

**HAYSVILLE PLANNING COMMISSION
& BOARD OF ZONING APPEALS**

Agenda

January 23, 2025

6:00 p.m., Municipal Building, 200 W. Grand

- I. Call to Order
- II. Roll Call
- III. Presentation and Approval of Minutes
 - A. Minutes of January 9, 2025
- IV. Public Forum
- V. New Business
 - A. Review of a Zone Change from SF-20 to TF-3 in the AOI
 - B. Conditional Use Application to construct a new tower for a Wireless Communication Facility at 200 W Grand Ave
- VI. Old Business
- VII. Correspondence
- VIII. Off Agenda
 - A. Next Meeting Date
- IX. Adjournment

HAYSVILLE PLANNING COMMISSION/BOARD OF ZONING APPEALS

Minutes

January 9, 2025

The regular Planning Commission Meeting was called to order by Chairperson Tim Aziere at 6:06 p.m. in the Council Chambers at the Haysville Municipal Building, 200 W. Grand.

The members present were Mark Williams, Debbie Coleman, Tim Aziere, Dan Rinke, and Jeff Blood. Also present were Deputy Administrative Officer Georgie Carter and Planning and Zoning Administrator Kailyn Hogan.

The first item of business was the Minutes of December 12, 2024

COLEMAN: I have a correction to make on that. The Chairperson, Tim Aziere, was not at the meeting.

Motion by Coleman, second by Williams.
To approve the minutes with corrections.
Williams aye, Coleman aye, Rinke aye, Blood aye.
Aziere abstain.
Motion carried.

Kevin Swart was in attendance to speak under Public Forum.

AZIERE: Kevin Swart, would you like to speak under public forum, or would you like to wait?

SWART: I would like to wait.

AZIERE: After that item?

SWART: Yes.

Under new business was the Review of Conditional Use for Oil and Gas Drilling in the Area of Influence.

EATHERLY: Good evening. My name is Brad Eatherly, planner for MAPD. I wanted to let you know that this morning the applicant for this case did reach out to our legal team at the county and asked to defer this case until February 13th. I was instructed to come down here and let you guys know that. You can either decide to hear the case now or wait until the 13th as well. Either way is fine. Some of these guys were at the Planning Commission earlier today, so they know the situation as well. But the applicant is not here.

APPLICANT: We are here.

EATHERLY: Oh, I apologize. So I guess we could go forward if you guys are fine with that.

AZIERE: Am I correct this was heard today?

EATHERLY: We did present, and there was one public comment. But the action will be deferred until the 13th. And they [the applicant] will also have a chance to speak on their behalf at that meeting and respond to any public comments that are heard either today at the planning commission or the one coming up.

AZIERE: Okay. Before you present, would you guys [the applicant] like to walk us through that?

APPLICANT: Sure, my name is Chris Steincamp. I am a lawyer with Depew Gillen Rathbun & McInteer, LC here in Wichita. I represent Bear Petroleum, which is the agent for the applicant, which is actually called GEB of Wichita, LLC. I have only gotten involved in this case very recently. I submitted a letter, which I gave copies to you when I got here, to the County Counselor yesterday afternoon. The County Counselor called me about noon and asked to defer the hearing on it while they reviewed my letter and tried to decide what they were going to do. Dick Schremmer with Bear Petroleum agreed that we would defer it, so that is why it has gotten continued for the hearing at MAPC until the 13th. So that's how we ended up here. The letter that you have was really more focused on the county, but it does have the information that is related to the city. It is a little bit unclear to me whether the city is acting as part of the MAPC, or whether they are enforcing some of their own regulations. I understand that it is the zoning influence for the City of Haysville. If you want me to go through what I have to say about all of this, I am happy to do that.

AZIERE: I just wanted to cover the deferral and whether or not we actually want to hear it. It sounds like you want to defer that, which we have no control of. What we are tasked with is making a recommendation to that body because it is in our area of influence. Whether that happens now or a month from now, we can still make a recommendation, which is probably not binding either way for their consideration. I have no problem hearing it tonight, but if anybody else feels strongly one way or the other, that we should wait, I am fine with that. Everyone is here, and now that we have a quorum, I would like to at least move this forward if we can to make our recommendation.

APPLICANT: That is fine with me. I came prepared to speak about this. I gave you the information that I gave the county counselor. There are some things that relate directly to cities that I can describe, that I can tell you as well, to the extent that is relevant. What I think we are talking about is enforcing county regulations as opposed to city regulations. So in that circumstance, the letter that you have is aimed at county regulations.

AZIERE: Let's start over and have the county present, and then you guys can follow afterwards with questions.

CARTER: One thing I do want to clarify, in his letter it does say Haysville Planning Commission. That was corrected. It is not Haysville Planning Commission's recommendation because you guys have not done that yet. I just want to make sure I point that out to you.

AZIERE: We are going to make a recommendation. What is presented here is what the county staff has recommended.

CARTER: Brad, are you able to clarify when MAPD denies something that staff is recommending, whether it goes to the two boards?

EATHERLY: Just to clarify, the MAPC is the metropolitan area commission. They will hear the case on the 13th. MAPD, which is staff department, we are a city/county organization. We do work in the city, but we also work in the unincorporated Sedgwick County as well. For this case, we are county essentially. MAPD staff makes a recommendation to the MAPC, who will then go on to make a recommendation to the Board of County Commissioners. Then this [Haysville] commission will also make that recommendation to the Board of County Commissioners as well. That is the process of when the Board of County Commissioners meet. They will look at the two planning commission's recommendations and go from there. It is also a public hearing, so you will have a chance to present. There will also be a chance for the public to speak, and you would rebuttal.

Eatherly presented the staff report.

CARTER: Brad, the South Wichita/Haysville Area Plan, do you know what year that is from?

EATHERLY: It is early. I think it is from 2002.

CARTER: I thought it was from 2001. So it is a little outdated. I didn't see our Land Use Map in here. I see the urban influence growth area in here.

EATHERLY: I am not sure why it didn't get included. It was meant to be included. But I did look it up, and it is definitely a residential area.

CARTER: I just want to point out the one map, the South Wichita/Haysville Area Plan, is not one we reference. It is from 2001. I have seen it once before, but it is not something that has been updated. I wouldn't say it is a great guideline for us. Also the use for Oil and Gas Drilling in the Haysville chart is permitted as a conditional use in residential. Our land use map, for what we currently have, is labeled as residential. It is county area, but if we were looking at the same thing, it would go through the same process. It would be allowed through the conditional use process.

WILLIAMS: This alternative action, is that from you?

EATHERLY: Yes. If you do deem that this is something that you are fine with, that alternative action lists the conditions that are recommended conditions to include with the use if it were approved.

WILLIAMS: But you are opposed to it?

EATHERLY: We recommend denial, but if you were to decide to recommend approval, with those conditions, that is your prerogative as a commission.

AZIERE: Thank you for now. Would the applicant like to speak?

APPLICANT: Just to give you a little bit of background on this situation, as I mentioned before, the reason the county deferred isn't because we asked to defer it, it is because they asked us if we would agree to defer. I am not sure if that makes a difference, but that is in fact what happened. In any event, I think that is a point worth making. This well is located in the unincorporated parts of the county. It is not within the City of Haysville. It is in Haysville's zone of influence, just south of Haysville as I

understand it. It is also located in the Gladys Pool, which has been present in that area since the –

COLEMAN: Did you say it is south of Haysville?

APPLICANT: North of Haysville. I am sorry. The well is in the Gladys Pool. If you have the letter I handed out here, there is a map showing that. There are frankly an enormous number of wells there. Some of those wells are plugged. Some of those wells continue to be operated, right in the same quarter section as this well. Those wells started being drilled in the '20s. A lot of them were drilled in the '50s. They've continued to be operated ever since. One of these wells continues to be operated in this quarter section by Bear Petroleum. The land that this well is located on is agricultural land. As I understand, it has a center pit irrigation system on it, and the well is located to avoid interference with that center pit irrigation. The land is also unplatted. It is not set up to be developed into anything at this point. The agricultural use is the current use and will, presumably, be the use for the foreseeable future. The well is directly across the road from an auto repair shop and fairly large electric substation from Everygy, both of which are industrial uses. There is no water or sewer on this property. There is no development infrastructure on this property at all. As I understand it, the property is considered appropriate for future residential property, which could probably be said of almost the entire state of Kansas. So it is just like the rest of the state. You could build a house on it if you chose to. As for the actual surface impact of this well, I think the total surface area occupied by the infrastructure that would be associated with the well, the pumps and the tanks and those sorts of things, would be less than two acres of total impact. Again, they are over and out of the way of the center pit irrigation. The well was properly permitted by the Kansas Corporation Commission. That is one of the questions in one of the conditions from the recommended conditions if you were to permit this conditional use. The Kansas Corporation Commission is the proper permitting authority. One of the primary issues we want to talk about tonight is that the Kansas Corporation Commission is the only permitting authority allowed under state law. You have in my letter the authorities. The county may not zone oil and gas activities. The legislature has specifically excepted that from county zoning power. I have highlighted in the inset section there in the middle of the page, "...Counties may not require any license or permit for the drilling or production of oil and gas wells. Counties may not impose any fee or charge for the drilling or production of any oil or gas well." That is KSA 19-101a(19). That has been the law for a long time. The legislature has determined that the experts at the Kansas Corporation Commission are better at determining where oil and gas wells are or where they should be than every individual county having their own set of rules. That is what the law is. That has been litigated and decided by the Kansas Supreme Court in the Billy Oil Company v. Board of County Commissioners of Leavenworth County case back in 1987. The Kansas Attorney general has also found the same issue and the same answer, that the only permitting authority for oil and gas wells in the state of Kansas is the Kansas Corporation Commission. That is kind of the situation we find ourselves in. It looks to me that this is the county authority that is being acted on here. This is an action by Sedgwick County Board of County Commissioners. Which mean that the state law removing their authority to act in this area controls the question. However, you also have the information from KSA 74-623(a)(1) which provides that, "...the state corporation commission shall have the exclusive jurisdiction and authority to regulation oil and gas activities." The extent of that regulation is anything and everything related to oil and gas wells. The law on cities regulating through zoning is slightly different than for counties. Counties regulation through a statute that grants counties authority to zone. Cities can exercise constitutional home rule through the Kansas Constitution, however, they can only do that in areas where the state has not specifically excluded them from regulation by preemption. The leading case on that is the case called DWAGFYS Manufacturing v. City of Topeka. It was decided in 2019. What it says is that cities cannot regulate under home rule

where the legislature has specifically exempted or occupied an area. The legislature knows how to expressly preempt city home rule. An example of a case is one about the ability to regulate vape shops and those kind of things. The power to regulate license and tax and management operation and conduct in participation in games of bingo and raffles is hereby vested exclusively in the state. You will note that the KSA 74-623(a)(1) that is on the second page of your letter says, "...the state corporation commission shall have the exclusive jurisdiction and authority to regulate oil and gas activities." It is the exact same language the Supreme Court says. When the legislature says that, cities may not regulate in that area. The point of my comment here is that neither the county nor the city has the legal authority to require a conditional use permit, require permit fees, to require restrictions, or any of these other things. All of those things are governed by state law and the Kansas Corporation Commission which has frankly very extensive regulations on how gas and oil wells are drilled, operated, plugged, and every other thing. One of the things I would note from the proposed conditions if you decided to approve with the conditional use permit, was one that they would get all of the other appropriate permits. Well, they have. They have a permit to drill the well from the Kansas Corporation Commission. No other permits are required. There is no ability to require a bond by the county or by the city. Obviously, we talked about the distance from the boundaries of this tract, which more than meet the setback requirements if those were going to be applicable. Fencing will be put around it. The fence is already ordered, it has to be put up yet. If that were to be required, it is also being taken care of. They also talk about storm water drainage plans, and, as it turns out, the storm water runoff for oil and gas activities is preempted by the federal law. The clean water acts requires an SPCC plan, spill prevention, countermeasures, and a control plan. Those will be in place. Those are all governed by USEPA, by federal regulation. So those are also outside of the purview of the state, city, and county. The well has been drilled already because no one had any idea about any of this until things were well under way. I would note that under state law, when an intent to drill a well is approved by the Kansas Corporation Commission, the county clerk for each county where the well will be located is notified by the KCC of the well being approved and the location of the well. So the county and other municipalities are at least on constructive notice through the government that wells are going to be drilled. The only thing else I can say is that these wells generate a substantial amount of revenue for state and local government. Dick can tell you better than I cant, but the other well that is in this same quarter section, not very far from where this one is, is generating around \$4,000 a year in taxes. It appears, based on initial information, that this well will be generating around ten times as much in state and local tax. It is not an insignificant benefit to local government to have these wells present. Are there any questions anyone may have?

CARTER: Screening you have mentioned, solid screening or what is it going to be?

SCHREMMER: At this time, we are looking at a six foot chain link fence.

CARTER: Okay. Are you putting any slats in it?

SCHREMMER: At this time, no. It was not part of the plan.

AZIERE: Thank you. Mr. Kevin Swart? Did you have a question? Please state your name and address for the record.

SWART: My name is Kevin Swart. I live at 5837 S Jones, Wichita, KS 67217, which is about a block away from the field. My question is the storm drainage. The ditch you [the applicant] plowed through,

is that going to be lined?

SCHREMMER: It is already being used.

SWART: I understand it is being used. Is it being lined?

SCHREMMER: No, it wasn't required by the Kansas Corporation Commission to be lined.

SWART: My concern that a lot of us in that neighborhood are on well water. We are not on city water, though it is available. That is one of the concerns. The storage tanks are already in play, the pump jacks are in play. It is already being used. There is a new smell in the area. It is not pleasant. The other pump that they are talking about is not in the zoning that they are asking for. It is on the southwest corner of the field. It is not in the zoning area. The other concern I had is that if this is zoned, is this the only well that you are going to be digging? Or are they going to be drilling all the way down 59th street? When is the county public hearing?

CARTER: I believe it is February 13th at 1 o'clock.

EATHERLY: 1:30 pm. Downtown.

SWART: That is all I have.

SCHREMMER: I am Dick Schremmer, president of Bear Petroleum. I have been in this area since '79. I was a foreman over the Gulf Oil Gladys shed for over thirty years before it was plugged. I actually used to live on 58th street south. I am really familiar with the area, and my office today is just two miles south of Haysville at 9801 S Meridian. We are a local employer through the oil service. To answer the question on the pit, we have to file for a pit permit with the Kansas Corporation Commission Conservation Division. We dig a test hole, and they send a representative out. We dig to a certain depth, and they check for shale or clay that will seal the pit. If that clay is there, they go ahead and permit the pit to be used. With the natural cuttings from the well, it helps seal the pit as you drill. If you look at it now, it is still holding fresh water from the last rain we had. The pit is holding just like it is.

AZIERE: Can you answer the part about the number of wells you plan on digging?

SCHREMMER: Yes, this is the only well I was planning on drilling. It is a horizontal well. We moved it to the east side of the property to stay out of the irrigation system, and then the well is drilled to the west, to the west edge of this property. So this well goes down here, makes a big corner and goes west about 3,000 feet. It will produce that whole section. No, we do not have any more plans to drill more wells in that area. There is a situation where we might need to drill an extra well on that pad, as the saltwater disposal well.

COLEMAN: Am I correct that you said that the fencing you are going to put around is chain link and you do not plan on putting any slats in it?

SCHREMMER: The tanks are 20 feet tall. The fence would be 6 feet tall. The pumping unit is probably 20 feet tall when it is standing. I don't really see what the slats would do, and so many places

that I have been where they have installed that, after a few years, it looks worse than what is behind the fence. I am not saying that we couldn't do it, but it is not in the plan at this time.

AZIERE: Thank you. Any discussion?

RINKE: What would we be voting on or recommending since everything is based on state law?

AZIERE: We are making a recommendation to MAPC.

EATHERLY: It is my understanding that it is to the Board of County Commissioners, but I could be wrong about that.

AZIERE: Either way, we are making a recommendation based on it being in our area of influence. If we want to deny it, that is our recommendation. If we want to approve it, we can approve it with conditions. None of those may be held up at that level, but we can make our recommendation. If it is approved here, these are the things we would like to see. If we feel strongly one way or the other, that is our discussion.

SCHREMMER: One more thing, the issue of taxes came up a minute ago. I have the breakdown for the taxes. For the \$4,000 in taxes, \$51 went to the state. The rest of it stayed local. The county gets almost 29%, Riverside Township gets over 6%, the USD 261 gets 13.7%, the USD 261 gets 14.98%, the USD 261 gets almost 8%, and the USD 261 gets another 20%.

AZIERE: Sounds like the school district does pretty well. Thank you.

CARTER: I have one more question for you. You are regulated, so any leaks, you do have a certain time frame you have to clean those up and everything, correct?

SCHREMMER: Yes. Like I said, this pit was approved by the Kansas Corporation Commission.

WILLIAMS: My concern, is all this a moot point if what the attorney says is correct?

AZIERE: Here is where I see it. This is not going to be decided by us, and we can make our recommendation one way or the other, and it can be thrown out. Still, I would feel like we would have done our job. But our decision probably has no bearing on this, so I feel comfortable moving forward.

WILLIAMS: I agree.

EATHERLY: The attorney for the applicant is correct in that they did not ask for the deferment as much as the county legal did, because they did bring up the legal aspect of this. That is why our county legal team did ask to defer as they looked at that information. That is why the deferment. I am by no means a legal expert. That is not my job, but while that is being looked at, I think we can move forward. If that is the case, then it is kind of a moot point.

AZIERE: That is where I was going too. If that is where it gets sorted out, fine. I think we can still make a recommendation, and if it gets throw out, fine. If not, then we have got our recommendation and we can move forward.

WILLIAMS: So this is one we have to follow the Golden Rules?

AZIERE: Yes. Staff is making recommendations based on those Golden Rules, and you can read their reasoning in that. For me, I think there are existing oil wells out there on open fields. It is not the same property, but it is the same open field. It is not as close to the houses, as this one, which is a consideration. But all of that is what we are supposed to look at.

Motion by Williams, second by Rinke.
To recommend denial of the conditional use.
Williams aye, Coleman aye, Rinke aye.
Aziere nay.
Blood abstain.
Motion carried.

There was no old business.

There was no correspondence.

Under off-agenda.

HOGAN: The next meeting date is January 23rd.

Motion by Coleman, second by Williams.
To adjourn tonight's meeting.
Williams aye, Coleman aye, Aziere aye, Rinke aye, Blood aye.
The meeting adjourned at 6:47 p.m.

