Added communications for the following items:
Item 1 - CUP for Cell Tower at 2138 N 1000 Rd
Item 2 - Site Plan for 1930 Airport Rd

6/26/17 @ 11:30am

GENERAL BUSINESS:
ELECTION OF OFFICERS FOR 2017-2018
Accept nominations for and elect Chair and Vice-Chair for the coming year.

PLANNING COMMISSION ACTION SUMMARY
Receive and amend or approve the action summary (minutes) from the Planning Commission meeting of May 24, 2017.

COMMITTEE REPORTS
Receive reports from any committees that met over the past month.

COMMUNICATIONS
a) Receive written communications from the public.
b) Receive written communications from staff, Planning Commissioners, or other commissioners.
c) Receive written action of any waiver requests/determinations made by the City Engineer.
d) Disclosure of ex parte communications.
e) Declaration of abstentions from specific agenda items by commissioners.

AGENDA ITEMS MAY BE TAKEN OUT OF ORDER AT THE COMMISSION’S DISCRETION
REGULAR AGENDA (JUNE 28, 2017) MEETING
PUBLIC HEARING ITEMS:
Recess LDCMPC
Convene Joint Meeting with Eudora Planning Commission
ITEM NO. 1 CONDITIONAL USE PERMIT FOR CELL TOWER; 2138 N 1000 RD (SLD)

Adjourn Joint Meeting with Eudora Planning Commission

Convene as the Airport Zoning Commission
ITEM NO. 2 SITE PLAN FOR WILDLIFE HAZARD FENCE; 1930 AIRPORT RD (SLD)
**SP-17-00236**: Consider a Site Plan (by the Lawrence Douglas County Metropolitan Planning Commission sitting as the Airport Zoning Commission per Section 20-302) for construction of a wildlife hazard fence at Lawrence Municipal Airport, located at 1930 Airport Rd. Submitted by the City of Lawrence, property owner of record.

**Adjourn Airport Zoning Commission**

**Reconvene LDCMPC**

**ITEM NO. 3**  **RSS TO RS7; 1.13 ACRES; 309, 321, 325, 331 INDIANA ST (BJP)**

**Z-17-00217**: Consider a request to rezone approximately 1.13 acres from RS5 (Single-Dwelling Residential) District to RS7 (Single-Dwelling Residential) District, located at 309, 321, 325, and 331 Indiana St. Submitted by Summer Wedermyer on behalf of Philip R Jones, Jennifer M Padilla, Nathan R Littlejohn III, Lynette Littlejohn, Emily C H Hensley, Nate Wedermyer, and Summer Wedermyer, property owners of record.

**ITEM NO. 4**  **MINOR SUBDIVISION VARIANCE FOR 2645 HASKELL (SLD)**

**MS-17-00251**: Consider a variance request for the reduction of right-of-way width for Haskell Ave from 150’ to 100’ associated with a Minor Subdivision for Lawrence Industrial Park No. 2, located at 2645 Haskell Ave. Submitted by CFS Engineers, for Hedge Tree LLC, property owners of record.

**ITEM NO. 5**  **TEXT AMENDMENT TO DEVELOPMENT CODE; PARKING & ACCESS STANDARDS (SMS)**

**TA-13-00235**: Continue discussion related to proposed Text Amendments to the City of Lawrence Land Development Code, Article 9 and related sections of Chapter 20, for comprehensive revisions to parking and access standards. *Action on this item will not occur until after the commission completes their discussion on several of the elements of the code language and a final draft is available for their review.*

**MISCELLANEOUS NEW OR OLD BUSINESS**

Consideration of any other business to come before the Commission.

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**ADJOURN**

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**CALENDAR**

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<tr>
<th>May 2017</th>
<th>June 2017</th>
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PCCM Meeting: (Generally 2nd Wednesday of each month, 7:30am-9:00am)
# 2017
## LAWRENCE-DOUGLAS COUNTY METROPOLITAN PLANNING COMMISSION
### MID-MONTH & REGULAR MEETING DATES

<table>
<thead>
<tr>
<th>Mid-Month Meetings, Wednesdays 7:30 – 9:00 AM</th>
<th>Mid-Month Topics</th>
<th>Planning Commission Meetings 6:30 PM, Monday and Wednesday</th>
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<tr>
<td>Jan 11</td>
<td><strong>CANCELLED</strong></td>
<td>Jan 23 / Jan 25</td>
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<td>Feb 8</td>
<td>Douglas County Natural Areas Assessment – Kelly Kindscher</td>
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<td>Mar 8</td>
<td>East Lawrence Rezoning</td>
<td>Dg Co Food System Assessment &amp; Plan Mar 13 / Mar 15</td>
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<td>Apr 12</td>
<td>Development Review Process – Planning 101</td>
<td>Apr 24 / Apr 26</td>
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<td>May 10</td>
<td><strong>CANCELLED</strong></td>
<td>May 22 / May 24</td>
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<td>Jun 14</td>
<td>APA Conference recap</td>
<td>Jun 26 / Jun 28</td>
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<td>Jul 12</td>
<td>Michael Davidson – Explore Lawrence Hotel Market &amp; Short Term Rentals</td>
<td>Jul 24 / Jul 26</td>
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<td>Aug 9</td>
<td>Transportation 2040 Update</td>
<td>Aug 21 / Aug 23</td>
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**PC Orientation – all day (tbd)**

### Suggested topics for future meetings:
- How City/County Depts interact on planning issues
- Stormwater Stds Update – Stream Setbacks
- Overview of different Advisory Groups – potential overlap on planning issues
- Joint meeting with other Cities’ Planning Commissions
- New County Zoning Codes
- Tour City/County Facilities
- Water Resources

### Communication Towers – Stealth Design, # of co-locations, notice area
- WIFI Connectivity & Infrastructure Planning
- Oread Overlay Districts & Design Guidelines
- Comprehensive Plan – Goals & Policies
- Affordable Housing
- Retail Market Impacts
- Case Studies

### Meeting Locations
- The Planning Commission meetings are held in the City Commission meeting room on the 1st floor of City Hall, 6th & Massachusetts Streets, unless otherwise noticed.

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*Planning & Development Services | Lawrence-Douglas County Planning Division | 785-832-3150 | [www.lawrenceks.org/pds](http://www.lawrenceks.org/pds)*

Revised 5/18/17
## 2017 PLANNING COMMISSION ATTENDANCE

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PLANNING COMMISSION MEETING
May 24, 2017
Meeting Action Summary

May 24, 2017 – 6:30 p.m.
Commissioners present: Britton, Carpenter, Culver, Kelly, Struckhoff, von Achen, Weaver, Willey
Staff present: McCullough, Stogsdill, Day, Larkin, Pepper, Weik, Ewert

GENERAL BUSINESS
Recognize Clay Britton and Pennie von Achen for their years of service on Planning Commission.

PLANNING COMMISSION ACTION SUMMARY MINUTES
Receive and amend or approve the action summary (minutes) from the Planning Commission meeting of March 15, 2017.

Motioned by Commissioner Britton, seconded by Commissioner Struckhoff, to approve the March 15, 2017 Planning Commission action summary minutes.

Unanimously approved 8-0.

Receive and amend or approve the action summary (minutes) from the Planning Commission meeting of April 24 & 26, 2017.

Motioned by Commissioner Britton, seconded by Commissioner von Achen, to approve the April 24 & 26, 2017 Planning Commission action summary minutes.

Unanimously approved 8-0.

COMMITTEE REPORTS
No reports from any committees that met over the past month.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST
• No ex parte.
• No abstentions.

Complete audio & video from this meeting can be found online:
https://lawrenceks.org/boards/lawrence-douglas-county-metropolitan-planning-commission/
ITEM NO. 1A SPECIAL USE PERMIT FOR LMH; 3RD & MICHIGAN ST (SLD)

SUP-17-00153: Consider a Special Use Permit/Institutional Development Plan for a new parking lot at Lawrence Memorial Hospital and a master plan for the Hospital uses, located at 3rd & Michigan St. Submitted by Landplan Engineering for LMH Board of Trustees and City of Lawrence, property owners of record.

ITEM NO. 1B RS5 TO H; 1.38 ACRES; 302, 306, 310, 314, 318, 322 MICHIGAN (SLD)

Z-17-00158: Consider a request to rezone approximately 1.38 acres from RS5 (Single-Dwelling Residential) District to H (Hospital) District, located at 302 Michigan St, 306 Michigan St, 310 Michigan St, 314 Michigan St, 318 Michigan St, and 322 Michigan St. Submitted by Landplan Engineering PA on behalf of Lawrence Memorial Hospital and LMH Board of Trustees, property owners of record.

STAFF PRESENTATION
Ms. Sandra Day presented items 1A and 1B together.

APPLICANT PRESENTATION
Mr. CL Maurer, Landplan Engineering, agreed with the staff report. He showed a rendering on the overhead of what the parking lot would look like.

PUBLIC HEARING
Mr. Ernest Richardson, 215 Arkansas, expressed concern about angled off-street parking on Arkansas Street.

Mr. Bart Littlejohn, Pinckney Neighborhood Association, expressed concern about the lack of greenspace around the parking lot. He said elimination of affordable housing was tough but the neighborhood understand that was a part of it. He asked the City work with Lawrence Memorial Hospital to replace the affordable housing.

Ms. Pat Miller expressed concern about increased parking while still having a viable neighborhood for residents to live.

APPLICANT CLOSING COMMENTS
Mr. Maurer said the parking on Arkansas Street was back-in parking as a recommendation from the City to allow cars to back in and be able to look both ways to pull out when they leave. He said it was a new parking concept used in other bicycle communities.

COMMISSION DISCUSSION
Commissioner von Achen inquired about the landscape buffer between the two remaining houses and parking lot.

Mr. Maurer said there may not be enough room between the retaining wall and the property line to plant landscaping. He said it may be possible to put something on top of the wall like juniper to drape over the wall.
Ms. von Achen asked how many parking spaces would be gained in place of the houses that would be demolished.

Mr. Maurer said 94.

Commissioner Carpenter asked how many spaces would be added in phase II for on-street parking.

Ms. Day said approximately 84-86 total spaces in the diagonal parking. She said there may be half of that already with the parallel parking along the curb.

Commissioner Carpenter inquired about lighting.

Mr. Maurer said the lighting would be LED lighting with only two light poles in the lot.

Commissioner Kelly asked about additions/changes made to the hospital over the years and the increased need for parking.

Mr. Maurer said in the mid-1990’s an addition was built around the shelter house and a parking lot was added, as well as the doctor parking lot being changed. He said when the medical office building was built they widened and added parking. He stated in the last four years there was vacated right-of-way that was turned into angled parking. He said when the garage was added parking was added at the same time.

Ms. Day said every time a structure was built parking was added.

Commissioner Kelly asked why the Code was so far off on parking requirements.

Ms. Day said the total required parking was around 200 total parking spaces. She said there was overflow parking happening in the neighborhood.

Commissioner Carpenter struggled with the demolition of six houses when the parking lot would only provide ten more spaces than the angled spaces.

Mr. Maurer said angled parking was not the first choice due to safety factors. He said the City was not in favor of angled parking since it would have to be paid for and maintained by the City.

Commissioner Kelly asked what other parking options the hospital explored.

Mr. Maurer said staff park as far away from the hospital as possible and utilize the private parking lot at the Medical Arts building.

Commissioner Kelly asked if other options had been considered, such as bussing staff from off-site locations.

Mr. Maurer said he couldn’t think of any empty parking lot for off-site parking.

Commissioner Kelly said this felt like a short-term solution to a long-term plan. He said he understood there was a cost to parking structures but a parking garage would create a less dense
site. He felt this was a version of parking sprawl. He said someone going to the hospital would have to walk a long way if they parked on Michigan Street. He did not feel like this was good planning.

Commissioner von Achen said the on-street parking on Arkansas Street would be general neighborhood parking so it would not be exclusive to the hospital.

Mr. Maurer said that was correct.

Commissioner Britton would prefer not to demolish houses to build a parking lot. He felt the hospital had addressed issues head on and he appreciate that. He said Lawrence Memorial Hospital was a non-profit community hospital and he appreciated them wanting to save money for a better use. He felt this may be the best solution for right now.

Mr. Maurer said there was a plan from 10 years ago that showed a parking garage on the west side with two levels but it only increased the parking by 50 stalls for $2-3 million dollars. He said a parking garage would not be able to have a lower level, due to the soil, so going up was the only option.

Commissioner Willey said this was addressing a need that was for the medical campus and neighborhood. She felt this was the best solution possible.

Commissioner Struckhoff wondered how the hospital staff utilize parking. He asked if a staff survey was conducted to see where employees were coming from to encourage carpooling. He wondered if any thought had been given to incentivize carpooling for employees, such as being able to park closer with multiple occupants in the vehicle.

Mr. Maurer said staff are already encouraged to park at 4th and Michigan or the lots on the east side. He said many nurses work double shifts or unusual schedules.

Mr. Rich Webb, Lawrence Memorial Hospital, said it was a struggle to get employees to commute because everyone’s schedule is different. He said they were trying to minimize the frustration of patients not able to find parking spaces. He said a parking study was conducted that showed they were close to what was needed but it did not look at how many were parking in the neighborhood. He said they looked at ways to reconfigure Arkansas Street right-of-way but it would shut off the entrance which would affect residents. He said he was not sure the hospital was the best place to try new concept parking because people going to the hospital have a lot on their minds. He said the hospital has numerous volunteers and students so they were trying to address an immediate need so users can find spaces.

Commissioner Struckhoff said he’d like to see a long-term goal created to reduce trips to the hospital campus. He did not feel like this was a long-term plan and did not address the problem. He wondered about the proportion of employee growth and the number of parking spaces over time.

Mr. Webb said the hospital administration believed this would be sufficient because they were planning for off-site facility locations.

Commissioner von Achen said a certain amount of the parking problem was due to the hospitals success with ongoing programs, classes, and clinics.

Complete audio & video from this meeting can be found online: https://lawrenceks.org/boards/lawrence-douglas-county-metropolitan-planning-commission/
Commissioner Culver said the hospital was a huge community asset and they were cornered within a residential area. He said although it seemed like a short-term plan to provide more surface parking, the hospital has taken a proactive approach to address parking needs. He felt it was important going forward to look at metrics for parking with this type of use. He was not aware of the inability to go down with a structured parking garage. He said a multiple-story parking garage in a residential neighborhood would create other issues. He felt this proposal would fit the immediate need and had minimal consequences to the neighborhood.

Commissioner Britton asked staff what the best solution would be if money were not an issue.

Mr. McCullough said parking garages were common in urban settings and that many hospitals of a certain size do have a parking garage. He said the hospital has been trying to find the right balance between how much parking is enough. He said he was not sure it was within Planning Commission’s scope to say whether the hospital was addressing their demand. He said people were parking on the residential streets today at this site.

Commissioner von Achen inquired about the request to reduce the number of bicycle spaces.

Ms. Day said many different types of people have the hospital campus as a destination. She said in many instances patients are not going to be biking to the facility. She said it was a professional guess that 70% of the required bicycle parking seemed reasonable.

Mr. McCullough said the city was doing a parking study and the hospital was one of the areas being looked at. He said they have some work to do on the parking ratio in the Code.

Commissioner Carpenter said his first reaction was to disagree with tearing down houses to replace with a parking lot. He wondered where the line would be drawn to encroachment into the neighborhood. He felt it was more of a policy question that couldn’t be answered tonight.

Commissioner Kelly said he recognized the hospital was a community asset. He said downtown was also a tremendous asset and it had upward parking to deal with parking issues. He said he didn’t love this solution and he wanted more thought to be given to a long-term plan for this area. He felt they needed to continually have parking discussions in planning the community. He said he would vote against this so that the City Commission would take a closer look at it.

Commissioner von Achen said no one likes the idea of tearing down houses to build surface parking but there was no other option. She said she would support the application.

**ACTION TAKEN on Item 1A**

Motioned by Commissioner von Achen, seconded by Commissioner Britton, to approve the Special Use Permit/Institutional Development Plan, SUP-17-00153, for Lawrence Memorial Hospital and related parking lot expansion and forwarding the request to the City Commission with a recommendation of approval, subject to the following conditions:

1. Approval of and publication of an ordinance to rezone 1.38 Acres from RS5 to H.
2. Prior to recording of the Institutional Development Plan with the Register of Deeds Office the applicant shall:
   a. Revise and resubmit a drainage study per city Stormwater Engineer’s approval.

Complete audio & video from this meeting can be found online:
[https://lawrenceks.org/boards/lawrence-douglas-county-metropolitan-planning-commission/](https://lawrenceks.org/boards/lawrence-douglas-county-metropolitan-planning-commission/)
b. Provision of a stormwater pollution provision plan and a notice of intent approved by KDHE prior to construction site construction.

c. Provide detailed plans for the construction of the parking lot and the installation of the pervious pavement per the approval of the City Stormwater Engineer.

d. Submission of public improvement plans to the City for review and approval.

3. Prior to recording of the Institutional Development Plan with the Register of Deeds Office the applicant shall provide a revised site plan with the following notes and changes:

a. Show 9 parking spaces located along Woody Park for clarification on the drawings. [Note shown on revised plan provided to staff dated 5/19/2017].

b. Show sanitary sewer line extended to meet minimum City Code requirements for LMH property for 326 and 330 Michigan Street per the approval of the City Utility Engineer.

c. Revise the landscape plan to include additional shrubs along the north and south property lines to screen the parking lot from adjacent residence. [Additional landscaping shown on revised plan provided to staff dated 5/19/2017]

d. Revise landscape plan to include additional shrubs and ornamental trees along Michigan Street. [Additional landscaping shown on revised plan provided to staff dated 5/19/2017]

e. Provision of a note that states Public Improvements Plan are required for review and approval for the following improvements: [Note shown on revised plan provided to staff dated 5/19/2017]

   i. Storm sewer
   ii. Sanitary sewer extension to 326 and 330 Michigan Street
   iii. Sidewalk improvements
   iv. Maine Street Crosswalks.

f. Provision of a revised plan to show the location of a minimum of 123 86 bicycle parking spaces, the distribution and type of bicycle parking spaces based on the APBP recommended rack design and number of bike parking at each bike parking location subject to staff approval.

g. Provision of a revised plan to show a conceptual 10’ connection of a shared-use path from Sandra Shaw trail through Woody Park or around the Hospital Property to 2nd and Michigan with a note on the face of the site plan that the alignment may be modified by the pending MPO study. [Conceptual alignment shown on revised plan provided to staff dated 5/19/2017.]

h. Execution of an agreement to fund and construct shared-use path with phase 2 to install on street parking spaces along Arkansas and Maine Streets. Provision of a note on the face of the plan that states: "At the time of the final alignment of the trail, LMH and City of Lawrence Staff will discuss sharing in the cost and possible route through LMH property".

Commissioner Willey said she would vote in support but recognized the difficulties with parking.

Commissioner Britton said this wasn’t a parking problem, it was a driving problem. He encouraged City Commission to think long-term to address the driving problem. He said ultimately this was the solution that existed and he would vote in favor of it even though it felt shortsighted.

Commissioner Struckhoff said he would support this but felt something needed to be done about the driving problem. He said hospital staff needed to be encouraged to carpool, walk, bike, etc. He wanted to see a goal driven effort to reduce single occupancy car trips to institutions in the city.

Complete audio & video from this meeting can be found online: https://lawrenceks.org/boards/lawrence-douglas-county-metropolitan-planning-commission/
Commissioner Carpenter said he would vote in opposition although he felt they were looking at the best plan for the time being. He wanted City Commission to know there were identified issues that needed to be considered.

Motion carried 6-2, with Commissioners Carpenter and Kelly voting in opposition.

**ACTION TAKEN on Item 1B**
Motioned by Commissioner von Achen, seconded by Commissioner Willey, to approve the request to rezone approximately 1.38 acres, from RS5 (Single-Dwelling Residential) District to H (Hospital) District based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval.

Motion carried 6-2, with Commissioners Carpenter and Kelly voting in opposition.
ITEM NO. 2 A TO I-3; 26.995 ACRES; 1705 N 1399 RD (BJP)

Z-17-00155: Consider a request to rezone approximately 26.995 acres from County A (Agricultural) District to I-3 (Industrial) District, located directly east of 1705 N 1399 Rd. Submitted by Law Office of Dan Watkins on behalf of RD Johnson Excavating Company LLC, property owner of record.

STAFF PRESENTATION
Ms. Becky Pepper presented the item.

APPLICANT PRESENTATION
Mr. Patrick Watkins was present for questioning.

PUBLIC HEARING
No public comment.

COMMISSION DISCUSSION
Commissioner Carpenter asked if there had been communication with the property owner immediately to the east.

Ms. Pepper said the property owner to the east would have received notice in the mail but that the property owner had not reached out to staff.

Commissioner von Achen asked to see the aerial view on the overhead. She inquired about the zoning of a specific property to the west.

Ms. Pepper said it was zoned Agricultural and was a legal non-conforming salvage yard.

Ms. Stogsdill said it was in existence before 1966 when the county adopted zoning.

