAGEMENT PROGRAM and to make recommendations to the GOVERNING BODY concerning the adoption of ordinances, resolutions, policies, guidelines and regulations in furtherance of the objectives of the STORMWATER MANAGEMENT PROGRAM.
 - b. Undertake studies, acquire data, prepare master plans, analyze policies or undertake such other planning and analyses as may be needed to address concerns related to Stormwater within the CITY and to further the objectives of the STORMWATER MANAGEMENT PROGRAM, and to undertake activities designed to communicate, educate and involve the public and citizens in addressing these issues or in understanding and abiding by the elements of the STORMWATER MANAGEMENT PROGRAM.
 - c. Acquire, design, construct, operate, maintain, expand, or replace any element or elements of the STORMWATER SYSTEM, including funding the acquisition of easements by eminent domain, and obtaining title or easements (or real property) other than by eminent domain, over any real or personal property that is part of, will become part of or will protect the STORMWATER SYSTEM, or is necessary or convenient for the implementation of the STORMWATER MANAGEMENT PROGRAM.
 - d. Regulate, establish standards, review, and inspect the design, construction or operation and maintenance of any STORMWATER SYSTEM that is under the control of private owners, whether or not such systems are required or intended for dedication to the Public Storm SEWER SYSTEM, when such systems have the potential to impact, enhance, damage, obstruct or affect the operation and maintenance of the STORMWATER SYSTEM or the implementation of the STORMWATER MANAGEMENT PROGRAM.
 - e. Regulate, establish standards, review and inspect land use or property owner activities when such activities have the potential to affect the quantity, timing, velocity, erosive forces, quality, environmental value or other characteristics of Stormwater which would flow into the

STORMWATER SYSTEM or in any way effect the implementation of the STORMWATER MANAGEMENT PROGRAM.

- f. Undertake any activities related to stormwater management when such activities are recommended by applicable federal, state or local agencies or when such activities are required by any permit, regulation, ordinance, or statute governing Stormwater or water quality concerns.
- g. Analyze the cost of services and benefits provided by the STORMWATER UTILITY and the structure of fees, service charges, credits, and other REVENUES on an annual basis and make recommendations to the GOVERNING BODY regarding the same.
- h. Undertake expenditures as required to implement these activities, including all COSTS OF CAPITAL IMPROVEMENTS, OPERATIONS AND MAINTENANCE, DEBT SERVICE, and other costs as required.

14-404 BUDGET

- A. The CITY shall, as part of its annual budget process, adopt capital and OPERATING BUDGET for the STORMWATER UTILITY. The OPERATING BUDGET shall conform to State law, CITY policy and generally accepted accounting practices. The initial OPERATING BUDGET will commence January 1, 2009.

14-405 STORMWATER SERVICE FEE

- A. Subject to the provisions of this ordinance, a STORMWATER SERVICE FEE is imposed on all real property located within the CITY. CITY owned property and CITY maintained property that is constructed and/or located on public right-of-way, public trails, public streets, public alleys, and public sidewalks will be exempt from the imposition of the STORMWATER UTILITY Fee. The GOVERNING BODY, upon recommendation of the DIRECTOR, shall, from time to time, by resolution establish SERVICE FEE RATE for each square foot of IMPERVIOUS AREA consistent with the benefits to be provided.
- B. The STORMWATER SERVICE FEE for SINGLE FAMILY RESIDENTIAL PROPERTY shall be the product of the SERVICE FEE RATE multiplied by the number of impervious square feet calculated by the sum of the building roofs, roof extensions and driveways.
- C. STORMWATER SERVICE FEE for NON-SINGLE FAMILY RESIDENTIAL PROPERTY shall be the product of the SERVICE FEE RATE multiplied by the number of impervious square feet calculated by the sum of the building roofs, roof extensions, driveways, parking lots, swimming pools, athletic courts and other impervious area.
- D. In the event of a newly constructed unit, the charge for the STORMWATER SERVICE FEE attributable to that unit shall commence upon the issuance of the BUILDING PERMIT for that unit, or additional development to property that is already developed, or if construction is at least fifty percent (50%) complete and is halted for period of three (3) months, then that unit shall be deemed complete and the STORMWATER SERVICE FEE shall commence at the end of the three-month period.
- E. Any increase or decrease in the impervious square feet associated with new or remodeling construction shall commence upon the issuance of the CERTIFICATE OF OCCUPANCY. The STORMWATER SERVICE FEE shall be based on the status of the property on May 31.
- F. In performing this calculation, the numerical factor for the impervious square feet shall be rounded to the nearest hundred square feet.
- G. For common property, the DIRECTOR shall calculate and allocate the STORMWATER SERVICE FEE pro-rata among the owners of record of the common property.

- H. The DIRECTOR shall make the initial calculations in accordance with the methods established in this section to determine the number of impervious square fee is located on all property and may from time to time change this calculation from the information and data deemed pertinent. With respect to new construction, the DIRECTOR may require that the applicant for development approval submit square footage IMPERVIOUS AREA calculations.
- I. The GOVERNING BODY may establish a system of credits, which may reduce the STORMWATER SERVICE FEE that is imposed above.
- J. If the owner of property, for which a STORMWATER SERVICE FEE has been imposed, disagrees with the calculation of the STORMWATER SERVICE FEE imposed upon such owner's property, the owner may request a recalculation of the fee to the DIRECTOR.

14-406 APPEAL PROCEDURE

- A. Owners of property, for which a STORMWATER SERVICE FEE has been imposed, who disagree: (1) with the calculation of the STORMWATER SERVICE FEE; or (2) with the decision that their property is entitled to a credit or the continuation of a credit or on the amount of a credit, may appeal the calculation or finding to the CITY Administrator.
- B. The appellant, who must be the property owner, must file a written notice of appeal, including the basis of the appeal, with the CITY Clerk within 30 days following distribution of Johnson County ad valorem tax bills. The appellant shall provide information including a land survey prepared by a surveyor registered in the State of Kansas showing total property square foot area, type of surface material, and impervious square foot area. Based on the information provided, the CITY Administrator shall make a determination as to whether the STORMWATER SERVICE FEE should be adjusted or eliminated for the subject property. The CITY Administrator shall notify the appellant in writing of the decision.
- C. A PERSON shall have the right to appeal the decision of the CITY Administrator to the CITY Council. Such appeal shall be made within 10 days of the date of the CITY Administrator's written decision and shall be presented in the same manner as the original appeal. The CITY Council shall consider the appeal and issue a written decision on the appeal within 30 days of the receipt of the presented appeal.
- D. The burden of proof shall be on the appellant to demonstrate, by clear and convincing evidence, that the determination of the STORMWATER SERVICE FEE is erroneous.
- E. The filing on a notice of appeal shall not stay the imposition, calculation or duty to pay the fee. The appellant shall pay the STORMWATER SERVICE FEE to Johnson County as stated in the billing. If either the CITY Administrator or the CITY Council determines that the appellant should pay a fee, pay a fee amount less than the amount appealed, or receive a credit, the CITY shall issue a check to the appealing party in the appropriate amount with 10 days of the date of the applicable written decision.
- F. The decision of the CITY Council shall be final and any further appeal of this decision shall be to the Tenth Judicial District Court of the State of Kansas by way of the K.S.A. 60-201 et seq.

14-407 STORMWATER SERVICE FEE COLLECTION

- A. The STORMWATER SERVICE FEE shall be billed by the Johnson County Clerk and collected by the Johnson County Treasurer. The STORMWATER SERVICE FEE shall be shown as a separate item on the County's annual ad valorem real property tax statement, in accordance with the procedures established in an agreement, pursuant to K.S.A. 12-2908, between the CITY and the County, as hereby authorized. The payment of STORMWATER SERVICE FEE bills for any given property shall be the responsibility of the owner of the property.

- B. To the extent permitted by applicable law, A STORMWATER SERVICE FEE shall be subject to interest for late payment at a rate that is the same as the rate prescribed in K.S.A. 79-2004, as amended and K.S.A. 79-2968, as amended, shall constitute a lien on the applicable property, and shall be collected in the same manner as ad valorem real property taxes collected by the County, regardless of whether the STORMWATER SERVICE FEE was incurred when a property owner was in possession of the property or a non-owner was in possession of the property.

14-408 STORMWATER UTILITY FUND

- A. STORMWATER SERVICE FEES, dedicated ad valorem taxes and other available REVENUES shall be paid into a fund that is hereby created and shall be known as the "STORMWATER UTILITY Fund." This fund shall be used for the purpose of paying the COSTS OF CAPITAL IMPROVEMENTS, EXTENSION AND REPLACEMENT, OPERATIONS AND MAINTENANCE, DEBT SERVICE and any other costs associated with the implementation and operation of the STORMWATER MANAGEMENT PROGRAM.

14-409 FLOODING LIABILITY

- A. Floods from stormwater runoff may occur which exceed the capacity of the storm drainage facilities constructed, operated, or maintained by funds made available under this Chapter. This Chapter shall not be construed or interpreted to mean that property subject to the fees and charges established herein will always (or at any time) be free from stormwater flooding or flood damage, or the STORMWATER SYSTEMS capable of handling all storm events can be cost-effectively constructed, operated, or maintained. Nor shall this Chapter create any liability on the part of, or cause of action against, the CITY, or any official or employee thereof, for any flood damage that may result from such storms or stormwater runoff. Nor does this Chapter purport to reduce the need of the necessity for obtaining flood insurance by individual property owners.

14-410 SEVERABILITY

- A. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 2. 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 August, 2008.

Mayor Ronald L. Shaffer

ATTEST:

Joyce Hagen Mundy, City Clerk

PRAIRIE VILLAGE

FIRST HALF CRIME REPORT - 2008

CRIME	2004	2005	2006	2007	2008	AVERAGE	2008 +/- AVG
Homicide	0	0	0	0	0	0.00	0.00
Rape	1	4	2	0	1	1.60	-0.60
Robbery	0	5	2	1	2	2.00	0.00
Assault	53	47	34	38	36	41.60	-5.60
Burglary	26	35	9	21	36	25.40	10.60
Residence	16	22	5	14	33	18.00	15.00
Business/ Miscellaneous	10	13	4	7	3	7.40	-4.40
Theft	74	97	91	71	69	80.40	-11.40
Auto Theft	11	16	8	15	10	12.00	-2.00
Arson	1	4	0	2	4	2.20	1.80
Forgery	7	3	5	4	3	4.40	-1.40
Fraud	4	5	3	0	3	3.00	0.00
Criminal Damage	30	34	66	38	29	39.40	-10.40
Sexual Offenses	5	7	2	1	3	3.60	-0.60
TOTAL	212	257	222	191	196	215.60	-19.60

ACCIDENTS	2004	2005	2006	2007	2008	AVERAGE	2008 +/- AVG
Fatal	0	0	0	0	0	0.00	0.00
Street - Injury	16	15	13	14	11	13.80	-2.80
Street - Property + \$1,000*	201	139	165	153	153	162.20	-9.20
Street - Property - \$1,000*	28	27	17	22	15	21.80	-6.80
Private - Injury	0	0	0	0	0	0.00	0.00
Private - Property	36	24	35	42	52	37.80	14.20
Walk-In Property	30	39	26	30	32	31.40	0.60
TOTAL	311	244	256	261	263	267.00	-4.00

TOTAL CALLS	4,688	4,839	4,564	4,898	4,043	4,747.25	-704.25
--------------------	--------------	--------------	--------------	--------------	--------------	-----------------	----------------

*2005 statute change to \$1,000

DENIAL OF SPECIAL USE PERMIT APPLICATION NO. PC2008-05

**DECISION OF THE GOVERNING BODY OF THE
CITY OF PRAIRIE VILLAGE, KANSAS**

Project No./Title: Special Use Permit Application No. PC2008-05 and Council Agenda Item COU2008-49

Request: Special Use Permit to allow construction of an 85' monopole tower for use by T-Mobile and approval of the associated Site Plan

Location: 4805 West 67th Street in the City of Prairie Village, Kansas

Applicant: Cherri Edwards of Selective Site Consultants, Inc., on behalf of T-Mobile, and with permission of the property owner of record, Faith Evangelical Lutheran Church.

The Governing Body of the City of Prairie Village, Kansas, at a public meeting on July 21, 2008, by a majority vote of 7 ayes to 3 nays, denied the Special Use Permit request to construct an 85' monopole on property located at 4805 W. 67th Street filed by Cheri Edwards of Selective Site Consultants, Inc., agent for T-Mobile (hereinafter "Application"). In accordance with the Federal Telecommunications Act of 1996, the Governing Body, as the governing body of a municipal corporation acting in a quasi-judicial capacity, hereby adopts this written denial of said Application and offers this writing as the basis for the Governing Body's vote of denial on July 21, 2008.

A. Background, Chronology and Procedure.

1. On June 6, 2008, Cheri Edwards of Selective Site Consultants, Inc., on behalf of T-Mobile, and with permission of the property owner of record, filed the Application (PC-2008-05) for a Special Use Permit to construct an 85' monopole Telecommunications Tower and associated equipment compound for use by T-Mobile on property located at 4805 W. 67th Street in the R-1, residential single-family zoning district. The Application also requires a separate site plan approval for the tower and associated equipment compound following approval of the Special Use Permit. This was the second application filed by Selective Site Consultants, Inc. for a monopole and associated equipment compound at this location in the past twelve months, with the first application being withdrawn by the Applicant's representative and attorney, Scott Beeler, on June 2, 2008.
2. All forms of legal notice of a public hearing on the Application before the Planning Commission scheduled for July 1, 2008 were given as required by law.
3. Ron Williamson, BWR, Planning Consultant for the City, issued his Staff Report addressing the Application and: (1) the special use criteria set out in Chapter 19.28 – Special Use Permits of the City of Prairie Village Zoning Code; (2) the criteria set out in the Planning Commission Policy for the Approval of Wireless Communication Towers (adopted December 10, 1996, and hereafter referred to as the "Tower Policy"); and (3) the criteria set out in Chapter 19.32 - Site Plan Approval of the City of Prairie Village Zoning Code. (Said Chapters and the Tower Policy are incorporated herein by reference.) The Planning Consultant did not give a recommendation for or against the Application, but recommended the Planning Commission consider all of the relevant criteria in making its recommendation to the City Council. The Planning Consultant recommended that, if the Planning Commission recommended approval

of the Special Use Permit, it should include the fourteen (14) conditions cited in the Staff Report as part of the recommendation. The Staff Report is attached hereto as Exhibit A and incorporated herein by reference.

4. On July 1, 2008, a public hearing was held before the Planning Commission to consider the proposed Special Use Permit and associated site plan. The Applicant's representative and attorney, Scott Beeler, and city staff made presentations. The public hearing was opened and ten (10) persons spoke with regard to the Application. The public hearing was then closed and the Planning Commission began its deliberations. Excerpts of the minutes of said meeting are attached hereto as Exhibit B and incorporated herein by reference.
5. Immediately following the public hearing on July 1, 2008, the Planning Commission considered the Application and conducted a thorough discussion of: the various special use criteria set out in Chapter 19.28 – Special Use Permits of the City of Prairie Village Zoning Code; the criteria set out in the Tower Policy, and the criteria set out in Chapter 19.32 - Site Plan Approval of the City of Prairie Village Zoning Code. For reasons more thoroughly discussed in Section B 4. ("PLANNING COMMISSION RECOMMENDATION"), the Commission, upon motion by Commissioner Nagel, seconded by Commissioner Kronblad, recommended denial of the Application by a unanimous vote. The Commission then directed staff to prepare a written report of its recommendation, which is attached hereto as Exhibit C and incorporated herein by reference. Because of the recommendation, no action was taken on the proposed site plan.
6. At its July 21st meeting, the Council Committee of the Whole considered the Application, the Applicant's presentation, staff's report, and the Planning Commission's recommendation on this matter. After receiving the staff's and the Applicant's presentation and reviewing the minutes of the Planning Commission meeting, the Council Committee of the Whole

allowed for public comment on the issue and eight (8) individuals spoke on the matter. Council Committee of the Whole participated in significant discussion about the Application. During the discussion, the Applicant's representative and attorney, Scott Beeler, indicated that co-location at the proposed site would probably not occur based upon the height of the proposed tower. Mr. Beeler also indicated the Applicant was currently in discussions with the property owner of one of the other alternative sites, Fire Station #2 site (63rd Street and Mission Road). At the conclusion of its discussion, the Council Committee of the Whole upon motion by Committee Member Wassmer, seconded by Committee Member Kelly, and approved on a voice vote, forwarded the Application to the Governing Body for consideration on July 21, 2008. Excerpts of the minutes of July 21, 2008 Council Committee of the Whole meeting are attached hereto as Exhibit D and incorporated herein by reference.

7. At its July 21, 2008 City Council meeting, the Governing Body considered the Application. The Mayor noted that all of the comments made at the Council Committee of the Whole were incorporated into the record of the City Council meeting by reference. After receiving further comment from the Applicant's representative and attorney, Scott Beeler, the Mayor permitted additional public comment on the Application and four (4) individuals spoke on the matter. Thereafter, the Governing Body engaged in significant discussion of the Application. Councilmember Beckerman moved to table action on the Application to the August 4, 2008 City Council Meeting, and the motion was seconded by Councilmember Clark. The motion was defeated by a vote of 3 ayes to 7 nays. A motion to sustain the Planning Commission's recommendation of denial on the Application was made by Councilmember Kelly and seconded by Councilmember Morrison. The motion passed by a vote of 7 ayes to 3 nays. Excerpts of the minutes of the July 21, 2008 City Council meeting are attached hereto as Exhibit E and incorporated herein by reference.