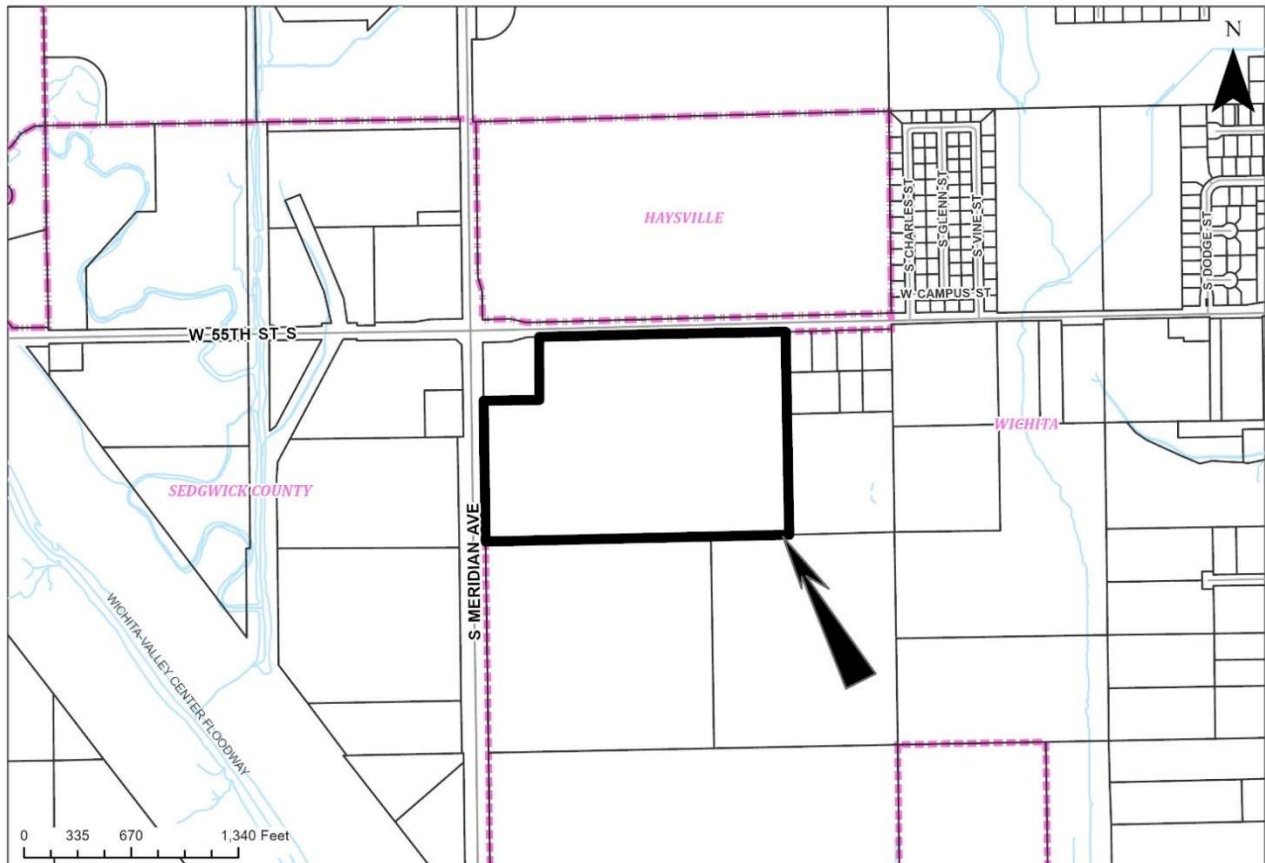




STAFF REPORT
MAPC: January 23, 2025
CAB 2: N/A

AGENDA ITEM NO. _____

- CASE NUMBER:** ZON2024-00060 (City)
- APPLICANT/AGENT:** Rojo Farms LLC (Applicant)/Bridger Development (Contract Purchaser)/Professional Engineering Consultants (Agent)
- REQUEST:** TF-3 Two-Family Residential District
- CURRENT ZONING:** LC Limited Commercial District and SF-20 Single-Family Residential District
- SITE SIZE:** 55.67 acres
- LOCATION:** Generally located south of West 55th Street South and east of South Meridian Avenue.
- PROPOSED USE:** Duplex development.
- RECOMMENDATION:** Approve.



BACKGROUND: The applicant is requesting a zone change from LC Limited Commercial District (LC) and SF-20 Single-Family Residential District (SF-20) to TF-3 Two-Family Residential District (TF-3). The 55.67-acre property is generally located south of West 55th Street South and east of South Meridian Avenue. The subject site is currently an agricultural field.

The applicant has indicated they intend to use the site for duplex development. The northwest portion of the subject site is zoned LC and already allows duplexes and multi-family development by right, up to 75 dwelling units per acre. Should the zone change request be approved, TF-3 allows for a new minimum lot area, minimum lot width, maximum height, and setback requirements, as demonstrated in the table below. TF-3 also allows for two-family dwellings.

Development Standard	SF-20 Single-Family Residential District	TF-3 Two-Family Residential District	LC Limited Commercial District
Minimum lot width	100 feet	35 feet	No minimum
Minimum lot area	20,000 square feet	3,500 square feet/Dwelling Unit for single-family; 3,000 square feet per Dwelling Unit for duplex and multi-family (maximum 14.5 dwelling units per acre); 5,000 square feet for nonresidential uses	2,500 square feet for Single-Family; 2,000 square feet per Dwelling Unit for Duplexes; 580 square feet per Dwelling Unit for Multi-Family (maximum 75.1 dwelling units per acre); no minimum for nonresidential uses
Front setback	25 feet	25 feet	20 feet
Rear setback	25 feet	20 feet	Ten feet
Interior side setback	Ten feet	Six feet	Zero feet
Street side setback	20 feet	15 feet	Ten feet
Maximum height	35 feet; 45 feet if located at least 25 feet from all lot lines; no maximum height limit for barns, silos and other similar farm buildings	35 feet	80 feet, plus two feet of additional height for each foot of setback beyond the minimum required setbacks

The setback requirements above are for properties not along any county arterial streets. West 55th Street South and South Meridian Avenue are both classified as county arterial streets; therefore, all development along the streets requires a 100-foot setback from the center of each of the roadways.

The applicant intends to annex the property into the City of Wichita. The subject site is adjacent to properties located in the City of Wichita to the east and south, which facilitates the extension of municipal services, such as water and sewer. The City of Wichita currently has these services in the West 55th Street South right-of-way.

The character of the neighborhood is generally mixed in nature with agricultural, low-density residential, and an institutional use. Property to the north, across West 55th Street South, is zoned SF-15 within the City of Haysville and is developed with a school. Property to the south is zoned SF-5 Single-Family Residential District in the City of Wichita and is currently undeveloped. The property owner to the south requested a zone change to TF-3 but ultimately withdrew the application (ZON2024-00007) in favor of submitting a new application for TF-3 approximately 600 feet south. Said new application was approved. Properties to the east are zoned SF-5 in the City of Wichita and are developed with single-family dwellings. Properties to the west, across South Meridian Avenue, are zoned LC and SF-20 and are in use as agricultural land in unincorporated Sedgwick County. Property to the

northwest is zoned LC, is owned by the applicant, and is developed with a single-family dwelling in unincorporated Sedgwick County.

CASE HISTORY: The subject site is not platted. Platting will be required prior to the issuance of building permits. There are no zoning cases associated with this property.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-15 (Haysville)	School
SOUTH:	SF-5 (Wichita)	Undeveloped
EAST:	SF-5 (Wichita)	Single-family dwellings
WEST:	LC, SF-20 (Unincorporated)	Agricultural field
NORTHWEST:	LC (Unincorporated)	Single-family dwelling

PUBLIC SERVICES: The subject site currently has access to South Meridian Avenue, which is a four-lane, County arterial roadway with a sidewalk on the east side, as well as West 55th Street South, a two-lane County arterial roadway with a sidewalk on the north side. Municipal services such as water, sanitary sewer, and stormwater services will need to be extended prior to development.

CONFORMANCE TO PLANS/POLICIES: The requested zone change is governed by the following plans: *Community Investments Plan:* The requested zone change is in conformance with the *Community Investments Plan*. The Wichita 2035 Future Growth Concept Map shows the site to be within the City of Haysville Urban Area of Influence. The plans that are governed by the City of Haysville are analyzed below.

The Locational Guidelines for properties outside the Established Central Area, which include Wichita’s 2035 Urban Growth Area, provide a decision-making framework regarding land use changes. In general, “New development areas separated from existing developed areas by major barriers (such as: highways, railroads, waterways, and airports) or by significant open space or undeveloped areas should be discouraged unless the scale of the development is sufficient to support the cost of extending infrastructure and services in a manner that supports additional development on surrounding sites.” The proposed development is over 55 acres in size, which optimizes the extension of municipal services to the area. In addition, the Wichita City Council recently approved the zone change request from SF-5 to TF-3 less than one-quarter mile south of the subject site, on the east side of South Meridian Avenue (ZON2024-00018), where municipal services have not yet been extended. Similarly, The Board of County Commissioners approved a zone change request from SF-20 to TF-3 on the west side of South Meridian Avenue last year (ZON2024-00042). These two zone changes permit development of duplexes in the area.

South Wichita/Haysville Area Plan: The requested zone change is in conformance with the *South Wichita/Haysville Area Plan*. The Future Land Use map identifies the area to be appropriate for Residential, Low Density. With a maximum density of 14.5 dwelling units per acre, duplex development is considered low-density as opposed to the density that would be permitted in other, higher zoning districts.

South Meridian Corridor Plan: The subject site is in conformance with the *South Meridian Corridor Plan*, governed by the City of Haysville. The *Plan* identifies the subject site as appropriate for “Low-density residential”. Duplexes are thus an appropriate land use for this site. Additionally, the City’s Land Use Plan Map identifies the site as appropriate for “Neighborhood Mixed Use”. The *Plan* identifies “Mixed Use” as such: “These are areas with the greatest flexibility in terms of land use and may be comprised of one or several use types. Although considered to be less of a traffic generator than true ‘commercial’ developments, mixed use projects still require appropriate site design to ensure traffic impacts are kept minimal.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be **APPROVED**.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The character of the neighborhood is generally mixed in nature with agricultural, and low-density residential, and an institutional use. Property to the north, across West 55th Street South, is zoned SF-15 within the City of Haysville and is developed with a school. Property to the south is zoned SF-5 Single-Family Residential District in the City of Wichita and is currently undeveloped. The property owner to the south requested a zone change to TF-3 but ultimately withdrew the application (ZON2024-00007) in favor of submitting a new application for TF-3 approximately 600 feet south. Said new application was approved. Properties to the east are zoned SF-5 in the City of Wichita and are developed with single-family dwellings. Properties to the west, across South Meridian Avenue, are zoned LC and SF-20 and are in use as agricultural land in unincorporated Sedgwick County. Property to the northwest is zoned LC, is owned by the applicant, and is developed with a single-family dwelling in unincorporated Sedgwick County.
2. **The suitability of the subject property for the uses to which it has been restricted:** The property is presently zoned SF-20 Single-Family Residential District and LC Limited Commercial District. SF-20 is suitable for a limited number of residential, public, and civic uses, including single-family residences, while LC allows duplexes by right as well as a limited number of commercial uses and multi-family dwellings up to 75 dwelling units per acre.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Staff does not anticipate the removal of restrictions to have substantial detrimental impacts on nearby properties. The zone change request is occurring similarly with two other anticipated duplex developments within one-quarter mile of the subject site.
4. **Length of time subject property has remained vacant as zoned:** The property has historically been used for agricultural purposes.
5. **Relative gain to public health, safety, and welfare as compared to the loss in value or the hardship imposed upon the applicant:** Approval would permit new residential development in an area that is in-character with nearby duplex developments mixed with single-family residential dwellings. Denial may represent a loss of economic opportunity for the applicant.
6. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The requested zoning is in conformance with the *Community Investments Plan* and the *South Wichita/ Haysville Area Plan*, the *South Wichita/ Haysville Area Plan Future Land Use Map*, the *City of Haysville Land Use Plan Map*, and the *South Meridian Corridor Plan Land Use Alternatives Map*, as discussed in the staff report.
7. **Impact of the proposed development on community facilities:** The development will require an extension of municipal services. Staff anticipates the proposed duplex development will bring an increase in traffic to the area.
8. **Opposition or support of neighborhood residents:** At the time the staff report was prepared, staff received two comments in opposition to the requested zone change, with concerns for density and traffic. The comment is attached to the end of this report.

Staff Report Attachments:

1. Public Comment
2. Aerial Map
3. Zoning Map
4. Land Use Map
5. *South Wichita/ Haysville Area Plan Future Land Use Map*
6. *City of Haysville Land Use Plan Map*
7. *South Meridian Corridor Plan Land Use Alternatives Map*
8. Site Photos

ZON2024-00060 SF-20 to TF-3 across from CHS



DEBORAH MCCLURE <mc_clure@swbell.net>

To khogan@haysville-ks.com; [Planning](#)



Wed 1/8/2025 1:44 PM

You forwarded this message on 1/10/2025 12:33 PM.

This message was sent with High importance.

If there are problems with how this message is displayed, [click here to view it in a web browser.](#)

I am writing to protest the zoning request change to Two-Family Residential District on Case No. ZON2024-00060. This land is approximately 55 acres and is directly south Campus High School and directly north of 150 acres to be developed with a third of the acreage zoned for Two-Family Residential District approved last year. With a third already zoned TF-3 it's pretty much a shoe-in the rest could also be approved later on. Therefore a little over 200 acres could have duplexes on it, turning a quiet country-like 8 single-family residential area, with at least 1 acre lots, into a congested urban environment.

The area in ZON2024-00060 being south of Campus High School will bring even more traffic and congestion since the housing is across the street from the east parking lot entrance, the south and visitor parking lot, as well as the bus drive. West 55th St S was already widened at the corner with S Meridian Av to help relieve congestion, with the addition of 55 acres of duplexes any street access to W 55th St S will just add to the congestion.

This will also add to the crowding of Haysville West Middle School and Prairie Elementary School as well as Campus High School. The elementary school on the north side of W 55th St S currently is not the assigned school for that area as there is no sidewalks nor crosswalks to reach that school.

I have reservations about having that many families in proximity to my pond. I had to make provisions to make sure water runoff from the fields did not go into the pond since it is fed by the aquifer. With the addition of many houses and less land to soak up the rain, I hope your engineers put requirements to keep the future runoffs from coming on my land and overwhelming the requirements I had to abide by. I have already spent over \$1,000 on trees to create a buffer between my property and the development south of 150 acres and will have to do the same on the west side of my property.

According to the MAPC Subdivision 2024 report, the subdivisions stayed about the same from 2023 to 2024, but the number of lots increased putting a stress on the personnel handling them.

Finally, I'm tired of companies & government always catering to the "new" customers and ignoring and disregarding the existing customers and not enforcing the signage requirements. But that doesn't mean I will move from the land my Great-Grandfather Slade homesteaded over 150 years ago around 1872.

Thank you,
Deborah McClure
1873 W 55th St S
Wichita, Ks 67217

From: Rick Rexroat <rickrexroat@gmail.com>
Sent: Monday, January 13, 2025 7:38 PM
To: Kailyn Hogan <khogan@haysville-ks.com>
Subject: ZON202400060

You don't often get email from rickrexroat@gmail.com. [Learn why this is important](#)