Ms. Pepper said the property owner attempted to rezone to a legal use but the rezoning was denied.

Commissioner Willey said the industrial use was appropriate for the area.

ACTION TAKEN
Motioned by Commissioner Britton, seconded by Commissioner Culver, to approve the request to rezone approximately 26.995 acres from County A (Agricultural) District to I-3 (Industrial) District, located directly east of 1705 N 1399 Rd, and forward to the Board of County Commissioners with a recommendation for approval based on the findings of fact found in the body of the staff report.

Unanimously approved 8-0.
ITEM NO. 3  PRD TO RM15; 8.566 ACRES; 2115 EXCHANGE CT (KEW)

Z-17-00157: Consider a request to rezone approximately 8.566 acres from PRD (Planned Residential Development) District to RM15 (Multi-Dwelling Residential) District, located at 2115 Exchange Ct. Submitted by Paul Werner Architects on behalf of Southwind Capital LLC, property owner of record.

STAFF PRESENTATION
Ms. Katherine Weik presented the item.

APPLICANT PRESENTATION
Mr. Paul Werner, Paul Werner Architects, was present for questioning.

PUBLIC HEARING
No public comment.

ACTION TAKEN
Motioned by Commissioner Struckhoff, seconded by Commissioner von Achen, to approve the rezoning request (Z-17-00157) from PRD (Planned Residential Development) District to RM15 (Multi-Dwelling Residential) District and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report.

Unanimously approved 8-0.
ITEM NO. 4 FINAL DEVELOPMENT PLAN FOR MT BLUE ADDITION; 2350 & 2400 FRANKLIN RD (BJP)

FDP-17-00185: Consider a Final Development Plan for Mt. Blue Addition, Lot 1 and Mt. Blue Addition No. 2, Lot 9 to accommodate mini storage units and a gun range and retail store, located at 2350 & 2400 Franklin Rd. Submitted by Paul Werner Architects on behalf of Ace Self Storage LLC, property owner of record.

STAFF PRESENTATION
Ms. Becky Pepper presented the item.

APPLICANT PRESENTATION
Ms. Leticia Cole, Paul Werner Architects, was present for questioning.

PUBLIC HEARING
No public comment.

ACTION TAKEN
Motioned by Commissioner Britton, seconded by Commissioner Struckhoff, to approve the Revised Final Development Plan (FDP-17-00185) for Mt. Blue Addition based upon the findings of fact presented in the body of the staff report and subject to the following conditions:

1. Execution of a Site Plan Performance Agreement.
2. Provision of mylar and recording fees.
3. Submittal of an Erosion Control Plan for review and approval by the City Stormwater Engineer

Unanimously approved 8-0.
ITEM NO. 5  EXTENSION REQUEST; PRELIMINARY PLAT FOR NORTH LAWRENCE RIVERFRONT ADDITION (SLD)

PP-2-1-12: Consider an extension request for a Preliminary Plat for North Lawrence Riverfront Addition, located at 401 North 2nd Street. Submitted by Paul Werner Architects, for North Mass Redevelopment, LLC, Douglas County Kaw Drainage District, City of Lawrence, Kaw River Estates, LLC, HDD of Lawrence LLC, D & D Rentals of Lawrence LLC, Jeffrey W. Hatfield, Exchange Holdings LLC, Loosehead Investments LLC, and Riverfront Properties of Lawrence LLC, property owners of record.

STAFF PRESENTATION
Ms. Sandra Day presented the item.

APPLICANT PRESENTATION
Mr. Paul Werner, Paul Werner Architects, said an extension was needed to continue progress on this extensive project.

PUBLIC HEARING
No public comment.

COMMISSION DISCUSSION
Commissioner Britton inquired about the time limit on plats.

Ms. Day said staff look at whether amendments to the Code would affect the design of the subdivision but in this case there had not been during that period.

Commissioner Carpenter inquired about downtown parking requirements.

Ms. Day said the downtown district does not technically have a parking requirement. She said this project would have a parking requirement and design guidelines would need to be submitted.

ACTION TAKEN
Motioned by Commissioner Britton, seconded by Commissioner von Achen, to approve the extension request for 24 months.

Approved 8-0.

MISCELLANEOUS NEW OR OLD BUSINESS
Consideration of any other business to come before the Commission.

ADJOURN 8:53pm
Planning Commission

Key Links

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**Plans & Documents**
- Horizon 2020
- Sector/Area Plans
- Transportation 2040
- 2015 Retail Market Study

**Development Regulations**
- Community Design Manual
- County Zoning Regulations
- City Land Development Code
- Subdivision Regulations

**Online Mapping**
- City of Lawrence Interactive GIS Map
- Douglas County Property Viewer
- Submittals to the Planning Office

**Planning Commission**
- Bylaws
- Mid-Months & Special Meetings
- Minutes
- Planning Commission Schedule/Deadlines
PC Staff Report – 6/24/17
CUP-17-00215

PLANNING COMMISSION REPORT
Regular Agenda – Public Hearing Item

ITEM NO. 1  CONDITIONAL USE PERMIT FOR CELL TOWER; 2138 N 1000 RD (SLD)

CUP-17-00215: Consider a Conditional Use Permit for a new 190 ft self-supporting wireless telecommunications facility (tower), located at 2138 N 1000 Rd. Submitted by MW Towers LLC for F. Dwane Richardson & Valerie Richardson, property owners of record. Joint meeting with Eudora Planning Commission. (Eudora Planning Commission has sent a written response and will not attend.

STAFF RECOMMENDATION: Staff recommends approval of the Conditional Use Permit for a Communication Tower (Wireless Facility) use, subject to the following conditions:

1. Provision of a revised site plan drawing that shows the location of the tower enclosure setback at least 60’ from the right-of-way line and the tower shall be setback 150’ from the future right-of-way line per section 12-310 of the County Zoning Regulations.

Reason for Request:
Applicant’s Response:
“To construct and maintain a 190 foot wireless telecommunications facility and related equipment shelters/cabinets.”

ATTACHMENTS
1. Lease area survey and fall zone
2. Site plan
3. Memo summarizing City of Eudora recommendation
4. Letter from applicant regarding tower design and fall zone
5. Recommended setback exhibit

KEY POINTS
- Proposed location for new wireless communication facility.
- Structures less than 200’ are generally not required to provide lighting per FAA.
- Access to site is from N 1000 Road.
- Property is located within 3 miles of the City of Eudora.

ASSOCIATED CASES/OTHER ACTION REQUIRED
- Existing home occupation – non-compliant. Use has expanded beyond allowable limits. Conditional use permit required for home business. (CUP application submitted on 6/19/2017 for a future Planning Commission meeting.)
- Approval of the Conditional Use by the Board of County Commissioners.
- Applicant shall obtain a permit for the Conditional Use from the Zoning and Codes Office prior to commencing the use.
- Applicant shall obtain a building permit from the Zoning and Codes Office prior to any construction.
PUBLIC COMMUNICATION
1. Communication from the City of Eudora Planning Commission.
2. Multiple calls from property owners requesting clarification of proposed tower location.
3. Nearby property owner called to express concerns that tower will conflict with aerial spraying, use of ultra-light aircraft, impact local wetlands and the Santa Fe Trail.
4. Hiqun Ma and Zongwu Cai; 2115 N 1000 Road letter.

**GENERAL INFORMATION**

<table>
<thead>
<tr>
<th>Current Zoning and Land Use:</th>
<th>A (County-Agricultural) District; Agriculture. This property includes 94 acres with a rural residence, out buildings and crop land.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surrounding Zoning and Land Use:</td>
<td>A (County-Agricultural); Agriculture in all directions. Existing agricultural area with scattered rural residences along county roads.</td>
</tr>
</tbody>
</table>

**Summary of Request**
This application is for the construction of a new 190’ self-support structure to be located on the north side of N 1000 Road. The structure is designed to provide platforms for multiple wireless communication providers. This project has been submitted in accordance with criteria set out in Section 12-319-1.02 of the County Zoning Ordinance. It should be noted that the application was submitted (April 24, 2017) and reviewed based on regulations in effect on the date of the submittal. Recent changes to wireless communications uses were not in effect until May 24, 2017 (TA-16-00511).

The text amendment was made to align the local zoning code regulations with the adopted State and Federal changes to law regarding wireless communication made effective last July.

This application does not include any justification reports or propagation maps. The applicant did provide the extra one mile notice that is required by the County Zoning Regulations.
I. ZONING AND USES OF PROPERTY NEARBY
The 93-acre parent parcel includes active agricultural land and accessory buildings. The nearby and surrounding area is uniformly zoned A (Agricultural). Land uses include large tracts of land with smaller rural residential parcels located along County roads. Smaller lots are concentrated along E 2100 Road west of the property. Larger land tracts are located to the east, north and south.

Section 20-319-4.31 (d) (5) states that towers “should be located in areas zoned commercial, industrial or agricultural” zoning district. The existing zoning is consistent with this land use preference and proposed development request.

Staff Finding – The subject property and immediately surrounding land area are zoned and used for agricultural activities and include rural residences along County roads. The proposed location of the tower (Wireless Support Structure) is consistent with the zoning district location requirements of the County Zoning Regulations.

II. CHARACTER OF THE AREA
The property is located within the Eudora Township. The area is characterized by agricultural uses and rural residential homes located along county roads. Both N 1000 and E 2200 Roads are principal arterial thoroughfares in the area. The north property line of the parent parcel is located approximately one mile south of the City of Eudora. The proposed tower would be located about 1.7 miles south.

The property and proposed tower location are located outside of the Eudora growth area but are located within three miles of the incorporated City Limits.

The Little Wakarusa Creek is located to the east of the property. A tributary to the creek is located within the subject property.

Staff Finding – The subject property is located within three miles of the City of Eudora within the unincorporated portion of Douglas County. The predominant characteristic of the area is agricultural.
III. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED

Applicant’s Response: “The subject property is agricultural. The subject property is suitable for a wireless telecommunications facility because it is geographically located in an area where public and private demand for high speed data and wireless communications exceed existing capacity and additional wireless equipment and access is needed to serve the demand.”

The proposed request does not alter the base zoning A (Agricultural) District. Uses permitted in this district include agricultural activities such as farms, truck gardens, nurseries, grazing and similar activates. Residential uses are also permitted. Certain uses are permitted in the A (Agricultural) District subject to review and approval of a Conditional Use Permit such as Wireless Facilities and support structures (towers). Section 12-319.4.31(d) specifically identifies commercial, industrial or agricultural zoning districts as suitable for communication towers (Wireless Facilities).

The specific location of the tower within the property is discussed later in this report as it pertains to building setbacks.

Staff Finding – The property, as zoned A (Agricultural) District, is suitable for the proposed use.

IV. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED

The proposed location of the tower is on the southeast corner of a 95 acre parcel. The property is undeveloped except for an area to the west along N 1000 Road which includes a residence and multiple agricultural buildings. Improvements appear on the parcel in the 1941 Aerial. Zoning was established in Douglas County in 1966.

Staff Finding – The property has been used for agricultural uses since before the adoption of the Zoning Regulations in 1966. The majority of the 95 acres is undeveloped except for the area located in the southwest corner of the property noted above.

V. EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY

Applicant’s Response: The granting of a Conditional Use Permit will not detrimentally affect nearby property because the wireless telecommunications facility will be located on a 95 acre farm tract with no direct visibility to any existing residences.”

Section 12-319-1.01 of the County Zoning Regulations recognize that “....certain uses may be desirable when located in the community, but that these uses may be incompatible with other uses permitted in a district...when found to be in the interest of the public health, safety, morals and general welfare of the community may be permitted, except as otherwise specified in any district from which they are prohibited.”

Communication towers are specifically recommended to be located in commercial, industrial or agricultural zoning districts. This proposed development request is located within the existing A (Agricultural) District.

The subject property is encumbered by regulatory floodplain. However, the proposed location of the tower is identified in the southeast corner of the property along N 1000 Road and will not encroach on the floodplain.
Nearby uses include a private air strip located approximately two miles to the northwest. This private air strip is oriented north and south and located west of E 2000 Road. The proposed tower would not be located in direct alignment with the air strip.

**Staff Finding** – The proposed request is comparable to similar wireless facility requests made in Douglas County.

**VI. RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE PETITIONER’S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNERS**

Applicant’s Response: N/A. No property values will be destroyed and no hardship imposed on landowners. The public health, safety and welfare will be improved by increased access to high speed data and wireless telecommunications services provide by tower tenants.

Evaluation of the relative gain weighs the benefits to the community-at-large vs. the benefit of the owners of the subject property. Approval of the request expands the structural network of towers that are capable of supporting wireless communication equipment. The proposed request facilitates wireless communications and wireless data use within the community. The proposed equipment does not conflict with existing emergency communication equipment. The majority of the property will remain viable for existing land uses and uses permitted within the A (Agricultural) District.

The County Public Works Director noted in the review that the proposed location of the tower, in proximity to the existing road right-of-way, will cause a conflict in the future with widening and improvement of N 1000 Road (County Route 458). N 1000 Road is classified as a Principal Arterial. The Subdivision Regulations require 120’ of right-of-way (50’ from center line.) The existing right-of-way along this road segment is only 30’ from centerline, so the fence enclosure should be moved at least 30’ north to preserve future right-of-way.

New structures are required to be setback 150’ from the right-of-way along Principal Arterial roads. The following graphs represents the location of the enclosure based on the existing and future right of way.

*Table 1: Setback Requirements*

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<th>Roadway from center line.</th>
<th>Prop. Set back</th>
<th>Proposed Enclosure</th>
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<tbody>
<tr>
<td>30’ ROW</td>
<td>30’</td>
<td>75’</td>
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<table>
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<tr>
<th>Roadway from center line.</th>
<th>Prop. Set back</th>
<th>Proposed Enclosure</th>
</tr>
</thead>
<tbody>
<tr>
<td>60’ ROW</td>
<td>150’</td>
<td>75’</td>
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</table>

By moving the tower and enclosure farther north appropriate right-of-way is preserved for future improvements to the roadway.
**Staff Finding** – In staff’s opinion, the approval of this request as proposed does not preserve the necessary right-of-way for N 1000 Road, a Principal Arterial. Shifting the base of the tower and enclosure to the north right-of-way will be preserved. Staff recommends the tower site be relocated to the north to accommodate a future road improvement along N 1000 Road.

**VII. CONFORMANCE WITH THE COMPREHENSIVE PLAN**

Applicant’s Response: *North 1000 Road is designed as a principal arterial road. Having a facility to provide high speed data and wireless communications is paramount for economic growth. Additionally, reliable wireless services are critical for public safety and emergency services.*

Chapter 10; Community Facilities of *Horizon 2020* addresses public utilities. Key strategies (Page 10-10) primarily address municipal utilities such as water and wastewater planning. One strategy states:

- *The visual appearance of utility improvements will be addressed to ensure compatibility with existing and planned land use areas.*

The plan specifically addressed electric and telephone services and encourages this infrastructure to be placed underground in conjunction with new development where feasible. Wireless communication towers support the wireless industry and accommodate the reduction of hardwire infrastructure. However, it should not be interpreted that wireless communication will replace hardwire needs in the community.

The plan recognizes that *"telephone and electric utilities have a strong visual presence in the unincorporated Douglas County Landscape."* Large transmission lines and easements should be coordinated throughout the community to minimize visual and environmental impacts.

The Comprehensive Plan does not explicitly address communication towers.

**Staff Finding** – The comprehensive plan does not provide any specific land use recommendations regarding *Wireless Facilities.* A Conditional Use Permit can be used to allow specific non-residential uses subject to approval of a site plan. This tool allows proportional development in harmony with the surrounding area. The proposed request is consistent with the Comprehensive Plan.

**CUP PLAN REVIEW**

In addition to typical site plan design standards, communication towers must address specific requirements of section 12-319-4.31 of the County Zoning Regulations. As discussed above, the proposed use is located in an appropriate zoning district.

New communication towers require design that shall accommodate at least three two-way antennas for every 150’ of tower height or co-location space. The proposed tower site plan includes four co-location spaces on this tower.

The proposed project locates the wireless tower facility within a 75’ square enclosure area. The enclosure would be fenced and is shown graphically to include two future 12’ by 20’ tenant ground lease areas within the proposed fence enclosure (50’ by 50’). The current project does not include or show the location of a generator. Generators are typically provided by individual communication providers to support equipment during times of power loss. Tenant co-location on the tower in the future would be considered through an administrative site plan application review.
Parking and Access:
*Wireless Facilities* do not require traditional off-street parking. Access to the tower enclosure area is provided from a driveway access from N 1000 Road. Access to the site is limited to construction and maintenance. There are no offices or manned operations at this location. A county driveway permit would be required separately.

Utilities
Typical utilities are not required for this use. The site plan shows the location of an access and utility easement that will accommodate services (electric and phone) connections to the site. Water and sanitary sewer serves are not required.

Landscape and Screening:
This site will not be irrigated and will not be staffed. The survival of vegetation used for screening is usually unsuccessful especially in a rural application. The project as proposed does not include a landscape plan. An existing tree line is located along the east property line.

Tower Design
- Accommodations for the co-location of equipment for multiple tenants is provided with this proposed structure design.
- The overall tower height is less than 200’. Mandatory lighting is not required or proposed for the structure.

Setback
As discussed above the building setback for structures is 150’ from the right-of-way for buildings located along Principal Arterial roads. For example, a new residence would be required to be setback 150’ from the north right-of-way line along this segment of N 1000 Rod.

The tower is required, per section 12-319-4.31(d), to be setback at least equal to the height of the tower to the nearest property line measured from the center of the tower. The tower (center of tower), as proposed, is located 67’ from the north right-of-way line (south property line) and approximately 80’ from the east property line. The fence enclosure is proposed to be located 31’ north of the right-of-way and 42.4’ west of the east property line. While the tower is setback an additional distance, the location of the fence enclosure would not be adequately setback once the roadway for N 1000 Road is widened.

The typical right-of-way profile for a rural Primary Arterial Road is 120’ (without a median) or 150’ (with a median). The existing right-of-way for this segment of N 1000 Road is 60’. Each property owner would provide one half of the right-of-way or roadway easement as applicable.

Primary structures are typically required to be setback 150’ from the right-of-way for properties located along Principal Arterial roads per 12-318. This setback standard applies to residential structures. The existing residence to the west does not appear to meet this design standard. The following graphic shows the location of the tower and lease area in relationship to the right-of-way lines (south property line).
The proposed tower location is setback in line with the existing residence. The enclosure area would be located one foot north of the easement.

Wireless communication towers must meet the minimum setback established by Section 12-319-4.31(d) or provide documentation certified by a registered engineer certifying that in the event of a failure or collapse, the fall zone will be contained within the proposed setback area. The applicant has provided a letter from the tower designer indicating the intended design for the tower to result in collapse radius equal to the identified distance in the attached survey (67.5').
Evaluation of the required structural documentation will continue to be reviewed with the submission of a building permit to the County Zoning and Codes Office. The lease area is located 42.5’ from the east property line. The fall zone is located completely within the parent parcel.

The tower and ground equipment will be located in a 50’ by 50’ enclosure area within the larger lease area of 75’ by 75’. Additional ground equipment could result in the need to expand the ground enclosure to accommodate added equipment in the future.

Staff recommends the enclosure area be setback the tower enclosure setback at least 60’ from the right-of-way line and the tower shall be setback 150’ from the future right-of-way line. This is intended to preserve the right-of-way for improvements to N 1000 Road.

**Lighting**

Lighting is not proposed with this application for the communication tower. The tower will need to meet any applicable FAA requirements. Generally, towers less than 200’ are not required to be lit. Ground equipment will have lighting on front and rear sides of the building. Lighting must be shielded and directed down.

**Other**

Prior to construction of the tower the applicant will be required to obtain a Conditional Use Permit, issued by the County Zoning and Codes office as well as applicable building and floodplain development permits.

Recent changes to federal laws allow some future modifications to approved and existing communication towers, base stations, co-location equipment and other features. The full scope of these changes has not been assessed by staff. Changes can include expanding the tower by up to an additional 20’ and increasing the base station (enclosure area) by up to 10%.

**Conclusion**

The proposed application meets the required documentation requirements of the County Zoning Regulations. Staff recommends a changes to the site plan to facilitate the project compatibility with future roadway improvements along N 1000 Road as discussed in the body of this staff report.