B. Summary of Evidence Received and Reviewed

1. STAFF REPORT AND RECOMMENDATION:

Staff did not provide a specific recommendation for approval or denial but provided comments regarding specific factors that staff felt were relevant to the Application as outlined in the Staff Report. (Exhibit A.)

Staff advised that, based on the fact that the trees in the area were surveyed at 47'-67', and the fact the Applicant would occupy the top two tower locations at 80' and 70', the remaining two locations on the tower would have little if any coverage for additional carriers, and the Applicant would probably be the only user.

Staff identified the following major issues with the Applicant's previous application:

1. Co-location with other providers had not been adequately addressed.
2. The 120' height was a major objection of the neighbors.
3. The availability of the alternative locations was not recently confirmed and propagation maps needed to be provided for potential locations.
4. The monopole equipment compound needed to be integrated into the existing church building rather than being an island location in the parking lot. Some thought the tower should actually be integrated into the building such as a steeple or bell tower.

Staff advised that, with the exception of co-location, the Applicant believed the Application reflected changes from the last application addressing these issues.

Staff advised that the Telecommunication Act of 1996 established some limitation when considering a wireless facility, with the following primary points:

- A city shall not discriminate among providers.
- A city shall not prohibit or have the effect of prohibiting the installation of wireless services.

- An application must be acted on within a reasonable period of time.
- A decision to deny an application for wireless communications must be in writing and supported by substantial evidence.
- The Federal Communications Commission regulates the environmental efforts of radio frequency emissions and a city cannot consider this issue as approving or denying an applicant.

Staff reviewed the Application in light of the Tower Policy. Among the comments staff listed the eight (8) possible locations identified by the Applicant as being able to meet their service needs (including the proposed site), and the information provided by the Applicant concerning the availability of the same.

With regard to co-location, staff noted that Sprint initially indicated interest in the site, but that Sprint, AT&T, Verizon and Cricket Communications all declined because the height of the proposed tower was too low.

Staff reviewed the required findings of fact for a Special Use Permit and comments regarding the same.

Staff indicated that if the Planning Commission recommended approval of the Application, that the following conditions should be included as part of the recommendation:

- 1) The initial approval of the Special Use Permit shall be for a maximum of five years. At the end of the five year period, the applicant shall resubmit the application to the Planning Commission and shall demonstrate to the satisfaction of the Planning Commission that a good faith effort has been made to cooperate with other providers to establish co-location at the tower site, that a need still exists for the tower and that all the conditions of approval have been met. The application may then be extended for an additional five years.
- 2) The stealth tower shall maintain a hot dipped bronze finish.
- 3) 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.

- 4) The maximum height for this communication tower shall be 85 feet plus a lighting rod not exceeding four feet.
- 5) If the tower is not operated for a continuous period of six 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.

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.

- 6) 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.
- 7) Adequate screening of the equipment cabinets located at the tower base shall be provided by an eight foot solid brick wall attached to the church. The brick shall match the materials of existing church building. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
- 8) The applicant shall submit a drainage plan for review and approval of Public Works.
- 9) The applicant shall have a structural inspection of the tower performed by a licensed professional engineer prior to every five year renewal and submit it as a part of the renewal application.
- 10) Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of 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.

- 11) Additional carriers will be required to submit a site plan for review and approval by the Planning Commission in accordance with Chapter 19.32 of the Zoning Ordinance.
- 12) Only one standby generator shall be approved for this complex. The generator shall be shared by all carriers and shall be owned, operated and maintained by the same entity that owns the tower. The generator will be connected to a natural gas line. Staff will need to review the specifications for the proposed standby generator before it is installed to be sure that the noise created by it is minimized. The maximum noise level should not exceed 68-db and as much noise reduction as possible should be incorporated into the unit.
- 13) The applicant shall prepare a landscape plan and submit it to staff for review and approval.
- 14) The lease agreement shall contain an abandonment clause.

2. APPLICANT'S PRESENTATION:

On behalf of the Applicant, Cheri Edwards and attorney Scott Beeler presented to or answered questions from the Planning Commission and/or Governing Body concerning the Application. All information presented by the Applicant's representatives is summarized as follows:

The Applicant stated that it has coverage gaps in the vicinity which will be served by the proposed tower. The proposed site is one of eight identified sites which could meet the Applicant's needs, but the Applicant has not been able to reach an agreement with the property owners on the other sites.¹ The Applicant believes that, given the current status of negotiations with the other site property owners, the proposed site is the best location for the proposed tower. The Applicant stated that the proposed 85' monopole and associated equipment compound will allow it to address their needs.

¹ See following paragraphs regarding the subsequent availability of the Village Presbyterian Church site and the Fire Station #2 site.

While the Applicant indicated that the monopole structure and site would technically allow for co-location, the Applicant acknowledged that, given the proposed height and the surrounding tree canopy, it would be unlikely that additional carriers could co-locate. The Applicant indicated that they had contacted several other carriers, and that these carriers indicated they were not interested in co-location based on the specifics of the proposed tower.

The Applicant noted that with this Application the monopole and equipment compound location was moved to be adjacent to the church and the overall height was reduced to 85'. The Applicant stated that they were not sure if the property owner would agree to a taller monopole in the current location to increase the opportunity for co-location. The Applicant said they believed the Application with these changes addressed the concerns of the Planning Commission with the Applicant's prior application.

At the public hearing before the Planning Commission, the Applicant indicated that the Village Presbyterian Church site had become available as a potential site. However, the Applicant said that the Village Presbyterian Church site is now no longer considered in the same service ring as the proposed site, and that it is being considered for a separate application. No further explanation or documentation was provided to show why this site is now deemed to no longer meet the Applicant's needs under this Application.

At the Council Committee of the Whole and the City Council Meeting, the Applicant indicated that it was currently in discussions with representatives of Fire Station #2, one of the alternative site locations, about the possible location of a monopole and associated equipment which might meet the needs of the Applicant's gaps in coverage. However, the Applicant said that the fire station site is now no longer considered in the same service ring as the proposed site, and that it is being considered for a separate application. The Applicant said the fire station site was now being considered in lieu of the Village Presbyterian Church site, which was identified as a possible separate site at the public

hearing before the Planning Commission. No further explanation or documentation was provided to show why both of these sites are now deemed to no longer meet the Applicant's needs under this Application.

3. PUBLIC COMMENTS:

The Applicant provided correspondence from several individuals in favor of the Application. Members of the public opposing the Application provided correspondence, photo simulations, an appraisal report from an appraiser indicating that towers reduce property values, and a petition of nearby residents against the Application. A number of individuals either spoke at the public hearing held before for the Planning Commission on July 1, 2008 or during public comment at the Council Committee of the Whole and/or the City Council Meeting on July 21, 2008. One individual spoke at the public hearing in support of the Application and stated he felt it would provide better service. All other public comments opposed the Application, and are summarized as follows:

- The Application fails to meet the criteria in the City's zoning code provisions and adopted policies.
- The Application is not in keeping with the architectural character of the neighborhood.
- If the proposed location was selected, the tower should be architecturally incorporated into the church, such as in a bell tower or steeple.
- The Application is at odds with the zoning of nearby property.
- The Application is not an appropriate use of the land.
- Not all of the alternative sites have been exhausted, and some of these alternative sites would be better locations.
- Frustration was noted that when two of the alternative sites became available the Applicant suddenly and without further explanation said those sites were no longer in the target service ring.
- The Application does not provide for co-location by other providers.
- Based on the lack of co-location opportunity, other towers and additional ground shelters will now unnecessarily be needed to meet the needs of other providers.

- The Application will have a negative impact on adjacent and nearby property values. (Several of these comments referenced the appraiser's report of Donald Gossman.)
- The Application will discourage property improvements on nearby properties.
- The Application should be denied on the basis of aesthetics.
- The proposed site is not suitable because of its low topography and high trees.
- The proposed site is too close to adjacent properties.
- This is not a situation where the Applicant has no coverage, but that it is seeking to provide in-home and broadband coverage.
- Concern about potential safety hazards from the tower and falling ice.

4. PLANNING COMMISSION RECOMMENDATION:

At its July 1, 2008 meeting, the Planning Commission reviewed the Application and recommended denial of the Application by a unanimous vote. The recommendation was based upon an analysis of: the various special use criteria set out in Chapter 19.28 – Special Use Permits of the City of Prairie Village Zoning Code; the criteria set out in the Tower Policy; the criteria set out in Chapter 19.32 – Site Plan Approval of the City of Prairie Village Zoning Code; and the neighborhood concerns regarding the same. The Commissioners' discussion at the July 1, 2008 meeting can be summarized as follows:

- The Commission expressed concern that the tower was not architecturally integrated into the existing church structure, and was not compatible with surrounding architecture in the residential area.
- The Commission expressed concern about the aesthetics and the visual impact on the residential character of the neighborhood.
- The Commission noted that the tower as proposed would not truly allow for co-location of other providers, as prescribed by the Tower Policy.

- The Commission felt that the lack of co-location opportunity created a detrimental impact on future applications, and that additional tower facilities would be needed on the site or in the vicinity to accommodate other providers. The additional towers would detrimentally impact the community.
- The Commission questioned the lack of availability of other more suitable locations.
- The Commission found the Application fails to meet special use factor #2.² It was stated that this is a typical Prairie Village neighborhood which the Village Vision encourages preservation and investment. This proposal would have a detrimental effect on the welfare of the neighborhood.
- The Commission found the Application fails to meet special use factor #3. It was stated that this Application will send a message to both current and prospective property owners that the City is not as concerned about maintaining the high quality of neighborhoods, which will have a negative impact in terms of individuals reinvesting in properties, maintaining properties and seeing property values maintained.
- The Commission found the Application fails to meet special use factor #4. Concern was expressed that the tower would inhibit the desire of others to develop and use the neighboring properties.
- The Commission found the Application fails to meet special use factor #9. It was noted that, while the enclosure may be in character with the structure of the church at ground level, the tower is not architecturally compatible and should instead be incorporated into the actual structure of the church.
- The Commission noted the proposed equipment shelter was overly-sized in order to accommodate multiple providers when in reality only the Applicant would be able to use the site.

² These special use factors are stated hereafter in Section C 2.

- Several Commissioners believed that the Application would have an adverse effect on the property values and welfare of the adjacent neighborhood.
- Several Commissioners expressed concern about the poor location of the site due to the topography of the area.

5. CITY COUNCIL REVIEW:

During the City Council Committee of the Whole Meeting and/or the City Council Meeting on July 21, 2008, the Governing Body reviewed the Application and the Planning Commission's recommendation of denial. At the Council Meeting, the Governing Body approved the Planning Commission recommendation for denial of the Special Use Permit by a vote of 7 ayes to 3 nays. The Governing Body's discussion at these meetings can be summarized as follows:

- In response to inquiry, the Applicant stated during the Committee Meeting that two of the alternative sites, Fire Station #2 and Village Presbyterian Church, had become available. However, without further explanation or documentation, the Applicant informed the Governing Body that it no longer considered these alternative sites in the same service ring. In response to further inquiry, the Applicant said it did not know whether these sites could meet the Applicant's needs under this Application and that further simulations and testing would be necessary. Accordingly, the Governing Body found that other more favorable sites were available, and that the Applicant had failed to adequately evidence the inability of other sites to address its needs.
- The Governing Body expressed concern that the proposed tower was not architecturally integrated into the existing church structure or otherwise masked or camouflaged so as not to impact the surrounding residential area.
- The Governing Body noted that the tower as proposed would not truly allow for co-location of other providers, as prescribed by the Tower Policy.

- The Governing Body felt that the lack of co-location opportunity would require additional tower facilities to accommodate other providers, causing a detrimental impact on the community.
- The Governing Body expressed concern that the proposed tower will not adequately address provider needs, including that of the Applicant, thus requiring additional towers.
- The Governing Body expressed concern about the aesthetics and the intrusion upon the neighborhood.
- The Governing Body expressed concern about the poor location of the site due to the topography and tall trees in the area.

C. Basis for Denial

1. The City of Prairie Village, Kansas, legislatively adopted an ordinance setting out the procedures and basis for review in considering Special Use Permit applications. These criteria are set forth in Chapter 19.28 – Special Use Permits of the City of Prairie Village Zoning Code. In addition, the Planning Commission and City Council have approved a Planning Commission Policy for the Approval of Wireless Communication Towers (adopted December 10, 1996, the “Tower Policy”). It is noted that it is not necessary to find all or a majority of the factors favorable or unfavorable, but, based upon the Application, it can be determined that one or more factors are more significant or critical than the others and the determination would be based on the findings of the critical factors.
2. With respect to the Special Use Criteria set forth in Chapter 19.28 – Special Use Permits of the City of Prairie Village Zoning Code, the Governing Body concludes as follows:
 1. *The proposed special use complies with all applicable provisions of these regulations including intensity use regulations, yard regulations, and use limitations.*

The Governing Body finds that the location of the monopole tower and associated equipment compound appears to meet all the setback requirements of the regulations. The proposed tower is to be 85 feet in height, which is less than the 150 foot maximum height set out in the City's policy.

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

The Governing Body finds that the Application would have an adverse impact on the welfare of the adjacent properties. The Application is counter to the goals of the adopted Village Vision, which encourages preservation and investment. The Application will also discourage property improvements.

3. *The proposed special use will not cause substantial injury to the value of other properties in the neighborhood in which it is to be located.*

The Governing Body finds that the Application would have an adverse impact on the value of other properties in the neighborhood. Approving a monopole tower at this location would have impact on potential reinvestment in properties and the maintenance of adjacent properties in the neighborhood. The property nearby is primarily zoned for single family uses. The Governing Body furthermore finds the Application to be incompatible with such zoning and uses.

4. *The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it, are such that this special use will not dominate the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood, consideration shall be given to: (a) the location, size and nature of the height of building structures, walls and fences on the site; and (b) the nature and extent of landscaping and screening on the site.*

The Governing Body finds that the nature and intensity of the Application would dominate the immediate neighborhood and inhibit the desire of others to develop and use the neighboring properties.

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

The Governing Body finds that additional off-street parking will not be necessary for this particular use because there will be no permanent staff on the site. Service people will be available on site periodically to maintain the equipment, and of course, when installation occurs. The existing church parking lot that is provided on the site will be adequate for this need.

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

The Governing Body finds that water, sewer and power services to this site should be adequate because there will be no permanent occupancy by people. There will be a need for a gas line if the standby generator is approved. It should be noted however that the area may or may not have additional impervious surface and that a storm drainage master plan should be prepared and submitted to Public Works for their review and approval.

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

The Governing Body finds that existing church parking lot will be used for access will be more than adequate to handle the traffic generated by this use.

8. *Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing process, obnoxious odors, or unnecessary intrusive noises.*

The Governing Body finds that the proposed tower and equipment installation will not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that will affect the general public.

9. *Architectural style and exterior materials are compatible with such style and materials used in the neighborhood in which the proposed structure is to be built or located.*

The Governing Body finds that the Application is not compatible with the architectural style and materials used in the church and in the surrounding neighborhood. While the enclosure may be in character with the structure of the church at ground level, the use of the monopole tower to mount the antennas is not compatible with the architectural style or materials of either the existing church or the surrounding neighborhood. To be compatible, the tower should instead be appropriately incorporated into the actual structure of the church, or

otherwise be better masked or camouflaged so as not to impact the surrounding residential area.

3. With respect to the Tower Policy, the Governing Body concludes as follows:

The Governing Body finds that the Applicant has failed to fully address the ability or inability of the identified alternative sites to host the proposed tower, or to fully show that the alternative sites are not available. Based on the documentation provided by the Applicant concerning the alternative sites and the subsequent availability of two of these sites, the Governing Body further finds that other more favorable sites are available to meet the Applicant's service needs.

The Governing Body also finds that the Application does not meet the City's requirements regarding the ability for co-location on the facility. The Applicant has indicated that because of the proposed height of 85' it is unlikely that other providers will find the proposed tower acceptable for co-location. Accordingly, the Governing Body further finds that such lack of co-location opportunity would require the need for additional tower facilities to accommodate other providers, which in turn causes a detrimental impact on the community.

4. The Telecommunications Act of 1996 expressly reserves the authority of local governments over decisions regarding the placement, construction, and modification of personal wireless service facilities, subject to the certain limitations, including but not limited to, the following: (a) such regulation shall not unreasonably discriminate among providers of functionally equivalent services; (b) such regulation shall not prohibit or have the effect of prohibiting the provisions of such services; and (c) any decision to deny a request to place, construct or modify such facilities shall be in writing and supported by substantial evidence contained in the written record.

The Governing Body finds that the application of existing state and local zoning and land use regulations to the Application was appropriate and consistent with the Telecommunications Act of the 1996.

5. The Governing Body concludes, based upon the facts, issues, and evidence received and considered, that the Application should be denied. Therefore, by a vote of 7 to 3 of the Governing Body, Special Use Permit Application No. PC2008-05 was denied on July 21, 2008.

6. The Governing Body, by Resolution on August 4, 2008 adopted this written denial as the basis for its denial of Special Use Permit Application No. PC2008-05 in accordance with the Telecommunications Act of 1996.