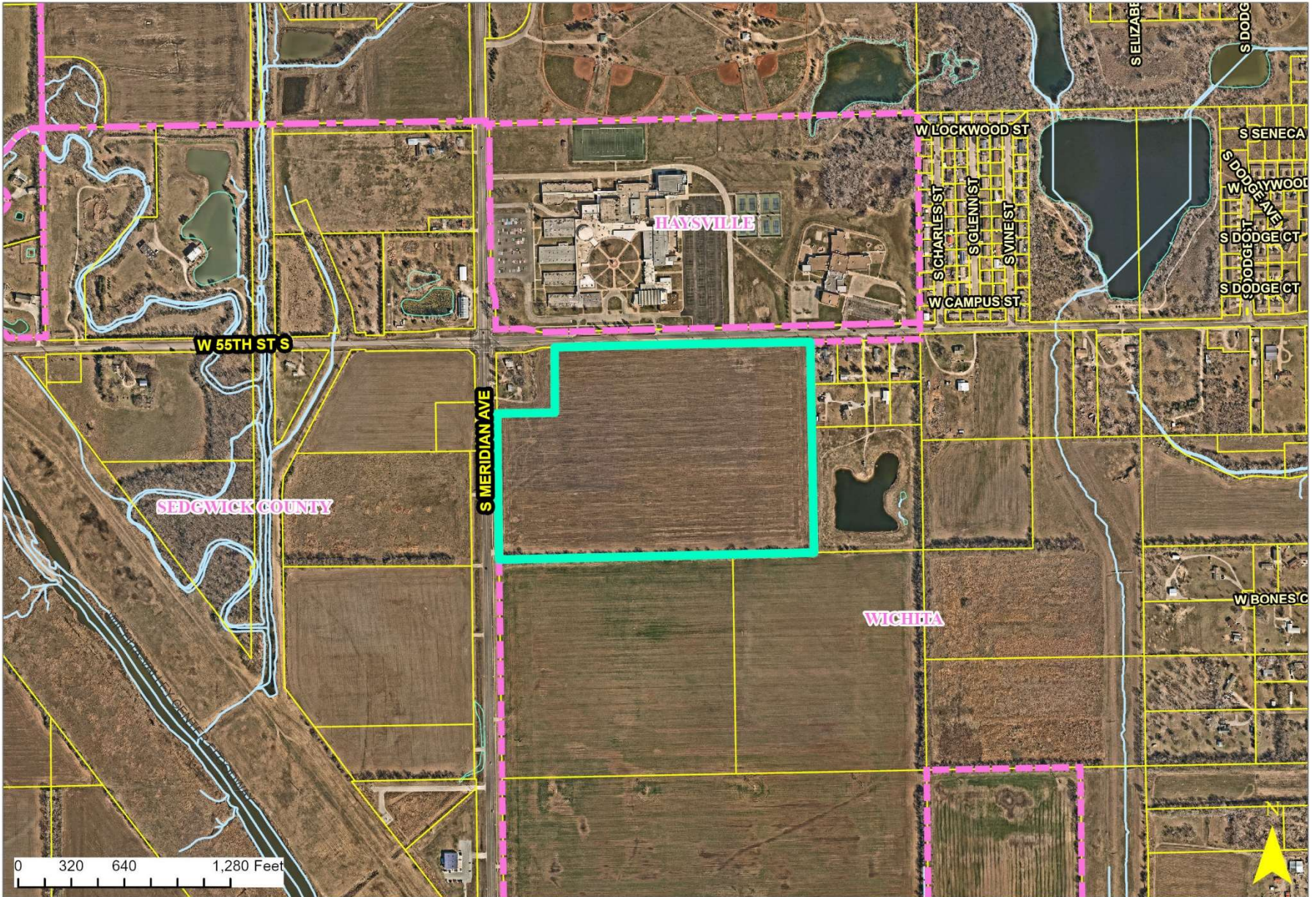
Kailyn Hogan

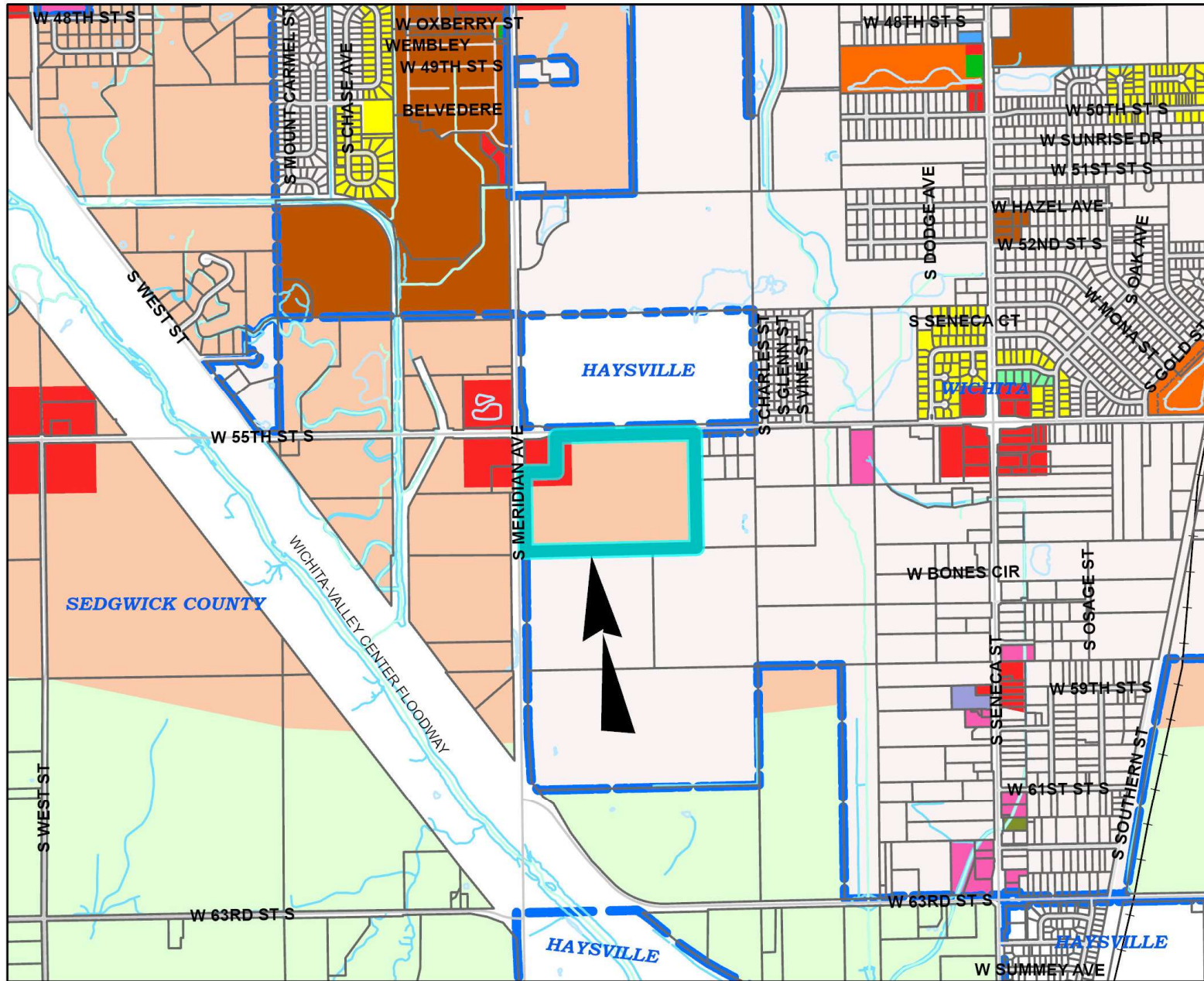
My name is Rick Rexroat. I live at 2005 W 55th Street S Wichita KS 67217.

I oppose the zoning change (ref. ZON2024-0060). The reason is I don't believe South Wichita / Haysville and the surrounding areas would benefit from another multi family or mobile / modular housing. This area already has (2) mobile home parks, (1) modular home on foundations neighborhood and (2) multi family dwelling neighborhoods all within one mile of this area. I believe that an additional multi family dwelling neighborhood will drive the value of my home down. I'm not against one or two lots being a duplex but to make the whole area of duplexes is too much.

Thank You for your time.

Rick Rexroat





- ZONING**
- RR
 - SF-20
 - SF-10
 - SF-5
 - TF-3
 - MF-18
 - MF-29
 - B
 - MH
 - NO
 - GO
 - NR
 - LC
 - GC
 - CBD
 - OW
 - IP
 - LI
 - IP-A
 - GI
 - AFB
 - U
 - PUD
 - AIRPORT
 - OLD TOWN



2035 Wichita Future Growth Concept Map

Legend

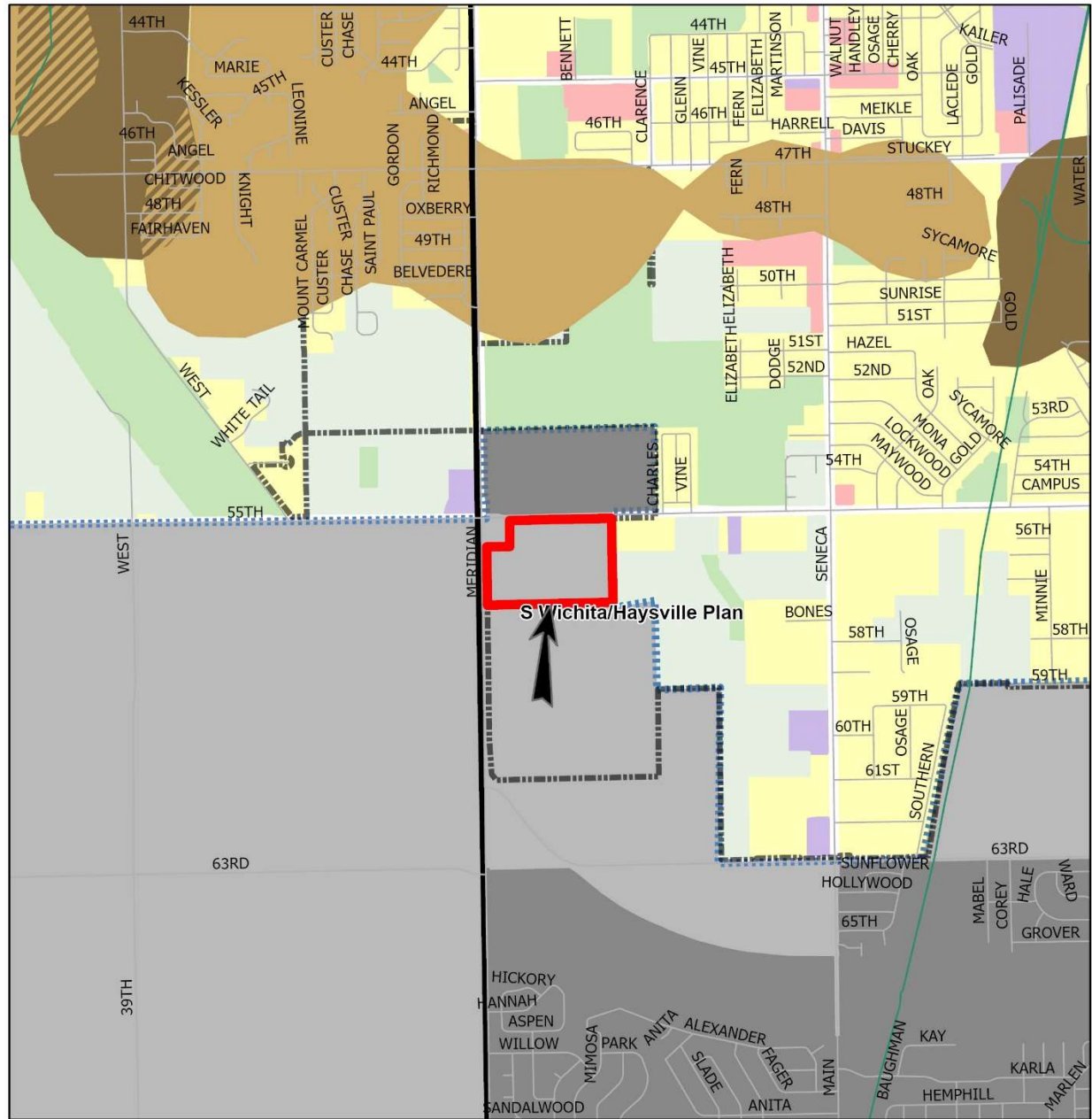
-  Established Central Area
-  Residential and Employment Mix
-  New Employment
-  New Residential
-  Wichita City Limits
-  Other Cities
-  Northwest Bypass Right-of-Way
-  Other Urban Growth Areas 2014
-  Other Urban Growth Areas 2014
-  Rural Growth Areas 2014

LAND USE

-  Residential
-  Commercial
-  Industrial
-  Major Air Transportation & Military
-  Parks and Open Space
-  Agricultural or Vacant
-  Major Institutional
-  Neighborhood & Area Plans
-  Application Area



City of Wichita Planning and Economic Development
 2024-2025 Comprehensive Plan
 City of Wichita, Kansas
 1100 South Broadway, Wichita, Kansas 67202
 www.wichita.gov
 © 2024 City of Wichita. All rights reserved.

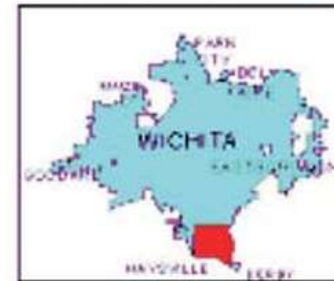
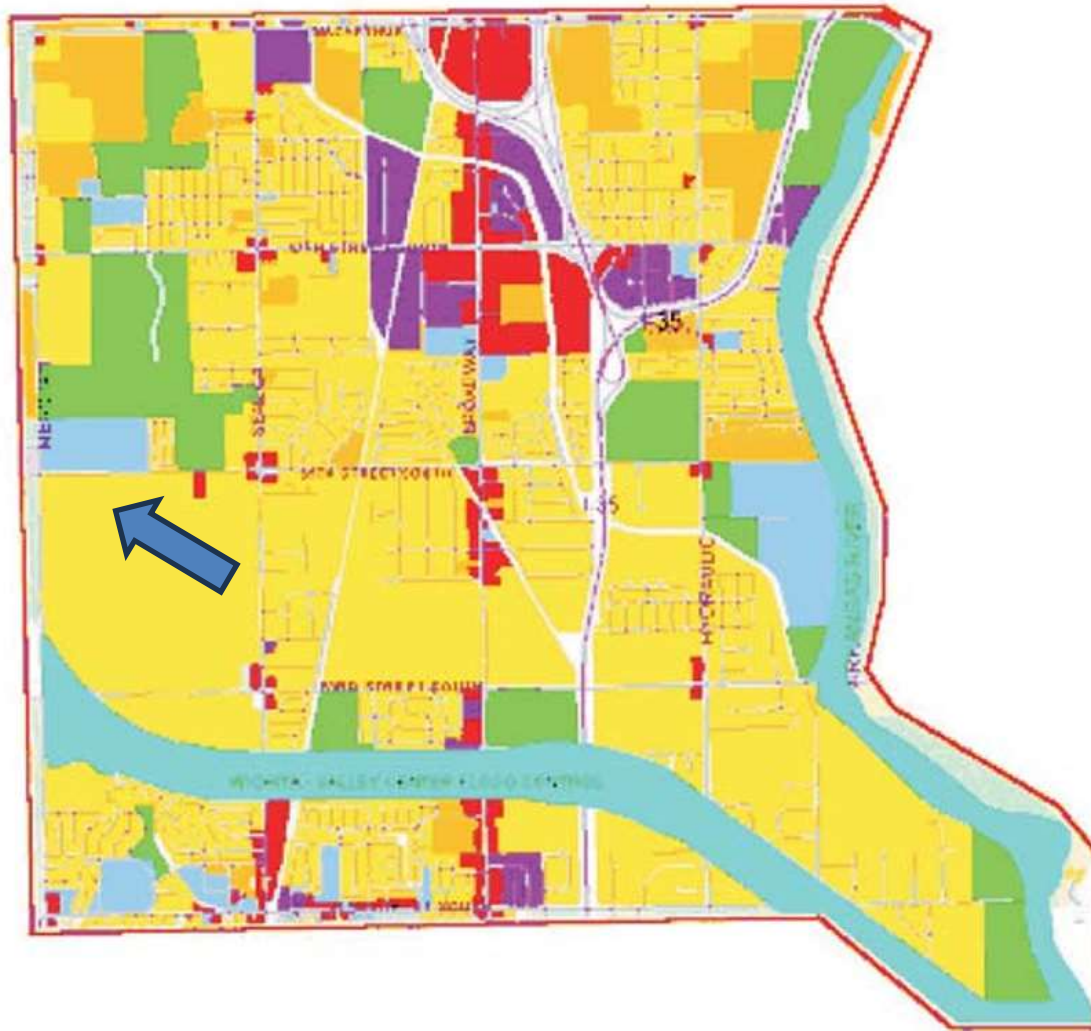


SOUTH WICHITA/ HAYSVILLE AREA PLAN

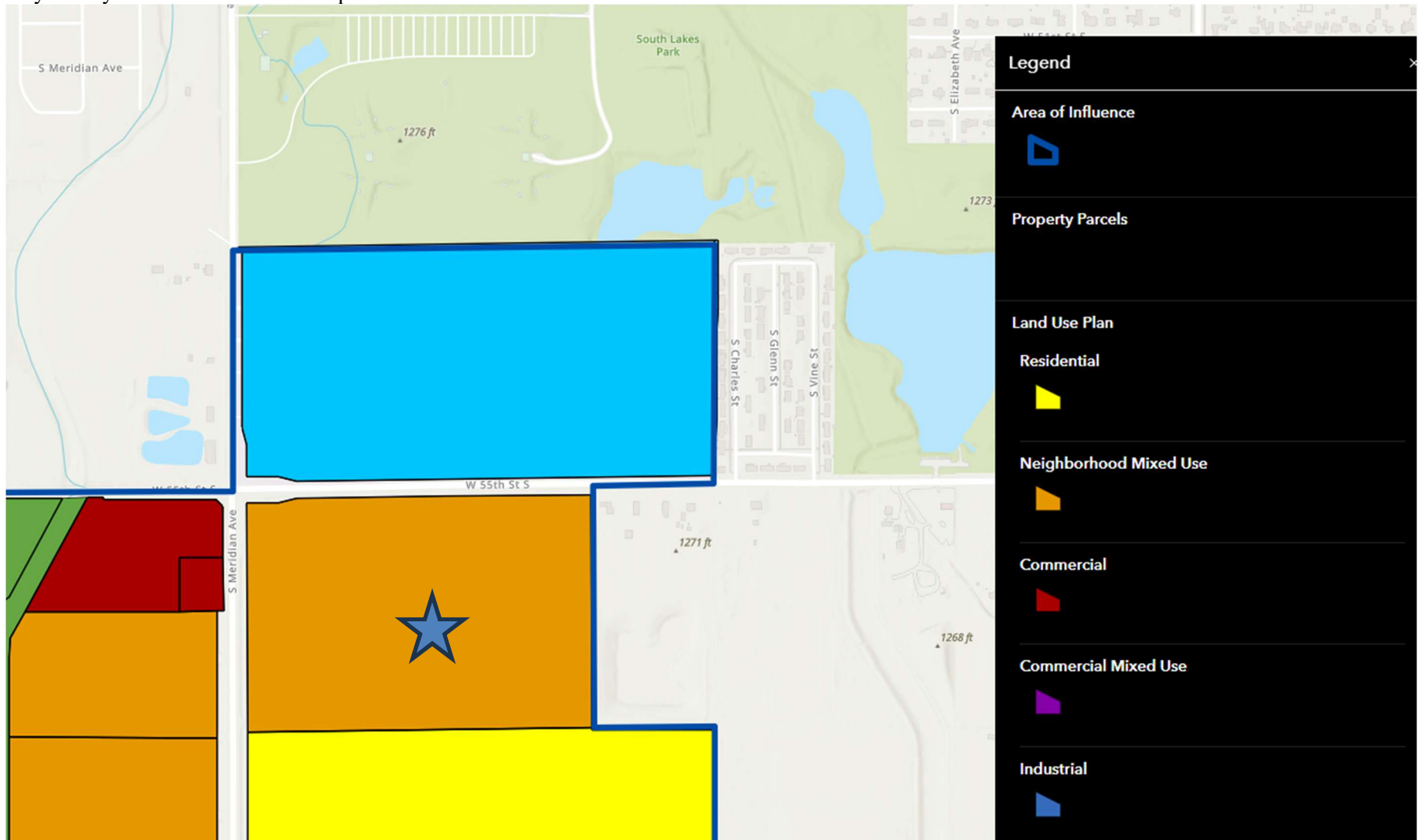
FUTURE LAND USE

LEGEND

- Residential Low Density
- Residential Medium Density
- Commercial Retail
- Industrial
- Public-Semi Public-Institutional
- Public Parks-Open space-Golf Courses
- Streets
- Project Boundary



City of Haysville Land Use Plan Map



South Meridian Corridor Plan Land Use Alternatives Map



Looking east towards site



Looking west away from site



Looking south towards site



Looking north away from site



Haysville Planning Commission Staff Report

AGENDA ITEM:

- Owner/Applicant:** City of Haysville (Owner)
Network Real Estate LLC / AT&T (Applicant)
- Location:** Lot 1, Grand Addition, Haysville, Sedgwick County, Kansas, more generally known as 200 W Grand Ave. Area of application is highlighted on the attached map.
- Current Zoning:** Light Commercial
- Lot Size:** 1.997 acres (parent parcel) / 0.103 acres (lease area)
- Proposed Use:** Conditional Use Permit to build a new tower for a Wireless Communication Facility (AT&T)
- Meeting Date:** January 23, 2025
- Presented By:** Kailyn Hogan, Planning and Zoning Administrator
- Public Hearing:** Required to be held by the Planning Commission

ANTICIPATED MEETING SCHEDULE

<i>Body</i>	<i>Meeting Date</i>	<i>Action</i>
Planning Commission	01/23/2025	Hold required public hearing. Recommendation for approval, approval with modifications, or denial of the proposal. This recommendation is forwarded to the Haysville City Council.
City Council Meeting	02/10/2025	Adopt the recommendation of the Planning Commission as presented, override the recommendation, or return the recommendation to the Planning Commission

BACKGROUND

The applicant is requesting a Conditional Use to construct a new 150-foot-tall tower for a Wireless Communication Facility on a leased portion of the property generally known as 200 West Grand Avenue. The site is zoned "LC" Light Commercial and is used for government office

buildings. The parent parcel is 1.997 acres in size. The tower will be placed within a 90-foot by 50-foot (0.103 acres) lease area located in the northwest corner of the parent parcel.

Per the Code of the City of Haysville, Wireless Communication Facilities require Conditional Use approval in the “LC” Light Commercial zoning district. The applicant is also required to submit a Wireless Communication Facility application, which is subject to administrative approval.

A Wireless Communication Facility is defined in the City of Haysville’s Zoning Code as a Lot containing equipment at a fixed location that enables wireless communications between user equipment and a communications network, including, but not limited to: (A) a wireless support structure consisting of a freestanding support structure, such as a monopole, guyed, or self-supporting tower or alternative structure designed to support or capable of supporting wireless facilities; (B) a base station that supports or house an antenna, transceiver, coaxial cables, power cables or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics; (C) equipment associated with wireless services such as private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul; and/or (D) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies and comparable equipment, regardless of technological configuration.

The applicant indicates this will be a monopole structure. The proposed 150-foot-tall tower will be enclosed with a six-foot-tall faux stone composite fence surrounding the lease area.

CASE HISTORY: The property on which the tower will be leased was platted as the “Grand Addition,” Haysville, Sedgwick County, Kansas on October 8, 1976. There are no known zoning cases associated with this site.