The property owner has a current home-based business that is currently not in compliance with the home occupation regulations. The property owner has submitted a separate Conditional Use Permit for the continuation of the business at this location. The application will be considered on a future Planning Commission agenda.
Figure 7: Aerial of surrounding property
SITE WORK AND DRAINAGE

EARTHWORKS, EROSION AND DRAINING

PART 1 GENERAL

1.01 WORK INCLUDED: REFER TO SURVEY AND SITE PLAN FOR WORK INCLUDED.

1.02 LIMITATIONS:紋理 FROM THE LIMITS OF THE OSMAN LEASE PROPERTY UNLESS AUTHORIZED BY PROJECT MANAGER.

1.03 INSTALLATION:
A. THE SITE AND TURNAROUND AREAS SHALL BE AT THE SUB-BASER COURSE ELEVATION TO PROVIDE FORMING FOR FLOODING. TODAY SHALL BE ON THE SITE AND ACCESS ROAD AS REQUIRED TO PROVIDE EROSION CONTROL, WHICH CONFORMS 41 BRING IN CONSTRUCTION ELEVATIONS TO BE CALCULATED FROM FLOODED ORIS OR SLICED TO THE SUB-BASER COURSE ELEVATION.
B. CERTEK EXCEPTORS, IF ANY, FROM JOB SITE AND DO NOT FLOW

1.04 QUALITY GUARDIAN: REFER TO SURVEY AND SITE PLAN FOR WORK INCLUDED.

1.05 CLOSING:
A. EARTHWORKS SHALL BE SUSTAINED IN ACCORDANCE WITH MANUFACTURERS' SPECIFICATIONS FOR DRAINAGE BASINS.
B. EARTHWORKS SHALL BE MONITORED CONTINUOUSLY TO ENSURE THAT NO MATERIALS ARE UTILIZED FOR ACCESS TO PUBLIC TERRITORY IS INCLUDED OF WORK IS COMPLETED.
C. EARTHWORKS SHALL BE CLEARED AND MADE TO SUSTAIN THE AS ERECTED.
D. EARTHWORKS SHALL BE CLEARED AND MADE TO SUSTAIN THE AS ERECTED.
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PART 2 PRODUCTS

2.01 MATERIALS:
A. ROAD AND SITE WORK MATERIALS SHALL BE ACCEPTABLE.
B. ROAD AND SITE WORK MATERIALS SHALL BE ACCEPTABLE.
C. ROAD AND SITE WORK MATERIALS SHALL BE ACCEPTABLE.
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Z. ROAD AND SITE WORK MATERIALS SHALL BE ACCEPTABLE.

2.02 EQUIPMENT:
A. EARTHWORKS MACHINES SHALL BE MECHANICAL ENSURE THAT LAYERS ARE SUFFICIENT TO PREVENT DRYrar.
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Z. EARTHWORKS MACHINES SHALL BE MECHANICAL ENSURE THAT LAYERS ARE SUFFICIENT TO PREVENT DRYrar.
CONCRETE

CAST-IN-PLACE CONCRETE FOUNDATIONS, INCLUDING POURING AND PLACING STEEL CONCRETE FOUNDATIONS, ACCESSORY ASSEMBLIES, AND ACCESSORIES AS SHOWN ON THE DRAWINGS. CAST-IN-PLACE CONCRETE INCLUDES ALL CONCRETE IN kannst FOUNDATIONS, SLABS ON GRADE, EQUIPMENT PADS AND FRAMING FOUNDATIONS.

1.02 GENERAL

2.04 CONCRETE

2.01 CONCRETE MATERIALS

2.03 CONCRETE MIX

2.05 CONCRETE MIX

3.05 MIXING

3.06 DETECTIVE CONCRETE

3.07 PROTECTION

4.01 APPROVAL

4.02 PREPARATION

4.03 PLACING CONCRETE

4.04 FINISHING

4.05 Curing

4.06 DETECTION

4.07 PREVENTION

5.01 INSPECTION

5.02 PREVENTION

5.03 PLACING CONCRETE

5.04 FINSISHING

5.05 CURING

6.01 MATERIALS

6.02 PRODUCTS

6.03 FINISHING STEELS

6.04 ELECTRICAL STEEL

7.01 GENERAL

7.02 REVIEWED

7.03 EVIDENCE

7.04 INSPECTION

7.05 TESTING

8.01 MATERIALS

8.02 ASSEMBLY

8.03 INSTALLATION

8.04 ELECTRICAL STEEL

9.01 GENERAL

9.02 REVIEWED

9.03 EVIDENCE

9.04 INSPECTION

9.05 TESTING

10.01 GENERAL

10.02 REVIEWED

10.03 EVIDENCE

10.04 INSPECTION

10.05 TESTING

11.01 GENERAL

11.02 REVIEWED

11.03 EVIDENCE

11.04 INSPECTION

11.05 TESTING

12.01 GENERAL

12.02 REVIEWED

12.03 EVIDENCE

12.04 INSPECTION

12.05 TESTING

13.01 GENERAL

13.02 REVIEWED

13.03 EVIDENCE

13.04 INSPECTION

13.05 TESTING

14.01 GENERAL

14.02 REVIEWED

14.03 EVIDENCE

14.04 INSPECTION

14.05 TESTING

15.01 GENERAL

15.02 REVIEWED

15.03 EVIDENCE

15.04 INSPECTION

15.05 TESTING

16.01 GENERAL

16.02 REVIEWED

16.03 EVIDENCE

16.04 INSPECTION

16.05 TESTING

17.01 GENERAL

17.02 REVIEWED

17.03 EVIDENCE

17.04 INSPECTION

17.05 TESTING

18.01 GENERAL

18.02 REVIEWED

18.03 EVIDENCE

18.04 INSPECTION

18.05 TESTING

19.01 GENERAL

19.02 REVIEWED

19.03 EVIDENCE

19.04 INSPECTION

19.05 TESTING

20.01 GENERAL

20.02 REVIEWED

20.03 EVIDENCE

20.04 INSPECTION

20.05 TESTING

21.01 GENERAL

21.02 REVIEWED

21.03 EVIDENCE

21.04 INSPECTION

21.05 TESTING

22.01 GENERAL

22.02 REVIEWED

22.03 EVIDENCE

22.04 INSPECTION

22.05 TESTING
ELECTRICAL SPECIFICATIONS

GENERAL PROPERTIES

A. REQUIREMENTS: Furnish all labor, materials, service, equipment, and apparatus as required to install, test, and operate the electrical system in accordance with the specifications and contract documents. Provide service equipment and materials for outside installation in accordance with Rapid City ordinance, electrical codes, and specifications.

B. REQUIREMENTS OF REGULATORY AGENCIES AND STANDARDS: Install, test, and operate the electrical system in accordance with the applicable provisions of the National Electrical Code (NEC) – American National Standards Institute (ANSI). Allowable answers: B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z. Allow all required permits to be obtained prior to the installation of electrical equipment and materials. Allow all electrical work to be performed by persons qualified by the Rapid City authorities to perform electrical work in accordance with the Rapid City ordinance.

C. APPROVAL BY CONTRACT: The electrical system shall be approved by the Rapid City authorities prior to the project being brought into use. Allow all electrical work to be performed in accordance with the Rapid City ordinance. Allow all electrical work to be performed by persons qualified by the Rapid City authorities to perform electrical work in accordance with the Rapid City ordinance. Allow all electrical work to be performed in accordance with the Rapid City ordinance.

D. LOCATION OF ELECTRICAL SYSTEM: The electrical system shall be located in a manner that is consistent with the Rapid City ordinance. Allow all electrical work to be performed in accordance with the Rapid City ordinance. Allow all electrical work to be performed in accordance with the Rapid City ordinance. Allow all electrical work to be performed in accordance with the Rapid City ordinance.

E. APPROVAL BY CONTRACT: The electrical system shall be approved by the Rapid City authorities prior to the project being brought into use. Allow all electrical work to be performed in accordance with the Rapid City ordinance. Allow all electrical work to be performed in accordance with the Rapid City ordinance.

F. GENERAL NOTES:

1. CONTRACTOR SHALL INSPECT THE EXISTING CONDENSERS PRIOR TO SUBMITTING ANY QUESTIONS REGARDING THE LOCATION OF THE CONDENSERS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOCATION OF THE CONDENSERS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE LOCATION OF THE CONDENSERS.

2. LOCATION OF ELECTRICAL SYSTEM: The electrical system shall be located in a manner that is consistent with the Rapid City ordinance. All electrical equipment shall be located in accordance with the Rapid City ordinance. Allow all electrical work to be performed in accordance with the Rapid City ordinance. Allow all electrical work to be performed in accordance with the Rapid City ordinance.

G. CONDUCTORS AND WIRING: All conductors shall be insulated. All conductors shall be insulated. All conductors shall be insulated.

H. ELECTRICAL COMPONENTS: All electrical components shall be insulated. All electrical components shall be insulated. All electrical components shall be insulated.

I. CONDUCTORS AND WIRING: All conductors shall be insulated. All conductors shall be insulated. All conductors shall be insulated.

J. ELECTRICAL COMPONENTS: All electrical components shall be insulated. All electrical components shall be insulated. All electrical components shall be insulated.

K. CONDUCTORS AND WIRING: All conductors shall be insulated. All conductors shall be insulated. All conductors shall be insulated.

L. ELECTRICAL COMPONENTS: All electrical components shall be insulated. All electrical components shall be insulated. All electrical components shall be insulated.

M. CONDUCTORS AND WIRING: All conductors shall be insulated. All conductors shall be insulated. All conductors shall be insulated.

N. ELECTRICAL COMPONENTS: All electrical components shall be insulated. All electrical components shall be insulated. All electrical components shall be insulated.

O. CONDUCTORS AND WIRING: All conductors shall be insulated. All conductors shall be insulated. All conductors shall be insulated.

P. ELECTRICAL COMPONENTS: All electrical components shall be insulated. All electrical components shall be insulated. All electrical components shall be insulated.

Q. CONDUCTORS AND WIRING: All conductors shall be insulated. All conductors shall be insulated. All conductors shall be insulated.

R. ELECTRICAL COMPONENTS: All electrical components shall be insulated. All electrical components shall be insulated. All electrical components shall be insulated.

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X. ELECTRICAL COMPONENTS: All electrical components shall be insulated. All electrical components shall be insulated. All electrical components shall be insulated.

Y. CONDUCTORS AND WIRING: All conductors shall be insulated. All conductors shall be insulated. All conductors shall be insulated.

Z. ELECTRICAL COMPONENTS: All electrical components shall be insulated. All electrical components shall be insulated. All electrical components shall be insulated.

THE END.
GENERAL ELECTRICAL NOTES
1. REFER TO SPECIFICATIONS DRAWINGS IN THIS SET FOR ELECTRICAL SPECIFICATIONS.
2. REFER TO ELECTRICAL ITEMS WHICH ARE APPLICABLE FOR THE TYPE OF ELECTRICAL AND TELEPHONE SERVICES REQUIRED FOR THIS Structure. VERIFY REQUIREMENTS FOR ELECTRICAL AND TELEPHONE SERVICES WITH LOCAL UTILITY BEFORE ORDERING AND INCLUDE IN Scope OF WORK.
3. ELECTRICAL CONTRACTOR SHALL PROVIDE AND INSTALL A NEW 20A/2P/200A FUSED MAIN DISCONNECT UNIT WITH SERVICE ENTRANCE LABEL IN WEATHERPROOF ENCLOSURE (IMPORTANT: ALL SERVICE ENTRANCE LABELS PROVIDED BY LOCAL UTILITY). MOUNT ADAPTED TO WATER BASE OR SIDE WALL OF THE DISCONNECT UNIT AND WIRE WILL TO SHIELD DISCONNECT UNIT IN CONFORM WITH LOCAL BUILDING INSPECTION REQUIREMENTS AND INCLUDE IN Scope OF WORK IF REQUIRED.

POWER & TELEPHONE GENERAL NOTES
1. CONTRACTOR SHALL PROVIDE WITH UTILITY COMPANY FOR FINAL AND EXACT WIRING/INSTALLATION REQUIREMENTS AND CONSTRUCTION TO UTILITY COMPANY SPECIFICATIONS ONLY.
2. CONTRACTOR SHALL FORESEE ALL CONDUIT, PULL WIRES, CABLE PULL, AND OTHER ENCLOSURE REQUIREMENTS OF CONSTRUCTION (INCLUDING, TRANSFORMERS AND PANELS, ELECTRICAL THRU PANEL, MOUNTING OF PANELS, AND INSTALLATION OF ANY UTILITY COMPANY REQUIREMENTS IN Scope OF WORK).
3. UTILITY CONTACTS, SEE SHEET T-1

ELECTRICAL EQUIPMENT LOAD
1. ELECTRICAL SERVICE CHARACTERISTICS
120/240 VOLT, SINGLE PHASE, THREE WIRE / 200 AMP SERVICE
2. ELECTRICAL RATING LOADS:
A. DIALED
120V 640 WATTS
B. RADIO EQUIPMENT (RECEIVERS)
240V 12,200 WATTS
C. RADIO EQUIPMENT (SPEAKERS)
240V 6,680 WATTS
D. WIRELESS EQUIPMENT (DEMODULATOR, ETC.)
120V 1,800 WATTS
E. (2) 1 HP A/C UNITS
240V 12,800 WATTS
F. (2) R-XR ELECTRIC HEATERS WITH A/C UNIT
240V 16,000 WATTS

CONNECTED LOAD WITH FUTURE TETHERS AND UTILITIES OPERATING AS LARGEST A/C UNIT LOAD.
3. DEMAND CHARGING RATING BASED ON HIGHEST DEMAND LOAD REPORTED BY LOCAL POWER COMPANY ON SIMILAR BUILDING.
4. 120/240 VOLT connections COULD POSSIBLY BE ACHIEVED A/B AFTER A NOISE SOURCE HAS BEEN RESTORED AND PRIOR TO WIRING THE MAXIMUM POWER REQUIREMENTS OF BATTERIES, BOTH A/C UNITS WILL RUN TO SATISFY THERMAL/WORK LOAD.

UTILITY ROUTING PLAN
1. SCALE
0 10 20 30 40 50 60 70 80 90 100
N
1. **Utility Rack Elevations**
   - **Scale:** N.T.S.
   - **Note:**
     1. A 2" thick concrete slab may be used in place of compacted sand.
     2. Usable as proposed.
     3. Covers existing underground utility lines.

2. **Trench Detail**
   - **Scale:** N.T.S.
   - **Note:**
     1. Use 6" manhole for manhole chamber and 36" manhole for utility vault.
     2. Use 24" manhole for 6" service line and 20" manhole for 12" service line.
     3. Use 20" manhole for 3" fire hydrant.
Memorandum
City of Lawrence
Planning & Development Services

TO: Lawrence Douglas County Metropolitan Planning Commission
FROM: Sandy Day, Planning Staff
CC: CUP-17-0021; communication tower located at 2138 N 1000 Road
Date: June 8, 2017
RE: City of Eudora Planning Commission review of project.

The proposed development application is located within three miles of the incorporated limits of the City of Eudora. The project was forwarded to the City of Eudora for review. This project has been advertised as a joint Planning Commission/Eudora meeting.

The City of Eudora met separately on June 7, 2017. At their meeting, the Eudora Commission ruled unanimously to forward a recommendation to the Lawrence Douglas County Metropolitan Planning Commission for approval for the Conditional Use Permit, CUP-17-000215 with the following stipulation:

Move the tower 190 ft. from public right of way and adjacent property, or have the applicant submit a registered engineer’s certification regarding the fall zone.

This information was provided to staff by Curtis Baumann, Codes Administrator, City of Eudora.
May 22, 2017

Mr. Paul Wrablica III
Telecom Realty Consultants, LLC
3864 West 75th Street
Prairie Village, KS 66208

RE: Proposed 190’ Sabre Self-Supporting Tower for Eudora South, KS

Dear Mr. Wrablica,

Upon receipt of order, we propose to design and supply the above referenced Sabre tower for a Basic Wind Speed of 90 mph with no ice and 40 mph with 3/4” radial ice, Structure Class II, Exposure Category C and Topographic Category 1, in accordance with the Telecommunications Industry Association Standard ANSI/TIA-222-G, “Structural Standard for Antenna Supporting Structures and Antennas”.

When designed according to this standard, the wind pressures and steel strength capacities include several safety factors, resulting in an overall minimum safety factor of 25%. Therefore, it is highly unlikely that the tower will fail structurally in a wind event where the design wind speed is exceeded within the range of the built-in safety factors.

Should the wind speed increase beyond the capacity of the built-in safety factors, to the point of failure of one or more structural elements, the most likely location of the failure would be within one or more of the tower members in the upper portion. This would result in a buckling failure mode, where the loaded member would bend beyond its elastic limit (beyond the point where the member would return to its original shape upon removal of the wind load).

Therefore, it is likely that the overall effect of such an extreme wind event would be localized buckling of a tower section. Assuming that the wind pressure profile is similar to that used to design the tower, the tower is most likely to buckle at the location of the highest combined stress ratio in the upper portion of the tower. This would result in the portion of the tower above the failure location “folding over” onto the portion of the tower below the failure location. **Please note that this letter only applies to the above referenced tower designed and manufactured by Sabre Towers & Poles.** In the unlikely event of total separation, this, in turn, would result in collapse within a radius equal to 67.5 feet.

Sincerely,

Robert E. Beacom, P.E., S.E.
Senior Design Engineer
DISCLAIMER NOTICE

The map is provided "as is" without warranty or any representation of accuracy, timeliness or completeness. The burden for determining accuracy, completeness, timeliness, merchantability and fitness for a particular purpose rests solely on the requester. The City of Lawrence makes no warranties, express or implied, as to the use of the map. There are no implied warranties of merchantability or fitness for a particular purpose. The requester acknowledges and accepts the limitations of the use, including the fact that the map is intended and is a general tool for information and guidance.

Legend

- 150 Foot Front Setback
- Future Right-of-Way
- Proposed Tower Site
- Subject Parcel
- Parcels

CUP-17-00215: Proposed Tower
2138 N. 1000 Road
June 20, 2017
Prepared by: J. Crick

N 1000 Rd
2138
2122
1041

[Map with various locations marked]
CUP-17-00215: Conditional Use Permit for a new 190 ft. self-supporting wireless telecommunications facility (tower), located at 2138 N 1000 Rd
City of Lawrence  
Douglas County  
Planning & Development Services  

Dear Sandra,  

We are a property owners living near the 2138 N 1000 Road, Eudora, KS 66025. We received the letter regarding having a self-supporting wireless telecommunication tower located at 2138 N 1000 Rd. We are strongly against to have this tower in this location. Our area did not have any cable internets (that is already very weird), all surrounding area neighbors rely only on wireless internets either through satellite wireless internet or wireless internets provided by cellular phone companies. All the wireless internet signals will interfere each other, our area is the far away (5 miles away) from the Towers of Verizon and Sprint wireless, those wireless signals are not very strong. We are fear that we will have even worse signal if the other wireless Tower is set up. So we are not agreeing to build another wireless tower near us.

Thank you for considering our concerns.

Sincerely,  

Huiqun Ma and Zongwu Cai  

2115 N 1000 Road  

Eudora, KS 66025
FAO COVER SHEET

TO: Lawrence-Douglas County Planning Commission

From: Barbara J. Braa & Michael G. Braa
Phone 785-542-3829

RE CUP-17=00215 Conditional Use Permit — Hearing 6/28

The following two pages contain written comments regarding the hearing referenced above

**Please confirm receipt of this FAX by leaving a message at the phone number above.**

Thank you!
Michael & Barbara Braa  
1032 E 2100 Road  
Eudora, KS 66025

June 24, 2017

To - Lawrence-- Douglas County Planning Commission

RE: CUP-17-00215 – Conditional Use Permit for a new 190-foot telecommunications facility  
(tower) at 2138 N 1000 Road (aka Douglas County Road 458)

We received notice regarding a proposed communications facility/tower conditional use permit  
request for 2138 N 1000 Road, also known as Douglas County Road 458. This property is near  
our rural Eudora home of 17 years. Below are some of our questions /concerns:

1) Is this facility/tower, which would be as tall as a nineteen story building, appropriate in  
our rural residential area? The affected residences total 10-12, if you count recent and  
pending construction in the immediately area.

2) Will this require another driveway cut onto this property which already has two cuts?  
Does Douglas County Road 458 allow that much access to a single property?

3) Is the facility/tower to be positioned exactly in the SE corner of the property or is that an  
estimated location?

4) Will this 190 foot tower require lighting? If so, what type - strobing or steady? It is just  
under the 200’ height to require lighting. Can lighting be added later due to safety  
concerns without notification to the surrounding homeowners?

5) The property also has a grass airstrip upon which ultra-light aircraft lands frequently. Will  
this use be rescinded or continue as well on this land?

6) The current schematic shows the tower, the surrounding compound fence and two  
“future lease areas.” What will be on those separate future lease areas? More towers?

7) Is anyone concerned about the loss of agricultural land?

8) Towers such as this often make the surrounding land less aesthetically appealing. Home  
owners purchased and or built in the area for the aesthetics and this is likely to mar the  
view and limit future use of the surrounding areas.

9) If property value falls due to the detrimental effects on surrounding homes, the tax base  
and resulting tax revenue to the county will fall too. Is this considered in your decision?
10) Will you consider the potential erosion of land values of the surrounding properties? No one wants to have their hard-earned appreciation to vanish.

11) How long is the lease? Permanent? Who is responsible for the upkeep around the tower & for any safety concerns? Who is responsible to remove the tower and compound if it falls into disuse or becomes obsolete?

12) Is any plant screening required to mask the unattractive fenced compound?