Exhibit A: Planning Commission Staff Report Case No: PC2008-05



BWR | Right in the Center

STAFF REPORT

TO: Prairie Village Planning Commission
FROM: Ron Williamson, BWR, Planning Consultant
SUBJECT: PC 2008-05: Request for a Special Use Permit for an 85 ft. Communication Tower and an Equipment Compound to be Located at Faith Evangelical Church, 4805 W. 67th Street
DATE: July 1, 2008 **BWR Project #2008-0024.01**

COMMENTS:

At the June 2, 2008 City Council meeting, the applicant withdrew its application for the 120' high cell tower and stated that they would refile an application for a shorter tower. The application has been refiled for an 85' high monopole. The proposed tower has four antenna locations, 80', 70', 60' and 50'. T-Mobile will use the top two locations. T-Mobile has had the trees surveyed in the area and they are 47'-67' in height. This means that the bottom two locations on the monopole have little if any coverage for additional carriers. The consequences of this are that if other carriers need to provide service in this area more towers will need to be constructed. This raises the issue of fewer taller towers versus more shorter towers. The equipment compound and tower have been relocated adjacent to the west end of the church and the compound also includes an equipment area for an additional carrier.

The Planning Commission identified four major issues with the previous application and they were as follows:

1. Co-location with other providers had not been adequately addressed.
2. The 120' height was a major objection of the neighbors.
3. The availability of the alternative locations was not recently confirmed and propagation maps needed to be provided for potential locations.
4. The monopole equipment compound needed to be integrated into the existing church building rather than being an island location in the parking lot. (Some thought the tower should actually be integrated into the building such as a steeple or bell tower.)

With the exception of co-location, these issues have been addressed by the applicant as a part of this application.

T-Mobile is requesting a Special Use Permit to construct a telecommunications tower and install supporting equipment cabinets at 4805 West 67th Street. The tower is proposed to be 85 feet in height with a 4-foot lightning rod on top. The tower is proposed to be a stealth pole with the antennae mounted inside the pole. An example of this pole 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. The tower is designed to accommodate two carriers but because of the tree heights, T-Mobile will probably be the only user. The proposed equipment compound will be 28' x 30' surrounded by an eight-foot tall brick screening wall which has been relocated adjacent to the west end of the church. The brick will match that

BUCHER, WILLIS & RATLIFF CORPORATION

903 East 104th Street | Suite 900 | Kansas City, Missouri 64131-3451 | P 816.363.2696 | F 816.363.0027 |
www.bwr@brp.com

engineering | planning | architecture

of the existing church building. This compound will accommodate T-Mobile equipment and possibly one additional carrier.

In addition to the normal equipment box, the applicant has also proposed to include a standby emergency generator. Standby emergency generators require site plan approval by the Planning Commission so it needs to be addressed as a part of this application. There are some concerns regarding standby generators; one is noise and the other is the source of fuel. The Johnson County Fire District is concerned about multiple installations of standby generators throughout the City and has recommended that they be directly connected to a natural gas line. T-Mobile is the first carrier to submit a request for a standby generator, other carriers have made inquiries. It would be preferable to have one generator at a location and not three. This would minimize the negative aspects of a standby generator and reduce the size of the equipment compounds. The applicant has indicated that they have concerns about liability, operation and management when multiple users are involved. Those issues are probably the same with the tower owner. It would seem reasonable that whoever owns the tower would also provide the standby generator for all carriers at the location and would limit their liability by contract.

Most of the applications in Prairie Village have either been the installation of antennae and their associated equipment cabinets on buildings or water towers. There are only two towers and they are located at City Hall and at the Fire Station at 90th and Roe Avenue. Towers are more controversial and create more neighborhood concerns. The Telecommunications Act of 1996 established some limitation when considering a wireless facility and the primary points are as follows:

- A city shall not discriminate among providers.
- A city shall not prohibit or have the effect of prohibiting the installation of wireless services.
- An applicant must be acted on within a reasonable period of time.
- A decision to deny an applicant for wireless communications must be in writing and supported by substantial evidence.
- The Federal Communications Commission regulates the environmental effects of radio frequency emissions and a city cannot consider this issue as approving or denying an applicant.

The applicant held a public information meeting for the neighbor on June 25, 2008. Approximately 16 people attended and 9 indicated opposition while 7 indicated support. The neighbors asked a number of questions regarding the application but none specifically addressed the new location and new height. The complete summary notes are included for Planning Commission review.

The Staff has reviewed the application based on the City's policy for wireless communication towers and has the following comments regarding the information submitted:

1. **Validation Study – A study comparing all 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 as well as any other existing and proposed towers.**

If the use of current towers is unavailable, a reason or reasons specifying why they are unavailable needs to be set out and may include one or more of the following: refusal by current tower owner; topographical limitations; adjacent impediments blocking transmission; site limitations to tower construction; technical limitations of the system; equipment exceeds structural capacity of facility or tower; no space on existing facility or tower; other limiting factors rendering existing facilities or towers unusable.

The applicant has requested approval of this specific location in order to provide improved coverage to the residences and vehicular traffic in this portion of Prairie Village. A current gap exists in desired level of service in this area. Calls made on the T-Mobile system in this geographic area are susceptible to signal fade, with the end result that a call might be dropped and in-building coverage is not at an acceptable level. This installation will significantly improve the coverage which will result in better service to T-Mobile customers.

This location was chosen after a "search ring" was developed and issued by T-Mobile's radio frequency engineering team. The search ring indicates a geographic area in which potential sites may be located that will effectuate the maximum amount of coverage where service is poor.

Typical considerations in siting communication installations are the ground elevations and clearance above ground clutter, such as buildings or vegetation. In addition, the communications facility must be located in the correct geographical area, to provide continuous coverage to the sites that are indicated on the propagation studies as having poor levels of service.

Typically, site acquisition specialists' first target potential co-location sites that have already been approved within the search ring. This is done in order to minimize the cost of new construction for carriers and in order to meet the spirit and intent of the local regulations that encourage co-location in order to minimize the number of towers in a jurisdiction.

Based upon these considerations, the site selection team reviewed a total of eight locations prior to selecting this location. A brief report on each site was contained in a memo from the applicant dated June 4, 2008, that is a part of this application request.

The following sites were identified as candidates to meet the coverage objectives of T-Mobile:

1. 69th & Roe PV Water Tank (69th Terr. & Roe) – This site is not available because Water One is preparing a feasibility study to determine whether the tower should be decommissioned.
2. St. Michaels & All Angels (67th & Nall) – Not interested as of June 2008
3. Woodson Avenue Bible Church (67th & Woodson) – After a year of meetings and an executable lease, the church decided not to sign; they sited their congregation was not in favor as being the main factor June 2006.
4. Nall Baptist Church (67th & Nall) – This is a possibility, however, the church does not want to increase the height of the bell tower and would not like to exceed 60' in height.
5. PV Fire Station #2 (63rd & Mission) – A sewer line is located at the proposed cell tower site which eliminated it and other proposed locations were not acceptable. The location is no longer under consideration.
6. Faith Evangelical Church (67th & Roe) – The rent is \$2000 with 3% increase. The church receives \$200 per co-locator; the church will receive future ground leases. They are also receiving a one-time \$7,000 payment.

7. Homestead Country Club (Homestead & Mission) – Two locations have been proposed but they could not come to terms with the site location, or design. The club has ended negotiations.
8. Village Presbyterian Church (67th & Mission)– T-Mobile is negotiating for a facility at this location, but it is in a different coverage area and may result in another application.

The applicant has submitted a propagation study and coverage report that shows the existing coverage without this site and shows the proposed coverage with this site indicating how the coverage would be improved for the users in this location.

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

Photo simulations have been included; showing the proposed stealth tower as viewed from the north and east. The houses to the south on 68th Street are about 20 feet higher in elevation and will see the portion of the tower that extends above the tree line. A photosym from that direction would be helpful however, the trees are too tall to show anything from the south.

3. Co-Location Agreement – A signed statement indicating the applicant's intention to share space on the tower with other providers.

The proposed installation is designed to accommodate two carriers. T-Mobile included a statement in its project description indicating that it intends to share space with other carriers. This should be a condition of approval if the location is approved. It is unlikely that co-location will occur because the tree heights are in the range of 47'-67' and the available antennae elevations are at 50' and 60'.

4. Copy of Lease – A copy of the lease between the applicant and the land owner containing the following provisions:

- a. **The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.**
- b. **The landowner shall be responsible for the removal of the communications tower facility in the event that the leaseholder fails to remove it upon abandonment.**

A copy of the lease agreement between T-Mobile and the Faith Evangelical Lutheran Church has been submitted with this application and it does not prohibit co-location. It does not however contain an abandonment clause and this should be a condition of approval.

5. Site Plan – A site plan prepared in accordance with Chapter 19.32 Site Plan Approval.

The site plan submitted generally includes all required information; however, there are some comments as follows:

- No landscape plan has been submitted with this application. A landscape plan needs to be prepared and submitted for staff review and approval.
- The plan needs to note that the brick veneer on the wall is to match the existing church building. Staff should review and approve the actual brick color before it is installed
- The site plan submitted would be adequate for T-Mobile; and one additional carrier. Any other carriers would need to submit a site plan of their installation for review and approval by the Planning Commission, particularly relative to the design of the equipment compounds.

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

The applicant has been allocated a radio frequency spectrum by FCC and is required to meet all state and federal regulations prior to obtaining a building permit from the City.

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

T-Mobile is one of the nation's largest wireless service providers and this proposed installation will be part of their digital telephone network that will ultimately provide nationwide coverage. This particular installation is to provide adequate coverage to the local residents, and traveling public in this area. No special services are being offered or made available to the public.

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

No trees will be removed, but the equipment compound will be located within a grassed area.

9. Construction Schedule – Preliminary construction schedule including completion dates.

T-Mobile anticipates beginning construction in the third or fourth quarter with it being in operation by the first of 2009.

10. Qualifications and Experience – Sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding communications or utility facilities and services described in the application.

T-Mobile has many cell sites that have been installed throughout the metro area and has an approved "Radio Frequency Spectrum" from FCC. They have an existing site in Prairie Village at the Delmar Water Tower.

- 11. All Required Governmental Approvals – Information to establish the applicant has obtained all government approvals and permits to construct and operate communications facilities, including but not limited to approvals by the Kansas Corporation Commission.**

There is no information included with this application that indicates the existence of any other governmental approvals required, except the licensing of FCC. This tower is approximately 120 feet in height and is in location that would not require approval from FAA.

- 12. Miscellaneous – Any other relevant information requested by City staff.**

Staff did not request any additional information relevant to this application.

- 13. Copies of Co-Location Letters – Copies of letters sent to other wireless communication providers notifying them of the proposed request and inquiring of their interest to co-locate.**

The application includes e-mail responses from Sprint, AT&T, Verizon, and Cricket communications. Sprint initially indicated interest, but because the height is too low to obtain the coverage desired all the carriers have declined at this time.

FINDINGS OF FACT:

The Planning Commission shall make findings of fact to support its recommendation to approve, conditionally approve or disapprove the Special Use Permit. In making its decision, consideration should be given to any of the following factors that are relevant to the request:

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

The location of the tower appears to meet all the setback requirements of the regulations. The compounds for T-Mobile and other carriers must be 25' from the rear property line. The proposed tower is to be 85 feet in height, which is less than the 150 foot maximum height set out in the City's policy.

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

A review of the plan submitted does not indicate that there will be any adverse effect on the welfare or convenience to the public. On the other hand, the installation of the tower should be a benefit to the community in that it would provide a necessary communication link for users in immediate neighborhood as well as the travelling public. Several e-mails from area residents have been submitted supporting the installation.

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 submitted a Proximity Analysis prepared by Integra Realty Resources which included four case studies. Integra found no meaningful difference in value between properties abutting and those not abutting a cell tower site. Those opposing the cell tower provided testimony that the tower would adversely affect the property values but did not provide any expert testimony to that issue. The opposition also pointed out that the tower would slow down and perhaps stop plans of nearby residents to remodel, enlarge or renovate the homes.

4. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it, are such that this special use will not dominate the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood, consideration shall be given to: (a) the location, size and nature of the height of building structures, walls and fences on the site; and (b) the nature and extent of landscaping and screening on the site.

The Faith Evangelical Lutheran Church is on a site of approximately three acres. It also should be pointed out that the neighborhood is totally developed; the closest residence is approximately 130 feet away and therefore, not immediately adjacent to the installation itself. There is a significant amount of vegetation on the site that screens the facility from the south, but additional plant materials may need to be added as part of this application. The location and size have been changed which should make the location more acceptable to the neighborhood. The compound is now attached to the church building which helps to integrate it into the existing development.

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 area may or may not have additional impervious surface and that a storm drainage master plan should be prepared and submitted to Public Works for their review and approval.

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

Existing church parking lot will be used for access will be more than adequate to handle the traffic generated by this use.

8. **Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing process, obnoxious odors, or unnecessary intrusive noises.**

The proposed tower and equipment installation will not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that will affect the general public.

9. **Architectural style and exterior materials are compatible with such style and materials used in the neighborhood in which the proposed structure is to be built or located.**

The architectural style and materials are typical of those used for utility type electrical poles and towers that are frequently found in urban neighborhoods. This tower will be a stealth pole which will have more of the appearance of a flagpole and no antennas will be visible from the exterior. The screening wall surrounding the equipment compound at the base of the tower will be brick and the brick will match the building on the site. Having the compound attached to the church will improve the appearance of the site and present a more compatible site plan.

RECOMMENDATION:

After a review of the proposed application in relation to the nine factors previously outlined, the Planning Commission shall make findings of fact and may either recommend approval of the Special Use Permit with or without conditions, recommend denial, or continue it to another meeting. In granting this Special Use Permit, however, the Planning Commission may impose such conditions, safeguards, and restrictions upon the premises benefited by the approval of the Special Use Permit as may be necessary to reduce or mitigate any potentially injurious effect on other property in the neighborhood. If the Planning Commission recommends approval of the Special Use Permit to the City Council, it is suggested that the following conditions be included:

- 1) The initial approval of the Special Use Permit shall be for a maximum of five years. At the end of the five year period, the applicant shall resubmit the application to the Planning Commission and shall demonstrate to the satisfaction of the Planning Commission that a good faith effort has been made to cooperate with other providers to establish co-location at the tower site, that a need still exists for the tower and that all the conditions of approval have been met. The application may then be extended for an additional five years.
- 2) The stealth tower shall maintain a hot dipped bronze finish.
- 3) 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.
- 4) The maximum height for this communication tower shall be 85 feet plus a lighting rod not exceeding four feet.

- 5) If the tower is not operated for a continuous period of six 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.

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.

- 6) 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 and independent engineer will be required to perform construction observation.
- 7) Adequate screening of the equipment cabinets located at the tower base shall be provided by an eight foot solid brick wall attached to the church. The brick shall match the brick of existing church building. All equipment cabinets shall be adequately secured to prevent access by other than authorized personnel.
- 8) The applicant shall submit a drainage plan for review and approval of Public Works.
- 9) The applicant shall have a structural inspection of the tower performed by a licensed professional engineer prior to every five year renewal and submit it as a part of the renewal application.
- 10) Any permit granted which is found not to be in compliance with the terms of the Special Use Permit will become null and void within 90 days of 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.
- 11) Additional carriers will be required to submit a site plan for review and approval by the Planning Commission in accordance with Chapter 19.32 of the Zoning Ordinance.
- 12) Only one standby generator shall be approved for this complex. The generator shall be shared by all carriers and shall be owned, operated and maintained by the same entity that owns the tower. The generator will be connected to a natural gas line. Staff will need to review the specifications for the proposed standby generator before it is installed to be sure that the noise created by it is minimized. The maximum noise level should not exceed 68-db and as much noise reduction as possible should be incorporated into the unit.
- 13) The applicant shall prepare a landscape plan and submit it to staff for review and approval.
- 14) The lease agreement shall contain an abandonment clause.

**Exhibit B: Excerpts from the July 1, 2008 Planning Commission
Meeting for Case No: PC2008-05**

**PLANNING COMMISSION MINUTES
MEETING OF JULY 1, 2008**

ROLL CALL

The Planning Commission of the City of Prairie Village met in regular session on Tuesday, July 1, 2008 in the Council Chamber, 7700 Mission Road. Chairman Ken Vaughn called the meeting to order at 7:00 p.m. with the following members present: Randy Kronblad, Bob Lindeblad, Marlene Nagel & Nancy Vennard.

The following persons were present in their advisory capacity to the Planning Commission: Ron Williamson, Planning Consultant; Andrew Wang, Council Liaison; Bob Pryzby, Director of Public Works; Chief of Police Wes Jordan, Jim Brown, City Building Official and Dennis Enslinger, Assistant City Administrator.

APPROVAL OF MINUTES

Ken Vaughn noted the date of the minutes should read June 3, 2008 rather than May 6, 2008. Bob Lindeblad moved the Planning Commission minutes of June 3, 2008 be approved as corrected. The motion was seconded by Nancy Vennard and passed by a unanimous vote.

PUBLIC HEARINGS

**PC2008-05 Request for Special Use Permit for a
Telecommunications Tower & Related Equipment
4805 West 67th Street
Zoning: R-1a**

Bob Lindeblad stated he has a conflict of interest on application PC2008-05 because he is a member of the church on which the tower is proposed to be located. He stated he would therefore recuse himself from this application and left the meeting.

Chairman Ken Vaughn reviewed the rules of procedures for the hearing.