The lease agreement between AT&T and the City of Haysville for the 90-foot by 50-foot lease area was approved by City Council on November 12, 2024.

ADJACENT ZONING AND LAND USE: Surrounding properties zoning are generally “LC” Light Commercial with some “SF” Single-Family Residential to the South.

NORTH:	Light Commercial	Developed
SOUTH:	Light Commercial & Single-Family Residential	Developed
WEST:	Light Commercial	Developed
EAST:	Light Commercial	Developed

CONSIDERATIONS

The following criteria shall be evaluated as they relate to the specific case being considered, and such stipulation as deemed appropriate in relation to any request for a conditional use may be developed by the commission and incorporated into any recommendation in support of the requested conditional use.

1. Access and traffic load and/or flow.

- a. *Access.* Access to the facility will be via the proposed 20-foot access easement off of Campbell Drive. The easement overlaps with the existing north driveway on the parent parcel, and it wraps around to the east side of the lease area. The applicant is also requesting a roughly 15-foot by 30-foot utility easement to the west of the lease area, abutting both the lease area and the right-of-way for Campbell Drive. Campbell Drive is a paved, two lane collector road.
- b. *Traffic load.* There is no anticipated increase in traffic load.
- c. *Traffic flow.* There is a minor concern for impacting traffic flow of vehicles during construction, as the primary access for city staff and emergency vehicles is via the existing, shared northwest driveway. The applicant should have minor need to access the facility after it is constructed.

2. Noise, light, and odor.

There is no anticipated increase in odor, dust, smoke, noise, vibration, or light from this facility.

Requirements per Chapter 16A. Zoning Regulations for “LC” Light Commercial zoning district: *“Operations or products are not objectionable due to odor, dust, smoke, noise, vibration, or other similar causes.”*

Requirements per Appendix E. Site Development Regulations for Wireless Communication Facilities: *“Lighting. Except for lighting specifically required by the Federal Aviation Administration or other federal or state authority, wireless infrastructure must not be artificially illuminated and must not display strobe lights. (1) Security lighting around the base of a tower may be provided if the lighting is shielded so that no light is directed towards adjacent properties or rights-of-way, and the lighting avoids illuminating the tower. (2) When incorporated into the design of the wireless telecommunication facilities, streetlights, traffic signal, or light fixtures used to illuminate ball fields, parking lots, or similar areas may be attached to the wireless facility.”*

3. Screening and security fencing.

The applicant plans to install a 6-foot tall faux stone composite panel fence to screen the accessory equipment from the public right-of-way and any other property. The lease area will be completely enclosed with a 20-foot-wide double lock latch gate for secure access.

Requirements per Chapter 16A. Zoning Regulations for “LC” Light Commercial zoning district: *“Storage shall occur within solid screened areas and shall not be visible from any adjacent no-elevated street nor from ground level view in any adjacent lot except as otherwise allowed in accordance with these regulations.”*

Requirements per Appendix E. Site Development Regulations for Wireless Communication Facilities: *“Screening. Ground mounted accessory buildings, structures and equipment, which are visible from public ways or any other nearby property, must be screened with a solid wall at least 6-feet in height.”*

Requirements per Appendix E. Site Development Regulations for Wireless Communication Facilities: *“Wireless infrastructure which is not located in the right-of-way, and which incorporates ground mounted equipment or accessory*

structures, must be surrounded by a security fence and screening at least 6-feet in height that prevents unauthorized access.”

4. Parking.

No additional parking is needed for this facility.

5. Services.

- a. *Water.* Water service is not needed for this project. City water is available.
- b. *Sanitary Sewer.* Sanitary sewer is not needed for this project. City sewer is available.
- c. *Electricity.* Electricity will be provided by Evergy.
- d. *Storm sewer/drainage.* The lease area is within Flood Zone AE. Flood Zone AE means the area has a 1% annual chance of flood, or a 26% chance of flooding over a 30-year mortgage. The applicant will be obtaining an Elevation Certificate in order to construct the proposed tower.
- e. *Natural gas.* Natural gas is not needed for this project. Kansas Gas Service is available.
- f. *Communications.* Fiber will be provided by a local company. Said local company has not been determined.

6. Public health and safety.

It is anticipated the proposed land use, when built to the standards of the City’s zoning ordinance, subdivision regulations, and building codes, would not be a health or safety issue to the residents or the community itself.

7. Adequacy of facility and lot size.

The size of the proposed facility appears to be adequate; a site plan shows the anticipated layout.

8. Signs.

The applicant is not requesting any signage at this point in time.

Requirements per Appendix E. Site Development Regulations for Wireless Communication Facilities: *“Signs. No signs may be applied on or attached to any part of a wireless facility, except for associated warning or emergency information signs.”*

9. Review by fire marshal for designation.

Sedgwick County Fire District 1 has reviewed and approved the Conditional Use for Lot 1, Grand Addition to Haysville.

10. Other considerations as appropriate.

- a. *Setbacks.* There is an existing 35-foot building setback line along the south and west sides of the parent parcel. This setback encroaches on the lease area by about 20 feet. The proposed location of the monopole is located roughly 90.5 feet from the west property line of the parent parcel, therefore the proposed monopole location is about 65 feet further off the property line than is required.

Requirements per Appendix E. Site Development Regulations for Wireless Communication Facilities: *“Wireless infrastructure must meet all setback requirements of the underlying zoning district.”*

Requirements per Chapter 16A. Zoning Regulations for “LC” Light Commercial districts: *“Front Yard Setback: 35 feet when adjacent to an arterial street, 25 feet when adjacent to other types of street rights-of-way. Corner lots have at least minimum front yard setbacks on both sides. Rear/Side Yard Accessory Setback: 3 feet.”*

- b. *Easements.* No existing easements on the parent parcel affect the proposed lease area.

Requirements per Appendix E. Site Development Regulations for Wireless Communication Facilities: *“Wireless infrastructure must no unlawfully encroach on any easements.”*

- c. *Equipment cabinets.* The applicant has proposed the location of four equipment areas. The proposed AT&T equipment area will house at least one equipment box. The applicant has not provided a description on what will be located in the future carrier equipment location areas.

Requirements per Appendix E. Site Development Regulations for Wireless Communication Facilities: *“No more than 4 equipment cabinets are permitted per wireless facility, unless otherwise approved by the Planning Commission.”*

RECOMMENDED ACTION

Based upon provided information, planning staff recommends that the conditional use request be **APPROVED**, subject to the following conditions:

1. All requirements of Appendix E. Section 505 shall be met.
2. The tower shall be a “monopole” design that is a colored and finished to be as unobtrusive as possible.
3. The site shall be developed in general conformance with the approved site plans. All improvements shall be completed before the facility becomes operational.
4. The applicant shall obtain FAA approval regarding “objects affecting navigable airspace” and “impacts to terminal instrument procedures” for the proposed wireless communication facility and shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the Public Works Department and Planning and Zoning Department prior to the issuance of a building permit.
5. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
6. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Chapter 16A. Article 7 of the Code of the City of Haysville, may, with concurrence of the Deputy Administrator, declare that the Conditional Use is null and void.

CONFORMANCE TO PLANS/POLICIES: The combined conclusion for conformance to the Plans and Policies, is this request complies with the overall spirit and intent to accommodate both the expansion of wireless communication within the City, while honoring the introduction of this type of use at this location by requiring the Conditional Use approval process.

The requested Conditional Use is in conformance with the *City of Haysville's Comprehensive Plan*. The *City of Haysville's Comprehensive Plan* includes the 2023 Land Use Plan Map. The Map identifies the area in which the site is located to be appropriate for Public/Semi-Public uses. Public/Semi-Public uses include cell towers.

IMPACT OF THE PROPOSED DEVELOPMENT: Approving the conditional use is not expected to have a detrimental effect on public health, safety, and welfare.

PUBLIC REVIEW

The public hearing notice was first published on the City's website on January 13, 2025. Any comments received are attached. Any comments received after the printing of this staff report will be presented at the meeting.

ATTACHMENTS

Aerial Map
Zoning Map
Land Use Map
Site Photos
Site Plans
Lease Agreement, approved by City Council
Conditional Use Application
Copy of the Public Hearing Notice

PUBLIC COMMENTS

On January 14, 2025 at 2:36 p.m., Division Chief Robert Timmons of Sedgwick County Fire District 1 confirmed review and approval of the proposed tower.

On January 16, 2025 at 9:05 a.m., James "Monty" Munyon of Sedgwick County Public Works called to say that since the property is within Haysville city limits, Sedgwick County has no say in approving or reviewing the conditional use.

On January 16, 2025 at 4:11 p.m., Charlie Brown of PEC emailed the following comments:

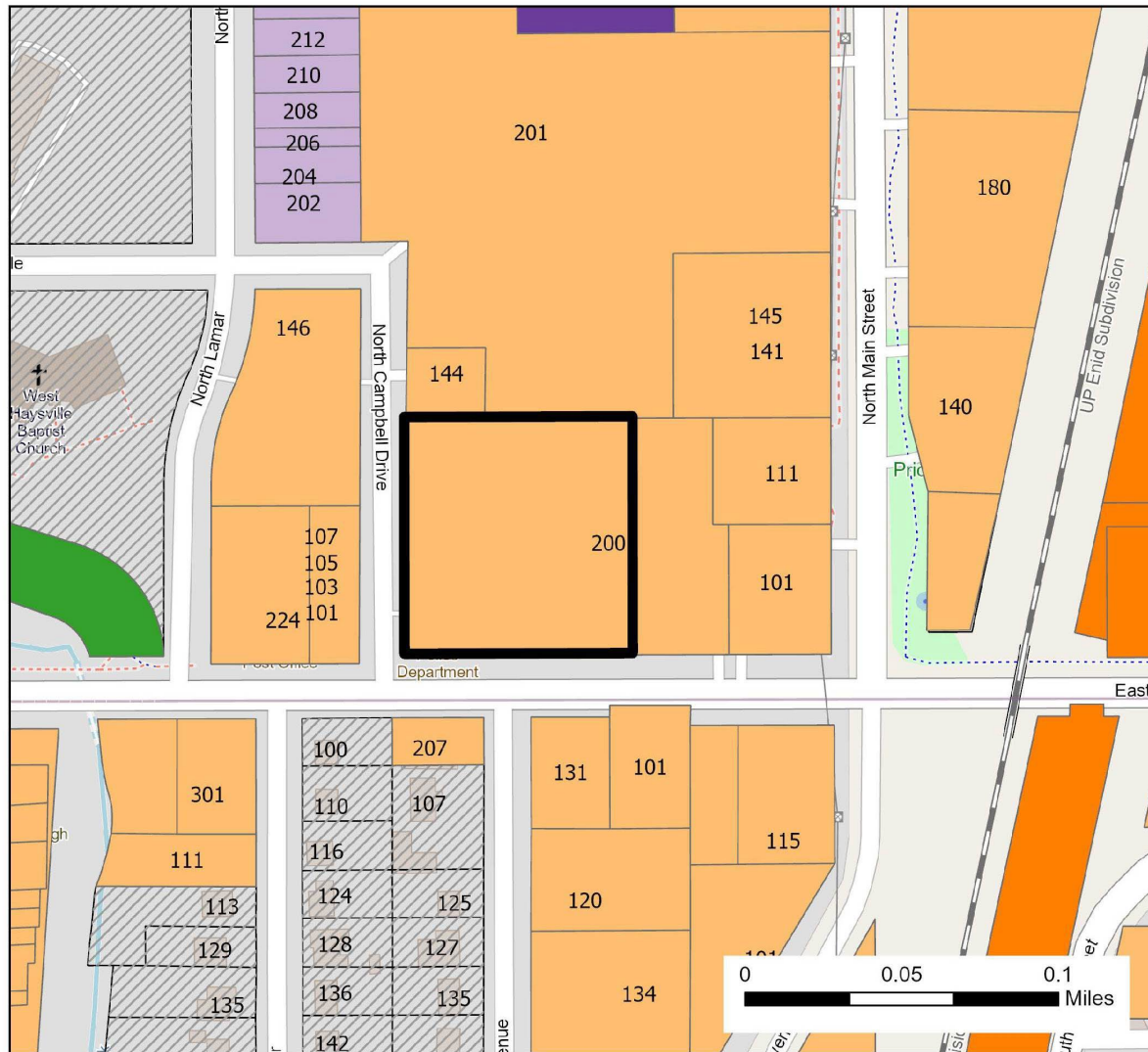
- Plan Sheet T-1: It appears the applicant used a previous project in Kansas City for this submittal. Site location map, jurisdiction, applicant name, property owner all need to be corrected.
- Plan Sheet T-1: Confirm the Building Code and Electrical Code in effect for the City of Haysville.
- Plan Sheet SS-2: Suggest that the applicant use different shading for the various floodplains – somewhat hard to read

- Plan Sheet SS-2: Not sure what the word “GRAND” that is in the middle of the lease area is for.
- Plan Sheet SS-3: All section corners, distances and bearings that are included in the legal description should be shown on the Easements Detail
- Plan Sheet SS-4: Title Report Item 7 indicates a Blanket Easement to Cities Service Gas Service (Book 165, Page 349) dated 9/9/1943. This should be researched to see if that easement is still in effect or if it has been released or confined to a specific location. If the blanket easement is still valid, then it would need to be released or confined. Would City Hall be located on that blanket easement?
- Plan Sheet Z-1: What type of surfacing material will be used inside the proposed fence? Grass, asphalt, gravel, concrete?
- Plan Sheet Z-2: Access to the site will be across the existing City Hall parking lot that has curb and gutter. Should a concrete driveway be shown to the proposed access gate?
- Plan Sheet Z-2: Dimensions along the south fence line total 86' (5' + 4' + 25' + 20' + 32' = 86'). Dimensions along the north fence line total 80' (70' + 10' = 80'). Proposed fence area is labeled as 80'.
- Plan Sheet Z-2: Suggest adding Campbell Street Right-of-Way line to clarify lease and easement locations.
- Plan sheet Z-4: Detail shows 150' tower with 5' tall lightning rod. The application states that the pole will be 125'.

Comments were forwarded to the applicant.

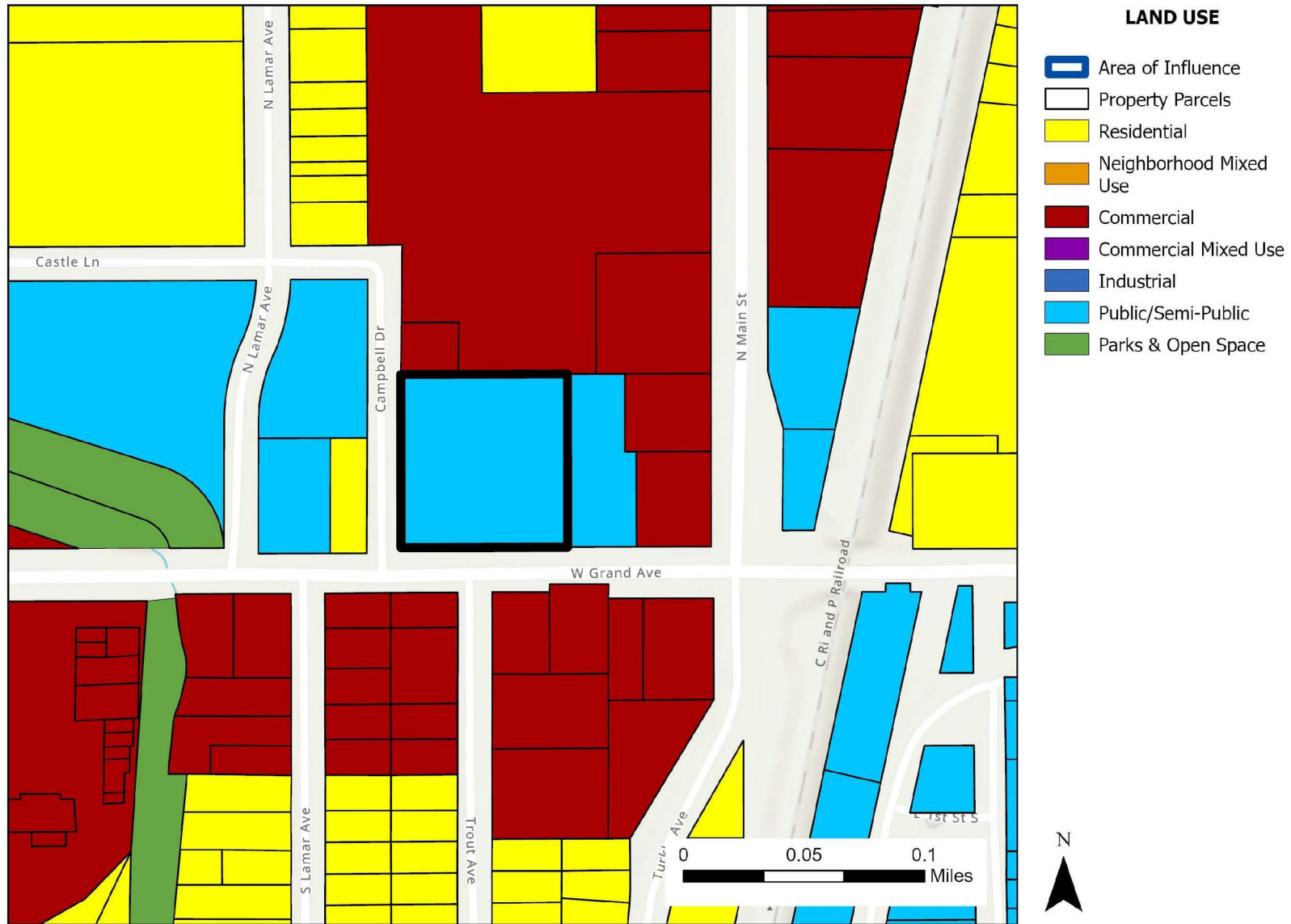
On January 21, 2025 at 8:25 a.m., Kelly Dixon of Sedgwick County Public Works confirmed no comments. The conditional use lies fully within the City of Haysville, outside Sedgwick County's jurisdictional authority.

On January 21, 2025 at 8:38 a.m., Tony Martinez with the City of Haysville's Public Works commented that there is a water service line feeding the Police Department. The location of the line is unknown, and there are no records indicating where it is. The City will do their best to mark the service line when a locate ticket is called in. If the marking is accurate and the line is damaged, it will be the responsibility of the contractor to pay for damages. If the marking is not accurate, it will be the City's responsibility. Comments were forwarded to the applicant.



ZONING

- Protective Overlay
- Non-Conforming
- Variances
- Conditional Uses
- Vacations
- Official Zoning
 - G: Green Space
 - HC: Heavy Commercial District
 - HMC: Hotel and Motel Commercial District
 - LC: Light Commercial District
 - LI: Light Industrial District
 - MF4: Multifamily Four Residential District
 - MFA: Multi-Family Apartment Residential District
 - MH: Manufactured Home Parks or Manufactured Home Subdivision
 - SF15: Single Family Suburban Residential District
 - SF: Single Family Residential District
 - TF: Two Family Residential District



Looking west away from site.



Looking north towards site.



Looking east away from site.



Looking south away from site.



PARENT PARCEL DESCRIPTION:

Lot 1, Grand Addition, Haysville, Sedgwick County, Kansas, as recorded in Instrument No. D-7-24.