13) Does the leasehold stay with the owner of the land or does it stay with the current owner even if the current owner sells the land?
   • I know of a property where the lease went with the seller and not with the land. The use of the land is now seriously affected and 9+ acres are sitting unused due to the tower right in the middle of otherwise usable land.

14) Is there a historical marker for the Santa Fe Trail on property that is due east? Any restrictions due to historical nature of that marking?

We hope you will seek answers to our questions and concerns prior to your decision regarding approval of this conditional use request.

To us, it seems that an area which will affect fewer residential properties would be more appropriate. We hope the Planning Committee members, and ultimately the County Commissioners will consider all of the above concerns when considering approval or denial of this request for a conditional use permit.

Please contact either of us if you have questions or feedback prior to the meeting on 6/28. Barbara can be reached at w. 785-65-1065 or c. 785-760-7525. Michael can be reached at 785-542-3829.

Thank you for considering our questions and input before making your decision.

Sincerely,

Barbara J. Braa

cc: Douglas County Commissioners
Hi Sandy

I am against the approval of CUP-17-00215 for the following reasons which I speak to in more detail at the hearing on Wednesday, June 28, 2017.

- Decrease in property values
- Aesthetics
- Historical
- Safety/Hazard issues
- Environmental

Regards,
Pat Kelly
21 June 2017

To: Lawrence-Douglas County Metropolitan Planning Commission / Eudora Planning Commission

RE: CUP-17-00215, Telecommunications tower located at 2138 N. 1000th Rd. Eudora, KS 66025

Dear Commission members,

First, as a prior member of the Eudora Planning Commission I would like to thank you for your service and for allowing me to voice my concerns.

I'm sure that you are all well aware that telecommunication (cell) towers have many things in common with wind turbines in western Kansas, most notably “visual” pollution. I have enclosed a copy of an article from the Notre Dame Journal of Law, Ethics & Public Policy which reviews cell tower visual pollution. Although the article neither condemns or condones erection of new cell towers it does offer a solution to lessen the effects of the visual pollution by disguising the cell tower as a tree (photo on the last page). Perhaps some of you have noticed some of the same cell tower camouflage along K-10 near Desoto, KS? As a neighbor who chose to move outside the city to enjoy country scenery I feel that new cell towers should be required to use some type of disguise when placed in rural residential areas, thus limiting the amount of visual pollution.

Another type of pollution cell towers have in common with wind turbines is light pollution. My family and I, as well as many of our neighbors enjoy spending time outdoors, especially in the evening hours after sunset. I would assume that a tower of 190 ft. would require safety lighting, especially with its proximity to the Vinland airport. I think I can speak for most of us in the area when I say that our evening outdoor activities would certainly be less enjoyable in the presence of constantly blinking lights. There have also been several studies done to document the adverse effects of light pollution on humans, animals and especially migratory birds.

I find myself questioning the geographic placement of this tower. The property is significantly lower than the properties to both the east, west and south. Anyone who drives Douglas County 458 highway west from Eudora knows there is a significant drop in elevation east of the property in question at Captain’s creek, followed by a rise in elevation west of county road 2100, placing the tower in what common sense would tell me is close to the lowest geographical area in the vicinity. Not to mention that there is a significantly taller tower at a higher elevation approximately 3 miles to the west of the proposed location which would seem to serve as a better alternative to the proposed tower.

Finally, there have also been several studies done by the real estate profession which show that the closer a property is to a cell tower, the less desirable and less valuable it becomes, mostly due to my first two objections stated above. I fully understand and agree that a property owner should have the right to develop a property as they see fit, with the understanding that such development should not impede upon his neighbors and their property. With these concerns in mind I must object to the Conditional Use Permit# CUP-17-00215.

Sincerely,

Patrick E. Jankowski
Amy M. Jankowski
June 5, 2017

Dear Property Owner:

The Lawrence-Douglas County Metropolitan Planning Commission will hold its regular meeting on Wednesday, June 28, 2017, beginning at 6:30 p.m., in the Commission Meeting Room on the first floor of City Hall, 6 E. 6th Street, Lawrence. The following item may be of interest to you:

**CUP-17-00215**: Consider a Conditional Use Permit for a new 190 ft self-supporting wireless telecommunications facility (tower), located at 2138 N 1000 Rd. Submitted by MW Towers LLC for F. Dwane Richardson & Valerie Richardson, property owners of record. Joint meeting with Eudora Planning Commission.

Conditional Use Permit requests are considered public hearing items and the public will be given the opportunity to make oral comments on such requests at the meeting. Written comments are welcomed and encouraged. The Commission has established a **deadline for receipt of all written communications of no later than 10:00 a.m. on Monday, June 26, 2017.** This deadline allows time for the Commission to receive and review comments prior to the meeting.

A complete legal description for this property is available at the Planning Office, 6 E. 6th Street, Monday - Friday from 8:00 a.m. until 5:00 p.m. If you have questions relating to this matter, please contact me at 832-3151.

**PLEASE NOTE:** If you have recently transferred ownership of your property in the area of this request, or if such property is under a contract purchase agreement, we ask you to please forward this letter to the new owner or the contract purchaser.

Sincerely,

Sandra Day, AICP
Planner II

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We are committed to providing excellent city services that enhance the quality of life for the Lawrence Community.
1-1-2012

Cell Phone Towers as Visual Pollution

John Copeland Nagle

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CELL PHONE TOWERS AS VISUAL POLLUTION

JOHN COPELAND NAGLE*

Granger, Indiana is a collection of residential subdivisions filled with nearly 800 cul-de-sacs. Besides those subdivisions, Granger’s most prominent features are its proximity to South Bend and to the Michigan state line, its lack of any real downtown, and the precarious status of an unincorporated community of 30,000 residents who rely upon individual water wells and septic tanks.1 Granger was also known for spotty wireless coverage when cell phones first became popular. My cell phone did not receive a signal in my Granger home, nor did most of my visitors whose phones were serviced by other providers. So I was pleased to learn that a new cell phone tower was planned for a vacant field about one mile from my home. Then I checked my mailbox one day and found a bright pink flyer that objected to the proposed tower as “visual pollution.” Most of my neighbors felt the same way, as demonstrated by the 1,135 residents who signed a petition against the tower. Another resident reported that she had abandoned plans to build a deck on the back of her house because she did not want to look at a tower. “View is everything,” said one neighbor, “and a tower kills the view.” Heeding these complaints, the county council repeatedly voted to deny the necessary permits.2

These stories can be multiplied across the country. Indeed, they have been, as local newspaper accounts and the reports of litigated disputes attest. There are now about 200,000 cell sites (including both tow-

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1. John N. Matthews Professor of Law, Notre Dame Law School; nagle.8@nd.edu. Alejandro Canoche offered helpful comments on an earlier draft of this paper. Research librarians Chris O’Byrne and Fumi Ogden provided invaluable assistance, and I am grateful for the research assistance of Kacy Ronig and Rachel Williams.


ers and antennas attached to existing structures) to accommodate the exponential increase in the use of wireless communication devices. Yet residents repeatedly object to the environmental, health, safety, and especially aesthetic harms of cell phone towers, which in turn lead to claims of reduced property values. As National Public Radio's Noah Adams reported in November 2004, "Americans everywhere from Manhattan to Hollywood take their cell phones for granted, but in many parts of the country where scenery is cherished, cell phone towers have been called visual pollution."

Cell phone towers are just the most recent target of visual pollution complaints. The term visual pollution has been used by courts, academics, and environmental groups to explain their distaste for ugly buildings, telephone towers, billboards, flags and signs, and numerous other images that have been derided as polluting the visual landscape. As Chief Justice

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For some of the other references to visual pollution, see Final National Pollutant Discharge Elimination System (NPDES) General Permits for the Eastern Portion of Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG280000) and Record of Decision, 63 Fed. Reg. 55,718, 55,722 (Oct. 16, 1998) (noting that an Alabama coastal city had complained that offshore drilling structures constituted visual pollution); Sunrise Powerlink Project: Final EIR/FEIS 3-1663 (Oct. 2008) (comment from the Sierra Club...
tice Burger once wrote, "[E]very large billboard adversely affects the environment, for each destroys a unique perspective on the landscape and adds to the visual pollution of the city. Pollution is not limited to the air we breathe and the water we drink; it can equally offend the eye and the ear."

Visual pollution is a fascinating example of pollution. Ordinarily, we associate pollution with air pollution, water pollution, and hazardous wastes. But we also worry about hostile work environments "polluted" by discrimination, claims of cultural pollution leveled against violent entertainment and internet pornography, and political processes polluted by excessive campaign spending. As I have argued elsewhere, a wide range of pollution claims have long appeared in the law and literature, with the idea of moral pollution preceding the contemporary understanding of pollution as a uniquely environmental phenomenon. Some of these other pollution claims persist, as evidenced by the kinds of pollution discussed in legal and political debates and by the continuing role that pollution plays in academic writing about anthropology.

Offensive sights fit within this broader understanding of pollution. These offensive sights are polluting agents because their appearance is found objectionable. A polluting agent is placed into the environment by a sign, a tower, a building, or a disorganized pile of materials. The affected environment is the heretofore uncluttered outdoor landscape. The most common harm associated with visual pollution is the annoyance resulting from the perception of something that is judged unsightly. That is not the only harm, though. Signs, communications towers, and discarded cars have all been blamed for reducing property values and inhibiting the enjoyment of neighboring property. Aesthetic concerns have also been linked to human health and blamed for depriving landowners of the cultural identity of their neighborhood. Billboards have been accused of distracting drivers, degrading public taste, encouraging

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Visual Pollution Task Force objecting to "visual pollution and visual impacts of the 150 miles of 160 foot-tall and 65 foot-wide transmission towers covering some of San Diego's formerly most scenic parks and neighbourhoods"; Harvey K. Flad, Country Clutter: Visual Pollution and the Rural Landscape, 553 ANNALS AM. ACAD. POL. & SOC. SCI. 117 (1997); Lesley K. McAllister, Revisiting a "Promising Institution": Public Law Litigation in the Civil Law World, 24 GA. ST. U. L. REV. 693, 730 (2008) (noting that Brazilian prosecutors regarded the reduction of visual pollution as one of their top priority areas); Peter J. Howe, Storefront Tobacco Ads Said to Target Students, BOSTON GLOBE, Sept. 11, 1998, at B2 (cigarette advertisements).


7. See id. The classic work on pollution as an anthropological concept is MARY DOUGLAS, PURITY AND DANGER: AN ANALYSIS OF CONCEPTS OF POLLUTION AND TABO (1966).
needless consumption, and desecrating the landscape. Billboards also illustrate the cumulative nature of visual pollution, for the sight of a solitary billboard proves much less objectionable than a highway that is filled with them. Visual pollution rarely results from a purposeful effort to offend the aesthetic sensibilities of others, though the person or organization that introduces the sight to the landscape may expect that the sensibilities of many viewers will be offended.

Visual pollution also illustrates the three ways of responding to pollution. Toleration is the initial response. Tolerance is championed by First Amendment scholars as the appropriate response to claims of cultural pollution resulting from violent entertainment and internet pornography (though not the appropriate response for hostile work environments). The idea of tolerating pollution may seem foreign to environmental law, but in fact many environmental laws prescribe the tolerable amount of air or water pollution, or they establish the permissible tolerances for pesticides. Prevention is the second response to pollution. Here the goal is to altogether eliminate pollution by preventing it from occurring. The Pollution Prevention Act states the national policy of the United States that pollution should be prevented or reduced at the source whenever feasible. The act establishes a program for achieving that goal, but it is generally understood that zero pollution is a goal our society has so far been unwilling to pay to achieve. So the most common response to pollution is avoidance. The law variously encourages dilution, filtering, separating pollution and its victims, and the treatment and removal of pollution as methods to reduce the harms resulting from exposure to pollution.

This Essay seeks to analyze the idea of visual pollution in the context of cell phone towers. Part I provides a general description of the nature of, and responses to, visual pollution. Part II examines the debate concerning the aesthetics of cell phone towers, which pits affected residents against cellular providers, with local governments exercising their traditional powers of land use regulation while being constrained by a federal law designed to promote wireless services. Part III reflects on the lessons that the idea of pollution offers for controversies regarding cell

8. 42 U.S.C. § 13101(b) (2000). Pollution prevention also appears in other federal statutes. A primary goal of the Clean Air Act (CAA) is to encourage or otherwise promote reasonable actions for pollution prevention. 42 U.S.C. § 7401(c) (2000). The Clean Water Act (CWA) supports activities and programs for the prevention, reduction, and elimination of pollution. 33 U.S.C. §§ 1253(a), 1254(a) (2000). The Resource Conservation and Recovery Act declares that whenever feasible, the generation of hazardous wastes is to be reduced or eliminated as expeditiously as possible. 42 U.S.C. § 6902(b) (2000).

phone towers, and the lessons that the cell phone tower controversies offer for understanding pollution in other contexts.

I. VISUAL POLLUTION

The first reported case to acknowledge "visual pollution" rejected a challenge to a gas station to be located in the downtown shopping area of a Detroit suburb. 10 Two years later, the same court upheld another Detroit suburb's rejection of a proposed high-rise sign to advertise another gas station located along Interstate 75. The court enthusiastically embraced municipal aesthetic regulation:

The modern trend is to recognize that a community's aesthetic well-being can contribute to urban man's psychological and emotional stability. It is true that the question of what is beautiful and pleasing is for each individual to decide. We should begin to realize, however, that a visually satisfying city can stimulate an identity and pride which is the foundation for social responsibility and citizenship. These are proper concerns of the general welfare.

Yellin, Visual Pollution and Aesthetic Regulation, 12 The Municipal Attorney 186 (1971). Madison Heights has determined that its citizens' well-being will be served best by preventing the visual pollution which occurs when high-rise signs dot major thoroughfares. It has sought to do this by limiting the height of free-standing signs within its boundaries.

The use of such signs for advertising purposes is often done with little regard for their natural or man-made environment. Their garishness often intrudes on a citizen's visual senses. Property owners do have the right to put their property to profitable use. But, we do not think that the right to advertise a business is such that a businessman may appropriate common airspace and destroy common vistas. Nor do we believe that the right to advertise a business means the right to interfere with the landscape and the views along public thoroughfares. 11

The concurring judge warned, however, that "[w]e will all live to rue the day that public officials are permitted to meddle in private affairs on aesthetic considerations since . . . each person has his own yardstick for the evaluation of matters aesthetic." 12


12. Id. at 530 (Targonski, J., concurring in the result).
Of course, the law struggled with aesthetic concerns long before the term visual pollution was coined. Traditionally, aesthetic complaints were insufficient to establish a nuisance. As Horace Wood's treatise explained over a century ago, "[T]he law will not declare a thing a nuisance because it is unpleasant to the eye." The courts repeatedly rejected assertions that aesthetic objections to junk yards, fences, and other things as unsightly rendered those objects a nuisance. The basis for those decisions was the reluctance of courts to find that offenses to one's sense of aesthetics constituted an injury that could be remedied by the courts.

"The cases rejecting aesthetic nuisances are now in tension with other areas of the law. Aesthetic concerns were once held insufficient to support zoning laws, but the modern trend is to uphold zoning conducted for aesthetic purposes." Other areas of the law now accept aesthetic concerns as a valid purpose, too. Moreover, several academic commentators have favored the acceptance of aesthetic nuisance cases. Raymond Coletta has argued that "[w]e seem somewhat incongruous to allow individuals redress for offenses to their senses of hearing and smell, but at the same time to deny them a remedy for offenses to their sense of sight."

13. Horace G. Wood, A Practical Treatise on the Law of Nuisances in Their Various Forms; Including Remedies Therefor at Law and in Equity 26 (3d ed. 1893); see also Dan B. Dobbs, The Law of Torts 133 (2d ed. 2001) ("Because cases differ and criteria for aesthetic judgments are deemed unreliable, courts have been reluctant to say that an inappropriate and ugly sight can be a nuisance."); W. Page Keeton et al., Prosser & Keeton on the Law of Torts 626 & n.3 (5th ed. 1984) (indicating that "mere unsightliness" does not constitute a nuisance, but that "aesthetic considerations... play an important part in determining reasonable use"); John Copleand Nagle, Mental Nuisance, 50 Emory L.J. 265 (2001) (discussing the application of nuisance law to aesthetic harms).

14. See, e.g., Busby v. Greene, 156 P. 1184, 1187 (Okla. 1917) (holding that an unsightly fence did not constitute a nuisance because landowners are "not compelled to consult the 'aesthetic taste' of their neighbors" when building a fence); Mathewson v. Primus, 395 P.2d 183, 189 (Wash. 1964) (holding that the unsightliness of a pig farm did not create a nuisance); State Rd. Comm'n of W. Va. v. Oakes, 149 S.E.2d 293, 300 (W. Va. 1966) (rejecting a nuisance claim against the storage of rubbish near a road).

15. See generally Raymond Robert Coletta, The Case of Aesthetic Nuisance: Rethinking Traditional Judicial Attitudes, 48 Ohio St. L.J. 141, 145-48 (1987) (explaining that courts refused to find a nuisance based on mere unsightfulness because of the belief that aesthetic harms are subjective and de minimis).


17. See, e.g., Berman v. Parker, 348 U.S. 26, 36 (1954) (holding that aesthetic concerns can justify a use of the government's eminent domain power). See generally Coletta, supra note 15, at 159 & n.111 (citing cases illustrating that "many federal and state courts have upheld a wide variety of aesthetically oriented regulations" since Berman).

18. Coletta, supra note 15, at 163-66. Coletta adds that "there is no physiological reason for treating visual perceptions any differently from noise or smell." Id. at 166.
These arguments have resulted in increasing judicial acceptance of aesthetic nuisance claims. The cases also contain novel assertions of the harm caused by unsightly activities on a neighbor's property. One landowner, for example, asserted that the view of wrecked cars on a neighbor's lot made him self-conscious and unwilling to invite friends over for cookouts. Yet the reluctance to rely upon unsightliness as an injury giving rise to a nuisance still endures in some courts. Today most courts agree that a nuisance claim can rest on either aesthetic concerns themselves, or the decreased property value associated with unpleasant aesthetics. But aesthetic nuisance claims remain rare compared to the ubiquity of zoning provisions governing appearances.

Zoning law now provides the primary means for regulating visual pollution. Local ordinances prescribe the acceptable colors, architectural styles, sizes, location, and variety of buildings and other structures constructed within communities throughout the United States. The other source of legal regulation of visual pollution is contained in statutes specifically designed to preserve the aesthetic appeal of certain places. For example, federal and state law designate particular rivers, highways, and communities as "scenic" and thus entitled to protection against any structures or other sights that would impair the visual quality of that environment.