Scott Beeler, 10851 Mastin Overland Park, attorney for the applicant and Cheri Edwards with Selective Site Consultants were present to present the application. Mr. Beeler noted the new application has been submitted to address the concerns raised by the neighboring residents regarding their previous submittal in May. Mr. Beeler noted that much of the documentation submitted in the earlier application is applicable to this application and in an effort to save time will not be restated. The earlier submittal of propagation as well as the testimony of residents, clearly demonstrated the holes in this area where T-Mobile residents are unable to receive calls.

The Planning Commission questioned the need in the original proposal for a 120' tower. It was stated at that time, 120' was necessary to provide for the co-location requirement of the City's policy. The proposed 85' tower will allow T-Mobile to address their needs with antenna on the top two bands. The remaining bands at 60 and 50 feet will be

significantly impacted by the surrounding trees and buildings. Thus most of the carriers contacted were not interested in co-locating on the proposed tower. Mr. Beeler stated T-Mobile has reduced the height of the tower 35 feet to address height concerns raised by both the Commission and residents.

The second issue raised by the Commission and residents on the initial application submittal was the location of the tower close to a residential property line. The applicant met with the Church's governing body to see if they would agree to the relocation of the tower to another area on their property. The church agreed and the tower and equipment compound have been relocated adjacent to the church. The equipment compound will be brick matching the existing brick on the church. Mr. Beeler noted at the request of staff, they have changed the tower color to a dipped bronze finish. However, he noted over the years steel gray has proven to blend into the sky from a distance better.

Mr. Beeler stated that in addition to these changes, they have revisited all of the sites in the area identified as potential locations. In particular, they revisited with Nall Avenue Baptist Church. The church was not interested and the area in which a tower could be located was not acceptable to T-Mobile engineers.

Mr. Beeler presented new photo simulations of the proposed tower to the Commission and those in attendance. They noted the difficulty in viewing the tower within the existing trees.

The relocation of the tower places it 101 feet from the Faerber home as opposed to the earlier submittal located 25 feet from their home. In response to requests to locate the tower even closer to the church, Mr. Beeler stated they will have a foot to two foot separation to prevent any negative impact on the church's foundation by the pouring of the foundation for the tower.

Mr. Beeler closed his presentation stating they have addressed every point raised by the Commission and the public at the last hearing. T-Mobile wants to be in this community and wants to be a good corporate neighbor. To have effective service to their customers, they have to have a tower. They have to have them under their license and the City has to allow them. Mr. Beeler stressed the need to work together.

Ken Vaughn noted the elevation shows a minimum of 32-inch and maximum of 42-inch diameter and asked why it can't be 32-inch or something other than the 42-inch maximum. Mr. Beeler responded the reason for the variance is the diameter will be determined by the model of antennas that are attached and they vary by model, therefore, the wider maximum is proposed to provide market functionality. Mr. Vaughn asked if the photo simulation was based on 42 inches or 32 inches. Mr. Beeler responded it was based on 42.

Marlene Nagel asked if discussions with the church included the possibility of incorporating an antenna into the structure itself such as the steeple. Mr. Beeler replied what has been submitted is what the church has agreed upon.

Randy Kronblad confirmed the information submitted indicated that only one other carrier would consider relocation at the heights available.

Nancy Vennard asked if they were the sole carrier on the tower could the height be lowered by 10 feet. Mr. Beeler replied no, based on their engineer's studies 85 feet is the minimum height.

Mr. Kronblad noted with no co-location it seems certain that additional tower requests will be submitted at some point in time. Mrs. Vennard agreed.

Ron Williamson reviewed his following staff report on this application:

At the June 2, 2008 City Council meeting, the applicant withdrew its application for the 120' high cell tower and stated that they would refile an application for a shorter tower. The application has been refiled for an 85' high monopole. The proposed tower has four antenna locations, 80', 70', 60' and 50'. T-Mobile will use the top two locations. T-Mobile has had the trees surveyed in the area and they are 47'-67' in height. This means that the bottom two locations on the monopole have little if any coverage for additional carriers. The consequences of this are that if other carriers need to provide service in this area more towers will need to be constructed. This raises the issue of fewer taller towers versus more shorter towers. The equipment compound and tower have been relocated adjacent to the west end of the church and the compound also includes an equipment area for an additional carrier.

The Planning Commission identified four major issues with the previous application and they were as follows:

1. Co-location with other providers had not been adequately addressed.
2. The 120' height was a major objection of the neighbors.
3. The availability of the alternative locations was not recently confirmed and propagation maps needed to be provided for potential locations.
4. The monopole equipment compound needed to be integrated into the existing church building rather than being an island location in the parking lot. (Some thought the tower should actually be integrated into the building such as a steeple or bell tower.)

With the exception of co-location, these issues have been addressed by the applicant as a part of this application.

T-Mobile is requesting a Special Use Permit to construct a telecommunications tower and install supporting equipment cabinets at 4805 West 67th Street. The tower is proposed to be 85 feet in height with a 4-foot lightning rod on top. The tower is proposed to be a stealth pole with the antennae mounted inside the pole. An example of this pole 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. The tower is designed to accommodate two carriers but because of the tree heights, T-Mobile will probably be the only user. The proposed equipment compound will be 28' x 30' surrounded by an eight-foot tall brick screening wall which has been relocated adjacent to the west end of the church. The brick will match that of the existing church building. This compound will accommodate T-Mobile equipment and possibly one additional carrier.

In addition to the normal equipment box, the applicant has also proposed to include a standby emergency generator. Standby emergency generators require site plan approval by the Planning Commission so it needs to be addressed as a part of this application. There are some concerns regarding standby generators; one is noise and the other is the source of fuel. The Johnson County Fire District is concerned about multiple installations of standby generators throughout the City and has recommended that they be directly connected to a natural gas line. T-Mobile is the first carrier to submit a request for a standby generator, other carriers have made inquiries. It would be preferable to have one generator at a location and not three. This would minimize the negative aspects of a standby generator and reduce the size of the equipment compounds. The applicant has indicated that they have concerns about liability, operation and management when multiple users are involved. Those issues are probably the same with the tower owner. It would seem reasonable that whoever owns the tower would also provide the standby generator for all carriers at the location and would limit their liability by contract.

Most of the applications in Prairie Village have either been the installation of antennae and their associated equipment cabinets on buildings or water towers. There are only two towers and they are located at City Hall and at the Fire Station at 90th and Roe Avenue. Towers are more controversial and create more neighborhood concerns. The Telecommunications Act of 1996 established some limitation when considering a wireless facility and the primary points are as follows:

- A city shall not discriminate among providers.
- A city shall not prohibit or have the effect of prohibiting the installation of wireless services.
- An applicant must be acted on within a reasonable period of time.
- A decision to deny an applicant for wireless communications must be in writing and supported by substantial evidence.
- The Federal Communications Commission regulates the environmental efforts of radio frequency emissions and a city cannot consider this issue as approving or denying an applicant.

The applicant held a public information meeting for the neighbor on June 25, 2008. Approximately 16 people attended and 9 indicated opposition while 7 indicated support. The neighbors asked a number of questions regarding the application but none specifically addressed the new location and new height. The complete summary notes are included for Planning Commission review.

The Staff has reviewed the application based on the City's policy for wireless communication towers and has the following comments regarding the information submitted:

1. **Validation Study - A study comparing all 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 as well as any other existing and proposed towers.

If the use of current towers is unavailable, a reason or reasons specifying why they are unavailable needs to be set out and may include one or more of the following: refusal by current tower owner; topographical limitations; adjacent impediments blocking transmission; site limitations to tower construction; technical limitations of the system; equipment exceeds structural capacity of facility or tower; no space on existing facility or tower; other limiting factors rendering existing facilities or towers unusable.

The applicant has requested approval of this specific location in order to provide improved coverage to the residences and vehicular traffic in this portion of Prairie Village. A current gap exists in desired level of service in this area. Calls made on the T-Mobile system in this geographic area are susceptible to signal fade, with the end result that a call might be dropped and in-building coverage is not at an acceptable level. This installation will significantly improve the coverage which will result in better service to T-Mobile customers.

This location was chosen after a "search ring" was developed and issued by T-Mobile's radio frequency engineering team. The search ring indicates a geographic area in which potential sites may be located that will effectuate the maximum amount of coverage where service is poor.

Typical considerations in siting communication installations are the ground elevations and clearance above ground clutter, such as buildings or vegetation. In addition, the communications facility must be located in the correct geographical area, to provide continuous coverage to the sites that are indicated on the propagation studies as having poor levels of service.

Typically, site acquisition specialists' first target potential co-location sites that have already been approved within the search ring. This is done in order to minimize the cost of new construction for carriers and in order to meet the spirit and intent of the local regulations that encourage co-location in order to minimize the number of towers in a jurisdiction.

Based upon these considerations, the site selection team reviewed a total of eight locations prior to selecting this location. A brief report on each site was contained in a memo from the applicant dated June 4, 2008, that is a part of this application request.

The following sites were identified as candidates to meet the coverage objectives of T-Mobile:

1. 69th & Roe PV Water Tank (69th Terrace & Roe) - This site is not available because Water One is preparing a feasibility study to determine whether the tower should be decommissioned.
2. St. Michaels & All Angels (67th & Nall) - Not interested as of June 2008
3. Woodson Avenue Bible Church (67th & Woodson) - After a year of meetings and an executable lease, the church decided not to sign; they sited their congregation was not in favor as being the main factor June 2006.

4. Nall Baptist Church (67th & Nall) - This is a possibility, however, the church does not want to increase the height of the bell tower and would not like to exceed 60' in height.
5. PV Fire Station #2 (63rd & Mission) -A sewer line is located at the proposed cell tower site which eliminated it and other proposed locations were not acceptable. The location is no longer under consideration.
6. Faith Evangelical Church (67th & Roe) - The rent is \$2000 with 3% increase. The church receives \$200 per co-locator; the church will receive future ground leases. They are also receiving a one- time \$7,000 payment.
7. Homestead Country Club (Homestead & Mission) - Two locations have been proposed but they could not come to terms with the site location, or design. The club has ended negotiations.
8. Village Presbyterian Church (67th & Mission)- T-Mobile is negotiating for a facility at this location, but it is in a different coverage area and may result in another application.

The applicant has submitted a propagation study and coverage report that shows the existing coverage without this site and shows the proposed coverage with this site indicating how the coverage would be improved for the users in this location.

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

Photo simulations have been included; showing the proposed stealth tower as viewed from the north and east. The houses to the south on 68th Street are about 20 feet higher in elevation and will see the portion of the tower that extends above the tree line. A photosym from that direction would be helpful however, the trees are too tall to show anything from the south.

3. Co-Location Agreement - A signed statement indicating the applicant's intention to share space on the tower with other providers.

The proposed installation is designed to accommodate two carriers. T-Mobile included a statement in its project description indicating that it intends to share space with other carriers. This should be a condition of approval if the location is approved. It is unlikely that co-location will occur because the tree heights are in the range of 47'-67' and the available antennae elevations are at 50' and 60'.

4. Copy of Lease - A copy of the lease between the applicant and the land owner containing the following provisions:

- a. **The landowner and the applicant shall have the ability to enter into leases with other carriers for co-location.**
- b. **The landowner shall be responsible for the removal of the communications tower facility in the event that the leaseholder fails to remove it upon abandonment.**

A copy of the lease agreement between T-Mobile and the Faith Evangelical Lutheran Church has been submitted with this application and it does not prohibit co-location. It does not however contain an abandonment clause and this should be a condition of approval.

5. Site Plan - A site plan prepared in accordance with Chapter 19.32 Site Plan Approval.

The site plan submitted generally includes all required information; however, there are some comments as follows:

- No landscape plan has been submitted with this application. A landscape plan needs to be prepared and submitted for staff review and approval.
- The plan needs to note that the brick veneer on the wall is to match the existing church building. Staff should review and approve the actual brick color before it is installed
- The site plan submitted would be adequate for T-Mobile; and one additional carrier. Any other carriers would need to submit a site plan of their installation for review and approval by the Planning Commission, particularly relative to the design of the equipment compounds.

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

The applicant has been allocated a radio frequency spectrum by FCC and is required to meet all state and federal regulations prior to obtaining a building permit from the City.

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

T-Mobile is one of the nation's largest wireless service providers and this proposed installation will be part of their digital telephone network that will ultimately provide nationwide coverage. This particular installation is to provide adequate coverage to the local residents, and traveling public in this area. No special services are being offered or made available to the public.

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

No trees will be removed, but the equipment compound will be located within a grassed area.

9. **Construction Schedule - Preliminary construction schedule including completion dates.**

T-Mobile anticipates beginning construction in the third or fourth quarter with it being in operation by the first of 2009.

10. **Qualifications and Experience - Sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding communications or utility facilities and services described in the application.**

T-Mobile has many cell sites that have been installed throughout the metro area and has an approved "Radio Frequency Spectrum" from FCC. They have an existing site in Prairie Village at the Delmar Water Tower.

11. **All Required Governmental Approvals - Information to establish the applicant has obtained all government approvals and permits to construct and operate**

communications facilities, including but not limited to approvals by the Kansas Corporation Commission.

There is no information included with this application that indicates the existence of any other governmental approvals required, except the licensing of FCC. This tower is approximately 120 feet in height and is in location that would not require approval from FAA.

12. Miscellaneous - Any other relevant information requested by City staff.

Staff did not request any additional information relevant to this application.

13. Copies of Co-Location Letters - Copies of letters sent to other wireless communication providers notifying them of the proposed request and inquiring of their interest to co-locate.

The application includes e-mail responses from Sprint, AT&T, Verizon, and Cricket communications. Sprint initially indicated interest, but because the height is too low to obtain the coverage desired all the carriers have declined at this time.

Chairman Ken Vaughn opened the public hearing for comments from the floor.

Casey Housley, 4900 West 68th Street, addressed the Commission on behalf of the neighborhood residents. Mr. Housley acknowledged T-Mobile is not erecting cell towers for the sake of it and that there is a need. However, it is not the situation where there is no coverage. They are seeking to improve coverage so they can have broadband access into homes and complete with cell carriers, cable carriers and Direct TV. Mr. Housley reminded the Commission that with the earlier application they submitted 300 signatures of people in the area that say the cell tower is not needed as far as they're concerned.

Mr. Housley also requested exhibits submitted with the earlier record be included in the consideration of this application. He shared two photographs taken by an area resident when the balloon was being set for the photo simulations which demonstrated how photographs can be manipulated as to perspective by where they are taken. Mr. Housley noted even with the reduction in size of the tower to 85 feet, this is still eight and a half stories tall. It is not architecturally consistent with the surrounding area. This application would not be approved in Leawood or Fairway because it is not incorporated into a church as a steeple.

Mr. Housley stated the proposed tower is a **nullity** because no one wants to use it at 85 feet in height. It does not allow for co-location so you can be assured down the road other carriers will want to come in and erect their own towers and bring with them additional ground equipment. So instead of having a minimum number of towers, which is the policy, you're opening the door to three, four, or multiple towers at that location, which is architecturally inconsistent with the surroundings.

Mr. Housley reminded the Commission of his earlier submittal by Donald Gossman, a certified real estate appraiser that indicated structures like this are a visual obsolescence. They do reduce property values. Mr. Housley stated at the recent neighborhood information meeting an elimination map was reviewed which reflected that all sites have not necessarily been exhausted. He mentioned Woodson Avenue

Bible Church at 67th and Woodson and Village Presbyterian Church at 67th and Mission Road as two potential locations.

Mr. Housley stated the Commission has the discretion to deny cell phone towers based upon aesthetic concerns and property values and the neighboring property owners are asking that this application be denied.

Nancy Vennard asked if the 300 signatures represented opposition to the 120 foot proposed tower or the 85 foot tower. She noted that there were fewer residents present at the hearing and wondered whether their opinions had changed with the lower tower or if it was a result of the holiday weekend. Mr. Housley responded the signatures are from the original application and he can not say for sure why there are fewer people in attendance but would submit the time of the year has had an impact.

Mary Cordill, 4904 West 68th Street, stated several of the neighboring residents are out of town on vacation. Many of the residents she called stated they would not be able to attend the meeting but were still opposed to the installation. Mrs. Cordill expressed her concern with the precedent that would be set for additional towers to come, especially since this application is unable to provide co-location.

John Faerber, 4806 West 68th Street, stated he is opposed to the application as well as 30% of the adjacent property owners notified by T-Mobile. He noted, Carolyn & Harold Neptune at 4722 West 68th Street and Chris & Jane Wooldridge at 4810 West 68th Street who reside behind the proposed tower are opposed to the application but are unable to attend because of vacation plans. They feel the site location is poor due to the low-lying area. They are concerned with co-location of other providers who will install tower equipment structures on that property. Mr. Faerber stated he had a letter from Mr. Neptune with photos.

Mr. Faerber stated the proposed tower is 83 feet from his property line and noted most of the neighboring cities require a minimum of 100 to 150 feet from residential property. They are seeking locations that fit and function aesthetically well in a residential neighborhood - an eight and a half story structure does not fit.

Nancy Vennard confirmed that Mr. Faerber had signed petitions from thirty percent of the property owners within 200' of the proposed location opposing the new application. She asked how the other 70 percent felt. Mr. Faerber responded that many of the neighbors have been out of town on summer vacations.

Paige Price, 6730 Fonticello, stated when she was seeking signatures for the earlier petition, many of the residents did not know the height of the tower. The question she asked them was "Are you against a cell tower in this residential location?" Mrs. Price stated Prairie Village is a family orientated community with small one and two story homes. She does not want to see it ruined with commercial buildings and commercial cell towers.