LEASE AREA DESCRIPTION:

That part of Lot 1, Grand Addition, Haysville, Sedgwick County, Kansas and being more particularly described as follows:

Referring the Southeast corner of Section 31, a #5 Rebar with plastic found for corner; thence westerly, on a Grid bearing of South 89°04'57" West, on the South line of the Southeast Quarter of said Section 31, 483.79 feet; thence departing said South line, northerly, North 00°55'03" West, 283.15 feet, to the Point of Beginning for the described Lease Area; thence following the perimeter of the Lease Area on the following bearings and distances: westerly, South 88°42'53" West, 90.00 feet; thence northerly, North 01°17'07" West, 50.00 feet; thence easterly, North 88°42'53" East, 90.00 feet; thence southerly, South 01°17'07" East, 50.00 feet, to the Point of Beginning.

Containing a total calculated area of 4,500 square feet, or 0.103 acres, more or less.

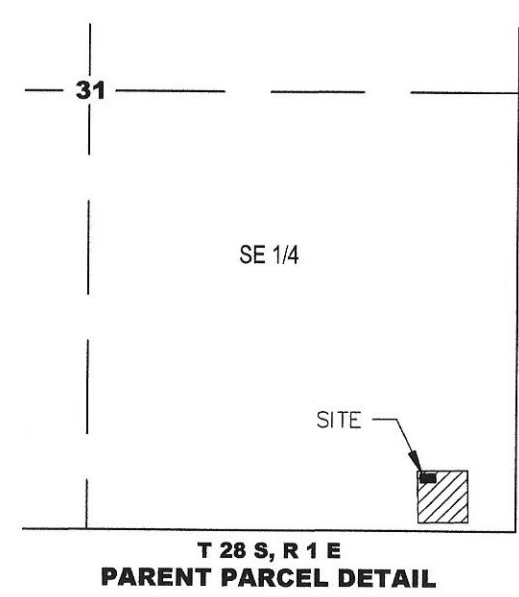
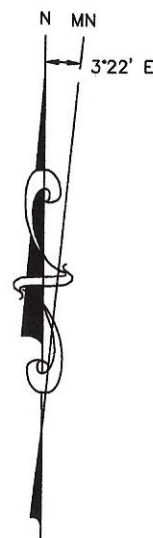
ACCESS EASEMENT DESCRIPTION:

An Access Easement, 20 feet in width, located in that part of Lot 1, Grand Addition, Haysville, Sedgwick County, Kansas, the centerline being more particularly described as follows:

Referring the Southeast corner of Section 31, a #5 Rebar with plastic found for corner; thence westerly, on a Grid bearing of South 89°04'57" West, on the South line of the Southeast Quarter of said Section 31, 483.79 feet; thence departing said South line, northerly, North 00°55'03" West, 283.15 feet, to the Southeast corner of the described Lease Area; thence following the perimeter of the Lease Area on the following bearings and distances: westerly, South 88°42'53" West, 90.00 feet; thence northerly, North 01°17'07" West, 50.00 feet; thence easterly, North 88°42'53" East, 90.00 feet; to the Northeast corner of the described Lease Area; thence departing said Northeast corner, easterly, North 88°42'53" East, 10.00 feet, to the Point of Beginning for the centerline of the described Access Easement; thence following the centerline of the easement, southerly, South 01°17'07" East, 60.00 feet; thence westerly, South 88°42'53" West, 115.84 feet, to a point of intersection on the easterly right-of-way line of North Campbell Drive, also being the Point of Termination for the centerline of the described Access Easement.

Containing a total calculated area of 3,517 square feet or 0.081 acres, more or less.

Parallel lines from the described centerline are intended to lengthen or shorten to intersect the lines described.

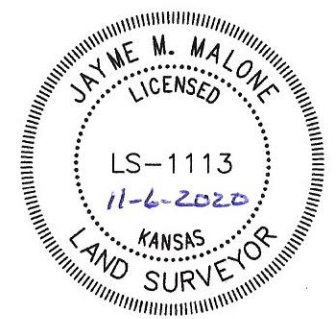


VICINITY MAP



SURVEYORS NOTES

- 1.) Generally located in Kansas State Plane Coordinate System, South Zone (NAD-83).
 - 2.) Not a survey of the parent parcel shown, but to be used only for the purposes shown hereon.
 - 3.) The Utility locations shown hereon were determined by observed above ground evidence only. The surveyor was provided with above ground markings to determine any subsurface locations, and makes no guarantee that the underground utilities in the area, either in service or abandoned. The surveyor further does not warrant that the underground utilities shown are in the exact location indicated. This surveyor has not physically located the underground utilities.
- Zoning: D - Lt. Commercial
- Flood Information:
Property falls within a Zones AE & "X" as determined by FEMA Flood Rate Map No. 20173C0503G, with an effective date of December 22, 2016.



Surveyor's Certificate

I, Jayme M. Malone, a Professional Registered Land Surveyor under the laws of the State of Kansas, certify the above survey was executed by me, on the date shown. Distances shown are measured in feet and decimals of a foot.

Signed this 6th day of Nov., 2020

 Jayme M. Malone



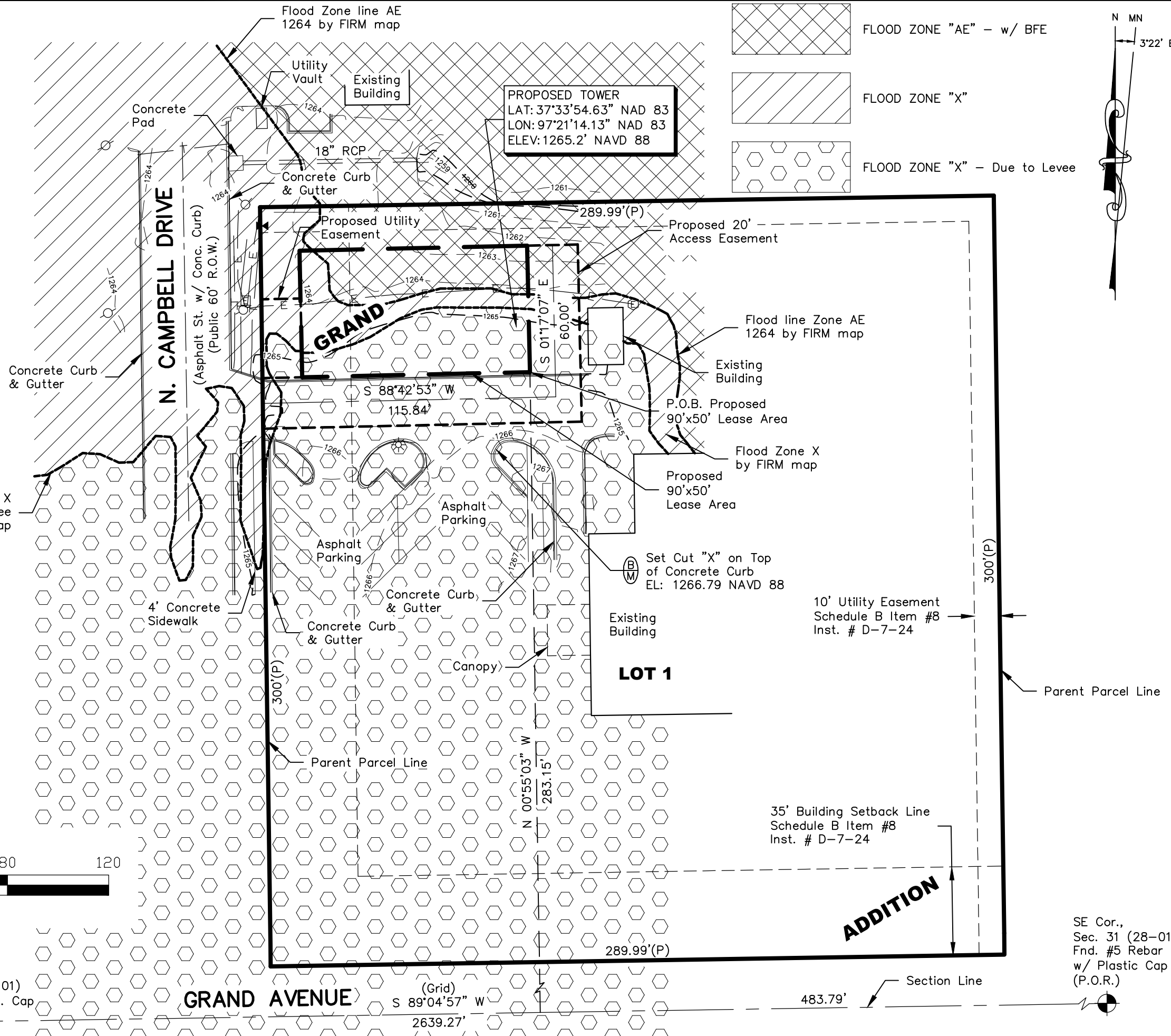
REV	DATE	DESCRIPTION	BY
1	08.08.19	PRELIMINARY	TH
2	11.04.20	REVISE UTILITY EASEMENT/ NEW 1A	PD
3	11.06.20	COMMENTS / FINAL	PD



SITE NAME	HAYSVILLE KS
SITE NUMBER:	KS6454
SITE ADDRESS	200 WEST GRAND AVENUE HAYSVILLE, KS 67060
SHEET NAME	SITE PLAN
SHEET NUMBER	SS-1

LEGEND

- = Cor. Fnd
- = Cor. Set #5 Rebar w/cap
- ⊕ = Section Corner
- Ⓜ = Benchmark
- (M) = Meas. Dist.
- (P) = Plat Dist.
- (D) = Deed Dist.
- (R) = Record Dist.
- P.O.B. = Point of Beginning
- P.O.R. = Point of Reference
- = Chain Link Fence
- Ⓜ = Electric Meter
- ⊕ = Power Pole
- Ⓜ = Electrical Box
- ⊕ = Light Pole
- ⊕ = Water Valve
- ⊕ = Water Hydrant



FLOOD ZONE "AE" - w/ BFE

FLOOD ZONE "X"

FLOOD ZONE "X" - Due to Levee

N MN
3'22" E

12851 MANCHESTER ROAD
ST. LOUIS, MO 63131

5055 Hwy N, Suite 200
St. Charles, MO 63304

FULLERTON
ENGINEERING-DESIGN

1100 E. WOODFIELD ROAD, SUITE 500
SCHAUMBURG, ILLINOIS 60173
TEL: 847-908-8400
www.FullertonEngineering.com

REV	DATE	DESCRIPTION	BY
1	08.08.19	PRELIMINARY	TH
2	11.04.20	REVISE UTILITY EASEMENT/ NEW 1A	PD
3	11.06.20	COMMENTS / FINAL	PD

6002

HUSKER SURVEYING

4535 Normal Blvd. Ste #101
Lincoln, Ne 68506
(402)423-5202
(402)423-5211
www.huskersurveying.com

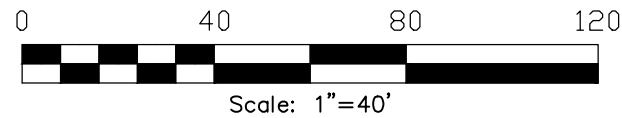
SITE NAME
HAYSVILLE KS

SITE NUMBER:
KS6454

SITE ADDRESS
200 WEST GRAND AVENUE
HAYSVILLE, KS 67060

SHEET NAME
SITE PLAN

SHEET NUMBER
SS-2



S 1/4 Cor.,
Sec. 31 (28-01)
Fnd. 2" Alum. Cap

GRAND AVENUE (Grid)
S 89°04'57" W
2639.27'

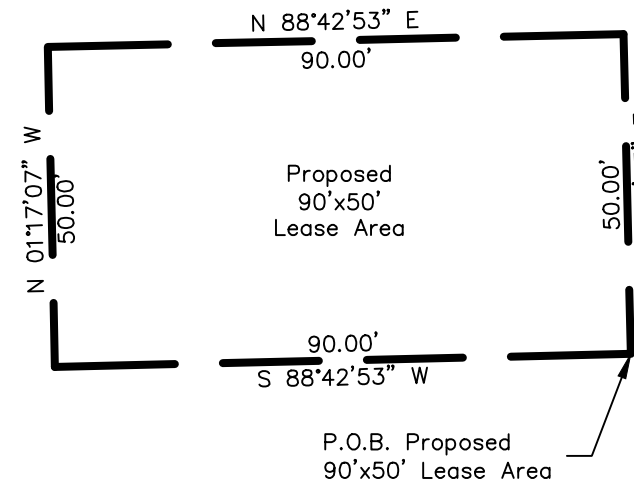
SE Cor.,
Sec. 31 (28-01)
Fnd. #5 Rebar
w/ Plastic Cap
(P.O.R.)

UTILITY EASEMENT DESCRIPTION:

A Utility Easement located in that part of Lot 1, Grand Addition, Haysville, Sedgwick County, Kansas and the centerline being more particularly described as follows:

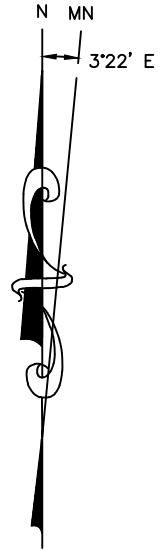
Referring the Southeast corner of Section 31, a #5 Rebar with plastic found for corner; thence westerly, on a Grid bearing of South 89°04'57" West, on the South line of the Southeast Quarter of said Section 31, 483.79 feet; thence departing said South line, northerly, North 00°55'03" West, 283.15 feet, to the Southeast corner of the described Lease Area; thence following the South line of the Lease Area, westerly, South 88°42'53" West, 90.00 feet, to the Point of Beginning for the described Utility Easement; thence following the perimeter of the easement on the following bearings and distances: westerly, South 88°42'53" West, 15.76 feet, to a point of intersection on the easterly right-of-way line of North Campbell Drive; thence northerly, North 00°48'31" West, on said right-of-way, 31.13 feet; thence departing the easterly right-of-way line of North Campbell Drive, easterly, North 88°42'53" East, 15.50 feet, to a point of intersection on the West line of the described Lease Area; thence southerly, South 01°17'07" East, on said West line, 31.13 feet, to the Point of Beginning.

Containing a total calculated area of 487 square feet, or 0.011 acres more or less.



LEASE AREA DETAIL

Scale: 1"=30'



12851 MANCHESTER ROAD
ST. LOUIS, MO 63131

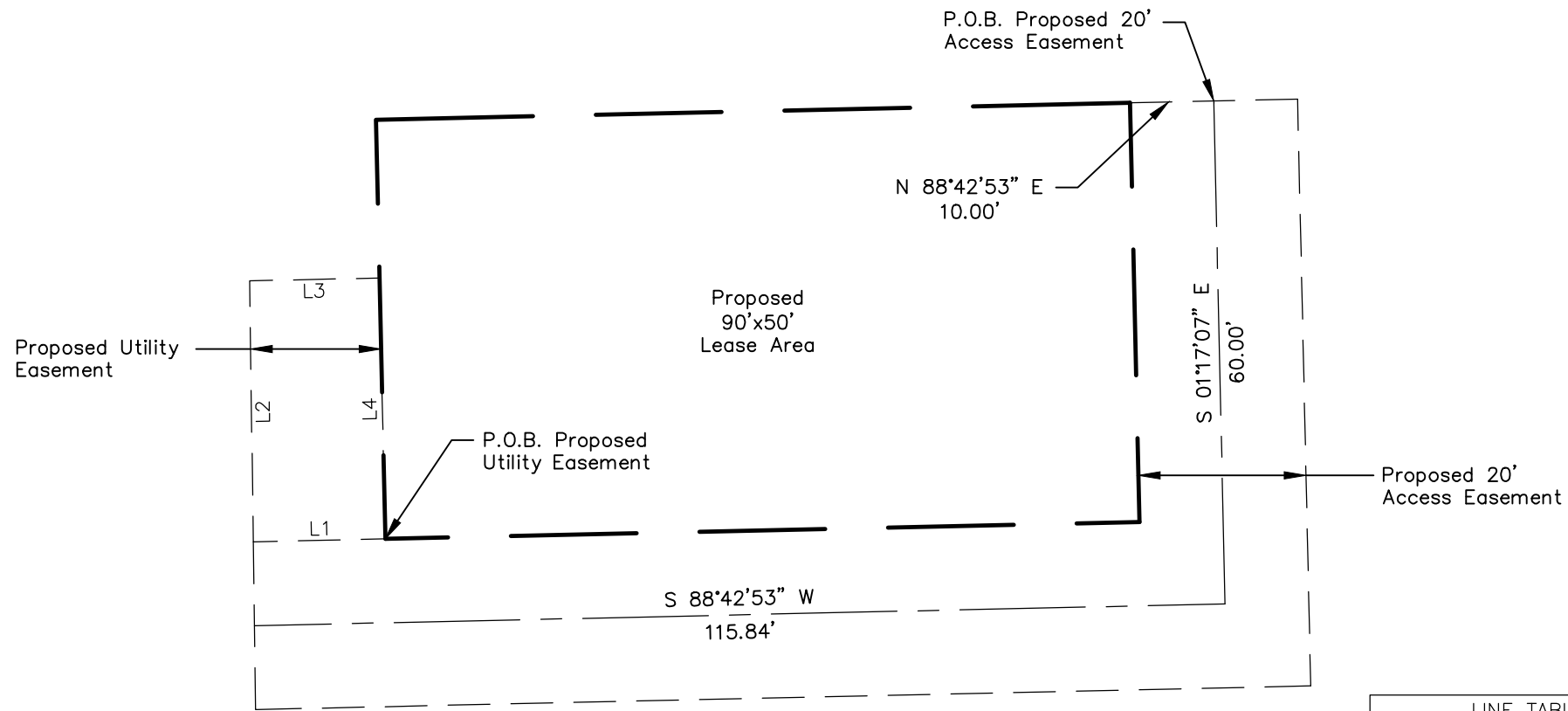


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REV	DATE	DESCRIPTION	BY
1	08.08.19	PRELIMINARY	TH
2	11.04.20	REVISE UTILITY EASEMENT/ NEW 1A	PD
3	11.06.20	COMMENTS / FINAL	PD



EASEMENTS DETAIL

Scale: 1"=20'

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 88°42'53" W	15.76'
L2	N 00°48'31" W	31.13'
L3	N 88°42'53" E	15.50'
L4	S 01°17'07" E	31.13'

6002

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Lincoln, Ne 68506
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SITE NAME
HAYSVILLE KS

SITE NUMBER:
KS6454

SITE ADDRESS
200 WEST GRAND AVENUE
HAYSVILLE, KS 67060

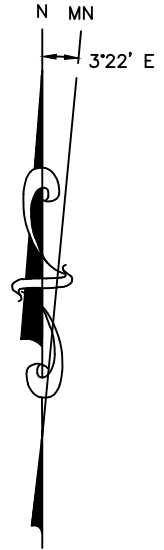
SHEET NAME
SITE PLAN

SHEET NUMBER
SS-3

TITLE REPORT:

Based on Report of Title by U.S. Title Solutions, File No. 63365-KS1905-5039, with an effective date of May 30, 2019, the following are of survey matters:

- 7. Right of Way by David Eugene Gunter and wife Mary A. Gunter to Cities Service Gas Company, dated 9/9/1943 in book 165, page 349. Affects Parent parcel. May or may not affect proposed Lease Area, proposed Access Easement and/or proposed Utility Easement but cannot be plotted because it is blanket in nature.
- 8. Grand Addition, Haysville, dated 10/8/1976, recorded 3/30/1977 in Instrument No. D-7-24. Affects proposed Lease Area, proposed Access Easement and proposed Utility Easement and is shown hereon.
- 9. Affidavit between Kansas Gas and Electric Company and Lot 1, Grand Addition to Haysville, dated 1/2/1979 in book 347, page 17. Does not affect proposed Lease Area, proposed Access Easement or proposed Utility Easement and is *not* shown hereon.