Many laws, and many claims of visual pollution, target billboards. "Billboards erode the quality of life," claimed one scenic advocacy organization. "They pollute our landscape, destroy our historic, cultural, and natural diversity, and undermine America's heritage and sense of place." It took a while for that view to take hold, and even longer for the law to accept it. Consider the concerns articulated by a Maryland court in 1973:

The effort to eliminate what was referred to in argument before us as "visual pollution" by controlling signs and billboards through the exercise of the zoning power has been slowly developing. The

20. See, e.g., Okefina v. Williams, 302 S.E.2d 110, 111 (Ga. Ct. App. 1983) (rejecting the claim that the unsightliness of a wall constituted a nuisance); Carroll v. Hurst, 431 N.E.2d 1344, 1349 (Ill. App. Ct. 1982) (rejecting the claim that a junkyard and salvage operation constituted a nuisance because "[i]n no testimony was given that defendant's use of his land created an unsightly view; indeed, under Illinois law, a landowner does not have a right to a pleasing view of his neighbor's land"); Noah v. Albemarle, 665 S.W.2d 1, 2 (Mo. Ct. App. 1983) (holding that the presence of several dilapidated appliances and other refuse was not a nuisance because of the subjective nature of aesthetic considerations).
principal difficulty is that other forms of pollution, stench and noise and the like, can be measured by more nearly objective standards. If beauty, however, lies in the eyes of the beholder, so does the tawdry, the gaudy and the vulgar—and courts have traditionally taken a gingerly approach to legislation which circumscribes property rights by applying what amount to subjective standards, which may well be those of an idiosyncratic group.22

Gradually, legislatures and courts became more accepting of billboard regulations. The federal Highway Beautification Act restricts the placement of billboards and other signs near interstate highways.23 That 1965 law resulted from a campaign led by Lady Bird Johnson, and upon signing the statute, her husband Lyndon proclaimed that "[b]eauty belongs to all the people. And as long as I am President, what has been divinely given to nature will not be taken recklessly away by man."24 The Visual Pollution Control Act of 1990 would have further regulated billboards, though Congress declined to enact that law.25 The regulation of billboards raises First Amendment issues because billboards contain speech, and much of the recent litigation has considered whether local regulations of billboards comply with the First Amendment's standards.26

This approach is seen in earlier efforts to address the aesthetic concerns of towers. "It is always interesting to observe the manner in which the courts deal with new inventions and apply old principles of law to new conditions." That statement could summarize the reaction to the law governing cell phone towers, but it actually appeared in Edward Quinton Klasby's 1900 treatise entitled The Law of Electric Wires in Streets and Highways.27 Telephone poles and wires, electric poles and wires, and trolley wires were all the subject of complaints—and litigation—concerning their aesthetic impacts. Or, as Klasby put it, "a line of posts and wires often spoils the appearance of a pretty place."28

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24. Lyndon B. Johnson, Remarks at the Signing of the Highway Beautification Act of 1965 (October 22, 1965), in AMERICAN EARTHY ENVIRONMENTAL WRITING SINCE THOREAU 398 (Bill McKibben ed., 2008); see also Id., supra note 4, at 125 (referring to "the Highway Beautification Act, which was specifically enacted to curtail visual pollution along roadways").
26. See, e.g., Outdoor Media Group, Inc. v. City of Beaumont, 506 F.3d 895 (9th Cir. 2007) (describing the First Amendment standards applicable to billboard ordinances).
27. EDWARD QUINTON KLASBY, THE LAW OF ELECTRIC WIRES IN STREETS AND HIGHWAYS vii (1900).
28. Id. at 108. Klasby also noted that "there are few, if any, decisions" involving telegraph lines before 1883 even though that technology had been employed since the 1840s. Id. at 97.
Telephone and electric systems were installed by public utilities that possessed the power of eminent domain. That allowed the utilities to decide where to locate their poles and wires. Some landowners tried to block the installation of unsightly poles and wires on their property, but the courts usually found that the placement was incident to the existing street or utility easements or otherwise authorized. More litigation concerned the proper measure of compensation owed to those whose property was taken for the new systems. Specifically, numerous courts considered whether the aesthetic harm of the pole and wires was a compensable harm. The courts reached differing results. Some courts held that the reduction in property value attributable to the unsightliness of the poles and wires was compensable. Other courts held the oppo-

29. See, e.g., Palmer v. Larchmont Elec. Co., 52 N.E. 1092, 1095 (N.Y. 1899) (noting that "it may be that some prejudice exists against wires strung on unsightly poles, but holding that the town was authorized to build them pursuant to the earlier construction of a highway); Dayton v. City Ry. Co., 12 Ohio Dec. 258, 285 (Ohio Ct. Com. Pl. 1902) ("With rare unanimity the courts have concurred in holding that an electric street railway . . . is not an additional servitude upon the fee within the streets, but a legitimate use of the streets within the original general purpose of their dedication."); Petron v. E. Cleveland R.R. Co., 10 Dec. Reprint 545, 1889 WL 352, at *7 (Ohio Ct. Com. Pl. 1889) (admitting that electric trolley wires and poles "add nothing to the beauty of the street," but adding that "[o]ne of these poles is no more of an obstruction than a lamp post or an electric light post"). But see Donovan v. Allert, 91 N.W. 441 (N.D. 1902) (holding that a telephone company had not acquired the right to erect unsightly telephone poles on the plaintiff's property); Krueger v. Wis. Tel. Co., 81 N.W. 1041 (Wis. 1900) (holding that the placement of a telephone pole is a servitude). See generally Keasby, supra note 27, at 110–11 (summarizing the arguments on both sides).

30. Kamo Elec. Coop. v. Cushard, 416 S.W.2d 646, 651–55 (Mo. Ct. App. 1967) (discussing many of the cases on both sides and concluding that "the trend of authority is presently inclined to the view that the disfigurement of farms by unsightly power lines is a compensable element of damage").

31. See Bd. of Trade Tel. Co. v. Darst, 61 N.E. 298, 309 (Ill. 1901) (holding that the damage suffered by the property owner due to the unsightliness of the telegraph poles or structure was a proper element of his damages for loss of value to his property); Cushard, 416 S.W.2d at 648–50 (upholding a $5,000 compensation award where about half of the damages were attributed to the aesthetic loss); Union Elec. Co. v. Simpson, 371 S.W.2d 673, 681 (Mo. Ct. App. 1963) (holding that jury allowed to consider any effect that the power lines would have had on value of owner's land, and thus allowed to consider that line would be unsightly); Wadsworth Land Co. v. Charlotte Elec. Co., 88 S.E. 439, 440–41 (N.C. 1915) (holding that unsightfulness of trolley wires and poles was a consideration in the depreciation in value of property); Ohio Pub. Serv. Co. v. Dehring, 172 N.E. 448, 449 (Ohio Ct. App. 1929) (holding that the unsightliness of towers and transmission lines may be considered in determining damages); Anderson v. Phila. Elec. Co., 2 Pa. D. & C.2d 709, 713 (Pa. Ct. Com. Pl. 1953) (allowing compensation for the presence of the poles, though not merely their unsightliness); Sw. Tel. & Tel. Co. v. Smithcal, 136 S.W. 1049 (Tex. 1911) (owner allowed to recover for loss of value to property for unsightly wires and poles); Tex. Power & Light Co. v. Jones, 293 S.W. 885, 886–87 (Tex. Civ. App. 1927) (owner could recover for damages caused to property because power lines are unsightly).
site. The Mississippi Supreme Court, for example, refused to compensate the residents of Bay St. Louis who complained that electric poles and wires interfered with their view of the Gulf of Mexico:

It is said the poles and wires of appellant are unsightly, and are a disfigurement to the property, and an especial injury in that it obstructs the open view of the sea. Similar erections in all cities and towns present, though perhaps in a less degree, like inconveniences to the owners of palatial residences, but disfigurements of this kind to property are not the subjects of compensation, or, if so, they are conclusively presumed to have been paid for upon the opening of the street and its dedication to public use.

Another court even contended that "[s]ince the advent of rural electrification, many farms have transmission lines traversing them and instead of being unsightly, many prospective buyers of farms regard them as evidence that an abundance of electric power is manifest."

Several property owners claimed that the aesthetic harms produced by telephone or electric systems constituted a nuisance. In 1881, the New York Attorney General filed a nuisance suit against "huge telegraph poles, of a size and clumsiness such as has been rarely seen outside of the Maine woods in which they got their growth." One Louisiana court ordered the removal of ten-foot posts that were "unsightly, interfere with and are a menace to the full and free use of the sidewalk and prevent the planting of trees and grass" by the sidewalk. But most courts refused to hold that the unsightliness of the poles or wires resulted in a nuisance.

Detroit residents took a different approach. When the city authorized a new electric street railway system, the neighbors "cut[] down the poles, and threatened to continue to do so." The railway then sought an injunction against the actions of the neighbors. The Michigan

32. See Ill. Power & Light Corp. v. Barnett, 170 N.E. 717, 719 (Ill. 1930) (holding that unsightliness of towers is not a proper element of damage to land); Ill. Power Co. v. Wieland, 155 N.E. 272, 274 (Ill. 1927) (holding unsightliness of poles for electric wires is not a proper element of damage); Kame Elec. Coop. v. Brooks, 337 S.W.2d 444, 451 (Mo. Ct. App. 1960) (denying compensation for aesthetic harms but suggesting that it might be forthcoming if the property hosted "an amusement park, cemetery, campus, institutional grounds, club grounds, school or hospital lawns, garden or a beautified estate, or the like"); Shinizel v. Bell Tel. Co. of Phila., 31 Pa. Super. 221, 226 (Pa. Super. Ct. 1906) (unsightliness of poles do not constitute a special injury for which damages can be recovered).

35. The Unightly Telegraph Poles. Suit by the Attorney-General to Remove the Pine-Streets Obstruction, N.Y. Times, May 1, 1881, at 2 (referring to the telegraph poles as "these huge, ugly excrescences").
Supreme Court approved the requested remedy, albeit by a 3–2 vote. The majority was dismissive of the neighbors’ aesthetic complaints about the poles: “If it be said they are unsightly, and therefore offend his taste, it can well be replied that they are no more so than the lamp-post or the electric tower.”

One dissenter responded that “poles may be so thickly planted along our sidewalks as even to exclude light and air from our dwellings, and yet we shall have no remedy.”

Over time, municipalities began to object to the aesthetics of telephone and electric poles and wires. They enacted prohibitions against such poles and wires or required them to be located in less intrusive places. The utilities objected to those laws, and more litigation resulted. Sometimes the courts forced the use of underground wires themselves. In 1894, for example, a local court held that “[t]he city of Cleveland should maintain its wires in conduits underground” because the “large and unsightly poles erected . . . in front of the residences of the plaintiffs, thus marred and in a measure destroying the beauty of a beautiful avenue,” was not a reasonable exercise of the city’s authority. Eventually, technological developments helped the aesthetic cause. Once underground wires became available, cities and courts required them instead of the objectionable above-ground systems.

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39. Id. at 1012.
40. Id. at 1018 (Moore, J., dissenting).
41. See generally Keaton, supra note 27, at 57–58 (summarizing the municipal power to regulate poles and wires).
44. See City of Monroe v. Postal Tel. Co., 162 N.W. 76 (Mich. 1917) (upholding a city ordinance requiring telegraph wires to be removed from poles and placed underground).
II. Cell Phone Towers

Motorola's Martin Cooper is credited with inventing the first portable telephone in 1973.45 A trial of the first cellular system linked 2,000 customers in Chicago in 1978.46 Since then, the number of cell phones has increased dramatically to 34 million in 1995, 159 million in 2004, and now 270 million.47

Cell phones and other personal wireless services depend on the transmission of radio signals. The easiest—and cheapest—way to transmit those signals is from antennas that are placed on towers. The antennas must be placed on high towers because wireless technology is relatively low-powered and requires a line-of-sight to the next tower. Coverage within an area is maintained by arranging antennas in a honeycomb-shaped grid, from which the term "cell" originates. A phone call is transferred from one tower's coverage area to another as a phone user travels. Providers want to increase the number of cells and decrease the geographic coverage of each cell in order to increase the quality of service and therefore attract subscribers. The coverage area of each cell determines the most desirable tower locations. Antennas may be located on existing towers, light poles, or roof tops in urban areas, but new towers must be built outside of cities in order to achieve continuous wireless service. Additionally, towers are expensive, so providers have an incentive to build as few as possible.48

Several harms are attributed to cell phone towers, including health impacts from electromagnetic fields, safety, harm to wildlife, and loss of property value. The most common complaint is aesthetic. As one court observed, "Few people would argue that telecommunications towers are aesthetically pleasing."49 Many people object to the sight of a tower or to

46. See id.; Thomas A. Winkle, Cellular Tower Proliferation in the United States, 92 GEOGRAPHICAL REV. 45, 49 (2002).
48. For the basics of cell phone technology, see, e.g., Winkle, supra note 46, at 54; see also Voice Stream PCS1, LLC v. City of Hillsboro, 301 F. Supp. 2d 1251 (D. Or. 2004); David W. Hughes, When NIMBY: Attack: The Height to Which Communities Will Climb to Prevent the Siting of Wireless Towers, 23 J. CORR. L. 469, 478–86 (1998).
49. Sw. Bell Mobile Sys. v. Todd, 244 F.3d 51, 61 (1st Cir. 2001); see also Am. Bird Conservancy v. Fed. Commun's Comm'n, 545 F.3d 1190, 1195 (9th Cir. 2008) (dismissing a lawsuit alleging that cell phone towers were killing endangered Hawaiian petrel and Newall's shearwaters); PrimeCo Pers. Commun's, Ltd. P'ship v. City of Mequon, 352 F.3d 1147, 1149 (7th Cir. 2003) ("The unsightliness of the antenna and the adverse effect on property values that is caused by its unsightliness are the most common concerns," while environmental and safety effects are sometimes cited as well.).
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a tower's interference with their preexisting view. But it is hard to be too precise about the nature of the aesthetic harm. The most common complaint is that cell phone towers are so different—and taller—than other features of the landscape. The emphasis upon the contrast between a tower and the existing landscape makes the harm depend upon where a tower is located. Commercial districts and areas with tall buildings or other structures are generally regarded as places where the aesthetic impact of a cell phone tower is least, while the harm is greatest in residential communities, historic sites, parks, forests, hillsides, or wilderness areas. Some observers have also cited the metallic character of most towers as producing an industrial or even "intergalactic" appearance.50

Cellular providers do not enjoy the power of eminent domain, unlike the utilities that built telephone and electric systems a century ago. Instead, cell phone providers must persuade—and pay—private or public landowners to allow a tower on their property. That makes the paid property owner happy, but it leaves the neighboring individuals and businesses to suffer the externality—the pollution—of the aesthetic harms. Those neighbors often turn to their local governments, who have become adept at employing zoning law and other regulations to achieve aesthetic ends. The efforts to combat the aesthetic harms mirror the efforts to combat other types of pollution, though with some unique twists.

A. Responding to the Visual Pollution of Cell Phone Towers

Recall the three responses to pollution claims: tolerance, prevention, and avoidance.51 Tolerance is an obvious response to the presence of cell phone towers. Aesthetic harms are real, but they are perhaps the least serious and most subjective of all of the harms associated with pollution claims. An ugly cell phone tower does not expose people or wildlife nearby to any toxic chemicals, nor does it interfere with most uses of one's property or other activities. Nor has anyone lodged any moral objections to cell phone towers. Aesthetic harms are especially subjective, though distaste with the sight of cell phone towers is widespread. And when people object to the sight of cultural pollution in the form of pornographic movies displayed at drive-in theaters, the typical response has been to encourage those who are offended to avert their eyes or to simply be more tolerant.

50. See Robert Long, Note, Allocating the Aesthetic Costs of Cellular Tower Expansion: A Workable Regulatory Regime, 19 STAN. ENVTL. L.J. 373, 390 (2000) (describing cell phone towers as "industrial-looking, metallic structures"); see also Hughes, supra note 48, at 497 (noting that "[t]he metallic composition of these towers further compounds the visual contrast"); B. Blake Levitt, Cell-Phone Towers and Communities: The Struggle for Local Control, ORION AFFIELD, Autumn 1998, at 32, 33 (referring to the "intergalactic look" of cell phone towers).

51. See supra text accompanying notes 8–9.
Toleration is an especially appropriate response to claims of visual pollution because the harm is generally less than other kinds of pollution and the harm is more subjective. Virginia Postrel sees the battle against the visual pollution of cell phone towers as the latest confirmation of Ronald Coase's insight "that pollution is not a simple matter of physical invasion or evildoing. It is a byproduct of valuable actions." Postrel explicitly calls for "tolerance" of cell phone towers and other forms of visual pollution because "[e]nforcing taste means blocking experimentation," and because we can simply avert our eyes from the offending structure (just like drive-in movies). Postrel also contends that "since we tend to become used to our surroundings over time, it becomes easier and easier to ignore visual offenses. Sometimes we even come to enjoy sights we once found annoying." There is ample precedent to support this call for toleration of cell phone towers. One geographer insists that the majority of Americans who use and value cell phones seem willing to overlook the visual impacts of towers, just as they have done with barbed wire, electric wires, and telephone poles. The experience with these other structures suggests that it is likely that people will grow accustomed to the sight of cell phone towers if they persist in coming decades; the intolerance for cell phone towers could be a temporary phenomenon.

Pollution prevention may be another viable response to the visual pollution of cell phone towers. In this context, prevention means retaining the benefit of cell phone coverage without experiencing the externality of aesthetic harms. So far, the prevention of these harms has been difficult because we want cell phones to work as we move from one area to another. Cell phone providers satisfy these popular desires by designing a honeycomb of cells, each containing a tower that transmits the radio signals necessary for communication via cell phone. Each provider, moreover, needs its own antenna to transmit its customers’ signals, and usually that means that each provider needs its own tower. Multiple towers for each provider can be avoided by "co-location"—the placement of multiple antennas on a single tower—and the resulting elimination of the need to build a new tower eliminates the additional visual pollution that a new tower would cause. Co-location is not always possible.

53. Id.
54. Id.
55. Winkle, supra note 46, at 56. Winkle cites Pierce F. Lewis, Aesthetic Pollution: When Cleanliness Is Not Enough, 52 PUB. MGMT. 8 (1970), for the proposition that "the frontier philosophy of Americans has led to acceptance of landscape elements viewed as functional, such as barbed wire." Cellular providers have made the same argument. See Sprint Spectrum Ltd. v. Parish of Plaquemines, No. Civ.A. 01-0520, 2003 WL 1934656, at *17 (E.D. La. Jan. 28, 2003) (reporting the testimony of a Sprint official who "observed that in his experience the towers tend to lose their identity and blend into the landscape over time").
though, because of leasing disputes between providers and because of the electrical interference that can occur from placing antennas too close together. 58

Prevention thus requires a technological development that provides phone coverage without towers that loom over the landscape. One township tried to justify a moratorium on new cell phone towers pending the necessary "rapidly advancing technologies in wireless telecommunications." 57 The court overturned the moratorium, though, because while satellite technology or other developments could make cell phone towers obsolete, "the use of communications towers and antennas is still the most prevalent and realistic technology in the industry at the present time." 58 Femtocells are the next, best hope for reducing the need for cell phone towers. A femtocell is the size of an ordinary home internet router and operates like a mini-cell phone tower that boosts the cellular provider's existing signal for better use inside a home. Sprint began offering nationwide femtocell service in August 2008. Cellular providers would benefit from femtocells by being able to offload traffic from their main networks, saving the substantial cost of building more cell phone towers. 59 If that actually happens, then fewer cell phone towers are necessary and the visual pollution associated with cellular service may be prevented. The ability to prevent that pollution may also persuade courts to uphold laws requiring such prevention, just as the courts began to uphold laws restricting telephone and electric poles once underground wiring became feasible. 60

While toleration and prevention each hold promise, avoidance remains the most frequently employed response to the aesthetic complaints about cell phone towers. This strategy accepts that cell phone towers will exist and that people will object to them, so it works to prevent the objecting parties from being harmed. One way of doing that is treatment. For environmental pollutants, treatment means altering the chemical composition of the pollutant so that it is no longer harmful, as is frequently done in municipal wastewater treatment plants. For visual pollution, treatment refers to efforts to diminish the aesthetic impact of a

56. See Lang, supra note 50, at 386–87 (describing co-location).
58. Id.
60. See supra in text at notes 55–57 above.
cell phone tower. For example, Gwinnett County in suburban Atlanta prescribes that towers

- shall either maintain a galvanized steel or concrete finish . . . or be painted a neutral color so as to reduce visual intrusiveness
- use materials, colors, textures, screening, and landscaping that will blend the tower facilities to the natural setting and building environment
- shall not be artificially lighted unless otherwise required (say by the Federal Aviation Administration), or
- include any commercial signage. 61

These provisions are intended to accomplish the goals of the county's Telecommunications Tower and Antenna Ordinance, including "the design and construction of towers and antennas to minimize adverse visual impacts." 62

Camouflage represents a more aggressive approach to treating the visual pollution of cell phone towers. Cellular providers have disguised towers as flag poles, church steeplae, light poles, chimneys, trees, silos, lighthouses, cacti, and bird nests. Towers have also been attached to existing structures, such as church steeplae, buildings, chimneys, gas station signs along interstates, electricity poles, and clock towers. 63 There is also one case involving "an 80-foot tower designed to look like a ship's mast or a flagpole in a boatyard in Manchester harbor." 64 The goal of these disguises is to transform cell phone towers into sights that are aesthetically innocuous, or even pleasing. The polluting vision is thus rendered harmless in much the same way that various environmental pollutants are treated to eliminate their toxic effects. But such camouflage techniques are not always successful. In the Manchester harbor case, the local planning board objected to the tower because, as one member put it, "the proposed tower looked like an 80-foot smokestack." 65 Cellular providers sometimes object to camouflage, too,

62. Id. div. 1, § 108-31.
65. Id. at 71. Another member of the planning board agreed "that the tower would not look like a mast." Id. On the other hand, the state historical commission
because it is much more expensive than simply building a regular metallic tower. All pollution control is expensive, though, so it would be surprising if controlling visual pollution was the exception.

B. Regulating the Location of Cell Phone Towers

The most common way of avoiding the aesthetic harms of cell phone towers, and the most common response to those harms generally, is to place the towers where they are least objectionable. Initially, this separation strategy may be achieved by voluntary actions. Providers often seek to build towers away from any residential neighborhoods simply to avoid the controversy that is likely to ensue. For their part, residential neighborhoods can establish private covenants that forbid the location of cell phone towers on their property. Covenants forbidding a wide range of activities or structures have become a staple of new subdivisions, and they are easily employed to block the siting of a tower by current and future owners of the land. The first case to enforce a restrictive covenant to exclude a cell phone tower arose on land in Westchester County, New York, that was subject to a covenant prohibiting anything besides a single-family home. The New York Court of Appeals rejected the provider’s claims that the enforcement of the covenant would violate the Federal Telecommunications Act (TCA) or generalized interests in public policy. The court reached that result even though the tower had already been built, and thus the court’s decision ordered the removal of the tower within “a reasonable period of time.” In another case, a Florida state court ordered the demolition of a tower built on land that had been conveyed to the city “solely for passive park purposes.”