Randy Cordill, 4904 West 68th Street, stated he is opposed to the proposed 85 foot tower and seriously questions how an 85 foot tower is going to be able to provide service to the targeted area. Because of the topography of the area, he does not see this location serving areas to the west, but rather only serving the church itself and

maybe the area to the northeast. Mr. Cordill stated this is a poor site and does not make sense. He acknowledged the setbacks provided are better than the initial application and they appreciate that; however, noted they still are less than required by other cities.

Steve Corwine, 6730 Fonticello, spoke against the application and noted it is highly unlikely the Commission would approve the construction of an eight-story structure at this location.

Steve Roth, 6801 Cedar, stated this is purely a business expansion on the part of T-Mobile. There are no security or safety issues. These towers are designed for commercial areas, not residential areas. He assured the Commission the chamber could have been packed, had it not been the July 4th weekend.

Pat Ink, 4800 West 67th Street, expressed concern with potential safety issues from falling ice and potential health concerns.

John Orman, 5100 West 67th Street - the intersection of Fonticello & 67th Street, stated he is a T-Mobile user and gets very poor reception. He also noted the tower would not simply benefit the church, but noted there are several community groups that meet in the church and are unable to get cell service.

Kevin Gravino, 4909 West 67th Street - five houses up from the proposed site, stated the last thing he wants to see at this location is a cell tower and feels the City needs to have an ordinance that will finally put this issue to rest. He feels there are still a lot of individuals opposed to the tower and the fewer number of people in attendance is not a sign of support or acceptance.

Chairman Ken Vaughn called upon Scott Beeler to respond to comments.

Mr. Beeler stated after viewing the pictures submitted by Mr. Housley it was clear they represented the tower height at 120 feet, not 85 feet. He noted Mrs. Vennard's comments regarding the petition raise an excellent point - 70% of the adjacent property owners did not sign the petition opposing the new application. He does not feel you can reasonably conclude that those opposing a 120 foot tower would also oppose an 85 foot tower. In response to this not being the best location, Mr. Beeler reminded the Commission that they can not simply place towers on property - they must be accepted by the property owner.

The ordinances that are not in effect in Prairie Village are not relevant. The proposed application is in compliance with all of the ordinance requirements of the City of Prairie Village. They are offering co-location; however, they have honestly submitted at this height co-location is not probably going to occur. As far as future applications, Mr. Beeler is confident that the Commission would scrutinize any future application as they have this application.

Mr. Beeler corrected his earlier statement regarding the photograph submitted by Mr. Housley. The photo does reflect the 85 foot height; however, it reflects the height at the previous location in the parking lot and not the current location adjacent to the church.

Randy Kronblad asked for clarification on the Village Presbyterian site. The report states negotiations are ongoing, but it's in a different coverage area and may require another application. Mr. Beeler responded their system coverage areas evolve based upon where the towers are located and traffic patterns. Search rings change over time. This site is another service area entirely - some of that is due to height, but most of it is due to a change in traffic. Mr. Kronblad confirmed this is not an alternative site for this location.

Casey Housley acknowledged the photos were at the previous location but they did reflect the 85 feet in height. He challenged the statement that since only 30 percent of the property owners signed the petition opposing the application that the other 70 percent now supported the application. He also noted 30 percent is what is legally required for a supermajority. He stressed to the Commission the enormous amount of time required to get the initial 300 signatures by volunteers on their own time.

Ron Williamson advised the Commission that according to the City's regulations, special use permits do not have the legal protest petition provision that applies to zoning applications. Therefore a supermajority vote of the City council is not required.

Nancy Vennard asked for clarification of that statement made that without co-location there could be more towers located at this property. Mr. Williamson stated, if the church would allow other towers on their property, there is the possibility for more applications at this location. Mrs. Vennard asked if under the Telecommunication Act if one tower was approved at this location, additional towers would have to be approved. Mr. Williamson replied it depends on the location and the specific of the application, but in a general sense that is probably true because the City cannot discriminate between providers based on the FCC regulations.

Mrs. Vennard asked if the size of the equipment enclosure could be reduced because it has been sized to allow for other carriers creating this very large enclosure at the bottom that is not going to be used.

Mr. Beeler responded the Telecommunications Act does not provide that because you allow one tower in a location, that you would have to allow another in that location. Towers side by side are a problem due to frequency issues and therefore are rarely done unless there is a significant differentiation in height separation. The equipment compound has been sized for two because they felt at 70 feet there are a reasonable possibility for another carrier. It could be reduced.

Mrs. Vennard asked for clarification on the staff recommendation on this issue. Mr. Williamson responded T-Mobile has stated they are going to use the top two bands at 80 and 70 feet. If at some time in the future they only need the top location, then it would be reasonable for another carrier to locate at 70 feet. Once you get below 70 feet, the trees in this area are 60- to 70-foot tall making it unlikely the two bottom spots would be used.

Andrew Wang noted the earlier 120 foot height was a major objection of the residents; however, knowing the probable lack of co-location on the 85 foot height, is the 120 foot height a major objection of the Commission. Ken Vaughn responded the Commission

objections were a combination of several items. Height with respect to the proximity of the property lines was a great concern.

Ken Vaughn expressed concern that this application will be able to meet the needs for T-Mobile and it will require other carriers to erect towers someplace in this area. Randy Kronblad shared Mr. Vaughn's concerns that an 85 foot tower is opening the possibility of more towers because the realistic opportunity for co-location is gone. He questioned how the height dropped from 120 feet to 85 feet. Mr. Beeler stated the comments they heard at the hearing on the application at 120 feet and from staff was the height was too high, so they lowered it as much as possible and still meet their needs. They are attempting to meet the requests of the neighbors and the City as they were stated at the previous public hearing.

Marlene Nagel stated she feels this is a poor location due to the topography of the area. She does not think it is in keeping with the architecture and residential character of the area. She was hopeful that the application would return with the antenna being incorporated into the existing structure. She is concerned that the size of the tower does not allow for co-location and that will impact future applications.

Ron Williamson noted that since the application was advertised for an 85 foot height as the maximum, in order to do anything higher would require a new application.

Ken Vaughn said he felt the crux of the issue is that this is a poor location for a tower.

The Planning Commission reviewed the following findings of fact for the application:

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

The location of the tower appears to meet all the setback requirements of the regulations. The compounds for T-Mobile and other carriers must be 25' from the rear property line. The proposed tower is to be 85 feet in height, which is less than the 150 foot maximum height set out in the City's policy.

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

Marlene Nagel stated this is a typical Prairie Village neighborhood which Village Vision encourages preservation and investment. This is happening and she feels this proposal would have a detrimental effect on the welfare of the neighborhood. Mr. Kronblad agreed.

Nancy Vennard stated she can not say it "adversely affect the welfare or convenience of the public". The real estate reports from professional are contradictory in their findings. Ken Vaughn stated this finding does not relate to property value.

- 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 submitted a Proximity Analysis prepared by Integra Realty Resources which included four case studies. Integra found no meaningful difference in value between properties abutting and those not abutting a cell tower site. Those opposing the cell tower provided testimony that the tower would adversely affect the property values but did not provide any expert testimony to that issue. The opposition also pointed out that the tower would slow down and perhaps stop plans of nearby residents to remodel, enlarge or renovate the homes.

Mrs. Vennard stated with the conflicting real estate reports, she can not clearly say property values will be adversely affected. Marlene Nagel stated she feels approving this application would send a message to both current and prospective property owners that the city is not as concerned about maintaining the high quality of neighborhoods. This may not necessarily result in property values declining, but have a negative impact in terms of individuals reinvesting in properties, maintaining properties and seeing property values maintained. Randy Kronblad stated that's fairly well emphasized with the understanding that additional towers could certainly be proposed. He agrees with Mrs. Nagel regarding the message that would be sent to the residents of Prairie Village.

4. **The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it, are such that this special use will not dominate the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood, consideration shall be given to: (a) the location, size and nature of the height of building structures, walls and fences on the site; and (b) the nature and extent of landscaping and screening on the site.**

The Faith Evangelical Lutheran Church is on a site of approximately three acres. It also should be pointed out that the neighborhood is totally developed; the closest residence is approximately 130 feet away and therefore, not immediately adjacent to the installation itself. There is a significant amount of vegetation on the site that screens the facility from the south, but additional plant materials may need to be added as part of this application. The location and size have been changed which should make the location more acceptable to the neighborhood. The compound is now attached to the church building which helps to integrate it into the existing development.

Ken Vaughn stated he did not see how this particular structure would have an impact on somebody if they wanted to develop. It's a matter of whether or not it will inhibit their desire to do so. Mr. Kronblad agreed.

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 area may or may not have additional impervious surface and that a storm drainage master plan should be prepared and submitted to Public Works for their review and approval.

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

Existing church parking lot will be used for access will be more than adequate to handle the traffic generated by this use.

8. **Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing process, obnoxious odors, or unnecessary intrusive noises.**

The proposed tower and equipment installation will not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that will affect the general public.

9. **Architectural style and exterior materials are compatible with such style and materials used in the neighborhood in which the proposed structure is to be built or located.**

The architectural style and materials are typical of those used for utility type electrical poles and towers that are frequently found in urban neighborhoods. This tower will be a stealth pole which will have more of the appearance of a flagpole and no antennas will be visible from the exterior. The screening wall surrounding the equipment compound at the base of the tower will be brick and the brick will match the building on the site. Having the compound attached to the church will improve the appearance of the site and present a more compatible site plan.

Randy Kronblad stated the enclosure is certainly in character with the structure of the church at ground level, but he is disappointed that the tower could not be incorporated into the actual structure like St. Ann's.

Ken Vaughn noted the applicant has made several improvements.

Scott Beeler stated the applicant agrees with the stipulations that were suggested by staff in their recommendation.

Nancy Vennard stated she could live with one tower but remains very concerned with the possibility of other towers and the Commission's ability to deny those applications.

Ron Williamson stated future applications will have to be judged on the criteria established, whether it meets the requirements and how it is put together. The City can not just arbitrarily deny another application because there is already a tower at that location. The application will have to be voted on based on its merits the same as the application before you.

Andrew Wang confirmed that part of the merits of this application is whether or not co-location can occur and it is part of the City's policy to encourage or pursue co-location. Mr. Vaughn stated that physically/technically there is a provision for co-location.

Dennis Enslinger, Assistant City Administrator, suggested that if the Commission felt another site might be viable and if there's co-location possible on that, it could be added as a condition .

Nancy Vennard asked if the applicant had any documentation of the reported conversations regarding other potential locations. Mr. Beeler responded there are a number of e-mails and notes in the record about their prior contacts. He added, at the request of staff, they have updated that information.

Ron Williamson stated the only site that the City has verified is the fire district property. Fire Department staff has stated they have not been able to find a mutually agreeable location on the property.

Mr. Williamson advised the Commission that in making its recommendation to approve or deny the Special Use Permit, it is not necessary to find all or a majority of the factors favorable or unfavorable. Based on the special application, the Commission may feel that one or more 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 and 9 are the most pertinent.

Marlene Nagel pointed out there are several findings of fact and noted she does not feel they all are equal in weight. She feels the Commission as a whole has determined this application does not meet findings #2, #3 and #9. She continues to have concerns with the poor location due to the topography of the site; the architecture of the structure in this residential area; the inability of this facility to truly accommodate co-location and its potential impact for future applications.

Randy Kronblad stated his primary concern is the inability for co-location. There is the possibility, but it is not practical based on information received; therefore, the Commission would be approving the installation of a single tower for a single carrier.

Marlene Nagel moved the Planning Commission recommend denial of the Special Use Permit to the City Council based upon the previous statements. The motion was seconded by Randy Kronblad and passed by a unanimous vote.

Bob Lindeblad returned to the meeting.

NON-PUBLIC HEARINGS
PC2008-111 Site Plan Approval for Retaining Wall
8136 Juniper Drive
Zoning: R-1a

David Soxman and Julia Soxman, 8136 Juniper Lane, requested the Commission approve their site plan application. Mr. Soxman stated they feel they have met the 6 standards that were requested. He advised the Commission that in 2007 their neighbor at 8140 Juniper Lane constructed an earthen berm along the entire southeast property

Exhibit C: Council Staff Report for Case No: PC2008-05/COU2008-49



PLANNING COMMISSION

Council Meeting Date: July 21, 2008

COU2008-49 Consider Special Use Permit for wireless communication tower and equipment compound at 4805 West 67th Street

RECOMMENDATION

Recommend the Governing Body Adopt the recommendation of the Planning Commission and deny the Special Use Permit based on the findings of fact of the Planning Commission.

BACKGROUND

At the June 2, 2008 City Council meeting, the applicant withdrew its application for the 120' high cell tower and stated that they would refile an application for a shorter tower. The application has been refiled for an 85' high monopole. The proposed tower has four antenna locations, 80', 70', 60' and 50'. T-Mobile will use the top two locations. T-Mobile has had the trees surveyed in the area and they are 47'-67' in height. This means that the bottom two locations on the monopole have little if any coverage for additional carriers. The consequences of this are that if other carriers need to provide service in this area more towers will need to be constructed. This raises the issue of fewer taller towers versus more shorter towers. The equipment compound and tower have been relocated adjacent to the west end of the church and the compound also includes an equipment area for an additional carrier.

The Planning Commission identified four major issues with the previous application and they were as follows:

1. Co-location with other providers had not been adequately addressed.
2. The 120' height was a major objection of the neighbors.
3. The availability of the alternative locations was not recently confirmed and propagation maps needed to be provided for potential locations.
4. The monopole equipment compound needed to be integrated into the existing church building rather than being an island location in the parking lot. (Some thought the tower should actually be integrated into the building such as a steeple or bell tower.)

With the exception of co-location, these issues have been addressed by the applicant as a part of this application.

T-Mobile is requesting a Special Use Permit to construct a telecommunications tower and install supporting equipment cabinets at 4805 West 67th Street. The tower is proposed to be 85 feet in height with a 4-foot lightning rod on top. The tower is proposed to be a stealth pole with the antennae mounted inside the pole. The tower is designed to accommodate two carriers but because of the tree heights, T-Mobile will probably be the only user. The proposed equipment compound will be 28' x 30' surrounded by an eight-

foot tall brick screening wall which has been relocated adjacent to the west end of the church. The brick will match that of the existing church building. This compound will accommodate T-Mobile equipment and possibly one additional carrier.

In addition to the normal equipment box, the applicant has also proposed to include a standby emergency generator. Standby emergency generators require site plan approval by the Planning Commission so it needs to be addressed as a part of this application. There are some concerns regarding standby generators; one is noise and the other is the source of fuel. The Johnson County Fire District is concerned about multiple installations of standby generators throughout the City and has recommended that they be directly connected to a natural gas line. T-Mobile is the first carrier to submit a request for a standby generator, other carriers have made inquiries. It would be preferable to have one generator at a location and not three. This would minimize the negative aspects of a standby generator and reduce the size of the equipment compounds. The applicant has indicated that they have concerns about liability, operation and management when multiple users are involved. Those issues are probably the same with the tower owner. It would seem reasonable that whoever owns the tower would also provide the standby generator for all carriers at the location and would limit their liability by contract.

Most of the applications in Prairie Village have either been the installation of antennae and their associated equipment cabinets on buildings or water towers. There are only two towers and they are located at City Hall and at the Fire Station at 90th and Roe Avenue. Towers are more controversial and create more neighborhood concerns. The Telecommunications Act of 1996 established some limitation when considering a wireless facility and the primary points are as follows:

- A city shall not discriminate among providers.
- A city shall not prohibit or have the effect of prohibiting the installation of wireless services.
- An applicant must be acted on within a reasonable period of time.
- A decision to deny an applicant for wireless communications must be in writing and supported by substantial evidence.
- The Federal Communications Commission regulates the environmental efforts of radio frequency emissions and a city cannot consider this issue as approving or denying an applicant.

The 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 Planning Commission discussed each of the nine factors that must be considered and made its findings as follows: reviewed the following findings of fact for the application:

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

The location of the tower appears to meet all the setback requirements of the regulations. The compounds for T-Mobile and other carriers must be 25' from the rear property line. The proposed tower is to be 85 feet in height, which is less than the 150 foot maximum height set out in the City's policy.

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

Marlene Nagel stated this is a typical Prairie Village neighborhood which Village Vision encourages preservation and investment. This is happening and she feels this proposal would have a detrimental effect on the welfare of the neighborhood. Mr. Kronblad agreed.

Nancy Vennard stated she can not say it "adversely affect the welfare or convenience of the public". The real estate reports from professional are contradictory in their findings. Ken Vaughn stated this finding does not relate to property value.

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 submitted a Proximity Analysis prepared by Integra Realty Resources which included four case studies. Integra found no meaningful difference in value between properties abutting and those not abutting a cell tower site. Those opposing the cell tower provided testimony that the tower would adversely affect the property values but did not provide any expert testimony to that issue. The opposition also pointed out that the tower would slow down and perhaps stop plans of nearby residents to remodel, enlarge or renovate the homes.

Mrs. Vennard stated with the conflicting real estate reports, she can not clearly say property values will be adversely affected. Marlene Nagel stated she feels approving this application would send a message to both current and prospective property owners that the city is not as concerned about maintaining the high quality of neighborhoods. This may not necessarily result in property values declining, but have a negative impact in terms of individuals reinvesting in properties, maintaining properties and seeing property values maintained. Randy Kronblad stated that's fairly well emphasized with the understanding that additional towers could certainly be proposed. He agrees with Mrs. Nagel regarding the message that would be sent to the residents of Prairie Village.