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ST. LOUIS, MO 63131



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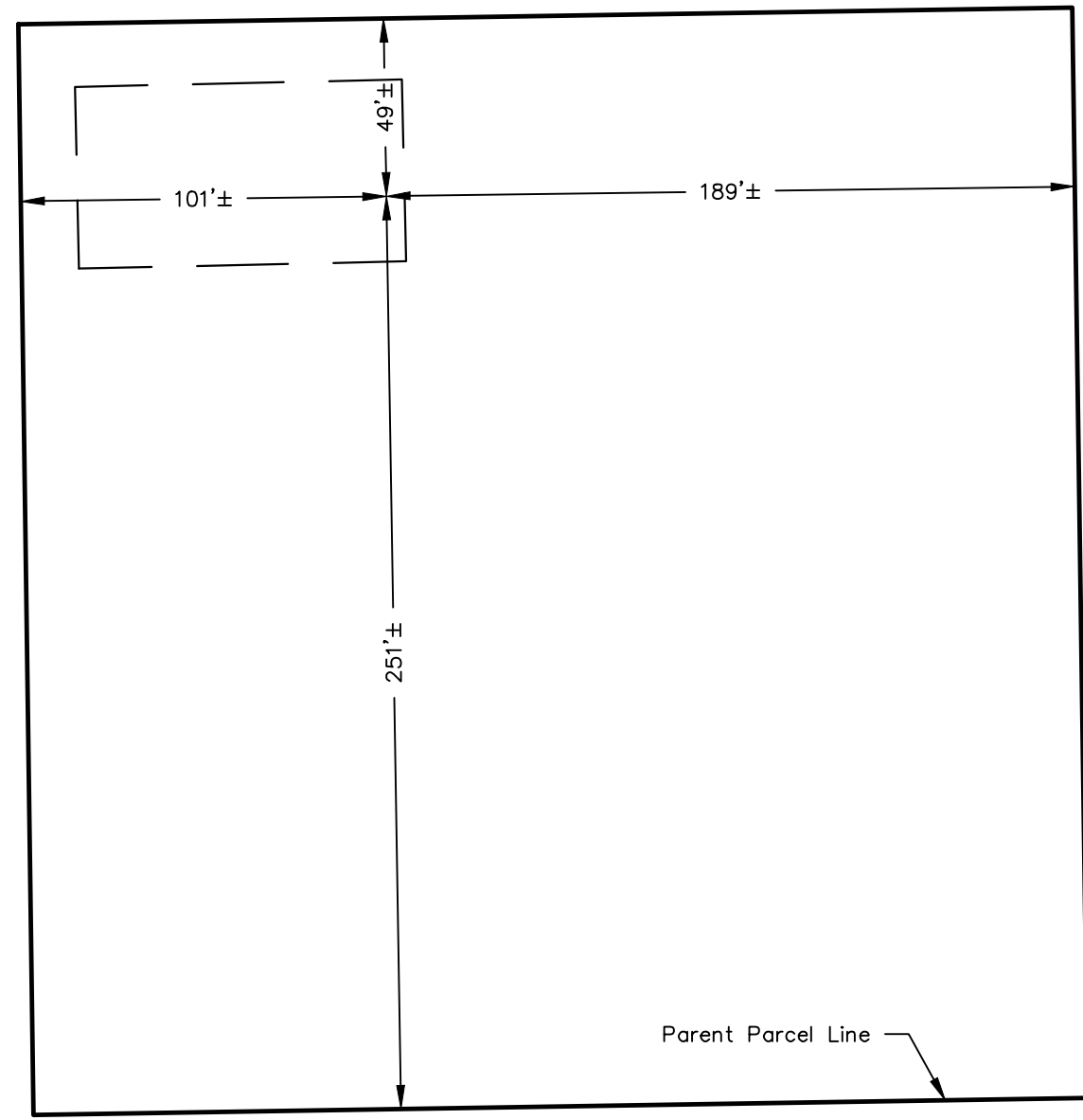
SITE NAME
HAYSVILLE KS

SITE NUMBER:
KS6454

SITE ADDRESS
200 WEST GRAND AVENUE
HAYSVILLE, KS 67060

SHEET NAME
SITE PLAN

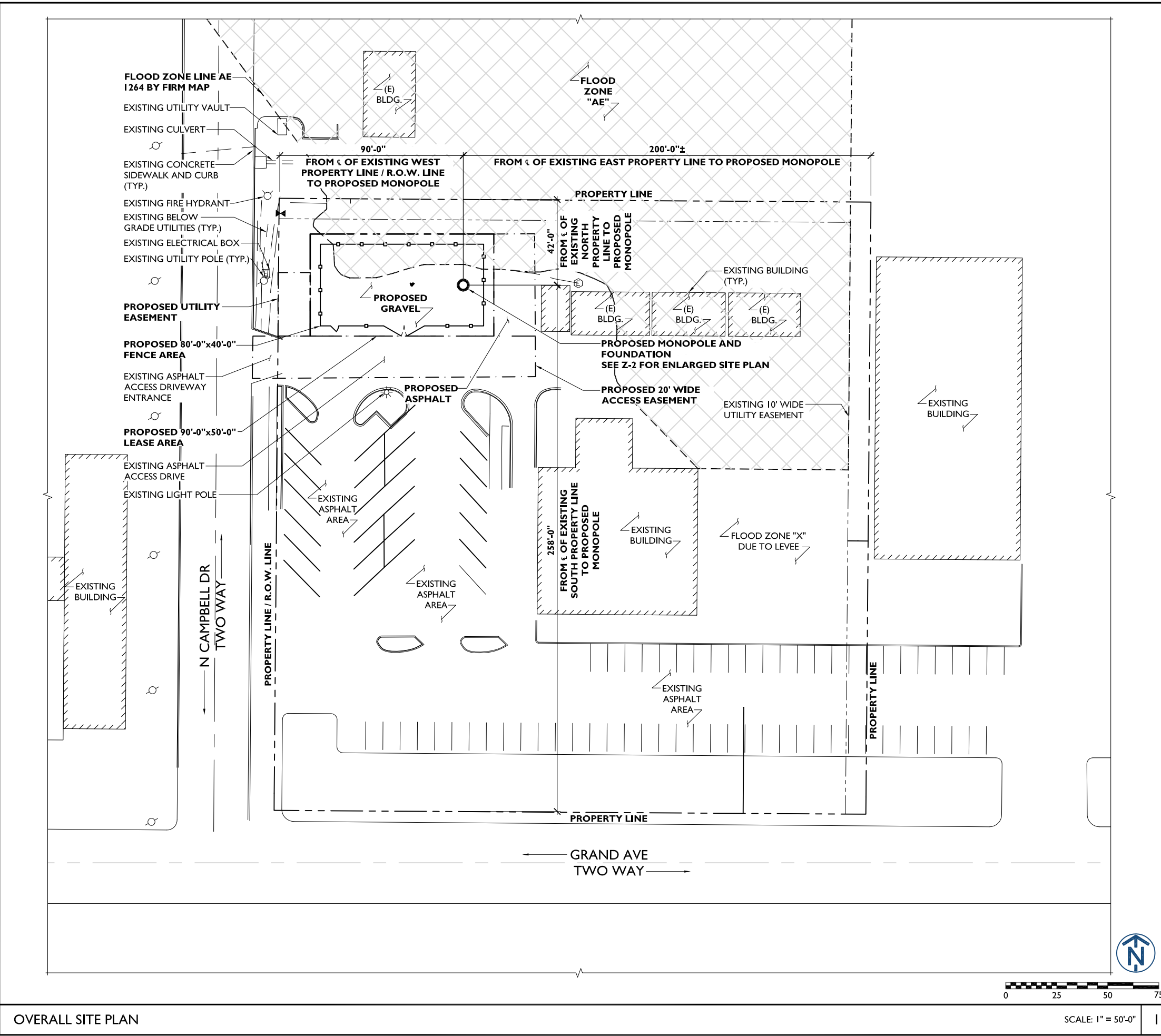
SHEET NUMBER
SS-4



TOWER DISTANCE DIAGRAM
(N.T.S.)

ABBREVIATIONS	
2C	2ND CARRIER
3C	3RD CARRIER
4C	4TH CARRIER
AFF	ABOVE FINISHED FLOOR
AFG	ABOVE FINISHED GRADE
AGL	ABOVE GROUND LEVEL
AMSL	ABOVE MEAN SEA LEVEL
APPROX	APPROXIMATE
ATS	AUTOMATIC TRANSFER SWITCH
AWG	AMERICAN WIRE GAUGE
BLDG	BUILDING
BBU	BASE BAND UNIT
¢	CENTERLINE
CLR	CLEAR
COL	COLUMN
CONC	CONCRETE
CND	CONDUIT
CSRF	CROSS SECTOR REDUNDANCY FEATURE
DWG	DRAWING
FT	FOOT(FEET)
EGB	EQUIPMENT GROUND BAR
ELEC	ELECTRICAL
EMT	ELECTRICAL METALLIC TUBING
ELEV	ELEVATION
EQUIP	EQUIPMENT
(E)	EXISTING
EXT	EXTERIOR
FND	FOUNDATION
F	FIBER
FIF	FACILITY INTERFACE FRAME
GA	GAUGE
GALV	GALVANIZED
GPS	GLOBAL POSITIONING SYSTEM
GND	GROUND
GSM	GLOBAL SYSTEM FOR MOBILE COMMUNICATION
LTE	LONG TERM EVOLUTION
MAX	MAXIMUM
MCPA	MULTI-CARRIER POWER AMPLIFIER
MFR	MANUFACTURER
MGB	MASTER GROUND BAR
MIN	MINIMUM
MTS	MANUAL TRANSFER SWITCH
N.T.S.	NOT TO SCALE
O.C.	ON CENTER
PPC	POWER PROTECTION CABINET
¢	PROPERTY LINE
RBS	RADIO BASED STATION
RRH	REMOTE RADIO HEAD
RGS	RIGID GALVANIZED STEEL
IN	INCH(ES)
INT	INTERIOR
LB(S), #	POUND(S)
SF	SQUARE FOOT
STL	STEEL
TYP	TYPICAL
UNO	UNLESS NOTED OTHERWISE
UMTS	UNIVERSAL MOBILE TELE-COMMUNICATION SYSTEM
VIF	VERIFY IN FIELD
W/	WITH
XFMR	TRANSFORMER

SYMBOLS	
⊕	REVISION
⊙	WORK POINT
⊕	UTILITY POLE
▨	BRICK
▨	COMPRESSED STONE
▨	CONCRETE
▨	EARTH
▨	GRAVEL
▨	MASONRY
▨	STEEL
---	CENTERLINE
---	PROPERTY LINE
---	LEASE LINE
---	EASEMENT LINE
---	FENCE
X-X	CHAINLINK
□-□	WOOD
○-○	WROUGHT IRON
E-E	ELECTRIC
OE-OE	OVERHEAD
UE-UE	UNDERGROUND
F-F	FIBER
OF-OF	OVERHEAD
UF-UF	UNDERGROUND
T-T	TELEPHONE
OT-OT	OVERHEAD
UT-UT	UNDERGROUND
DC-DC	DCPOWER
⊕	SECTION REFERENCE



OVERALL SITE PLAN



SCALE: 1" = 50'-0"

12930 OLIVE BLVD
CREVE COEUR, MO 63141

5055 Hwy N, Suite 200
St. Charles, MO 63304

1100 E. WOODFIELD ROAD, SUITE 500
SCHAUMBURG, ILLINOIS 60173
TEL: 847-908-8400
COA# E2019038761
www.fullerton-us.com

#	DATE	DESCRIPTION	INT.
A	10/21/24	PRELIM. ZONING	MK
0	10/24/24	FINAL	JV
I	01/21/25	REV. FINAL	EC

SITE NAME	HAYSVILLE KS
SITE NO.	KS6454
SITE ADDRESS	200 WEST GRAND AVENUE HAYSVILLE, KS 67060
SHEET NAME	OVERALL SITE PLAN
SHEET NUMBER	Z-1



12930 OLIVE BLVD
CREVE COEUR, MO 63141

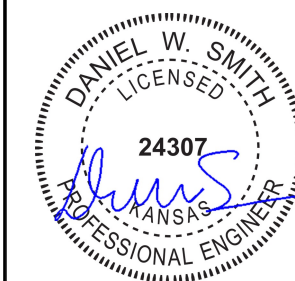


5055 Hwy N, Suite 200
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COA# E2019038761
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#	DATE	DESCRIPTION	INT.
A	10/21/24	PRELIM. ZONING	MK
0	10/24/24	FINAL	JW
I	01/21/25	REV. FINAL	EC



SITE NAME

HAYSVILLE KS

SITE NO.

KS6454

SITE ADDRESS

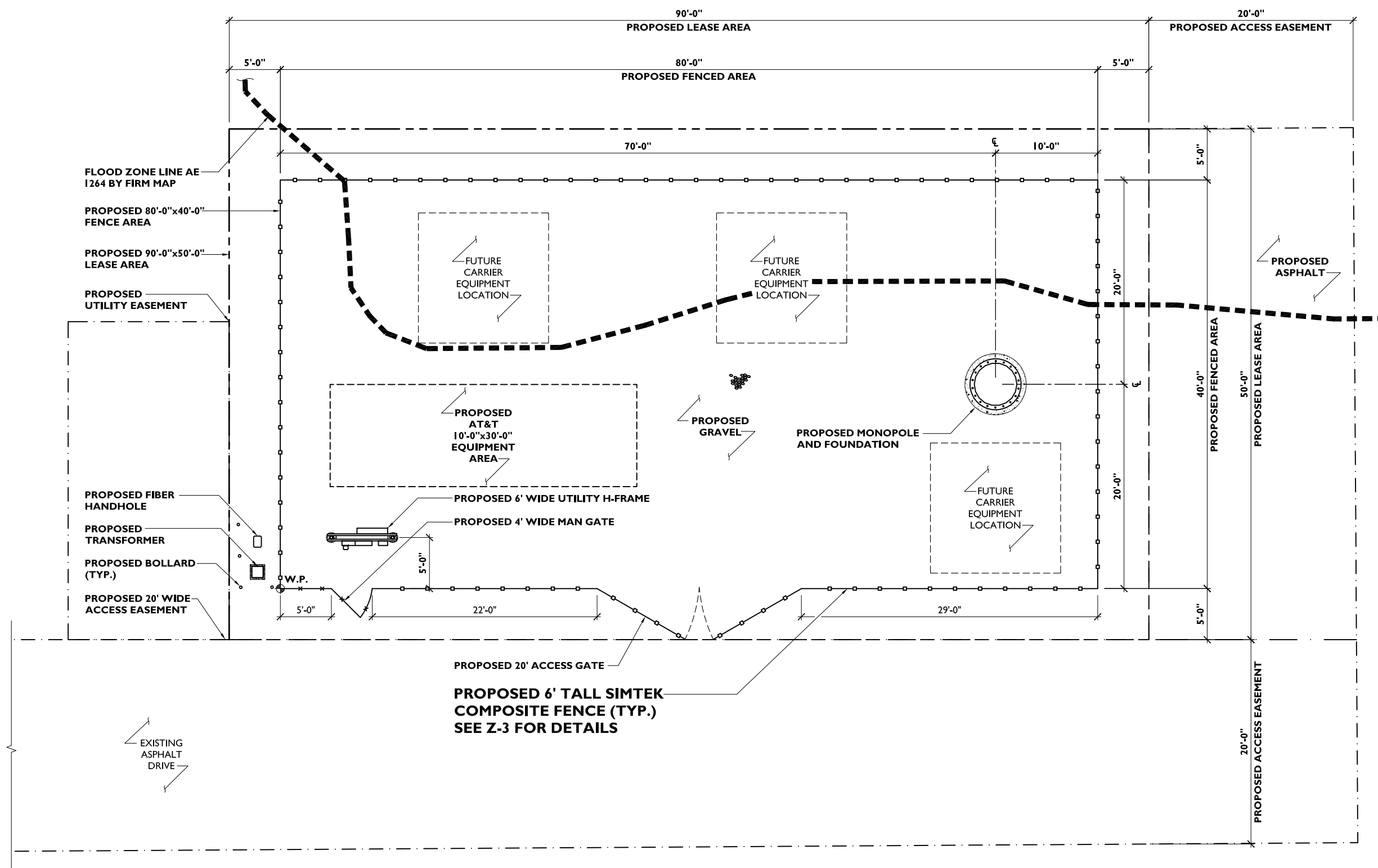
200 WEST GRAND AVENUE
HAYSVILLE, KS 67060

SHEET NAME

ENLARGED
SITE PLAN

SHEET NUMBER

Z-2



FLOOD ZONE LINE AE
1264 BY FIRM MAP

PROPOSED 80'-0"x40'-0"
FENCE AREA

PROPOSED 90'-0"x50'-0"
LEASE AREA

PROPOSED
UTILITY EASEMENT

PROPOSED FIBER
HANDHOLE

PROPOSED
TRANSFORMER

PROPOSED BOLLARD
(TYP.)