66. See Hughes, supra note 48, at 499 (providing data on the cost of camouflage on cell phone towers circa 1998).
Nuisance law is the traditional means of separating conflicting use of the land, including pollution claims. The plaintiffs in one nuisance case blamed a cell phone tower for straining the marriage of one couple and forcing another family to move because the tower was "offensive," "overbearing," that it clearly did not fit in place with the surrounding flora, and that he "felt [his] dream house was shattered by this monstrosity." But the judge visited the site and concluded that the tower "simply cannot be found without the assistance of a guide," and "it would be difficult to imagine being able to see this pole even in the dead of winter." The court thus dismissed the nuisance claim because "[n]o harm occurred here, nor could it be plausibly so alleged." Most other nuisance cases involving the aesthetics of cell phone towers have failed as well.

Separation is usually achieved by the existing tools of municipal zoning laws and land use regulations. The standard zoning law contains restrictions on the height of structures, requirements that structures be set back a certain distance from the property's boundary, and designations upon which uses are permissible in each area. Zoning law further authorizes conditional uses and special exceptions that operate to allow certain structures only upon a showing of need and the absence of harm. Each of these provisions has been applied to cell phone towers. The typical tower is over one hundred feet tall, and the ideal place for a tower that best serves its purpose might be close to the property line or in a residential area or an environmentally sensitive location, so providers often struggle to gain the permission of local zoning authorities to build a new cell phone tower.

70. Id. at *1 & n.1.
71. Id. at *2.
73. Representative cases include T-Mobile USA, Inc. v. County of Hawaii Planning Comm'n, 104 P.3d 930 (Haw. 2005) (holding that a special use permit was not needed to place an antenna in a fake chimney); Sprint Spectrum, Ltd. v. Zoning Bd. of Adjustment, 823 A.2d 879, 99 (N.J. Super. Ct. App. Div. 2003) (reversing the denial of a variance because, inter alia, the company had minimized the aesthetic impact of the antennas); AT&T Wireless Servs. v. City of Streetsboro, No. 97-P-0070, 1998 WL 813834, at *7 (Ohio Ct. App. June 26, 1998) (reversing the denial of a conditional use permit that relied "solely [on] statements made by nearby landowners expressing general concerns about aesthetic deterioration in the area," lowered property values, and health risks); In re Shaw, 945 A.2d 919 (Vt. 2008) (upholding the issuance of a conditional use
A recent Kansas City case is illustrative. T-Mobile wanted to build a 120-foot cell phone tower in Kansas City, Kansas. To do so, it needed a special permit, which would be forthcoming only after considering, inter alia, the effect of the tower on "the character of the neighborhood" and "visual quality." The city code also expressed a preference for locating cell phone towers in commercial districts rather than residential districts. The local board denied the application in part because the tower would be located in a residential district and because it "would be the tallest structure in the area" and "may be considered unsightly by many."

Some municipalities have expanded upon their general zoning provisions by specifying which places are acceptable and which places are unacceptable for cell phone towers. For example, San Diego County's 2003 Wireless Telecommunications Facilities ordinance divides tower applications "into four tiers, depending primarily on the visibility and location of the proposed facility," and then it imposes more stringent aesthetic requirements upon proposals in residential areas than in industrial areas. Towers located in residential areas must be camouflaged and they are subject to height and setback restrictions. The applicant for a permit to build a cell phone tower must prepare a "visual impact analysis," and the tower "must meet many design requirements, primarily related to aesthetics."

C. The Federal Telecommunications Act of 1996

The cumulative effect of such local ordinances has been extremely effective in restricting the location of cell phone towers. Zoning authorities often heed the objections that their constituents have voiced to the presence of a cell phone tower in their neighborhood, just as I experienced in my suburban community. One of my Notre Dame physics department colleagues was quoted in the local newspaper describing "visual pollution of the scenery" as "a much bigger worry. I certainly wouldn't want one in my back yard." One cannot imagine a clearer permit for a cell phone tower); Cingular Wireless v. Thurston County, 129 P.3d 300 (Wash. Ct. App. 2006) (affirming the denial of a special use permit).

74. T-Mobile Central, LLC v. Unified Gov't of Wyandotte County, 546 F.3d 1299, 1304 (10th Cir. 2008) (quoting WYANDOTTE COUNTY-KANSAS CITY, KAN., CODE OF ORDINANCES ch. 27, art. 4, § 27-214(1)(b), art. 8, div. 6, § 27-593(a)(30)).

75. Id. at 1305.

76. Sprint Telephony PCS, Ltd. v. City of San Diego, 543 F.3d 571, 574 (9th Cir. 2008) (en banc) (describing the ordinance and rejecting a TCA challenge to it).

77. Id.; see also Cellcom P'Ship v. Town of Grafton, 335 F. Supp. 2d 71, 75-76 (D. Mass. 2004) (prescribing a descending order of preferences for cell phone towers built on existing structures, where screening already exists, in commercial districts, on government or educational structures, or finally in residential districts).

78. Porter, Communications Towers, supra note 2, at 81.
statement of the NIMBY—"not in my back yard"—response that characterizes many complaints about pollution. Zoning law empowers local authorities with broad discretion to regulate such visual pollution. So much discretion, in fact, that cellular providers worry that the industry will never achieve its potential "if NIMBYs and local governments are allowed to bottleneck growth." 79

So Congress intervened to recalibrate the balance between the municipal zoning control of cell towers and the broader demand for cell phone coverage. The Telecommunications Act of 1996 (TCA) sought to provide "a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition." 80

Most of the law's provisions were designed to deregulate telephone service, though the law also regulated television station ownership and encouraged the installation of the V-chip technology that was seen as a solution to the claims of violent entertainment and pornography as cultural pollution. The TCA's treatment of cell phone towers is buried in § 332(c)(7). Entitled "Preservation of Local Zoning Authority," section 332(c)(7) is a compromise provision that acknowledged the concerns that local zoning decisions were creating a patchwork of requirements that impeded the development of wireless communications while recognizing legitimate local concerns about the siting of cell phone towers. The section strives to achieve the appropriate balance by imposing several substantive and procedural requirements for local zoning regulation of cell phone towers. For example, denial of permission to build a tower must be in writing, supported by "substantial evidence contained in a written record," and must neither "unreasonably discriminate" among providers nor effectively prohibit personal wireless services. 81 Moreover, cell phone towers cannot be prohibited based upon the alleged environmental

79. Hughes, supra note 48, at 476; see also id. at 471 ("Zoning boards ignore their limited authority ... to reject tower siting applications based on unsubstantiated myths that wireless towers and antennas are ... eyesores."); Long, supra note 50, at 409 ("[A] coalition of localities bent on preventing cell towers could burden society with a negative externality by hoarding aesthetic resources at the expense of cellular customers."); Vittore, supra note 63, at 21 ("[T]here are about 37,000 different zoning authorities in the U.S. that have the ability to stall the construction of wireless towers.").


effects of their electronic emissions, "to the extent such facilities comply with the Commission's regulations concerning such emissions."\(^2\)

These provisions have generated extensive litigation as providers have challenged the unfavorable decisions of local zoning authorities. Much of that litigation has focused upon the meaning of the "substantial evidence" requirement, especially as it applies to aesthetic concerns. While there has been some dispute about the meaning of "substantial evidence," most courts agree that the TCA adopts the traditional understanding of substantial evidence in other contexts. That means the standard is "less evidence than a preponderance, but more than a scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."\(^3\)

The TCA thus requires substantial evidence to support a local government's refusal to permit the construction of a cell phone tower. But substantial evidence of what? How does a local government show—or a cellular provider contest—that there is substantial evidence that a proposed cell phone tower will result in an aesthetic harm? Cellular providers have occasionally suggested that aesthetic harm can never yield substantial evidence, which would disqualify local governments from relying upon aesthetics to reject a proposed cell phone tower.\(^4\) That extreme argument has failed in court,\(^5\) but it leaves the nature of the relevant aesthetic evidence unresolved. Several types of evidence have been proffered: photos of the site, reports on nearby building and structures, and especially the complaints of neighboring individuals. Again, though, the challenge is to transform that evidence into a conclusion

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85. See, e.g., Prefab Sites, LLC v. Troup County, 296 F.3d 1210, 1219 (11th Cir. 2002) ("Aesthetic concerns may be a valid basis for denial of a permit if substantial evidence of the visual impact of the tower is before the board."); Comm. for Reasonable Regulation of Lake Tahoe v. Tahoe Reg'l Planning Agency, 311 F. Supp. 2d 972, 989–90 (D. Nev. 2004) ("Under the Telecommunications Act, substantial evidence may take the form of aesthetic information and judgment as long as it is apparent that aesthetic judgment is not a pretext for a particular decision.").
about aesthetics. The clearest photo, the most detailed report, and the most thoughtful comment must still rely upon some standard to judge what is aesthetically acceptable and what is not. The persuasive force of individual aesthetic objections has been particularly contested. In one case, seven residents complained that a proposed cell phone tower would (1) block the view of Mount Rainier, (2) "be an eyesore [and] cause our town to lose its reputation as a . . . beautiful community," (3) be a "hideous huge 100-foot piece of steel being placed in my space" where it would "substantially dominate and diminish the scenic beauty of my view of the forest . . . and my skyline view," (4) be a "monstrosity[!]" that "defaces the community," (5) be "an eyesore" that would turn off tourists, (6) be "the start of a huge monster" that would change the character of the community, and (7) defeat the community's efforts to remove power lines and telephone lines.\textsuperscript{86} The town relied upon such claims to deny a permit for the tower. But the court dismissed the complaints of the residents as "no more than individualized aesthetic opinions, not based on any fixed standards adopted by the town."\textsuperscript{87} The court added that "[a]s 'beauty is in the eye of the beholder,' 'adverse impacts' are also in the eye of the beholder," and the town failed to adopt any standards by which to judge those proposals that would infringe upon "the town's desire to maintain its scenic beauty and views."\textsuperscript{88}

Cases like that show why the TCA has probably generated more land use litigation since 1996 than any other federal statute.\textsuperscript{89} That litigation has produced a roughly even number of cases in which providers win or local officials win. Several patterns emerge from these cases, with courts emphasizing distinct features of a location depending upon whether they find that local governments have complied with the TCA or not.\textsuperscript{90}


\textsuperscript{87} Id. at *17.

\textsuperscript{88} Id. at *12–*13.


\textsuperscript{90} These cases show three trends: compliance with a zoning ordinance favors providers, specific factual evidence of a tower's likely effects is especially valuable, and
The courts have relied on several propositions in overturning local zoning decisions denying permission for cell phone towers when those zoning decisions have been driven by aesthetic objections. First, it is well established that "generalized concerns about aesthetics are insufficient to constitute substantial evidence." As Judge Posner explained, "If blanket opposition to poles could count as sufficient evidence for denying an application to build an antenna, the substantial-evidence provision of the Telecommunications Act would be set at naught." Conclusory allegations about the appearance of a cell phone tower are not sufficient either. Statements that rely upon a misunderstanding of a proposed tower do not count. An inaccurate model of what a tower would look like are more likely to be excluded from residentially zoned areas than other areas. Long, supra note 50, at 400.


92. PrimeCo Pers. Commc'ns, Ltd. v. City of Mequon, 352 F.3d 1147, 1150 (7th Cir. 2003).

93. See Cellular Tel. Co. v. Bd. of Adjustment, 37 F. Supp. 2d 638, 650 (D.N.J. 1999) (There was no evidence or testimony in support of the Board's conclusion that the negative aesthetic impact would be significant or that the facility would detract from the character or appearance of the area); U.S. W. Commc'ns, Inc. v. City of Vero Beach Heights, No. 97-9068, 1998 U.S. Dist. LEXIS 22962, at *15 (D. Minn. Nov. 13, 1998) (noting the lack of evidence supporting the City's conclusory statement that freestanding towers are an aesthetic blight).

94. See Cellular Tel. Co. v. Town of Oyster Bay, 166 F.3d 490, 495 (2d Cir. 1999) (observing that "a few comments suggested that the residents who expressed aesthetic concerns did not understand what the proposed cell sites would actually look like," with the residents referring to "a mass of spaghetti of wires" and "a small birthday cake with candles").
like is not substantial evidence. A municipal zoning plan that employs vague aesthetic standards does not support a decision to refuse a tower. Perhaps most interestingly, there is no aesthetic harm when a tower would be located in an already ugly site.

The decisions sustaining local government denials of cell phone towers because of aesthetics have adopted their own maxims. A cell phone tower may be rejected if it would be located in a prominent place, in a historic area, or in a scenic place. A local government

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95. See SBA Towers II, LLC v. Town of Atkinson, No. 07-CV-209-JM, 2008 U.S. Dist. LEXIS 72401, at *41–*42 (D.N.H. Sept. 19, 2008) (rejecting a simulation that was not to scale and did not contain all features of the tower).


97. See Nextel W. Corp. v. Town of Edgewood, 479 F. Supp. 2d 1219, 1232 (D.N.M. 2006) (“[T]here is not substantial evidence in the record of any significant visual or aesthetic difference between Plaintiff’s proposed antenna array and those of other, similarly situated providers already located on the [existing] tower.”); Cal. RSA No. 4 v. Madera County, 332 F. Supp. 2d 1291, 1308–09 (E.D. Cal. 2003) (“[T]he overarching presence of a concededly ugly and massive water storage tank near the proposed tower meant that “assertions regarding several small antennae are without a factual foundation and are tantamount to speculative and generalized concerns.”).

98. See Sw. Bell Mobile Sys. v. Todd, 244 F.3d 51, 61–62 (1st Cir. 2001) (sustaining the rejection of a proposed cell phone tower “on the top of a fifty-foot hill in the middle of a cleared field”); Red Sky Commc’n, LLC v. City of Lenexa, No. 07-2069-DJW, 2008 U.S. Dist. LEXIS 15335, at *53–*54 (D. Kan. Feb. 28, 2008) (finding substantial evidence where “the Proposed Site is at a high point topographically in the surrounding area and the proposed tower is taller than the trees located on this elevated piece of property” as well as relying upon the city code’s encouragement “to unobtrusively locate new towers.”).


100. See Voicestream Minneapolis, Inc. v. St. Croix County, 342 F.3d 818, 831–32 (7th Cir. 2003) (rejecting a tower to be located near “the extraordinary scenery of the National Scenic Riverway and with the historic district in the City of Marine on St. Croix,” and where “the National Park Service voiced strong opposition to the tower” based upon its visual impacts); Sprint Spectrum, Ltd. v. P’ship v. Bd. of County Comm’rs,
may also defend its rejection of a cell phone tower by showing that it would be out of character in the proposed location, for instance by being taller than any nearby structures. A local government may reject a cell phone tower that conflicts with its general zoning scheme.

These general trends are contradicted by numerous decisions that rely upon conflicting principles. For example, the character of a community may be contested such that the mere assertion that a tower would be out-of-place will not always survive judicial scrutiny. The trashy appearance of an area is no guarantee that a new cell phone tower will be

59 F. Supp. 2d 1101, 1106, 1109 (D. Colo. 1999) (sustaining a tower denial because "[t]he unique and diverse landscapes of Jefferson County [at the foothills of the Rocky Mountains] are among its most valuable assets"); Site Acquisitions, Inc. v. Town of New Scotland, 770 N.Y.S.2d 157, 161 (N.Y. App. Div. 2003) (citing "proof of potential negative impact on views from widely used areas of natural beauty" as part of the substantial evidence supporting a permit denial).

101. See Omnipoint Comms., Inc. v. City of Nashua, No. 07-CV-46-PB, 2008 U.S. Dist. LEXIS 86111, at *16–17 (D.N.H. Feb. 6, 2008) (finding substantial evidence where "the proposed tower would be visually, aesthetically, and functionally out of character with the surrounding neighborhood," which was a residential neighborhood next to an undeveloped wooded area); USOC of Greater Mo., LLC v. City of Ferguson, No. 4:07-CV-1489 (CCH), 2007 U.S. Dist. LEXIS 87760, at *5, *22–23 (E.D. Mo. Nov. 29, 2007) (the tower "would not blend in with the one story buildings surrounding it"); Sprint Spectrum Ltd. v. County of Platte, No. 06-6049-CV-SJ-DW, 2007 U.S. Dist. LEXIS 75724, at *12, *14–15 (W.D. Mo. Oct. 11, 2007) (finding that the zoning commission's aesthetic concerns were grounded in the specific characteristics of the proposed location, design and surrounding property, as evidenced by photos indicating "that the tower would not be obscured by trees or other structures and would dominate the visual landscape"); R.H. Gump Revocable Trust v. City of Wichita, 131 P.3d 1268, 1276 (Kan. Ct. App. 2006) (finding substantial evidence in the city's finding that the proposed stealth flagpole was incompatible and inconsistent with the area because "[t]here were no other flagpoles in the area, and extensive beautification efforts had been made in the area").

102. See Feld, 244 F.3d at 62 (observing that the proposed "tower would soar to almost four times the height of the water towers" located nearby); T-Mobile S. LLC v. City of Jacksonville, 564 F. Supp. 2d 1337, 1347 (M.D. Fla. 2008) ("The Planning Department also noted that the surrounding properties lacked either tall structures or trees and vegetation that would help reduce the impact of the proposed tower on adjacent landowners.").

103. See Aegerter v. City of Delafield, 174 F.3d 886, 890 (7th Cir. 1999) (upholding the rejection of a tower because "the proposed expansion of the commercial use in the area would be unsightly and inconsistent with its R-1 residential zoning").

104. See AT&T Wireless Servs. of Cal. LLC v. City of Calabas, 308 F. Supp. 2d 1148, 1162 (S.D. Cal. 2003) (rejecting the city's claim that a tower conflicted with the character of a neighborhood because "there simply is no evidence that the cell site would cause the area to look commercial since the site looks like a part of a large house in a neighborhood with very large houses"); MIOP, Inc. v. City of Grand Rapids, 175 F. Supp. 2d 952, 957–58 (W.D. Mich. 2001) (holding that the record lacked substantial evidence despite the value that the neighbors placed on their "rural setting, natural environment and peace and enjoyment").
approved,\textsuperscript{105} nor does the presence of historic or scenic sites ensure that a new tower will be denied.\textsuperscript{106} Such conflicts mimic the disputes about the appropriate location of other types of pollution. Part of the Clean Air Act discourages the location of new polluting facilities in areas that already experience clean air; environmental justice concerns counsel against locating such facilities in areas that already experience high levels of pollution.\textsuperscript{107} Similarly, local governments vacillate between locating sources of cultural pollution such as adult theaters and bookstores all in one area or instead spreading them throughout the community.\textsuperscript{108}

There is also a more fundamental disagreement among the courts about the nature of federal judicial review of TCA claims involving the aesthetics of cell phone towers. Generally, one view simply defers to local decisions, while the other view demands a reasoned explanation to support a local decision. The first view is represented in an early TCA case arising in Virginia Beach. Hundreds of residents objected to a proposed tower, the board rejected it without explanation, and the Fourth Circuit held that “the repeated and widespread opposition of a majority of the citizens of Virginia Beach who voiced their views—at the Planning Commission hearing, through petitions, through letters, and at the City Council meeting—amount[ed] to far more than a ‘mere scintilla’ of evidence to persuade a reasonable mind to oppose the application.”\textsuperscript{109} Judge Luttig offered a spirited defense of the ability of local residents to simply decide not to host a cell phone tower:

[W]e should wonder at a legislator who ignored such opposition.

In all cases of this sort, those seeking to build will come armed with exhibits, experts, and evaluations. Appellees, by urging us to hold that such a predictable barrage mandates that local govern-

\textsuperscript{105} See BellSouth Mobility, Inc. v. Miami-Dade County, 153 F. Supp. 2d 1345, 1357–58 (S.D. Fla. 2001) (upholding a county decision to exclude a tower because it “was aesthetically incompatible with the surrounding area,” which was “deteriorating” and where “numerous light and utility poles already occupy the landscape”).

\textsuperscript{106} See Omnispot Comm’ns, Inc. v. Vill. of Tarrytown Planning Bd., 302 F. Supp. 2d 205, 222 (S.D.N.Y. 2004) (concluding that the evidence in the record of aesthetic impacts was outweighed by other evidence asserting that the proposed tower would not impact the nearby historic area); Corcoran v. Conn. Siting Council, 934 A.2d 870, 874 (Conn. Super. Ct. 2006) (approving a cell phone tower located in an area designated as “a scenic viewpoint” for a “scenic vista”), aff’d, 934 A.2d 825 (Conn. 2007).