4. **The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it, are such that this special use will not dominate the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood, consideration shall be given to: (a) the location, size and nature of the height of building structures, walls and fences on the site; and (b) the nature and extent of landscaping and screening on the site.**

The Faith Evangelical Lutheran Church is on a site of approximately three acres. It also should be pointed out that the neighborhood is totally developed; the closest residence is approximately 130 feet away and therefore, not immediately adjacent to the installation itself. There is a significant amount of vegetation on the site that screens the facility from the south, but additional plant materials may need to be added as part of this application. The location and size have been changed which should make the location more acceptable to the neighborhood. The compound is now attached to the church building which helps to integrate it into the existing development.

Ken Vaughn stated he did not see how this particular structure would have an impact on somebody if they wanted to develop. It's a matter of whether or not it will inhibit their desire to do so. Mr. Kronblad agreed.

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 area may or may not have additional impervious surface and that a storm drainage master plan should be prepared and submitted to Public Works for their review and approval.

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

Existing church parking lot will be used for access will be more than adequate to handle the traffic generated by this use.

8. **Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing process, obnoxious odors, or unnecessary intrusive noises.**

The proposed tower and equipment installation will not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that will affect the general public.

9. **Architectural style and exterior materials are compatible with such style and materials used in the neighborhood in which the proposed structure is to be built or located.**

The architectural style and materials are typical of those used for utility type electrical poles and towers that are frequently found in urban neighborhoods. This tower will be a stealth pole which will have more of the appearance of a flagpole and no antennas will be visible from the exterior. The screening wall surrounding the equipment compound at the base of the tower will be brick and the brick will match the building on the site. Having the compound attached to the church will improve the appearance of the site and present a more compatible site plan.

Randy Kronblad stated the enclosure is certainly in character with the structure of the church at ground level, but he is disappointed that the tower could not be incorporated into the actual structure like St. Ann's.

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 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 and 9 are the most pertinent.

Marlene Nagel noted the Commission as a whole has determined this application does not meet finding #2, #3 and #9. She continues to have concerns with the poor location due to the topography of the site, the architecture of the structure in this residential areas; inability of this facility to truly accommodate co-location and its potential impact for future applications.

Randy Kronblad stated his primary concern is the inability for co-location. There is the possibility, but it is not practical based on information received; therefore, the Commission would be approving the installation of a single tower for a single carrier.

Marlene Nagel moved the Planning Commission recommend denial of the Special Use Permit to the City Council. The motion was seconded by Randy Kronblad and passed by a unanimous vote.

Options:

In making its decision, The City Council must make findings of fact based on the nine factors. It can adopt the findings of the Planning Commission or make its own findings of fact. The City Council shall make its findings of fact and either:

- A. Adopt the recommendation of the Planning Commission and deny the Special Use Permit based on the findings of fact of the Planning Commission, or
- B. Override the recommendation of the Planning Commission by a 2/3 vote of the Governing Body (9 votes), or
- C. 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 consider the City Council's statement.
- D. Continue the item to a designated meeting by a simple majority.

ATTACHMENTS

Planning Commission Minutes - July 1, 2008

PC2008-05 Staff Report

Application & Preliminary Plans

(Note the entire file is available for review from the City Clerk)

PREPARED BY

Ron Williamson

City Planning Consultant

Date: July 14, 2008

**Exhibit D: Excerpts from the July 21, 2008 Council Committee of the
Whole Meeting for Case No: PC2008-05/ COU2008-49**

(EXHIBIT A)
COUNCIL COMMITTEE OF THE WHOLE
July 21, 2008

The Council Committee of the Whole met on Monday, July 21, 2008 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, Laura Wassmer, Charles Clark, David Morrison and David Belz. Staff members present: Quinn Bennion, City Administrator; Wes Jordan, Chief of Police; Bob Pryzby, Director of Public Works; Karen Kindle, Finance Director; Dennis Enslinger, Assistant to the City Administrator; Steve Horner, Assistant City Attorney; and Joyce Hagen Mundy, City Clerk.

COU2008-49 Consider Special Use Permit for Communications Tower at 4805 W 67th St

Ron Williamson stated at the June 2, 2008 City Council meeting, the applicant withdrew its application for the 120' high cell tower and stated that they would refile an application for a shorter tower. An application was refilled with the Planning Commission and a public hearing held for an 85' high monopole. The proposed tower has four antenna locations, 80', 70', 60' and 50'. T-Mobile will use the top two locations. T-Mobile has had the trees surveyed in the area and they are 47'-67' in height. This means that the bottom two locations on the monopole have little if any coverage for additional carriers. The consequences of this are that if other carriers need to provide service in this area more towers will need to be constructed. This raises the issue of fewer taller towers versus more shorter towers. The equipment compound and tower have been relocated adjacent to the west end of the church and the compound also includes an equipment area for an additional carrier.

The Planning Commission identified four major issues with the previous application. They were as follows:

- Co-location with other providers had not been adequately addressed.
- The 120' height was a major objection of the neighbors.
- The availability of the alternative locations was not recently confirmed and propagation maps needed to be provided for potential locations.
- The monopole equipment compound needed to be integrated into the existing church building rather than being an island location in the parking lot. (Some thought the tower should actually be integrated into the building such as a steeple or bell tower.)

With the exception of co-location, these issues have been addressed by the applicant as a part of this application.

T-Mobile is requesting a Special Use Permit to construct a telecommunications tower and install supporting equipment cabinets at 4805 West 67th Street. The tower is proposed to be 85 feet in height with a 4-foot lightning rod on top. The tower is proposed to be a stealth pole with the antennae mounted inside the pole. The tower is designed to accommodate two carriers but because of the tree heights, T-Mobile will probably be the only user. The proposed equipment compound will be 28' x 30'

surrounded by an eight-foot tall brick screening wall which has been relocated adjacent to the west end of the church. The brick will match that of the existing church building. This compound will accommodate T-Mobile equipment and possibly one additional carrier.

Mr. Williamson stated most of the applications in Prairie Village have either been the installation of antennae and their associated equipment cabinets on buildings or water towers. There are only two towers and they are located at City Hall and at the Fire Station at 90th and Roe Avenue. Towers are more controversial and create more neighborhood concerns. The Telecommunications Act of 1996 established some limitation when considering a wireless facility and the primary points are as follows:

- A city shall not discriminate among providers.
- A city shall not prohibit or have the effect of prohibiting the installation of wireless services.
- An applicant must be acted on within a reasonable period of time.
- A decision to deny an applicant for wireless communications must be in writing and supported by substantial evidence.
- The Federal Communications Commission regulates the environmental efforts of radio frequency emissions and a city cannot consider this issue as approving or denying an applicant.

The 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 Planning Commission discussed each of the nine factors that must be considered and made its findings as follows:

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

The location of the tower appears to meet all the setback requirements of the regulations. The compounds for T-Mobile and other carriers must be 25' from the rear property line. The proposed tower is to be 85 feet in height, which is less than the 150 foot maximum height set out in the City's policy.

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

Marlene Nagel stated this is a typical Prairie Village neighborhood which Village Vision encourages preservation and investment. This is happening and she feels this proposal would have a detrimental effect on the welfare of the neighborhood. Mr. Kronblad agreed.

Nancy Vennard stated she can not say it "adversely affect the welfare or convenience of the public". The real estate reports from professional are contradictory in their findings. Ken Vaughn stated this finding does not relate to property value.

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 submitted a Proximity Analysis prepared by Integra Realty Resources which included four case studies. Integra found no meaningful difference in value between properties abutting and those not abutting a cell tower site. Those opposing the cell tower provided testimony that the tower would adversely affect the property values but did not provide any expert testimony to that issue. The opposition also pointed out that the tower would slow down and perhaps stop plans of nearby residents to remodel, enlarge or renovate the homes.

Mrs. Vennard stated with the conflicting real estate reports, she can not clearly say property values will be adversely affected. Marlene Nagel stated she feels approving this application would send a message to both current and prospective property owners that the city is not as concerned about maintaining the high quality of neighborhoods. This may not necessarily result in property values declining, but have a negative impact in terms of individuals reinvesting in properties, maintaining properties and seeing property values maintained. Randy Kronblad stated that's fairly well emphasized with the understanding that additional towers could certainly be proposed. He agrees with Mrs. Nagel regarding the message that would be sent to the residents of Prairie Village.

4. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it, are such that this special use will not dominate the immediate neighborhood so as to hinder development and use of neighboring property in accordance with the applicable zoning district regulations. In determining whether the special use will so dominate the immediate neighborhood, consideration shall be given to: (a) the location, size and nature of the height of building structures, walls and fences on the site; and (b) the nature and extent of landscaping and screening on the site.

The Faith Evangelical Lutheran Church is on a site of approximately three acres. It also should be pointed out that the neighborhood is totally developed; the closest residence is approximately 130 feet away and therefore, not immediately adjacent to the installation itself. There is a significant amount of vegetation on the site that screens the facility from the south, but additional plant materials may need to be added as part of this application. The location and size have been changed which should make the location more acceptable to the neighborhood. The compound is now attached to the church building which helps to integrate it into the existing development.

Ken Vaughn stated he did not see how this particular structure would have an impact on somebody if they wanted to develop. It's a matter of whether or not it will inhibit their desire to do so. Mr. Kronblad agreed.

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 area may or may not have additional impervious surface and that a storm drainage master plan should be prepared and submitted to Public Works for their review and approval.

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

Existing church parking lot will be used for access will be more than adequate to handle the traffic generated by this use.

8. Adjoining properties and the general public shall be adequately protected from any hazardous or toxic materials, hazardous manufacturing process, obnoxious odors, or unnecessary intrusive noises.

The proposed tower and equipment installation will not have any hazardous or toxic materials, obnoxious odors, or intrusive noises that will affect the general public.

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

The architectural style and materials are typical of those used for utility type electrical poles and towers that are frequently found in urban neighborhoods. This tower will be a stealth pole which will have more of the appearance of a flagpole and no antennas will be visible from the exterior. The screening wall surrounding the equipment compound at the base of the tower will be brick and the brick will match the building on the site. Having the compound attached to the church will improve the appearance of the site and present a more compatible site plan.

Randy Kronblad stated the enclosure is certainly in character with the structure of the church at ground level, but he is disappointed that the tower could not be incorporated into the actual structure like St. Ann's.

Mr. Williamson noted 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 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 and 9 are the most pertinent.

Marlene Nagel noted the Commission as a whole has determined this application does not meet finding #2, #3 and #9. She continues to have concerns with the poor location

due to the topography of the site, the architecture of the structure in this residential areas; inability of this facility to truly accommodate co-location and its potential impact for future applications.

Randy Kronblad stated his primary concern is the inability for co-location. There is the possibility, but it is not practical based on information received; therefore, the Commission would be approving the installation of a single tower for a single carrier.

Marlene Nagel moved the Planning Commission recommend denial of the Special Use Permit to the City Council. The motion was seconded by Randy Kronblad and passed by a unanimous vote.

Mr. Williamson stated in making its decision, The City Council must make findings of fact based on the nine factors. It can adopt the findings of the Planning Commission or make its own findings of fact. The City Council shall make its findings of fact and either:

- Adopt the recommendation of the Planning Commission and deny the Special Use Permit based on the findings of fact of the Planning Commission, or
- Override the recommendation of the Planning Commission by a 2/3 vote of the Governing Body (9 votes), or
- 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 consider the City Council's statement.
- Continue the item to a designated meeting by a simple majority.

Scott Beeler, 10851 Mastin, attorney representing Selective Site Consultants and T-Mobile. Mr. Beeler noted for both the previous application for a 120' tower and the application before the Council this evening had the full support of staff. The earlier application was withdrawn after the initial publication and hearing the concerns of the residents and the Planning Commission. As Mr. Williamson noted there were four primary concerns expressed at that meeting. The Planning Commission felt the 120' height was an issue because of the residential character of the neighborhood. During that hearing Mr. Beeler advised the Commission the proposed height was necessary to provide the city's desired co-location and that reducing the height would reduce the options for co-location. However, T-Mobile lowered the height of the proposed tower by 35 feet to 85 feet in an area with tree height of 67 feet.

The second concern given was the closeness to the residential property lines. T-Mobile asked the church (property owner) if they could move the tower and equipment compound closer to the church, construct the compound with bricks similar to those used on the church and paint the tower. The church board reluctantly agreed and the requested changes were made. By moving the tower there is no property within 100' of the tower.

In response to questions as to whether all other options for locations had been investigated, Selective Site Consultant representatives re-visited all previous site locations and re-verified no other locations were available.

Mr. Beeler stated he had presented to the Planning Commission written statements of support from clients residing within this area. He noted they also had unsolicited individuals speak in support of their application at the hearing. T-Mobile is making this request because their service is not appropriate for in-house coverage. T-Mobile has not claimed to not have coverage, but has documented areas where there are coverage gaps and difficulties. He noted many homes no longer have land lines requiring in house coverage. He also referenced the important role cell phones place in emergency communications with more than 40% of the 911 calls throughout the country being placed through cell phones.

Mr. Beeler repeated the application has the approval of the city's professional staff and has addressed the concerns raised by the Commission and neighbors.

Al Herrera when they communicated with Nall Avenue Baptist Church. Cheri Edwards with Selective Site Consultants stated she spoke with the pastor the first of June regarding the construction of a bell tower or cell tower and were unable to come to an agreement. Mr. Herrera asked about the fire station.

They received a call from the New Fire Chief expressing an interest and met with them on July 17th. This is a preferred location to the Village Presbyterian site, which is now also available and which they have been considering for a separate application. He said T-Mobile no longer considers the fire station or the Village Presbyterian site in the same ring as the proposed site.

Laura Wassmer asked what impact this would have on the area covered by the current application. Mr. Beeler stated a 120' tower at the fire station location would increase coverage but he did not think it would take the place of the proposed site. In response to Dale Beckerman's question, Mr. Beeler said they would need to run the simulations but that he thought a 120' tower at the fire station would probably not supplant the need for the proposed tower at Faith Lutheran. Ms. Wasserman asked if the tower could be higher, such as 150'. Mr. Beeler responded he could not respond but noted there are 150' towers with co-location.

Ron Williamson confirmed the maps submitted reflect coverage with an 85' tower.

Casey Housley, 4900 West 68th Street, stated the proposed tower is an eight and a half foot structure and is not in character with the surrounding area. It is adjacent to residential properties. The structure may be 100' from neighboring homes, but not from neighboring property lines. Mr. Housley stated that topographically this is a poor location. The property has one of the lowest elevations in the area.

Although safety concerns were raised by the inability to place and receive calls, Mr. Housley stated their has been no evidence presented of dropped 911 calls. In response to the letters of support, many of those individuals, when contacted by residents and

given specific information on the proposed tower, signed their petition opposing the tower. They submitted to the Planning Commission evidence from a professional appraiser that the construction of the tower will have a detrimental affect on property values. Mr. Housley noted the Planning Commission has unanimously voted to deny both applications. Mr. Housley suggested T-Mobile's needs might be resolved with the fire station location.

Mary Cordill, 4904 West 68th Street, noted at earlier meetings with the applicant residents were explicitly shown the ring and the possible other sites, and told if other sites were available this location would not be necessary. Now they are being told the rings have changed and even with other locations now available at Village Presbyterian and the fire station, the tower is still needed. She asked why their story is changing. She is concerned that the 85' tower does not allow for co-location which increases the probability for more and larger equipment compounds and other towers.

Kate Faerber, 4806 West 68th Street, stated the FCC allows local governments to make decisions on towers. Mrs. Faerber stated the proposed tower is 80' from her west property line and 83' from her south property line.

Harold Neptune, 4722 West 68th Street, distributed a photograph of the location of the 85' tower in relation to the trees noting the tower will be several feet taller than the tallest tree. He expressed frustration with the number of meetings he has had to attend to protect his property from this negative impact.

Ryan Reid, 4905 West 67th Street, five houses from the church property stated this is a family orientated neighborhood. The proposed application does not fit. He noted this is Prairie Village, not Leawood, Overland Park or Mission.

Randy Cordill, 4904 West 68th Street, stated when the tower was proposed at 120 feet the resident went through the neighborhood and would able to get 300 signatures within a four block radius of the site opposed to the tower. The proposed tower is designed to cover an area west of Nall, yet the location they have chosen will not allow the tower to even reach above the crest of the hill to the west. He contents the area to the north and east would be served by a tower located at the fire station. Mr. Cordill stated residents choose to live in Prairie Village because of the aesthetics of the community and part of that is the multitude of mature trees. He noted the FCC regulations do not guarantee a level of service that provides in-house coverage.

Bill Flora, 4908 West 68th Street, stated he is adamantly opposed to application and was confident that if the community was polled it would clearly reflect opposition to this project. This is not a necessity; it is something T-Mobile wants. He asked the Council to deny the application and then move forward with a moratorium to draft a stronger ordinance relative to towers in residential locations.

Kate Faerber noted that many of the residents present this evening will not be able to be in attendance on August 4th because of previous commitments.

Scott Beeler responded to the comments that the site is a poor location. He reviewed for an application to be made three factors all have to be present—the site was be available, acceptable and agreeable. This site is available, the property owner is agreeable to the location and the engineers' studies reflect that the site is acceptable to provide coverage where it is needed.