PROPOSED 20' WIDE
ACCESS EASEMENT

EXISTING
ASPHALT
DRIVE

PROPOSED 6' TALL SIMTEK
COMPOSITE FENCE (TYP.)
SEE Z-3 FOR DETAILS

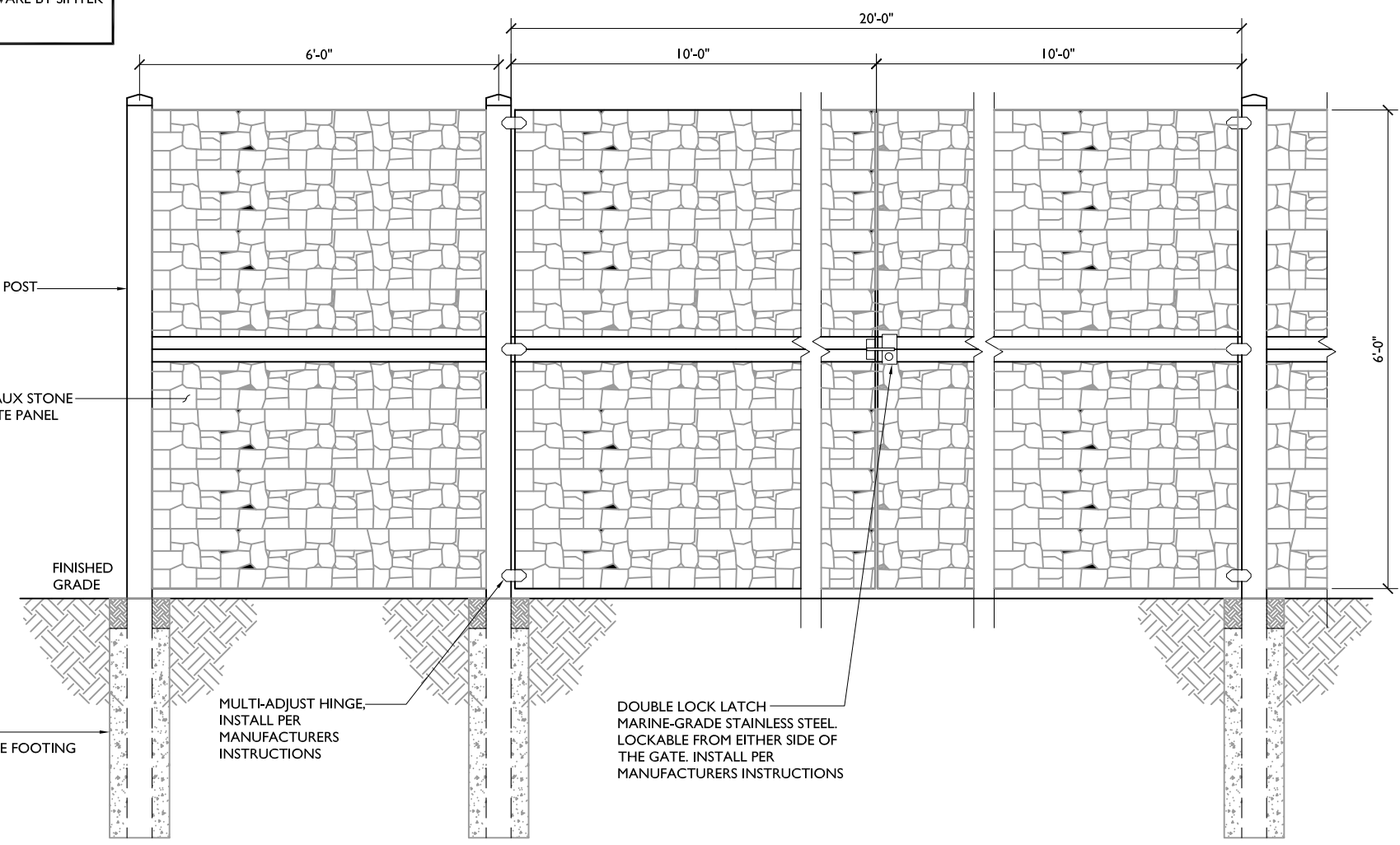


SCALE: 3/32" = 1'-0"

ENLARGED SITE PLAN

PROJECT# 2021.0005.0048

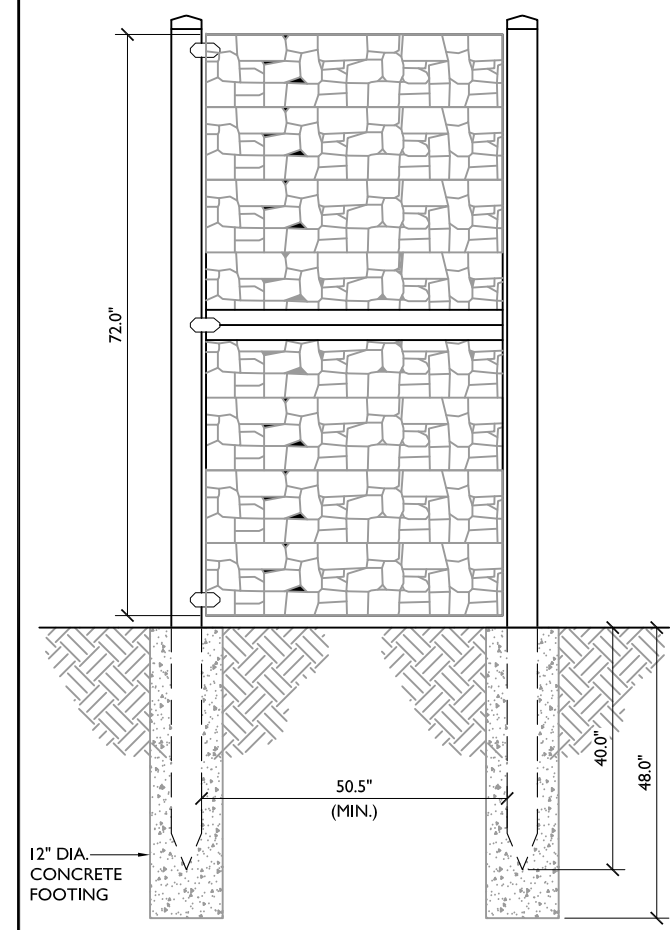
NOTE:
 FENCE MATERIAL AND HARDWARE BY SIMTEK
 www.simtekfence.com
 TEL:800-782-8777



TYPICAL FENCE SECTION AND GATE

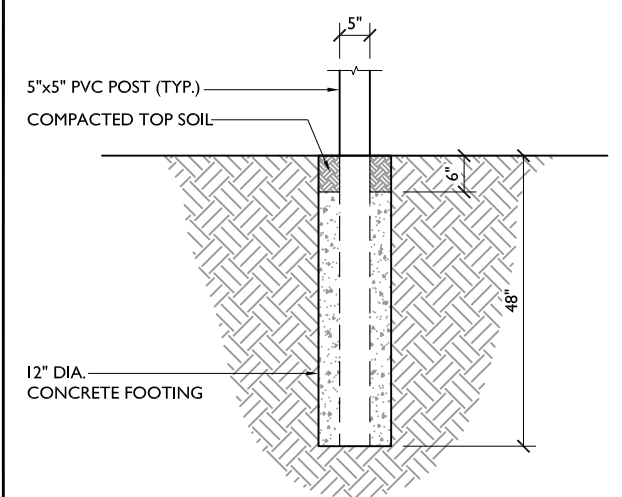
SCALE: N.T.S. | 1

NOTE:
 FENCE MATERIAL AND HARDWARE BY SIMTEK
 www.simtekfence.com
 TEL:800-782-8777



TYPICAL GATE

SCALE: N.T.S. | 2



FENCE POST DETAIL

SCALE: N.T.S. | 3

NOT USED

SCALE: N.T.S. | 4

12930 OLIVE BLVD
 CREVE COEUR, MO 63141

5055 Hwy N, Suite 200
 St. Charles, MO 63304

DESIGN DEVELOP CONSTRUCT

1100 E. WOODFIELD ROAD, SUITE 500
 SCHAUMBURG, ILLINOIS 60173
 TEL: 847-908-8400
 COA# E2019038761
 www.fullerton-us.com

#	DATE	DESCRIPTION	INT.
A	10/21/24	PRELIM. ZONING	MK
0	10/24/24	FINAL	JV
I	01/21/25	REV. FINAL	EC

SITE NAME
HAYSVILLE KS

SITE NO.
KS6454

SITE ADDRESS
 200 WEST GRAND AVENUE
 HAYSVILLE, KS 67060

SHEET NAME
**SIMTEK
 FENCE DETAILS**

SHEET NUMBER
Z-3



12930 OLIVE BLVD
CREVE COEUR, MO 63141

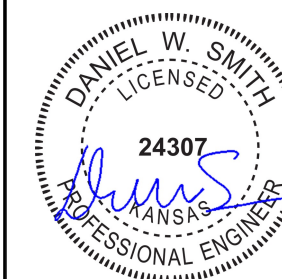


5055 Hwy N, Suite 200
St. Charles, MO 63304



DESIGN DEVELOP CONSTRUCT
1100 E. WOODFIELD ROAD, SUITE 500
SCHAUMBURG, ILLINOIS 60173
TEL: 847-908-8400
COA# E2019038761
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#	DATE	DESCRIPTION	INT.
A	10/21/24	PRELIM. ZONING	MK
0	10/24/24	FINAL	JW
I	01/21/25	REV. FINAL	EC



SITE NAME

HAYSVILLE KS

SITE NO.

KS6454

SITE ADDRESS

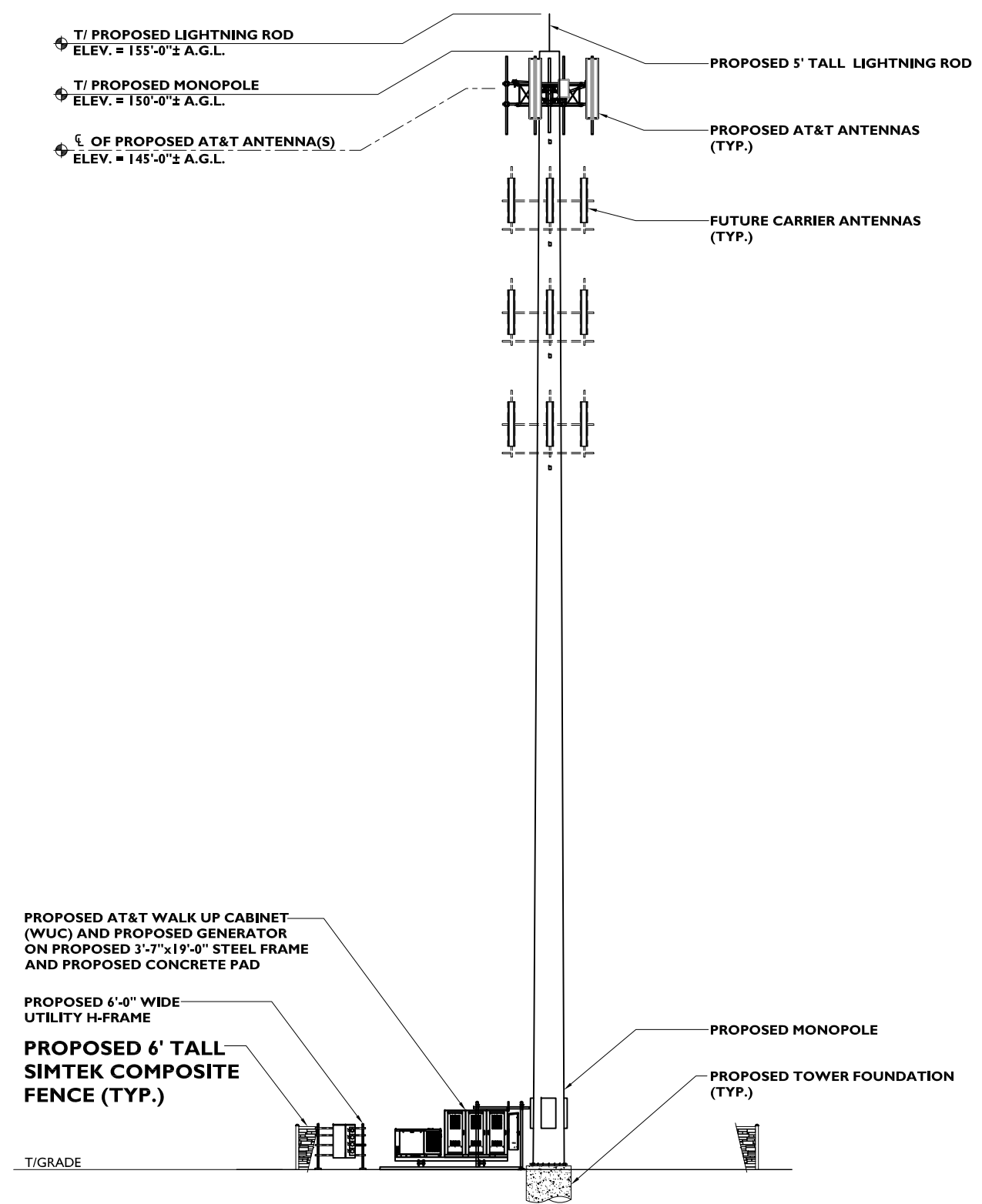
200 WEST GRAND AVENUE
HAYSVILLE, KS 67060

SHEET NAME

TOWER
ELEVATION

SHEET NUMBER

Z-4



Market: Greater Midwest
Cell Site Number: KS6454
Cell Site Name: Haysville Main St
Search Ring Name: HAYSVILLE MAIN ST
Fixed Asset Number: 14636632

OPTION AND LAND LEASE AGREEMENT

THIS OPTION AND LAND LEASE AGREEMENT (“**Agreement**”), dated as of the latter of the signature dates below (the “**Effective Date**”), is entered into by City of Haysville Kansas, having a mailing address of 200 West Grand Haysville, Kansas 67060 (“**Landlord**”) and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor Atlanta, GA 30319 (“**Tenant**”).

BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, as described on **Exhibit 1**, together with all rights and privileges arising in connection therewith, located at 200 West Grand, in the City of Haysville, in the County of Sedgwick, State of Kansas (collectively, the “**Property**”). Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

1. OPTION TO LEASE.

(a) Landlord grants to Tenant an exclusive option (the “**Option**”) to lease a certain portion of the Property containing approximately four thousand five hundred (4,500) square feet including the air space above such ground space, as described on attached **Exhibit 1**, (the “**Premises**”), for the placement of a Communication Facility in accordance with the terms of this Agreement.

(b) During the Option Term, and during the Term, Tenant and its agents, engineers, surveyors and other representatives will have the right to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, radio frequency testing and other geological or engineering tests or studies of the Property (collectively, the “**Tests**”), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Tenant’s sole discretion for its use of the Premises and include, without limitation, applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the “**Government Approvals**”), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those things on or off the Property that, in the opinion of Tenant, are necessary in Tenant’s sole discretion to determine the physical condition of the Property, the environmental history of the Property, Landlord’s title to the Property and the feasibility or suitability of the Property for Tenant’s Permitted Use, all at Tenant’s expense. Tenant will not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Property, whether or not such defect or condition is disclosed by Tenant’s inspection. Tenant will restore the Property to its condition as it existed at the commencement of the Option Term, reasonable wear and tear and loss by casualty or other causes beyond Tenant’s control excepted.

(c) In consideration of Landlord granting Tenant the Option, Tenant agrees to pay Landlord the sum of Ten Thousand and No/100 Dollars (\$10,000.00) within sixty (60) business days after the Effective Date. The Option may be exercised during an initial term of two (2) years commencing on the Effective Date (the “**Option Term**”).

(d) The Option may be sold, assigned or transferred at any time by Tenant without the written consent of Landlord. Upon notification to Landlord of such sale, assignment or transfer, Tenant shall immediately be released from any and all liability under this Agreement, including the payment of any rental or other sums due, without any further action.

(e) During the Option Term, Tenant may exercise the Option by notifying Landlord in writing. If Tenant exercises the Option, then Landlord leases the Premises to Tenant subject to the terms and conditions of

this Agreement. If Tenant does not exercise the Option during the Initial Option Term or any extension thereof, then this Agreement will terminate and the parties will have no further liability to each other.

(f) If during the Option Term, or during the Term if the Option is exercised, Landlord decides to subdivide, sell, or change the status of the zoning of the Premises or the Property, or in the event of a threatened foreclosure on any of the foregoing, Landlord shall immediately notify Tenant in writing. Landlord agrees that during the Option Term, or during the Term if the Option is exercised, Landlord shall not initiate or consent to any change in the zoning of the Premises or the Property or impose or consent to any other use or restriction that would prevent or limit Tenant from using the Premises for the Permitted Use. Any and all terms and conditions of this Agreement that by their sense and context are intended to be applicable during the Option Term shall be so applicable.

2. **PERMITTED USE.** Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure ("**Structure**"), associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (the "**Communication Facility**"), as well as the right to test, survey and review title on the Property; Tenant further has the right but not the obligation to add, modify and/or replace equipment in order to be in compliance with any current or future federal, state or local mandated application, including, but not limited to, emergency 911 communication services, at no additional cost to Tenant or Landlord (collectively, the "**Permitted Use**"). Landlord and Tenant agree that any portion of the Communication Facility that may be conceptually described on **Exhibit 1** will not be deemed to limit Tenant's Permitted Use. If **Exhibit 1** includes drawings of the initial installation of the Communication Facility, Landlord's execution of this Agreement will signify Landlord's approval of **Exhibit 1**. For a period of ninety (90) days following the start of construction, Landlord grants Tenant, its subtenants, licensees and sublicensees, the right to use such portions of the Property as may reasonably be required during construction and installation of the Communication Facility. Tenant has the right to install and operate transmission cables from the equipment shelter or cabinet to the antennas, electric lines from the main feed to the equipment shelter or cabinet and communication lines from the Property's main entry point to the equipment shelter or cabinet, install a generator and to make other improvements, alterations, upgrades or additions appropriate for Tenant's Permitted Use, including the right to construct a fence around the Premises or equipment, install warning signs to make individuals aware of risks, install protective barriers, install any other control measures reasonably required by Tenant's safety procedures or applicable law, and undertake any other appropriate means to secure the Premises or equipment at Tenant's expense. Tenant has the right to modify, supplement, replace, upgrade, expand the Communication Facility (including, for example, increasing the number of antennas or adding microwave dishes) or relocate the Communication Facility within the Premises at any time during the Term. Tenant will be allowed to make such alterations to the Property in order to ensure that the Communication Facility complies with all applicable federal, state or local laws, rules or regulations. In the event Tenant desires to modify or upgrade the Communication Facility, in a manner that requires an additional portion of the Property (the "**Additional Premises**") for such modification or upgrade, Landlord agrees to lease to Tenant the Additional Premises, upon the same terms and conditions set forth herein, except that the Rent shall increase, in conjunction with the lease of the Additional Premises by the amount equivalent to the then-current per square foot rental rate charged by Landlord to Tenant times the square footage of the Additional Premises. Landlord agrees to take such actions and enter into and deliver to Tenant such documents as Tenant reasonably requests in order to effect and memorialize the lease of the Additional Premises to Tenant.

3. **TERM.**

(a) The initial lease term will be five (5) years (the "**Initial Term**"), commencing on the effective date of written notification by Tenant to Landlord of Tenant's exercise of the Option (the "**Term Commencement Date**"). The Initial Term will terminate on the fifth (5th) anniversary of the Term Commencement Date.

(b) This Agreement will automatically renew for seventeen (17) additional five (5) year term(s) (each additional five (5) year term shall be defined as an "**Extension Term**"), upon the same terms and conditions set

forth herein unless Tenant notifies Landlord in writing of Tenant's intention not to renew this Agreement at least sixty (60) days prior to the expiration of the Initial Term or the then-existing Extension Term.

(c) Unless (i) Landlord or Tenant notifies the other in writing of its intention to terminate this Agreement at least six (6) months prior to the expiration of the final Extension Term, or (ii) the Agreement is terminated as otherwise permitted by this Agreement prior to the end of the final Extension Term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter ("**Annual Term**") until terminated by either party hereto by giving to the other party hereto written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. Monthly rent during such Annual Terms shall be equal to the Rent paid for the last month of the final Extension Term. If Tenant remains in possession of the Premises after the termination of this Agreement, then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the "**Holdover Term**"), subject to the terms and conditions of this Agreement.

(d) The Initial Term, any Extension Terms, any Annual Terms and any Holdover Term are collectively referred to as the "**Term**."

4. **RENT.**

(a) Commencing on the first day of the month following the date that Tenant commences construction (the "**Rent Commencement Date**"), Tenant will pay Landlord on or before the fifth (5th) day of each calendar month in advance, One Thousand Eight Hundred and no/100 Dollars (\$1800.00) (the "**Rent**"), at the address set forth above. In any partial month occurring after the Rent Commencement Date, the Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within forty-five (45) days after the Rent Commencement Date.