\textsuperscript{109} AT&T Wireless PCS, Inc. v. City Council of Va. Beach, 155 F.3d 423, 431 (4th Cir. 1998).
ments approve applications, effectively demand that we interpret the Act so as to always thwart average, non-expert citizens; that is, to thwart democracy. The district court dismissed citizen opposition as "generalized concerns." Congress, in refusing to abolish local authority over zoning of personal wireless services, categorically rejected this scornful approach.\textsuperscript{110}

Judge Luttig's opinion has been widely cited as reflecting the deferential approach to TCA review.\textsuperscript{111}

The alternative view is best expressed in a recent federal district court decision from Ocala, Florida. This time the court held that neighborhood opposition failed to satisfy the TCA's substantial evidence standard for cell phone tower denials:

It is predictable—and entirely understandable—in every case the Court has encountered under the Federal Telecommunications Act that there will be a group of property owners or nearby residents who oppose the erection of communications towers in their neighborhoods for purely subjective and mostly aesthetic reasons. It seems that such towers, like prisons, are just not welcome additions to the landscape, and those who hold those sincere opinions are entitled to some sympathy. This makes for hard cases when they are presented to local political bodies who might find it difficult to explain to their constituents, in an emotionally charged public hearing, the arcane difference between personal preference and substantial evidence. But the law requires the latter—substantial evidence—and while the substantial evidence standard is a lenient one (being something less than a preponderance of the evidence), when a tower erector meets all of the objective and reasonably relevant prerequisites established in advance by local authority for the placement of communications towers, the purely subjective preferences of the towers' putative neighbors, not augmented by (sic) any technical or objective facts or evidence, simply do not constitute "substantial evidence" upon which local government can properly rely in denying an application. Unfortunately, this is such a case, and the Court is required to intervene to grant the Plaintiffs' requested remedy.\textsuperscript{112}

That approach characterizes the majority view toward judicial review under the TCA.

\textsuperscript{110} Id.; see also Long, supra note 50, at 394 ("[H]omeowner groups are understandably frustrated by the TCA's robbery of their 'voice.'").

\textsuperscript{111} See, e.g., Aegerter v. City of Delafield, 174 F.3d 886, 890 (7th Cir. 1999) (citing the case but using it to distinguish between judicial review of the enactment of laws by municipal councils and judicial review of the administrative zoning decisions made by municipal councils, the latter of which are subject to review under the TCA).

But not everyone has been satisfied with this understanding of the TCA. The sparse legislative history of the section suggests that Congress may have expected local governments to retain more zoning authority than the courts have afforded them. The prevailing view has been attacked as “the biggest land-grab in one industry’s favor at the federal level since the buildout of the railroads at the turn of the last century” and as an unconstitutional violation of states’ rights under the Tenth Amendment. U.S. Senator Patrick Leahy repeatedly introduced legislation designed to shift all of the zoning power back to local officials. The premise of all of these efforts is that local governments will make the best decisions regarding the aesthetics of cell phone towers.

They are wrong. The TCA strikes the right balance between the visual pollution attributed to cell phone towers and the need for cell phone coverage. The combination of local authority constrained by federal law has encouraged municipal zoning officials to identify those places in their community where cell phone towers would produce the least aesthetic harms, rather than trying to ban such towers altogether. The abundant TCA litigation shows that local governments are capable of identifying the proper locations for cell phone towers, but they are equally capable of relying upon unsupported aesthetic complaints that fail to grapple with the hard questions of where to locate a new tower.

The TCA forces local governments to think seriously about claims of visual pollution. The TCA also encourages cellular providers to research the propriety of possible sites for a new cell phone tower rather than simply choosing a site and then trying to force local officials to approve it—for a strategy that fails to seek to minimize aesthetic harms while evaluating the availability of sites that would satisfy coverage needs will cause a provider to lose a TCA claim. The delicate balance achieved by the TCA should be preserved, rather than shifting all of the power back

113. See H.R. Rep. No. 104-458, at 207-08 (1996), reprinted in 1996 U.S.C.C.A.N. 10, 222–23 (explaining that section 704 “preserves the authority of state and local governments over zoning and land use matters except in . . . limited circumstances,” and stating that localities should have the flexibility to address aesthetic concerns): 142 Cong. Rec. 2240 (statement of Rep. Sensenbrenner) (insisting that “[t]he authority of state and local governments over zoning and land use matters is absolutely essential and must be preserved”); 142 Cong. Rec. 2230 (statement of Rep. Goodlatte) (praising the “agreement that protects the rights of local governments to see that their zoning regulations are carried forward in making sure that, when new cell towers are located, they have the ability to determine in each locality where they are placed while fairly making sure that these locations do not interfere with interstate commerce and with the opportunity to advance this new technology”).

114. Levitt, supra note 50, at 33.

115. See Petersburg Cellular P’ship v. Bd. of Supervisors, 205 F.3d 688, 692 (4th Cir. 2000) (“[T]he federal standard authorizing a state or local legislative body to deny a permit only on substantial evidence violates the Tenth Amendment.”).

to local officials (as Senator Leahy's legislation would do) or to providers (as legislation to allow the Federal Communications Commission to preempt local zoning laws once contemplated).

D. Cell Phone Towers in National Parks

One other location has generated a special amount of controversy regarding the placement of cell phone towers. National parks have experienced numerous disputes regarding the placement of cell phone towers. The TCA makes national parks and other federal lands available for cell phone towers, but, as a Park Service official once testified, "[N]o one would want to see a cellular phone tower on the rim of the Grand Canyon or in sight of Old Faithful." That is because, as the Park Service recently explained, "Scenery has always been an integral part of the fundamental resources and values of national parks.... Because the primary views through are natural, built structures often stand out in stark contrast to the scenery and thereby degrade part of the fundamental resource." Yet Old Faithful and the rest of Yellowstone National Park are in the midst of a debate about the appropriate location of cell phone towers. The first cell phone tower was built there in 2001. The park responded to complaints about that tower by ordering changes that make it less visible and by imposing a moratorium on additional cell phone towers in 2004. Then, in September 2008, the park released an environmental assessment that evaluated four alternative wireless communications services plans: retaining the current cell phone site "on a ridge above the Old Faithful development" and reviewing new proposals on a case-by-


case basis, reducing wireless services, allowing a limited increase in wireless services, or allowing a substantial increase. The Park Service prefers the limited increase proposal, which would improve coverage in the two areas of the park while relocating the cell phone tower at Old Faithful "to the site near a water treatment plant to further reduce the impact on the viewed," By contrast, the substantial increase proposal would keep the tower at Old Faithful while camouflaging it "to reduce its impact on the Old Faithful Historic District when it becomes feasible to do so." Regardless of the chosen alternative, the park listed both appropriate sites for future cell phone towers (such as existing structures and vacant or non-historic buildings) and inappropriate sites (such as near residential buildings, on top of ridges or near creeks, and "sites within plain view of sensitive natural or cultural areas, visitor centers, campgrounds, residential areas, trails, or park viewsheds"). The Park Service's approach should adequately address the visual pollution concerns about cell phone towers in national parks. Whether cell phones should be permitted at all raises harder, but different, questions about the nature of the experience that national parks are intended to provide.

III. Conclusion

The idea of pollution helps explain the controversy surrounding the aesthetics of cell phone towers. Claims of visual pollution assert a desire for a particular kind of environment—one free from the polluting effects of unwanted signs, towers, and other sights. Yet no environment is free from pollution, as demonstrated by the persistence of significant air pollution and water pollution nearly four decades after the enactment of the Clean Air Act and the Clean Water Act. The challenge is to decide how much pollution is acceptable. For federal environmental law, that is a question to be answered by the federal government. EPA identifies the National Ambient Air Quality Standards (NAAQS) that determine how much air pollution is acceptable. EPA also selects the technologies that each industry must employ to comply with the Clean Water Act. Yet there is no such standard for judging the visual pollution from cell phone

121. Id. at 21.
122. Id. at 11.
123. Id. at 33.
124. Id. at 46–47. Yellowstone, of course, is not the only national park to struggle with the aesthetic impacts of cell phone towers. For another example, see U.S. DEP’T OF THE INTERIOR, NAT’L PARK SERV., THEODORE ROOSEVELT NATIONAL PARK REPLACEMENT OF A COMMUNICATIONS TOWER IN THEODORE ROOSEVELT NATIONAL PARK AND U.S. FOREST SERVICE ACCESS ROAD IMPROVEMENT: ENVIRONMENTAL ASSESSMENT 9 (2005) (approving the replacement of a tower within the park because the alternative of “building a new tower on other public or privately owned land would generally have significant impacts on the scenery and viewsheds of the region, by increasing the number of towers in the region by one”).
towers. Some local governments have tried to legislate the kinds of places where towers should or should not be located, but those efforts have met with mixed success and sporadic application. The TCA does not address the question of where cell phone towers should be located, insisting only that local governments be able to justify their decisions. As those local governments continue to be especially subject to constituent complaints, the hope for deciding how to respond to visual pollution remains elusive.

The experience with locating cell phone towers offers lessons for thinking about other kinds of pollution, too. Avoidance has been the dominant response to the visual pollution of cell phone towers, as individual citizens, cellular providers, local governments, and federal judges have all struggled to decide how to keep towers from imposing unacceptable aesthetic harms. But avoidance is likely to be an unstable response to pollution. It is likely that people will gradually accept the presence of cell phone towers (thus adopting a toleration response to pollution) or that technological developments will render towers obsolete (thus implementing a prevention response to pollution). Avoidance will persist only so long as prevention is impossible or toleration is unacceptable. The history of visual pollution claims involving other kinds of towers suggests that either toleration or prevention will prevail. A similar dynamic may explain the social response to other kinds of pollution, too. And the next visual pollution claims are already on the horizon. Literally: wind farm proposals are now experiencing the same kind of battle over aesthetics that cell phone towers have endured for the past two decades.125

Meanwhile, Granger finally did build its cell phone tower. It is camouflaged to look like a really tall pine tree. The neighbors complained, and there are still signs saying "no cell tower" along the road.126 My cell phone works fine... but my wife still cannot get a reliable signal on her I-Phone.

125 See Residents Opposed to Kiteitas Turbines v. State Energy Facility Site Evaluation Council, 197 P.3d 1153 (Wash. 2008) (holding that the state governor could override a county’s aesthetic concerns to allow the siting of a wind farm); Avi Brisman, The Aesthetics of Wind Energy Systems, 13 N.Y.U. ENVTL. L.J. 1, 74 (2005) (describing the "fear that wind farms will cause 'visual pollution' of the landscape").

126 See Nancy J. Sulok, Commissioners OK Cell Phone Tower for Granger Area; Officials Respond to Need Despite Neighbors' Protest, SOUTH BEND TRIB., Dec. 13, 2006, at B3 (reporting that one of the tower's opponents said "[t]hanks for killing us" as he left the meeting).
Like on K-10 in the DeSoto Area
Memorandum
City of Lawrence
Planning & Development Services

TO: Lawrence Douglas County Metropolitan Planning Commission
   Airport Zoning Commission

FROM: Sandy Day, Planning Staff

Date: June 19, 2017

RE: ITEM NO. 2 SITE PLAN FOR WILDLIFE HAZARD FENCE; 1930 AIRPORT RD (SLD)

SP-17-00236: Consider a Site Plan (by the Lawrence Douglas County Metropolitan Planning Commission sitting as the Airport Zoning Commission per Section 20-302) for construction of a wildlife hazard fence at Lawrence Municipal Airport, located at 1930 Airport Rd. Submitted by the City of Lawrence, property owner of record.

Attachments: A—Administrative Determination
              B—Location Map
              C—Proposed Plans

The Planning Director administratively approved a Site Plan [SP-17-00236], Attachment C, for construction of a fence at 1930 Airport Road subject to the Airport Zoning Commission’s approval of the permit.

Per Section, 20-302 (j) of the Land Development Code, the Lawrence/Douglas County Metropolitan Planning Commission will be the Airport Zoning Commission for the City of Lawrence and has the responsibility for administering and enforcing the regulations of this section.

The AZC shall review all permit applications and determine if such should be granted and if the application conforms to the Airspace Overlay District regulations.

The proposed fence is a Public Works project. ADG (Airport Development Group) is the City’s airport consultant. The City has been working toward providing additional security to the airport and minimizing the conflicts wildlife pose to the airport operations since the fall of last year.

The fence will be located on airport property. A concurrent application for a local floodplain development permit was submitted for review and approval. The floodplain permit is in process.

Staff Recommendation:
Staff recommends the Airport Zoning Commission find that the application conforms to the Airport Overlay District Regulations and the proposed wildlife fence be approved.
SP-17-000236: A site plan for construction of a wildlife hazard fence at Lawrence Municipal Airport, located at 1930 Airport Rd. Submitted by the City of Lawrence, property owner of record.

**ADMINISTRATIVE DETERMINATION:** The Planning Director approves the above-described Site Plan subject to approval of the site plan by the Lawrence Douglas County Metropolitan Planning Commission sitting as the Airport Zoning Commission per Section 20-302.

**ASSOCIATED CASES**
- Lawrence Municipal Airport Addition (November 2001)
- Lawrence Municipal Airport Addition No. 2 (May 2010)
- SP-11-65-84; Airport Terminal Building 1915 Airport Road
- SP-7-65-89 Kohlman Aviation
- SP-3-11-96 New hangar – Stuber Executive Hangar; 1915 Airport Road
- SP-1-1-99; Dream Wings Aircraft Manufacturing. Expired not constructed.
- SP-2-12-99; Hangar west of terminal building 1915 Airport Road.
- SP-8-61-02; T-hanger; 830 Taylorcroft Road
- SP-4-24-03; LifeStar Air Ambulance Service; renovation of existing building and pavement improvements.
- SP-4-34-06; Great Planes Hangar Addition 1915 Airport Road
- N-4-01-06; Non-conforming use registration for Great Planes Hangar Addition 1915 Airport Road
- Z-4-5-09; GPI to IG Lawrence Municipal Airport.
- FP-17-00238; Local Floodplain Development Permit, Wildlife hazard fence.

**KEY POINTS**
- The proposed fence is for protection of the airport and airport operations from wildlife.
- A building permit is required for the fence to allow the construction of a 10' fence per FAA requirements.
- Proposed fence is designated by FAA as a “Wildlife Fence” not a security fence.

**OTHER ACTION REQUIRED**
- Planning Commission approval of the site plan as the Airport Zoning Commission.

**PLANS AND STUDIES REQUIRED**
- *Traffic Study* – Not applicable to this project.
- *Downstream Sanitary Sewer Analysis* - Not applicable to this project.
- *Historic Review Standards/Industrial Design Guidelines* – Not applicable to this project.
- *Drainage Study* – Not applicable to this project.
- *Retail Market Study* – Not applicable to this project.
- *Alternative Compliance* - Not applicable to this project.
COMMUNICATIONS RECEIVED
1. Request from Mark Andersen for additional information.

SUMMARY OF REQUEST
The proposed site plan is for the installation of barrier fencing around the airport runways and improvements to prevent wildlife from interrupting airport operations. The project is primarily funded through FAA grant money. The City of Lawrence will pay a 10% share of the cost. The FAA has deemed this project to be a “high priority safety concern” for the Lawrence Municipal Airport.

The location of the fence must maintain a minimum safe distance from runways and maintain a clear path for maintenance on both sides of the fence. The following graphic shows the location of the proposed fence (gold color) within the boundary of the airport property.

Figure 1: Lawrence Municipal Airport

GENERAL INFORMATION
Current Zoning and Land Use: Property is located within City Limits.

- IG (General Industrial) District. Existing Lawrence Municipal Airport. Buildings include terminal building, hangars, and associated businesses.

- Two tracts of land along the east and west sides of the airport were acquired from KU Endowment and have been annexed into the City but have not been rezoned to a City District.

Figure 2: Existing Zoning
Surrounding Zoning and Land Use: County A (Agricultural) District in all directions with exceptions noted below. The surrounding area is used for agricultural uses.

Surrounding Zoning and Land Use include scattered rural residential homes along county roads and:

1. Prairie Moon School – 1853 E 1600 Road to the east.
2. KU Student Farm
3. The Fete – 1804 E 1500 Road to the south.
4. Shuck Implement

Figure 3: Surrounding Zoning

Surrounding Land Use include scattered rural residential homes along county roads and:

1. Prairie Moon School – 1853 E 1600 Road to the east.
2. KU Student Farm
3. The Fete – 1804 E 1500 Road to the south.
4. Shuck Implement
STAFF REVIEW
The proposed fence is 10’ high with three strands of barbed wire. Additionally, the fence extends below grade to deter animals from digging under.

Figure 4: Fence Details

PARKING SUMMARY
A parking summary is not provided for this application, as it is not applicable. Off-street parking was required and provided for the terminal building and other hangars and commercial uses approved through the site plan process.

Landscaping and Screening
This project does not include a landscape plan. General landscaping and parking lot landscaping are deferred to individual lot development applications. Certain types of landscaping are negatively impactful for an airport.
The airport property is generally devoid of trees. Shrubs and ornamental trees may be found near buildings but are generally not appropriate for this use.

**Lighting**

Some obstruction lighting on the fence will be required. Additional information from FAA is pending regarding lighting at the end of runway 1-19.

**Historic Resources Commission OR Industrial Design Standards**

The airport is not located within the environs of a designated historic property or district. The property is zoned IG (General Industrial) District. Typically, chain link fences would not be appropriate for industrial development applications. The use of the property (airport), the requirement to prevent wildlife (wildlife hazards), the distance to be fenced requires a more feasible and manageable solution. The fencing design must be approved by the FAA as part of the permitting process. The use of chain link in this application is appropriate.

**Access**

Vehicular access to this site is provided from Airport Road for the main activities associated with the airport. Access to the KU facility on the west side of the airport property is accessed from E 1500 Road (N 7th Street). No changes to access are proposed with this application.

The project includes entrance gates at various locations for access to the airport property for maintenance purposes. Public access to these additional entrances is not permitted.

**Pedestrian Connectivity**

Internal pedestrian walkways are not proposed with this application. Pedestrian circulation is considered with each building development application. Pedestrian circulation on runways is not appropriate.

**Floodplain**

The airport includes areas that are located within the regulatory floodplain. The proposed fence project is subject to a local floodplain development permit.

**Findings**

Per Section 20-1305, staff shall first find that the following criteria have been met:

1) **The Site Plan shall contain only platted land;**

The Lawrence Municipal Airport is largely unplatted except for the buildings, structures, and development lots located at the south end of the airport property. Platting of property is an important component of major development projects to identify boundary setbacks and utility needs. The majority of the airport consists of the runways and related restricted areas and easements to ensure safe operations.

The Planning Director may waive Development Code standards per section 20-1305 (b)(2)(v) for good cause. Platting the entire airport property in this instance is impractical. The Director waives the requirement for this fence installation.

2) **The site plan shall comply with all standards of the City Code, this Development Code and other adopted City policies and adopted neighborhood or area plan;**

The only improvement proposed with this application is the construction of a 10’ fence to secure the airport property and provide protections from wildlife interference with airport operations. The overall height of the fence requires a permit from Development Services.
3) The proposed use shall be allowed in the district in which it is located or be an allowed nonconforming use;

The property is zoned IG (General Industrial) District. Airports (Major Utilities and Services) is a permitted use in this district subject to the approval of a special use permit. The Airport was developed prior to this requirement. Therefore, per Section 20-1306 (b) the property was granted automatic Special Use Permit approval with the adoption of the Land Development Code.

The proposed fence does not alter the airport use. As improvements are made to the airport, the fence may need to be expanded.

4) Vehicular ingress and egress to and from the site and circulation within the site provides for safe, efficient and convenient movement of traffic not only within the site but on adjacent roadways as well and shall also conform with adopted corridor or access management policies and;

The proposed fence plan includes multiple access points around the perimeter of the enclosed area to accommodate pedestrians and vehicles as necessary. Sheets 5-9 note the location and type of access proposed for each fence break. These locations are intended to allow continuation of airport operations while prohibiting wildlife access to the operationally sensitive portion of the airport grounds.

5) The site plan provides for the safe movement of pedestrians within the site;

The purpose of this application is for the installation of a wildlife protection fence around the airport operations. The project does not include an assessment of the existing improvements that provide pedestrian connectivity around and through the site.

Conclusion

The proposed fence project is a joint project with FAA to increase the safety of the airport operations. The proposed fence will require a building permit. The City is working with the Consultant and various agencies to ensure that all local and Federal requirements are met.
SP-17-00236: Site Plan for construction of a wildlife hazard fence at Lawrence Municipal Airport, located at 1930 Airport Rd.
Lawrence Municipal Airport
Lawrence, Kansas
A.I.P. Project No. 3-20-0047-21-2017
June 2017

Schedule I
Install 10' Wildlife Fence

Construction Plans
For Improvement To:

Sponsored By:
Federal Aviation Administration
City of Lawrence, Kansas

For Bidding Purposes Only - Not For Construction
New Chain Link Fence Line
Existing Fence Line to be Removed
Aviation Sensitive Region

1. All personnel and equipment shall remain clear of the active Airport Operations Area (AOA) during the project under any approved Airspace Operations Plan for Airport Operations. Aircraft shall have the right-of-way over all other vehicles at all times, and caution is necessary at the ends of runways for landing and departing aircraft overhead. Aircraft shall not enter any areas not authorized without permission from the airport as ordered in an emergency.

2. Survey benchmarks and fence alignment reference staking is provided by the Engineer as needed. All utility lines shown on the plan are approximate and shall be field confirmed by the contractor as required. No utility lines shall be damaged. Any damage to the fence line, or any others not shown, shall be repaired at the contractor’s expense.

3. Staging Area

Safety Notes:

1. Airport entrances are identified on the layout plan. Final roads will be aligning the new fence line so as to provide as much as possible for visibility. Airport Road Vegetation fence line shall be maintained under every airport.