Mr. Beeler noted six of the nine conditions for a special use permit have been met without question. He stated he has never seen an eight and a half story structure that has a base of 42" and 28" at the top. This tower will essentially be invisible after a period of time to the general public. They submitted to the Planning Commission an independent study conducted the Integra Realty Resources that determined there is no significant or measurable impact on the market value of single family residential lots or residences as a result of proximity to cell tower sites. They believe the concerns with architectural style have been addressed by the relocation and brick exterior on the equipment compound. The nearest surrounding structures are 128' to the north, 327' to the east, 101'6" to the south (85' further than the original application) and 83.6' to the west property line.

Mr. Beeler stated the Governing Body must judge this application on the evidence submitted, not on the emotions of the neighborhood.

Mayor Shaffer closed the public comment period at 7:00 p.m.

Laura Wassmer asked to see a picture taken from the new location. Mr. Beeler identified the picture submitted reflecting the new location taken from 67th Street looking south.

Al Herrera stated more than 300 people signed a petition opposing this application. He also expressed concerns about the topography. He feels this application should be placed on hold and T-Mobile continue its search. Mr. Beeler responded the 300 signatures were in response to the 120' tower at a different location. They have presented evidence that this site will work to provide the coverage needed and have documented and re-documented that other sites are not available.

Michael Kelly asked for clarification of the propagation maps. He feels that if the City is to approve this application more areas of coverage should be provided to Prairie Village residents so multiple towers are not required.

David Morrison asked how the design was determined and asked about alternative methods to mask or camouflage the tower. Mr. Beeler responded that they believe this design will have the least impact on the property. A bell tower design requires a base of 25 feet. Tree designs are much larger than poles. This is the best option for this property and the design approved by the property owner.

Laura Wassmer stated she does not want five or six more towers. She noted she has a land line because she does not have in-house coverage. She is frustrated that this application will not allow for co-location and would rather have that option available. She would rather see one tower at the fire station for multiple providers.

Dale Beckerman asked what the practical essentials for co-location on this site are. Mr. Beeler responded he does not have that information, but early research indicates only one carrier. He will confirm that with T-Mobile's engineers. Mr. Beckerman also asked that he find out what coverage could be reached by a tower location at the fire station.

David Belz noted he does not want to see this application continued; however, he would like to have the answers to Mr. Beckerman's questions.

Ron Williamson advised the Council that in considering the application they can not raise the height of the tower that would require a new application to be filed. Mr. Wang confirmed that T-Mobile could come back with another application.

Michael Kelly stated Mr. Belz had valid questions, but they were out of the realm of this application.

Ruth Hopkins moved to continue this application. The motion died for the lack of a second.

Laura Wassmer moved to take action on this application at the City Council meeting this evening. The motion was seconded by Michael Kelly and passed. Mayor Shaffer stated this item will be added to the Council agenda.

COU2008-55 First Reading of Everest Midwest Franchise

Quinn Bennion stated Everest Midwest d/b/a SureWest has applied for a telecommunication franchise to begin providing services within Prairie Village. They plan to provide internet, phone and cable services in Prairie Village and utilize the right of way. Everest plans to begin the construction in fall of 2008 encompassing approximately 2000 homes. Unlike Everest's current facilities in surrounding cities, Everest plans to construct a fiber network to the homes.

In addition to the city's franchise ordinance, Everest plans to obtain a state video services provider from the Kansas Communications Commission. As per state statute, cities have no negotiation authority associated with the video service provider and are limited to simply notifying the provider of the expectation that fees will be remitted and the right-of-way regulations. The video service provider right-of-way agreement will be provided at the August 4th meeting.

Mr. Bennion stated as with other providers, Everest will remit 5% of gross receipts for local exchange (telephone) services and video services. Mr. Bennion noted Ken Johnson, Chief Technology Officer with Everest and Assistant City Attorney Stephen Horner were in attendance to answer any questions.

Ruth Hopkins stated she has received more complaints from residents that they were unable to get service from Everest over the past few years. She and the residents of Prairie Village welcome them into the City.

**Exhibit E: Excerpts from the July 21, 2008 City Council Meeting for
Case No: PC2008-05/ COU2008-49**

Randy Kronblad addressed the Council as chairman of the Arts Council to ask the Council to consider taking action to allow for wine to be served at the 2nd annual State of the Arts exhibit this fall. The wine would be served and allowed only on the outdoor patio area of the municipal offices. Mr. Kronblad noted this is done by several other cities at their art exhibit openings.

Mayor Shaffer directed staff to investigate what is done in other cities and what action can be taken to address this request and present it to the City Council at the August 4th Council meeting.

CONSENT AGENDA

David Voysey moved the approval of the Consent Agenda for Monday, July 21, 2008:

1. Approve Regular Council Meeting Minutes - July 7, 2008
2. Approve Claims Ordinance 2649
3. Approve School Resource Officer Agreement with the Shawnee Mission School District for the 2008-2009 school year
4. Exempt the following Homes Associations from City provided Solid Waste Collection Services for 2009: Countryside East Homes Association; Normandy Square Homes Association and Town & Country Homes Association
5. Authorization to publish public hearing on 2009 budget
6. Adoption of Ordinance 2169 renumbering and reorganizing certain sections of the Prairie Village Municipal Code
7. Approve the contract with Barry Strock Consulting Associates, Inc. for consulting services related to the City's RFP for Financial/Budget Software

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

Mayor Shaffer announced a change in the agenda to continue the consideration of the special use permit for a communications tower at 67th & Roe from the earlier Council Committee of the Whole meeting. All of the comments made at the Council Committee of the Whole are hereby incorporated into these records.

Scott Beeler, 10851 Mastin, Overland Park, attorney for T-Mobile, expressed concern with this application being brought forward at this meeting, noting he and others had been told action would not be taken until August 4th.

Mr. Beeler stated he would be able to provide answers to the questions raised at the earlier meeting regarding the impact of a possible tower at the Fire District Property on August 4th and the impact if the tower were to be higher than 120 feet. He felt that some Council members indicated they would like to have those questions answered prior to taking action.

Charles Clark asked Stephen Horner if it would be appropriate to take action this evening. Mr. Horner responded the only public notice required is for the public hearing before the Planning Commission, so there is no legal issue with notice. Whether there are people planning to attend and speak on this issue on August 4th is not known. In response to the concerns raised that if a tower was constructed on this site others would also have to be approved, Mr. Horner did not feel that was accurate. He noted that in an approval of the application the Council could require that if another tower were to locate at this site or a nearby site, T-Mobile could be required to co-locate on that tower and remove their structure.

Mr. Horner also advised the Council the issues of co-location have been addressed by other cities by requiring the tower to be constructed so that it could be expanded in height at a later date, if needed. This could also be placed as a condition of approval. Mr. Beeler noted the foundation for such a tower would be significantly larger.

Laura Wassmer stated that she moved forward this issue to a vote for the benefit of those present who noted they had already attended several meetings. Ruth Hopkins stated that if it has been announced that action would take place on August 4th, it should not be taken this evening.

Andrew Wang stated his concerns have been addressed by staff. He noted others could come on the 4th, but he does not feel it will change anything. David Belz stated in theory he agrees with Mrs. Hopkins, but feels Mr. Wang is correct in his analysis.

Casey Housely, 4900 West 68th Street, does not feel there would be any prejudice in taking action this evening and asked that comments and information submitted to the Planning Commission earlier be incorporated into the record. He noted there was no interest by other carriers with an 85' tower and no one was present to speak in support of the application.

Kate Faerber, 4806 West 68th Street, stated Prairie Village is like a large homes association with people choosing to live here because of the neighborhoods. Residents take pride in maintaining and improving their properties. The proposed tower is an objectionable use of property adjacent to residential homes. At both of the neighborhood meetings, residents told the applicant they would not have any objection to the tower if it was incorporated into the building or a bell tower, but the applicant has not done that.

Mary Cordill, 4904 West 68th Street, presented to the City Clerk petitions signed by 69 neighborhood residents within the last two weeks opposing this application. She feels there has been ample opportunity for T-Mobile to present information.

Amy Culp, 5100 West 68th Street, noted the cell tower is one block from the eastern boundary of Overland Park and will service primarily the area to the west, which is part of Overland Park, not Prairie Village.

Steve Horner noted the Planning Commission records are already part of the official record. Charles Clark moved to incorporate by reference the discussion from the July 21st Council Committee of the Whole meeting as part of the official record. The motion was seconded by Laura Wassmer and passed unanimously.

Scott Beeler noted historically hearings before governing bodies are dominated by people opposing an application. He noted he has submitted several written documents in support of this application both to the Planning Commission and at the meeting this evening. Mr. Beeler stated this application is an example of an effective compromise and stated if the Council still has concerns or questions, he asks that this be continued to allow him the opportunity to get the answers previously requested.

Ruth Hopkins feels it is wrong to deny Prairie Village residents the technology provided by the tower. She feels this is truly a "not in my backyard" reaction and that the Special Use Permit should be approved. Mr. Herrera stated if Mrs. Hopkins wants it, put it in her backyard. Mrs. Hopkins noted the proposed tower is not as unattractive as it has been presented. Mr. Herrera responded the applicant should place the tower in Mrs. Hopkins backyard.

Andrew Wang stated he agrees with Mrs. Hopkins; however, he feels the city's policy on co-location needs to be upheld. He can not support this application without co-location.

David Belz agreed with Mrs. Hopkins. He is confident that an 85' stealth tower, over a period of time will become part of the landscape. However, he does not like towers that do not allow for co-location and would ask that it be built to allow for the height to be increased.

Al Herrera stated this is not about towers in all of Prairie Village. It is about aesthetics. If this could be enclosed so it would not be intrusive to the neighborhood, there would not be any objection and he would support it. However, he said it must blend in. It is not an opposition to towers, but to towers that do not blend with the surrounding community.

David Voysey believes the tower would not be noticed after a period of time, nor will its construction lower property values; however, he does not feel this is the right

location. He noted the combination of the low elevation and the tall trees. He is bothered by the possibility that if a tower is constructed at the fire station, this one may not be necessary. He said first the City was told that this location would not be an issue if T-Mobile could use the fire station, but tonight when it is available they are now being told that is not enough. He thinks there are better locations available than the proposed site. He does not feel it is the Council's place to disagree with the recommendation of the Planning Commission.

Charles Clark confirmed it would require a two-thirds vote of the Governing Body to override the recommendation of the Planning Commission and a majority vote to accept the recommendation, to return it to the Planning Commission, or to continue.

Stephen Horner noted if the Council votes to deny the special use permit, a written statement documenting the substantial evidence on which the denial was based must be created and asked Council to include direction for staff to prepare this documentation in their motion.

Dale Beckerman stated with two Council members absent, and a requirement of a two-thirds vote to override the recommendation, he does not feel it is fair to the applicant to take action and moved to table action to the August 4th City Council meeting. The motion was seconded by Charles Clark. The motion was defeated by a vote of 3 to 7.

Michael Kelly moved the Governing Body adopt the recommendation of the Planning Commission and deny the Special Use Permit for a wireless communication tower and equipment compound at 4805 West 67th Street. The motion was seconded by David Morrison. Mr. Williamson noted the Council could adopt the findings of the Commission or make their own findings. The motion was voted on and passed by a vote of 7 to 3 with Belz, Beckerman, & Hopkins voting "nay".

RESOLUTION 2008-05

A RESOLUTION ADOPTING A WRITTEN RECORD OF DENIAL AS THE BASIS FOR DENIAL OF SPECIAL USE PERMIT APPLICATION NO. PC2008-05/COU2008-49 IN ACCORDANCE WITH THE TELECOMMUNICATIONS ACT OF 1996.

WHEREAS, the Governing Body adopted the recommendation of the Planning Commission to deny the Special Use Permit for a wireless communication tower and equipment compound at 4805 West 67th Street on a vote of 7 to 3; and

WHEREAS, the Governing Body directed staff, on a vote of 8 to 2, to draft a written summary of the basis for the decision to deny the application for a wireless communication facility at Faith Evangelical Church (4805 West 67th Street).

NOW, THEREFORE, BE IT RESOLVED, the Governing Body hereby adopts the attached written denial as the basis for its denial of Special Use Permit Application No. PC2008-05 in accordance with the Telecommunications Act of 1996

ADOPTED AND PASSED BY THE GOVERNING BODY OF THE CITY OF PRAIRIE VILLAGE, KANSAS, THIS ____ DAY OF _____, 2008.

By: _____
Ronald L. Shaffer, Mayor

ATTEST:

Joyce Hagen Mundy, City Clerk

ORDINANCE NO. _____

AN ORDINANCE DECLARING A MORATORIUM ON APPLICATIONS FOR A SPECIAL USE PERMIT RELATED TO WIRELESS COMMUNICATIONS TOWERS AND ANTENNAS CONSTRUCTED OR INSTALLED FOR USE BY COMMERCIAL CARRIERS.

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

SECTION 1. The City Council has directed the Planning Commission and city staff to evaluate and make recommendations on the current ordinance and policy provisions related to wireless communications towers and antennas:

SECTION 2 Under its police powers to promote the health, safety and welfare of the community, the City desires to impose a reasonable moratorium, or brief suspension of action on applications for special use permits for wireless communications towers and antennas to allow time for the City to review, consider, and adopt new ordinance or policy provisions related to the issuance of special use permits:

SECTION 3. A moratorium is hereby declared on the submission and review of special use permits for wireless communications towers and antennas within the City for a period of five months from the effective date of this Ordinance, provided however, that the City Council may rescind the moratorium at an earlier date if it determines that such action is reasonable and appropriate, or required by law:

SECTION 4. 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 August, 2008

Ronald L. Shaffer, Mayor

ATTEST:

APPROVED AS TO FORM:

Joyce Hagen Mundy, City Clerk

Catherine Logan, City Attorney

MAYOR'S ANNOUNCEMENTS

Monday, August 4, 2008

Committee meetings scheduled for the next two weeks include:

Planning Commission	08/05/2008	7:00 p.m.
Sister City Committee	08/11/2008	7:00 p.m.
Park & Recreation Committee	08/13/2008	7:00 p.m.
Council Committee of the Whole	08/18/2008	6:00 p.m.
City Council	08/18/2008	7:30 p.m.

=====

The Prairie Village Arts Council is pleased to announce an exhibit of Botanical Art by Venus Auxier during the month of August. The artist reception will be held from 6:30 - 7:30 p.m. on August 8, 2008.

Please RSVP to Jeanne Koontz by August 15th if you plan to attend the employee's appreciation event at the Royals game.

Reduced hours for the Prairie Village Pool begin on August 11th. The pool will open at 4:30 p.m. on weekdays. The pool closes for the season on September 1st at 6:00 p.m.

The City offices will be closed in observance of Labor Day on September 1st. Deffenbaugh also observes this holiday and trash pick-up will be delayed one day.

Prairie Village Gift Cards are on sale at the Municipal Building. This is a great way to encourage others to "Shop Prairie Village."

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

INFORMATIONAL ITEMS
August 4, 2008

1. Planning Commission Agenda - August 5, 2008
2. Board of Zoning Appeals Agenda - August 5, 2008
3. Finance Committee Minutes - July 17, 2008
4. Environmental Committee Minutes - July 23, 2008
5. Sister City Committee Minutes - July 14, 2008
6. Mark Your Calendars
7. Committee Agenda

**PLANNING COMMISSION AGENDA
CITY OF PRAIRIE VILLAGE
MUNICIPAL BUILDING - 7700 MISSION ROAD
TUESDAY, AUGUST 5, 2008
Council Chambers
7:00 P. M.**

I. ROLL CALL

II. APPROVAL OF PC MINUTES - July 1, 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**

**PC2008-07 Request for Conditional Use Permit for
Temporary Use for a Art Gallery in a Commercial
Office Building - 3500 West 75th Street
Zoning: C-0
Applicant: Thaddeus Smith**

**PC2008-08 Request for Amendment to Special Use Permit
For the operation of a private school
4801 West 79th Street
Zoned: R-1a
Applicant: E. Allen Chugg for Kansas City Christian School**

IV. NON-PUBLIC HEARINGS

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

**PC2008-108 Building Line Modification from platted Front Setback of 9'7"
4306 West 89th Street
Zoning: R-1a
Applicant: Nicki Morrissey**

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.**

**BOARD OF ZONING APPEALS
CITY OF PRAIRIE VILLAGE, KANSAS
AGENDA
TUESDAY, AUGUST 5, 2008
6:30 P.M.
Council Chambers**

- I. ROLL CALL
- II. APPROVAL OF MINUTES - July 1, 2008
- III. ACTION ITEM
 - BZA2008-04 Request for a Variance from P.V.M.C. 19.50.030 to allow the installation of solar panels on the dormer's roof and extending above the roof line located at
9029 Rosewood Drive
Zoning : R-1a Single Family Residential
Applicant: Al & Carol Pugsley
- IV. NEW BUSINESS
- V. OLD BUSINESS
- VI. ADJOURNMENT

Council members may be present at this meeting

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

FINANCE COMMITTEE

July 17, 2008

The Finance Committee met on July 17, 2008. Present: Chairman David Voysey, Charles Clark, Dale Beckerman, Bill Griffith and Wayne Vennard. Staff Present: Quinn Bennion, Bob Pryzby and Karen Kindle.