2. The contractor’s access to the airport outside the immediate area of construction is not authorized without permission from the engineer or airport manager. All construction vehicles and personnel shall be removed from construction traffic or operations at the ends of runways for landing and departing aircraft overhead. This plan shall be signed by the contractor for the duration of the closures. Additional, all personnel must be removed from the area upon request.

3. Staging Area

General Notes:

1. All personnel and equipment shall remain clear of the active Airport Operations Area (AOA) during the project under any approved Airspace Operations Plan for Airport Operations. Aircraft shall have the right-of-way over all other vehicles at all times, and caution is necessary at the ends of runways for landing and departing aircraft overhead. Aircraft shall not enter any areas not authorized without permission from the airport as ordered in an emergency.

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1. All utility locations shown should be considered as approximate locations. Confirm all utility and site of utility locations on the area of work while installing new lines. No one can be liable for errors or damage to underground utilities during installation of new lines.

2. Sheeted plan includes:

   a. All pavement edges have controlled expansion joints.

   b. All areas, pavement and sidewalks, shall be fully detailed with appropriate lighting systems at the edge of the project area. Also including any extended utility connections and other related details. Using the standard notation and representation methods. All major expansion tables, joints, and utility connections shall be clearly indicated. The surface detail and any additional details required for pavement and sidewalks shall be clearly indicated.

   c. The surface detail and any additional details required for pavement and sidewalks shall be clearly indicated.

Sheet Notes:

- Silt Fence (Typ.)
- Bid Set
- Lawrence Municipal Airport
- City of Lawrence
- Denver, Colorado 80210-3802
- 3-20-00xx-xx
- Drawing Set
- June 2017
- Lawrence, Kansas
- LWC1488
- Project No.
- A.I.P. Project No.
- Date Ckd
- Revision No.
- Approved By
- Drawn By
- 4 of 15 Sheets
Existing Fence Line to be Removed

New Chain Link Fence Line

120 Meters

Aviation Sensitive Region

6 Double Fence Section, See Sheet 13 For Detail

Part 77 Approach Surface

Legend

- Existing Property Line
- Overhead Power Line
- Existing Fence Line (Remain)
- New Chain Link Fence Line
- Aviation Sensitive Region
- Existing Fence Line (to be Removed)
- Dry Run
- Existing Pavement
- Existing Buildings

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New Chain Link Fence Line
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**NOTE:**
- Coordinate System - US State Plane 1983
- Zone - Kansas State Plane, North Zone
- Coordinate Units - US Survey Foot
- Distance Units - Grad US Foot

Each point is a fence brace with concrete footings.
Chain Link Fence
Details II

General Notes:

1. All cutouts for access gates shall be installed per F-142. Trenches in the existing asphalt shall be made to install access grounding loops and new access controls will be installed and covered with F-142.

2. Install automatic sliding gate with key pad access control. Control shall also have radio input for emergency vehicle.

3. Insulate safety loop and detector loop. Safety loop shall be installed where the detectors are not working.

4. All external controls shall have a radio input where the detectors are not working.

5. All external controls shall comply with the national advisory code and local regulations.

Not For Construction

Lawrence Municipal Airport

Clinic Revision No.

June 2017

LAW5000

A.I.P. Project No:

3-20-00xx-xx

14 of 14 Sheets

1. The automatic sliding gate shall be installed per F-142. Trenches in the existing asphalt shall be made to install access grounding loops and new access controls will be installed and covered with F-142.

2. Install automatic sliding gate with key pad access control. Control shall also have radio input for emergency vehicle.

3. Insulate safety loop and detector loop. Safety loop shall be installed where the detectors are not working.

4. All external controls shall have a radio input where the detectors are not working.

5. All external controls shall comply with the national advisory code and local regulations.
**Ox Bow Crossing Details**

1. Install vertical trash grate on each box entrance. Hinge at top for cleaning. Vertical bars 2" square tubing at 10" O.C., frame to be 2 1/2" square tubing.

2. Install vertical animal grate on each box exit. Hinge at top for cleaning. Vertical bars to be 1 1/4" square tubing at 6" O.C., frame to be 2" square tubing.

3. Install similar animal grate to entrance on existing RCP drain lines at Airport Road. 36" Diameter.

4. Install similar grates to two existing 24" RCP drain lines along SW fence line.

**Notes:**

- These details are for a single culvert; additional holes or outlets may be required for adjacent box culverts. Hinges are required for cleaning. Vertical bars are required for strength at 10" O.C., frame to be 2 1/2" square tubing.
- The contractor shall provide and install all necessary connections and fittings for the civil works.
- All materials shall be in accordance with the specifications and drawings provided by the engineer.

---

**Additional Details:**

- **Curb Section View:**
  - 1/2" chamfer on top edges.
  - Curb length to match outside span of box culvert.

- **Dropwall Section View:**
  - Full length tongue to match barrel groove.

- **Inside Surface:**
  - 1/2" chamfer on top edges.

- **Typical Joint Detail:**
  - 1" square tubing at each joint.

- **Corner Detail:**
  - Note: these details are for a single culvert; additional joints or outlets may be required for adjacent box culverts.

- **Typical Assembly:**
  - Note: these details are for a single culvert; additional joints or outlets may be required for adjacent box culverts.

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**Materials:**

- **Concrete:**
  - Precast concrete curbs with dowel connections.
  - Precast concrete dropwalls.

- **Grilles:**
  - Vertical trash grates with hinge for cleaning.

- **Hinges:**
  - Hinge at top for cleaning.

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**Dimensions:**

- **Flow Direction:**
  - Embankment with 1% crown slope.

- **Over-Excavate:**
  - Prior (muck excavation) and waste 2'±.

- **Crossing Plan View:**
  - No scale.

- **Cross Section:**
  - No scale.

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**Final Notes:**

- All materials shall be in accordance with the specifications and drawings provided by the engineer.
- The contractor shall provide and install all necessary connections and fittings for the civil works.

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**Contact Information:**

- **GROUP INC.**
  - Development Airport
  - 303.782.0882 / 303.782.0842 fax
  - www.ADGAirports.com

- **Lawrence Municipal Airport**
  - 1776 South Jackson Street / Suite 950
  - Denver, Colorado 80210-3802
  - Lawrence, Kansas

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**Scale:**

- 1/2" = 1'-0" (scale approximated for clarity).
June 23, 2017

Lawrence - Douglas Co Metropolitan Planning Commission

Re: SP-17-00234

We received your letter of May 4, 2017. My wife Dorothy and I own a nearly 3000 acre parcel of land under Dorothy Congdon Trust. Although the proposed Wildlife Hazard Fence does not affect our property, I am submitting this comment as a concerned tax payer and owner of farmland. A few years ago there were a lot of letters from "concerned citizens" who opposed any development that would take "precious farmland" out of ag production, where are these folks now?

Perhaps a fence around the runway can be justified. However, I do not see any benefit from fencing land that is not near a runway.

I especially question the need...
of fencing south of Highway 24. It is obvious that this is not necessary. In addition there would be gaps in the fence at the two highway crossings.

Jim Congrove
Jim Congrove
1834 East 1700 Rd
Lawrence, KS 66044
Jcongrove@aol.com
785-843-4015 home phone
Z-17-00217: Consider a request to rezone approximately 1.13 acres from RS5 (Single-Dwelling Residential) District to RS7 (Single-Dwelling Residential) District, located at 309, 321, 325, and 331 Indiana St. Submitted by Summer Wedermyer on behalf of Philip R Jones, Jennifer M Padilla, Nathan R Littlejohn III, Lynette Littlejohn, Emily C H Hensley, Nate Wedermyer, and Summer Wedermyer, property owners of record.

STAFF RECOMMENDATION: Staff recommends approval of the request to rezone approximately 1.13 acres from RS5 (Single-Dwelling Residential) District to RS7 (Single-Dwelling Residential) District based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval.

Reason for Request: “Request zoning from single dwelling residential district to the same district (RS7) to allow possible future accessory dwelling units on lots that meet the minimum requirement for RS7. Also to preserve the historic nature of the larger platted lots.”

KEY POINTS
- Request includes 4 existing parcels containing 8 platted lots. No change in the lot configuration is proposed.

ASSOCIATED CASES/OTHER ACTION REQUIRED
- DR-17-00226; Rezoning; State Law Review. This item was approved by the Historic Resources Commission on June 15, 2017.
- DR-17-00227; 331 Indiana Street; Remodel and New Addition; Demolition and New Construction of Accessory Structure; State Law Review and Certificate of Appropriateness. This item was approved by the Historic Resources Commission on June 15, 2017.

PLANS AND STUDIES REQUIRED
- Traffic Study – Not required for rezoning
- Downstream Sanitary Sewer Analysis – Not required for rezoning
- Drainage Study – Not required for rezoning
- Retail Market Study – Not applicable to residential request

ATTACHMENTS
- None

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING
- Staff received a few phone calls from neighborhood residents who had questions about the purpose of the rezoning.

Project Summary:
Proposed request is for rezoning platted lots located along the west side of Indiana Street to allow for the potential development of Accessory Dwelling Units (ADU). This is a permitted use in the RS7 District, but not in the RS5 District.

The rezoning request was initially sought by the property owners of 331 Indiana Street for the purpose of constructing an ADU on their property. To prevent a spot zoning situation, the owners reached out to the property owners to the north who also owned larger parcels to see if they would like to be included in the rezoning request. Since the rezoning application was submitted,
the property owners of 331 Indiana have decided not to move forward with construction of an ADU and instead build a garage. However, there is still interest in pursuing the rezoning to allow for the development of ADUs on the subject properties in the future if desired.

1. **CONFORMANCE WITH THE COMPREHENSIVE PLAN**

The following section of Horizon 2020 relates to this rezoning request (staff comments are in italics):

**Chapter 5 – Residential Land Use:**

“A mixture of housing types, styles and economic levels should be encouraged for new residential and infill developments.”

“The character and appearance of existing residential neighborhoods should be protected and enhanced. Infill development, rehabilitation or reconstruction should reflect architectural qualities and styles of existing neighborhoods.”

*The intent of the rezoning request is to permit the possible construction of Accessory Dwelling Units. As stated in the Land Development Code, the purpose of this housing type is to create new housing units while preserving the look and scale of single-family neighborhoods. ADUs also provide a mix of housing types that responds to changing family needs, and can provide a broader range of accessible and more affordable housing.*

**Staff Finding** – The request for RS7 zoning is consistent with Chapter 5 of the Comprehensive Plan.

2. **ZONING AND USE OF NEARBY PROPERTY, INCLUDING OVERLAY ZONING**

**Current Zoning and Land Use:** RS5 (Single-Dwelling Residential) District; *Detached Dwellings.*

**Surrounding Zoning and Land Use:** RS5 (Single-Dwelling Residential) District to the north, south and west; *Detached Dwellings.*

RS7 (Single-Dwelling Residential) District to the east; *Detached Dwellings* and *Duplex.*

**Staff Finding** – The subject properties will be zoned similar to the residential properties on the east side of Indiana Street. The land uses surrounding the subject properties is primarily single-family residential. The existing land use of the subject properties is also single-family residential. The rezoning request does not represent a change in the existing land use.

3. **CHARACTER OF THE NEIGHBORHOOD**

**Applicant’s Response:** “*The neighborhood is the historic Pinckney II and is National Register of Historic Places.*”

The subject properties are located in the Pinckney neighborhood and are contributing structures in the Pinckney II Historic District. The majority of the residential development in the neighborhood includes single-family homes. There are no differences in the land uses permitted in the RS5 District and the RS7 District, with the exception of *Accessory Dwelling Units* (ADU). Section 20-534 of the Land Development Code provides regulations for the development of an ADU that will
ensure compatibility with the neighborhood. These regulations include, but are not limited to, size, appearance, parking, and occupancy.

**Staff Finding** – The proposed request does not substantially change or alter the character of the immediate neighborhood.

4. **PLANS FOR THE AREA OR NEIGHBORHOOD, AS REFLECTED IN ADOPTED AREA AND/OR SECTOR PLANS INCLUDING THE PROPERTY OR ADJOINING PROPERTY**

**Staff Finding** – The subject properties are located within the boundaries of the Pinckney Neighborhood Association. A portion of the neighborhood is included in the HOP District Plan, however, the subject properties do not fall within the boundaries of that plan. The boundaries of the HOP District Plan are W 5th Street to the north, W 7th Street to the south, California Street to the west, and Alabama Street to the east.

5. **SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED UNDER THE EXISTING ZONING REGULATIONS**

Applicant’s Response: “The current zoning does not allow for accessory dwelling units but the current lot sizes meet the minimum requirements.”

The rezoning request was initiated to facilitate the construction of an Accessory Dwelling Unit (ADU). This housing type is not permitted under the current zoning of RS5. The subject properties are larger parcels with lot areas that meet the minimum lot area requirements of the RS7 District (7,000 square feet). Given the larger parcel sizes, the subject properties are well suited for the potential development of ADUs.

**Staff Finding** – The subject properties are suitably zoned for their existing land use. They are not, however, suitably zoned for the development of Accessory Dwelling Units.

6. **LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED**

**Staff Finding** – The subject properties are developed with residential structures which were built between the late 1800s and early 1900s.

7. **EXTENT TO WHICH APPROVING THE REZONING WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES**

Applicant’s Response: “Does not impact surrounding properties because it is the same zoning district. Adjacent properties (east) are currently zoned RS7.”

There are no differences in the land uses permitted in the RS5 District and the RS7 District, with the exception of Accessory Dwelling Units (ADU). Section 20-534 of the Land Development Code provides regulations for the development of an ADU that will ensure compatibility with the neighborhood. These regulations include, but are not limited to, size, appearance, parking, and occupancy.

The subject properties are also contributing structures in the Pinckney II Historic District. Development of an ADU would require review and approval by the Historic Resources Commission.

**Staff Finding** – There are no anticipated detrimental affects for nearby property.
8. **THE GAIN, IF ANY, TO THE PUBLIC HEALTH, SAFETY AND WELFARE DUE TO THE DENIAL OF THE APPLICATION, AS COMPARED TO THE HARDSHIP IMPOSED UPON THE LANDOWNER, IF ANY, AS A RESULT OF DENIAL OF THE APPLICATION**

Applicant’s Response: ""No gain since it is the same zoning district. No hardship to landowner if it is not approved for same reason."

Evaluation of this criterion includes weighing the benefits to the public versus the benefit of the owners of the subject property. Benefits are measured based on anticipated impacts of the rezoning request on the public health, safety, and welfare.

The subject properties are currently developed with residential structures. Regardless of the outcome of the rezoning request, there would be no change to the existing primary land use of the subject properties (*Detached Dwellings*). If the rezoning request is denied, development of *Accessory Dwelling Units* on the subject properties would not be permitted.

Development of ADUs on larger parcels provide an infill opportunity to expand housing choices in the neighborhood.

**Staff Finding** – There would be little gain to the public and there would be a hardship to the landowners in denial of the rezoning request.

9. **PROFESSIONAL STAFF RECOMMENDATION**

Staff recommends approval of the request to rezone approximately 1.13 acres from RS5 District to RS7 District as it is an appropriate zoning district for the subject properties.
Z-17-00217: Rezoning approximately 1.13 acres from RS5 (Single-Dwelling Residential) District to RS7 (Single-Dwelling Residential) District, located at 309, 321, 325, and 331 Indiana St.
Memorandum
City of Lawrence
Planning and Development Services

TO: Planning Commission
FROM: Planning Staff
CC: Scott McCullough, Planning and Development Services Director

Date: June 08, 2017

RE: Item No. 4: MS-17-00251 – Variance associated with Minor Subdivision for A Replat of Lot 4 of Lawrence Industrial Park No. 2, submitted by CFS Engineers for Consolidated Properties Inc. of Lawrence, property owner of record.

Variance requested: Reduction of Right-Of-Way for a Principle Arterial Street from 150’ to 100’.

Attachment A: Minor Subdivision MS-17-00251

Minor Subdivisions are processed administratively but Planning Commission approval is required for variances from the Subdivision Design Standards. The Minor Subdivision (MS-17-00251) is being processed and requires Planning Commission approval of the reduced right-of-way along Haskell Avenue, a Principal Arterial Street. A copy of the Minor Subdivision is included with this memo for context; no other action is required by the Planning Commission related to the proposed Minor Subdivision.

The Subdivision Regulations state that an applicant may request a variance from the Design Standards in the Regulations in accordance with the variance procedures outlined in Section 20-813(g). This section lists the criteria that must be met in order for a variance to be approved. The requested variance is evaluated for compliance with the approval criteria below.

VARIANCE: Reduction in the width of right-of-way from 150’ to 100’ as required for a principal arterial street (Haskell Avenue) per Section 20-810 (e)(5).

The standard for the required right-of-way width changed in 2006 from 100’ to 150’ with the adoption of the Land Development Code. This property is located on the northwest corner of Haskell Avenue and E. 27th Street. The property to the East of Haskell Avenue is multi and single dwelling residential. Property to the south of E. 27th Street is light warehouse and industrial uses, and property immediately to the west is vacant, zoned IG (General Industrial) District.
This segment of Haskell Avenue is variable in width. The applicant proposes no additional dedication of Right-of-Way, keeping the ROW width at 100’. As noted in previous reports, the 150’ of required right-of-way is more applicable to new greenfield development rather than existing corridors.

**Criteria 1:** Strict application of these regulations will create an unnecessary hardship upon the subdivider.

Development along this segment of the Haskell Avenue corridor includes both residential and non-residential uses with building and parking lot setbacks based on the existing property line/right-of-way line configuration.

**STAFF FINDING:** Strict application of the regulations would limit the owner’s ability to develop the property based on an existing development pattern in the immediate area that generally recognizes a 100’ right-of-way width along the corridor. Granting this requested variance from the required right-of-way dedication is not opposed to the purpose and intent of the regulations.

**Criteria 2:** The proposed variance is in harmony with the intended purpose of these regulations.

This design standard was adopted in 2006 with the Land Development Code. The wider right-of-width accommodates street design with boulevards, multiple lanes, and amenities that may or may not exist along developed street segments within the community. A similar variance has been granted for other projects located along developed urban corridors that are designated arterial streets. Some examples include:

1. PP-15-00067 Dream Haven regarding Peterson Road (4/20/15)
2. PP-14-00303 Schwegler Addition regarding Ousdahl Road, a collector street (9/22/15)
3. PP-13-00338 Menards Addition regarding 31st Street (11/8/13 and 10/21/13)
4. PP-13-00352 Burrough’s Creek Addition regarding Haskell Avenue (10/21/13)
5. MS-15-00096 Bella Sera at the Preserve (5/18/15)
6. PP-16-00304 Rockledge Addition No. 2 (9/26/16)

The proposed request does not alter the development pattern. The intent of the land division is to create two separate lots, one containing the industrial building and the other containing the residential building (NC-17-00252 for a non-conforming use of a residence in an industrial zoned area) without changing the existing access locations. The change in design requirements in 2006 requires the applicant to seek a variance from this standard as part of the subdivision process – Minor Subdivision Approval.

Section 20-810(e)(1) provides general design criteria for streets. Subsection iii states “Arterial and collector streets shall be laid-out, arranged, and designed in accordance with any adopted Major Thoroughfares Map or corridor plan.” Haskell Avenue is identified as a “Principal Arterial Street” and is an existing street. The Lawrence Traffic Safety Commission has identified a need for geometric improvements.
**STAFF FINDING:** Granting this requested variance from the required right-of-way is not opposed to the purpose and intent of the regulations.

**Criteria 3:** The public health, safety, and welfare will be protected.

Haskell Avenue is a designated “Principal Arterial Street”. Its current width includes 100’ of public right-of-way along this property. The current subdivision regulations require “Principal Arterial Streets” to include 150’ of right-of-way. The majority of the current right-of-way is an existing condition of the site.

**STAFF FINDING:** Granting this requested variance from the required right-of-way will not harm the public health, safety, or welfare. These public aspirations will continue to be protected though the planning of corridor improvements. The future dedication of an easement at the corner will accommodate intersection improvements in the future.

**STAFF RECOMMENDATION**

Approval of the variance requested for a Minor Subdivision, MS-17-00251, variance request to reduce the right-of-way from Section 20-810(a)(5) for a principal arterial street from 150’ to 100’ per section 20-813(g) of the Land Development Code for property located at 2465 Haskell Avenue.
June 7, 2017

City of Lawrence
Planning Commission
6 East 6th St.
P.O. Box 708
Lawrence, Ks. 66044

Re: MS-17-00251 variance request by CFS Engineers

Dear Gentle Persons,

As owner of two properties that are east of the subject property requesting the variance from 150 feet to 100 feet easement for the widening of Haskell Street, I would ask that the commission take into consideration that when the widening does occur in the future, that land be condemned from the east and west sides of Haskell Street equally so that our units at 1003-1005 & 1007-1009 Natalie, are no closer to the roadway that those properties on the west side. As residential units, traffic noise effects the enjoyment of the property and marketability of the units and having Haskell St. closer to the units would diminish the value of the property.

Thank you for your consideration regarding this matter.

Sincerely,

[Signature]
A.J. Lang