Governmental Accounting Standards Board (GASB) Statement 45 "Other Postemployment Benefits"

- Mr. Mike Ehmke, actuary with SilverStone Group, presented the City's GASB 45 actuarial valuation report as of January 1, 2008.
- Mr. Ehmke provided some background information about GASB 45.
 - GASB 45 requires the City to account for postemployment benefits, such as healthcare, on the accrual basis like pension plans. Employees earn these benefits over the course of their career so the cost for these benefits should be charged to the period in which they are earned. GASB 45 does not require the City to set up a trust to pre-fund these benefits, like is done with pension plans. GASB 45 just changes the way the City is required to account for these benefits in its financial statements.
 - GASB 45 is applicable to the City because of KSA 12-5040 which requires the City to make its group health plan available to retirees. The plan includes health insurance, dental insurance and vision insurance.
 - GASB 45 requires the City to have an actuarial valuation of the plan every other year.
 - The City requires that the retirees pay 100% of the premium. KSA 12-5040 does allow the City to charge retirees up to 125% of the premium for active employees.
- Mr. Ehmke reviewed the assumptions used in the valuation.
 - The assumptions were determined through discussions with staff and by using assumptions established for the City's retirement plans.
 - The assumption with the greatest impact on the results is the discount rate. Mr. Ehmke prepared two options for the report. One option assumed the City would pre-fund the benefits, which would allow the City to utilize the same investments as the pension plans and earn a greater return. The other option assumed the City would not pre-fund the benefits and therefore would only be able to use the investments that are available for the General Fund.
 - Mr. Ehmke also reviewed the two amortization options displayed in the report.
- Mr. Ehmke reviewed the page that showed the numbers related to the interest rate and amortization method scenarios calculated for the report.
- Mr. Ehmke reviewed the two additional scenarios requested by staff after the report was issued.
- Based on Mr. Ehmke's presentation, there are three decisions that must be made by the Council.
 - Which amortization method should the City use in the valuation?
 - Should the City increase the premium that is paid by the retirees?
 - Should the City pre-fund the postemployment benefits in a trust allowed by KSA 12-16,102?
- Mrs. Kindle reviewed the number of employees currently participating and what the current premiums were.

FINANCE COMMITTEE
July 17, 2008

- The Committee discussed the issue of pre-funding the benefits.
 - The Committee discussed how other jurisdictions were handling this issue.
 - Of the neighboring cities in Johnson County, only Overland Park is pre-funding the benefits.
 - The Committee discussed how the bond market is looking at this issue. Since the City issues bonds infrequently, the Committee felt this was not a significant concern.
 - In addition, the Committee felt the issue is too new and that there might be changes to the law, etc., which could impact the City's liabilities in this area. The type of trust recognized by GASB 45 is an irrevocable trust. Once the trust is set up and money is deposited there, the City cannot get the money back.
- The Committee decided to recommend the following to the Council at their August 18, 2008 meeting:
 - Use the level dollar amortization method.
 - Grandfather the current retirees by keeping their premium rates at 100% of the active employee premium.
 - Require employees retiring on or after January 1, 2009 to pay 125% of the active employee premium as allowed by KSA 12-5040.
 - Not pre-fund the benefits.

Stormwater Utility

Mr. Pryzby gave the Committee a status update on the Stormwater Utility.

- Larkin has completed the calculations.
- Mr. Pryzby has completed his review of the information from Larkin.
- Mr. Pryzby reviewed the parameters used in the calculations.
 - Residential parcels: included the impervious area of the footprint of the house and driveway.
 - Non-residential parcels: included all impervious area (parking lot, sidewalks, building, etc.)
 - The fee is calculated by parcel since that is how the County keeps the tax records.
 - The County will add the fee to the tax bill and handle collection for the City. The City will receive the money in the property tax distributions throughout the year.
- Final statistics:
 - 9,645 parcels
 - 39 million square feet of impervious area
 - Fee per square foot of impervious area: 3.7¢
 - Minimum fee per parcel: \$11.00
 - Maximum fee per parcel: \$22,566.00
 - Average house: \$109.00
- Mr. Pryzby sent a letter to all parcels with a fee greater than \$500 letting them know their fee and how to contact Mr. Pryzby to discuss their fee.
 - Originally, staff had planned to hold group meetings; however, coordinating schedules proved to be difficult, so the offer of an individual meeting was extended instead.

FINANCE COMMITTEE July 17, 2008

- Mr. Pryzby noted that he had received 30-50 inquiries about the fee. So far he has responded to around a dozen. The questions varied, but most were from single family residences.
- Mr. Pryzby plans to put the list of parcels and their corresponding fee on the City's website. He will also include a link to the County's property system so that owners can look up their parcel ID numbers.
- Mr. Pryzby sought guidance on what to do with the parcels owned by the City. There are 18 parcels with a total fee of \$28,000.
 - Mr. Pryzby recommended the City pay the fee. The Committee agreed with that recommendation.
- Mr. Pryzby noted that the code will be in the July 21, 2008 Council meeting packet for the first reading.
 - The Committee asked how the code addresses credits for those who undertake stormwater mitigation projects, etc. Mr. Pryzby explained that the proposed code includes the wording that the Council may offer credits. He said that he would address the specific procedures, etc., in the policy that he will draft in the next couple of months.
 - Mr. Pryzby clarified that the focus is not only on the quantity of stormwater, but also on the quality. NPDES regulations are placing a greater emphasis on quality.
- The Committee asked if there would be an opportunity for the public to comment on the proposed Stormwater Utility and related fees. Mr. Pryzby and Mr. Bennion said that during the Council Meeting, time would be allotted for public comment on this issue.
- The Committee asked Mr. Pryzby about the process for updating the information in the future to reflect changes people make to their properties. Mr. Pryzby explained that the work could be done in house now that the master file has been completed by Larkin. The process involves overlaying the new aerials from the County (should be completed in 2008) and looking for parcels with changes.

Meadowbrook Update

- Mr. Bennion noted that the special Council Committee meeting to consider the zoning application is scheduled for July 28, 2008 and that public comment will be allowed at this meeting at the discretion on the Mayor.
- Mr. Bennion told the Committee that there has been no further action regarding a request for public financing from OPUS.

Audit RFP

- Mrs. Kindle noted that the current agreement with Lowenthal, Singleton, Webb & Wilson provides for four audits - fiscal years 2004, 2005, 2006 and 2007. Staff is seeking direction from the Committee on whether or not staff should conduct an RFP for audit services.
- Mrs. Kindle's recommendation was to continue the agreement for the 2008 audit with Lowenthal, Singleton, Webb & Wilson due to the implementation of GASB 45 and the new financial accounting system. The firm's service has been satisfactory and Mrs. Kindle feels that continuity of the auditor for these implementations is very important.
- The Committee agreed with Mrs. Kindle's recommendation.

FINANCE COMMITTEE
July 17, 2008

Banking Services RFP

- Mrs. Kindle informed the Committee that she plans to issue an RFP for banking services this fall.
- Mrs. Kindle noted some of the services she will include in the RFP - bank accounts, purchasing cards, merchant credit card services, etc. She also noted that she plans to include anti-fraud services that have become available in recent years, such as positive pay and ACH debit block.

The meeting was adjourned.

PRAIRIE VILLAGE ENVIRONMENTAL COMMITTEE
MINUTES July 23, 2008

Margaret Thomas, chair, called the meeting to order at 7:00 p.m. Attending were Margaret, Barbara Brown, Deborah English, Margaret Goldstein, Anne-Marie Hedge, Cheryl Landes, Don Landes, Penny Mahon, Karin McAdams, Linda Smith, Polly Swafford and Dennis Enslinger.

Events and information (cleverly disguising a call for volunteers):

- At Village Fest several people showed an interest in our committee. Anne-Marie Hedge offered to contact them and invite them to our August meeting.
- Thanks to Dennis and others responsible for getting a resolution passed in the city council, opening up the code to more flexibility in environmental matters. Deborah suggested that this might apply to permeable driveway paving, as we may eventually face more taxation for surfaces that contribute to runoff.
- Amy Gottlieb, daughter of Marilyn Koshland, is working in Africa on projects that include finding running shoes for local (in Malawi) runners. Margaret, Margaret and Karin volunteered to attend the next meeting to see if we can help.
- Bridging the Gap is trying to encourage more kids to walk to school, helping both the kids and air quality. The Walking School Bus program helps them walk together with supervision. Perhaps Steve Petrehn, Mayor of Roeland Park, could come to tell us more about this program. Note: Dennis mentioned that Prairie Village has applied for a federal grant to help with this effort, identifying obstacles and solutions.
- Barbara, Linda and Karin offered to attend the Johnson County Recycling Road Show on August 13 to learn more about the trail of trash and recyclables.

Reports:

- Village Fest: Those helping in the Bridging the Gap booth will advise them to use a briefer, catchier approach next time. Karin will write a short piece on line-drying for the Village Voice, to follow up on her display. If we start early, perhaps we can suggest a solution to offering drinking water that doesn't involve individual plastic bottles.
- Electronics Recycling is on October 25. We are still looking for volunteers, preferably high school age or older. Since they are needed from 8 a.m. to 4 p.m., four shifts are probably appropriate.
- Tote bags were suggested to be sold at next year's Village Fest, but the cost and competition could be a problem. We are not allowed to make a profit, although extra money can go into the municipal foundation. Dennis understands this.

New business:

- Sierra Club and KNRC have compiled a voters guide for the upcoming elections, focusing on Kansas. This could be very useful, but they need money for printing.
- ICLEI: Dennis reported that our committee never paid to join the organization, a \$600 fee. The committee voted unanimously to use \$600 from the electronics recycling budget for a 1-year membership.
- The committee is in agreement about canceling the 2009 Earth Fair and considering other priorities.
- On October 1 the Tree Board will have a seminar called Trees: the Green Impact on Cities.

- Barbara Kingsolver will speak at the Land Institute's Prairie Festival in September.

The meeting was adjourned at 8:20 p.m.

Respectfully submitted,

Karin McAdams, Secretary

SISTER CITY COMMITTEE
14 July, 2008
MINUTES

Call to Order

Chairperson Jim Hohensee called the meeting to order at 7.00pm. Members present: Cleo Simmonds, Carole Mosher, Michael Kelly, Bob McGowan, Dick Bills and Cindy Dwigans. Also present: Hildegard Knapp, Monika Simon and JoAnn Memming Staff: Chris Engel.

Approval of Minutes

Cleo pointed out that the sixth person coming as part of Open World will be the facilitator.

Mike moved for the approval of the minutes as corrected. Cleo seconded the motion which passed unanimously.

Welcome Potential New Members

Jim welcomed Monika Simon and JoAnn Memming to the meeting.

Dolyna

Cleo reported the Dolyna delegation had received their visas and would be getting their passports in the next week. He was working on learning what they would like to do or see when they are here.

Jim passed around the tentative schedule from last month's meeting. He's reworked it for the August 15 - 18 visit. Jim mentioned the Mayor has expressed interest in hosting a dinner on Sunday evening. Mike added the banquet would be at either the Raphael or Homestead and should be paid for by the City.

There was discussion over the Committee hosting a dinner with the delegation on the evening of their arrival depending on what that time ends up being.

Carole pointed out the Ethnic Festival is the same weekend as their visit so the Ukrainian Club could be busy and possibly unavailable. Cleo replied not everyone from the club would work the festival and what they were needed for the most would be to potentially sponsor a dinner or serve as translators.

Jim donated \$200 to the Municipal Foundation and Cleo donated \$300. Mike said the committees fundraising goal should be \$3,000. He is going to banks, the Arts Council and others in an effort to raise enough to cover at least lodging. He is also working on getting some meals donated. Additionally, he will be contacting senior living facilities, churches, and a Ford dealership for the donated use of a van.

Mike reported hotel accommodations had been made at the Raphael on the Plaza for a good deal with a Plaza view. In addition, the hotel would be flying the Ukrainian flag during the visit and wanted to host the banquet. Mike pointed out the Raphael was owned by Prairie Village residents.

Dick will be purchasing a Ukrainian flag to fly at City Hall and delivering it to Chris.

Cleo will be working on getting an official agreement drafted for production on computer in Cyrillic calligraphy. He will also be calling on the Ukrainian Club to ask if they will be available on the Tuesday of the visit.

There was discussion over gifts for them to bring home. Dick will speak with Jim Hamil about donating or reproducing some of his artwork as a gift. Cindy will try and locate some Kansas City coffee table books by Hallmark. Jim will contact the Kansas Sampler to inquire about donations.

There was discussion over creating a one page press release for the press. Jim said he will work on this. Jim will also work on contacting the Shawnee Mission School District offices to arrange a tour of SM East during the visit.

It was discussed that the Director of the Dolyna School for the Blind may want to visit the KCK School for the Blind. Bob will contact the KCK School to arrange a visit.

It was determined that an extra visit would be needed before the next regularly scheduled meeting. Mike moved for a special meeting to be scheduled on July 23rd in the Council Chambers. Dick seconded the motion and it passed unanimously.

Sister City Convention

Bob briefed everyone on the convention occurring in Kansas City this week. The Newry/Mourne delegation will be in KC and one, Michael Carr, will be visiting Prairie Village on Saturday with Bob, Cindy, Jim and Mayor.

Open World

The Open World group is visiting October 17 - 24. This committee is responsible for home-stays and some sort of curriculum.

Other Business

Cindy and Carole started a discussion about hosting a band concert on the front lawn of the Community Center. If nothing else, such an event would garner the Committee publicity. They both agreed to work on it for next summer.

Adjournment

The next meeting will be Wednesday, July 23rd at 7.00 pm in the Council Chambers. The meeting was adjourned at 8:50 p.m.

Jim Hohensee
Chair

**Council Members
Mark Your Calendars
August 4, 2008**

August 2008	Venus Auxier botanical art exhibit in the R. G. Endres Gallery
August 8	Artist exhibit in the R. G. Endres Gallery 6:30 to 7:30 p.m.
August 11	Prairie Village Pool goes to reduced hours
August 18	City Council Meeting
September 2008	Images Group Show mixed media exhibit in the R. G. Endres Gallery
September 1	City offices closed in observance of Labor Day
September 1	Prairie Village pool closes for the season at 6 p.m.
September 2 (Tues.)	City Council Meeting
September 5	Employee Appreciation Event - Royals Baseball Game - Kaufmann Stadium
September 12	Artist reception in the R. G. Endres Gallery 6:30 to 7:30 p.m.
September 15	City Council Meeting
September 23	Shawnee Mission Fall Breakfast at the Overland Park Convention Center
October 2008	State of the Arts exhibit in the R. G. Endres Gallery
October 6	City Council Meeting
October 10	Artist reception in the R. G. Endres Gallery 6:30 to 7:30 p.m.
October 11-14	League of Kansas Municipalities Conference in Wichita, KS
October 20	City Council Meeting
November 2008	Mid-America Pastel Society exhibit in the R. G. Endres Gallery
November 3	City Council Meeting
November 7	Artist reception in the R. G. Endres Gallery 6:00 to 8:00 p.m.
November 11-15	National League of Cities Conference, Orlando, FL
November 17	City Council Meeting
November 27	City offices closed in observance of Thanksgiving
November 28	City offices closed in observance of Thanksgiving
December 2008	Tom Wilson, Melanie Nolker & Wendy Taylor mixed media exhibit in the R. G. Endres Gallery 6:30 to 7:30 p.m.
December 1	City Council Meeting
December 5	Mayor's 2008 Holiday Party
December 12	Artist reception in the R. G. Endres Gallery 6:30 to 7:30 p.m.
December 15	City Council Meeting
December 25	City offices closed in observance of Christmas

COMMITTEE AGENDA

August 4, 2008

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

COU2006-27 Consider Project 190855: Tomahawk Road Bridge Replacement (assigned 8/28/2006)

COU2006-33 Consider Lease of Public Works from Highwoods Properties, Inc. (assigned 8/29/2006)

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)

COU2007-27 Consider Project 190864 - 2008 Paving Program (assigned 3/9/2007)

COU2007-33 Consider Project 190719: 2008 Storm Drainage Repair Program (assigned 4/11/2007)

COU2007-35 Consider reactivation of Project 190709: 83rd Street/Delmar Drainage Improvements

COU2007-40 Consider Code Enforcement - Interior Inspections (assigned 5/2/2007)

COU2007-49 Consider Project 190868: Roe - 91st to Somerset Drive (assigned 6/27/2007)

COU2007-62 Consider Project 190863: Parking at Shawnee Mission East (assigned 10/12/2007)

COU2007-74 Consider reactivation of Prairie Village Development Corporation (assigned 12/3/2007)

COU2008-01 Consider Project SP105: 2008 Crack Seal/Slurry Seal Program (assigned 12/31/2007)

COU2008-02 Consider Project SP107: 2008 Street Repair Program (assigned 12/31/2007)

COU2008-03 Consider Project 191022: 2008 Concrete Repair Program (assigned 12/31/2007)

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)

COU2008-25 Consider Project 190871: Mission Lane Bridge Replacement (assigned 2/27/2008)

COU2008-31 Consider Project 190721: 2008 Storm Drainage Repair Program Design Agreement (assigned 3/31/2008)

COU2008-36 Consider rezoning of 91st & Nall from R-1a (Single family residential) to MXD (Mixed Use District) (assigned 5/7/2008)

COU2008-57 Consider Revisions to Council Policy 046 - Reservation of City Facilities to allow for the serving of Cereal Malt Beverages (Wine and Beer) at Selective City Events (assigned 7/29/2008)

COU2008-58 Consider Project 190721: 2009 Storm Drainage Repair Program - Engineering Change Order #1

COU2008-59 Consider FY 2009 Solid Waste Management Fee and Solid Waste Exemption Fee (assigned 7/30/2008)

COU2008-60 Consider 2009 Stormwater Utility Fee (assigned 7/30/2008)

COU2008-61 Consider 2009 Fee Schedule (assigned 7/30/2008)

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)