(b) In year two (2) of the Initial Term, and each year thereafter, including throughout any Extension Terms exercised, the monthly Rent will increase by Two percent (2.0%) over the Rent paid during the previous year.

(c) All charges payable under this Agreement such as utilities and taxes shall be billed by Landlord within one (1) year from the end of the calendar year in which the charges were incurred; any charges beyond such period shall not be billed by Landlord, and shall not be payable by Tenant. The foregoing shall not apply to monthly Rent which is due and payable without a requirement that it be billed by Landlord. The provisions of this subsection shall survive the termination or expiration of this Agreement.

5. **APPROVALS.**

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises and Property for the Permitted Use and Tenant's ability to obtain and maintain all Government Approvals. Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Government Approvals for the Permitted Use and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Tenant may also perform and obtain, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

6. **TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant; or if Tenant determines, in its sole discretion that the cost of or delay in obtaining or retaining the same is commercially unreasonable;

(c) by Tenant, upon written notice to Landlord, if Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory for its intended uses;

(d) by Tenant upon written notice to Landlord for any reason or no reason, at any time prior to commencement of construction by Tenant; or

(e) by Tenant upon sixty (60) days' prior written notice to Landlord for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to three (3) months' Rent, at the then-current rate, provided, however, that no such termination fee will be payable on account of the termination of this Agreement by Tenant under any termination provision contained in any other Section of this Agreement, including the following: Section 5 Approvals, Section 6(a) Termination, Section 6(b) Termination, Section 6(c) Termination, Section 6(d) Termination, Section 11(d) Environmental, Section 18 Condemnation or Section 19 Casualty.

7. **INSURANCE.** During the Option Term and throughout the Term, Tenant will purchase and maintain in full force and effect such general liability policy as Tenant may deem necessary. Said policy of general liability insurance will at a minimum provide a combined single limit of One Million and No/100 Dollars (\$1,000,000.00). Notwithstanding the foregoing, Tenant shall have the right to self-insure such general liability coverage.

8. **INTERFERENCE.**

(a) Prior to or concurrent with the execution of this Agreement, Landlord has provided or will provide Tenant with a list of radio frequency user(s) and frequencies used on the Property as of the Effective Date. Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses on the Property, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord will not grant, after the Effective Date, a lease, license or any other right to any third party, if the exercise of such grant may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will notify Tenant in writing prior to granting any third party the right to install and operate communications equipment on the Property.

(c) Landlord will not, nor will Landlord permit its employees, tenants, licensees, invitees, agents or independent contractors to interfere in any way with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease within twenty-four (24) hours after receipt of notice of interference from Tenant. In the event any such interference does not cease within the aforementioned cure period, Landlord shall cease all operations which are suspected of causing interference (except for intermittent testing to determine the cause of such interference) until the interference has been corrected.

(d) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property or Surrounding Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility.

9. **INDEMNIFICATION.**

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with a third party claim (including reasonable attorneys' fees and court costs) arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, invitees, agents or independent contractors.

(b) Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with a third party claim (including reasonable attorneys' fees and court costs) arising directly from the actions or failure to act of Landlord, its employees, invitees, agents or independent contractors, or Landlord's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents or independent contractors.

(c) The indemnified party: (i) shall promptly provide the indemnifying party with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section 9 and provide

the indemnifying party with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the indemnifying party; and (iii) shall fully cooperate with the indemnifying party in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve the indemnifying party of its indemnity obligation, except (1) to the extent the indemnifying party can show it was prejudiced by the delay; and (2) the indemnifying party shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.

10. WARRANTIES.

(a) Each of Tenant and Landlord (to the extent not a natural person) each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power, and authority or capacity, as applicable, to enter into this Agreement and bind itself hereto through the party or individual set forth as signatory for the party below.

(b) Landlord represents, warrants and agrees that: (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license; (ii) the Property is not and will not be encumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, or any other agreements of record or not of record, which would adversely affect Tenant's Permitted Use and enjoyment of the Premises under this Agreement; (iii) Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises in accordance with the terms of this Agreement without hindrance or ejection by any persons lawfully claiming under Landlord; (iv) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; and (v) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, then Landlord will provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement executed by Landlord and the holder of such security interest.

11. ENVIRONMENTAL.

(a) Landlord represents and warrants, except as may be identified in **Exhibit 11** attached to this Agreement, (i) the Property, as of the Effective Date, is free of hazardous substances, including asbestos-containing materials and lead paint, and (ii) the Property has never been subject to any contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property.

(b) Landlord and Tenant agree to hold harmless and indemnify the other from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding ("**Claims**"), to the extent arising from that party's breach of its obligations or representations under Section 11(a). Landlord agrees to hold harmless and indemnify Tenant from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Landlord for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the Property with hazardous substances prior to the Effective Date or from such contamination caused by the acts or omissions of Landlord during the Term. Tenant agrees to hold harmless and indemnify Landlord from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Tenant for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from hazardous substances brought onto the Property by Tenant.

(c) The indemnification provisions contained in this Section 11 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Section 11 will survive the expiration or termination of this Agreement.

(d) In the event Tenant becomes aware of any hazardous materials on the Property, or any environmental, health or safety condition or matter relating to the Property, that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of liability to a government agency or other third party, then Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon written notice to Landlord.

12. ACCESS. At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access ("Access") to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises. As may be described more fully in **Exhibit 1**, Landlord grants to Tenant an easement for such Access and Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such Access at no additional cost to Tenant. Upon Tenant's request, Landlord will execute a separate recordable easement evidencing this right. Landlord shall execute a letter granting Tenant Access to the Property substantially in the form attached as **Exhibit 12**; upon Tenant's request, Landlord shall execute additional letters during the Term. If Tenant elects to utilize an Unmanned Aircraft System ("UAS") in connection with its installation, construction, monitoring, site audits, inspections, maintenance, repair, modification, or alteration activities at the Property, Landlord hereby grants Tenant, or any UAS operator acting on Tenant's behalf, express permission to fly over the applicable Property and Premises, and consents to the use of audio and video navigation and recording in connection with the use of the UAS. Landlord acknowledges that in the event Tenant cannot obtain Access to the Premises, Tenant shall incur significant damage. If Landlord fails to provide the Access granted by this Section 12, such failure shall be a default under this Agreement.

13. REMOVAL/RESTORATION. All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of the Tenant and may be removed by Tenant at any time during the Term. Within one hundred twenty (120) days after the termination of this Agreement, Tenant will, to the extent reasonable, restore the Premises to its condition at the commencement of the Agreement, reasonable wear and tear and loss by casualty or other causes beyond Tenant's control excepted. Footings, foundations, and concrete will be removed to a depth of one-foot below grade. Notwithstanding the foregoing, Tenant will not be responsible for the replacement of any trees, shrubs, or other vegetation, nor will Tenant be required to remove from the Premises or the Property any underground utilities.

14. MAINTENANCE/UTILITIES.

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto and all areas of the Premises where Tenant does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements.

(b) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. In the event Tenant cannot secure its own metered electrical supply, Tenant will have the right to install utilities, at Tenant's expense, and to improve present utilities on the Property and the Premises. Landlord hereby grants to any service company providing utility or similar services, including electric power and telecommunications, to Tenant an easement over the Property, from an open and improved public road to the Premises, and upon the Premises, for the purpose of constructing, operating and maintaining

such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such service companies may from time to time require in order to provide such services to the Premises. Upon Tenant's or service company's request, Landlord will execute a separate recordable easement evidencing this grant, at no cost to Tenant or the service company.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after written notice from Landlord of such failure to pay; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, then Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide Access to the Premises as required by Section 12 within twenty-four (24) hours after written notice of such failure; (ii) Landlord's failure to cure an interference problem as required by Section 8 within seventy-two (72) hours after written notice of such failure; or (iii) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have: (i) the right to cure Landlord's default and to deduct the costs of such cure from any monies due to Landlord from Tenant, and (ii) any and all other rights available to it under law and equity.

16. ASSIGNMENT/SUBLEASE. Tenant will have the right to assign this Agreement or sublease the Premises and its rights herein, in whole or in part, without Landlord's consent. Upon notification to Landlord of such assignment, Tenant will be relieved of all future performance, liabilities and obligations under this Agreement to the extent of such assignment.

17. NOTICES. All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties hereto as follows:

If to Tenant: New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: KS6454; Cell Site Name: Haysville Main St. (KS)
Fixed Asset #: 14636632
1025 Lenox Park Blvd NE
3rd Floor
Atlanta, GA 30319

With a copy to: New Cingular Wireless PCS, LLC
Attn.: Legal Dept – Network Operations
Re: Cell Site #: KS6454; Cell Site Name: Haysville Main St. (KS)
Fixed Asset #: 14636632
208 S. Akard Street
Dallas, TX 75202-4206

If to Landlord: City of Haysville Kansas
 200 West Grand Avenue
 Haysville, Kansas 67060

Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other party hereto as provided herein.

18. CONDEMNATION. In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within twenty-four (24) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Communication Facility, moving expenses, prepaid Rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent on a *pro rata* basis.

19. CASUALTY. Landlord will provide notice to Tenant of any casualty or other harm affecting the Property within twenty-four (24) hours of the casualty or other harm. If any part of the Communication Facility or the Property is damaged by casualty or other harm as to render the Premises unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date of such casualty or other harm. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a *pro rata* basis. Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property, but only until such time as Tenant is able to activate a replacement transmission facility at another location; notwithstanding the termination of this Agreement, such temporary facilities will be governed by all of the terms and conditions of this Agreement, including Rent. If Landlord or Tenant undertakes to rebuild or restore the Premises and/or the Communication Facility, as applicable, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property at no additional Rent until the reconstruction of the Premises and/or the Communication Facility is completed. If Landlord determines not to rebuild or restore the Property, Landlord will notify Tenant of such determination within thirty (30) days after the casualty or other harm. If Landlord does not so notify Tenant and Tenant decides not to terminate under this Section 19, then Landlord will promptly rebuild or restore any portion of the Property interfering with or required for Tenant's Permitted Use of the Premises to substantially the same condition as existed before the casualty or other harm. Landlord agrees that the Rent shall be abated until the Property and/or the Premises are rebuilt or restored, unless Tenant places temporary transmission and reception facilities on the Property.

20. WAIVER OF LANDLORD'S LIENS. Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof. The Communication Facility shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law; Landlord consents to Tenant's right to remove all or any portion of the Communication Facility from time to time in Tenant's sole discretion and without Landlord's consent.

21. TAXES.
 (a) Landlord shall be responsible for (i) all taxes and assessments levied upon the lands, improvements and other property of Landlord including any such taxes that may be calculated by a taxing authority using any method, including the income method, (ii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with this Agreement, and (iii) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in

connection with a sale of the Property or assignment of Rent payments by Landlord. Tenant shall be responsible for (y) any taxes and assessments attributable to and levied upon Tenant's leasehold improvements on the Premises if and as set forth in this Section 21 and (z) all sales, use, license, value added, documentary, stamp, gross receipts, registration, real estate transfer, conveyance, excise, recording, and other similar taxes and fees imposed in connection with an assignment of this Agreement or sublease by Tenant. Nothing herein shall require Tenant to pay any inheritance, franchise, income, payroll, excise, privilege, rent, capital stock, stamp, documentary, estate or profit tax, or any tax of similar nature, that is or may be imposed upon Landlord.

(b) In the event Landlord receives a notice of assessment with respect to which taxes or assessments are imposed on Tenant's leasehold improvements on the Premises, Landlord shall provide Tenant with copies of each such notice immediately upon receipt, but in no event later than thirty (30) days after the date of such notice of assessment. If Landlord does not provide such notice or notices to Tenant in a timely manner and Tenant's rights with respect to such taxes are prejudiced by the delay, Landlord shall reimburse Tenant for any increased costs directly resulting from the delay and Landlord shall be responsible for payment of the tax or assessment set forth in the notice, and Landlord shall not have the right to reimbursement of such amount from Tenant. If Landlord provides a notice of assessment to Tenant within such time period and requests reimbursement from Tenant as set forth below, then Tenant shall reimburse Landlord for the tax or assessments identified on the notice of assessment on Tenant's leasehold improvements, which has been paid by Landlord. If Landlord seeks reimbursement from Tenant, Landlord shall, no later than thirty (30) days after Landlord's payment of the taxes or assessments for the assessed tax year, provide Tenant with written notice including evidence that Landlord has timely paid same, and Landlord shall provide to Tenant any other documentation reasonably requested by Tenant to allow Tenant to evaluate the payment and to reimburse Landlord.

(c) For any tax amount for which Tenant is responsible under this Agreement, Tenant shall have the right to contest, in good faith, the validity or the amount thereof using such administrative, appellate or other proceedings as may be appropriate in the jurisdiction, and may defer payment of such obligations, pay same under protest, or take such other steps as permitted by law. This right shall include the ability to institute any legal, regulatory or informal action in the name of Landlord, Tenant, or both, with respect to the valuation of the Premises. Landlord shall cooperate with respect to the commencement and prosecution of any such proceedings and will execute any documents required therefor. The expense of any such proceedings shall be borne by Tenant and any refunds or rebates secured as a result of Tenant's action shall belong to Tenant, to the extent the amounts were originally paid by Tenant. In the event Tenant notifies Landlord by the due date for assessment of Tenant's intent to contest the assessment, Landlord shall not pay the assessment pending conclusion of the contest, unless required by applicable law.

(d) Landlord shall not split or cause the tax parcel on which the Premises are located to be split, bifurcated, separated or divided without the prior written consent of Tenant.

(e) Tenant shall have the right but not the obligation to pay any taxes due by Landlord hereunder if Landlord fails to timely do so, in addition to any other rights or remedies of Tenant. In the event that Tenant exercises its rights under this Section 21(e) due to such Landlord default, Tenant shall have the right to deduct such tax amounts paid from any monies due to Landlord from Tenant as provided in Section 15(b), provided that Tenant may exercise such right without having provided to Landlord notice and the opportunity to cure per Section 15(b).

(f) Any tax-related notices shall be sent to Tenant in the manner set forth in Section 17. Promptly after the Effective Date, Landlord shall provide the following address to the taxing authority for the authority's use in the event the authority needs to communicate with Tenant. In the event that Tenant's tax address changes by notice to Landlord, Landlord shall be required to provide Tenant's new tax address to the taxing authority or authorities.

(g) Notwithstanding anything to the contrary contained in this Section 21, Tenant shall have no obligation to reimburse any tax or assessment for which the Landlord is reimbursed or rebated by a third party.

22. SALE OF PROPERTY.

(a) Landlord may sell the Property or a portion thereof to a third party, provided: (i) the sale is made subject to the terms of this Agreement; and (ii) if the sale does not include the assignment of Landlord's full interest in this Agreement, the purchaser must agree to perform, without requiring compensation from Tenant or

any subtenant, any obligation of Landlord under this Agreement, including Landlord's obligation to cooperate with Tenant as provided hereunder.

(b) If Landlord, at any time during the Term of this Agreement, decides to rezone or sell, subdivide or otherwise transfer all or any part of the Premises, or all or any part of the Property or the Surrounding Property, to a purchaser other than Tenant, Landlord shall promptly notify Tenant in writing, and such rezoning, sale, subdivision or transfer shall be subject to this Agreement and Tenant's rights hereunder. In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord or its successor shall send the documents listed below in this Section 22(b) to Tenant. Until Tenant receives all such documents, Tenant's failure to make payments under this Agreement shall not be an event of default and Tenant reserves the right to hold payments due under this Agreement.

- i. Old deed to Property
- ii. New deed to Property
- iii. Bill of Sale or Transfer
- iv. Copy of current Tax Bill
- v. New IRS Form W-9
- vi. Completed and Signed Tenant Payment Direction Form
- vii. Full contact information for new Landlord including phone number(s)

(c) Landlord agrees not to sell, lease or use any areas of the Property or the Surrounding Property for the installation, operation or maintenance of other wireless communication facilities if such installation, operation or maintenance would interfere with Tenant's Permitted Use or communications equipment as determined by radio propagation tests performed by Tenant in its sole discretion. Landlord or Landlord's prospective purchaser shall reimburse Tenant for any costs and expenses of such testing. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Tenant, Landlord shall be prohibited from selling, leasing or using any areas of the Property or the Surrounding Property for purposes of any installation, operation or maintenance of any other wireless communication facility or equipment.

(d) The provisions of this Section 22 shall in no way limit or impair the obligations of Landlord under this Agreement, including interference and access obligations.

23. RIGHT OF FIRST REFUSAL. Notwithstanding the provisions contained in Section 22, if at any time after the Effective Date, Landlord receives a bona fide written offer from a third party seeking any sale, conveyance, assignment or transfer, whether in whole or in part, of any property interest in or related to the Premises, including without limitation any offer seeking an assignment or transfer of the Rent payments associated with this Agreement or an offer to purchase an easement with respect to the Premises ("Offer"), Landlord shall immediately furnish Tenant with a copy of the Offer. Tenant shall have the right within ninety (90) days after it receives such copy to match the financial terms of the Offer and agree in writing to match such terms of the Offer. Such writing shall be in the form of a contract substantially similar to the Offer but Tenant may assign its rights to a third party. If Tenant chooses not to exercise this right or fails to provide written notice to Landlord within the ninety (90) day period, Landlord may sell, convey, assign or transfer such property interest in or related to the Premises pursuant to the Offer, subject to the terms of this Agreement. If Landlord attempts to sell, convey, assign or transfer such property interest in or related to the Premises without complying with this Section 23, the sale, conveyance, assignment or transfer shall be void. Tenant shall not be responsible for any failure to make payments under this Agreement and reserves the right to hold payments due under this Agreement until Landlord complies with this Section 23. Tenant's failure to exercise the right of first refusal shall not be deemed a waiver of the rights contained in this Section 23 with respect to any future proposed conveyances as described herein.

24. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by Landlord and Tenant. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other

party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Memorandum/Short Form Lease.** Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum of Lease substantially in the form attached as **Exhibit 24(b)**. Either party may record this Memorandum of Lease at any time during the Term, in its absolute discretion. Thereafter during the Term, either party will, at any time upon fifteen (15) business days' prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease.

(c) **Limitation of Liability.** Except for the indemnity obligations set forth in this Agreement, and otherwise notwithstanding anything to the contrary in this Agreement, Tenant and Landlord each waives any claims that each may have against the other with respect to consequential, incidental or special damages, however caused, based on any theory of liability.

(d) **Compliance with Law.** Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations ("Laws") applicable to Tenant's use of the Communication Facility on the Property. Landlord agrees to comply with all Laws relating to Landlord's ownership and use of the Property and any improvements on the Property.

(e) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(f) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the Section wherein they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(g) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(h) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate; and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(i) **Affiliates.** All references to "Tenant" shall be deemed to include any Affiliate of New Cingular Wireless PCS, LLC using the Premises for any Permitted Use or otherwise exercising the rights of Tenant pursuant to this Agreement. "Affiliate" means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. "Control" of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(j) **Survival.** Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(k) **W-9.** As a condition precedent to payment, Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant, including any change in Landlord's name or address.

(l) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant. This Agreement may be executed in two (2) or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties. All parties need not sign the same counterpart.

(m) **Attorneys' Fees.** In the event that any dispute between the parties related to this Agreement should result in litigation, the prevailing party in such litigation shall be entitled to recover from the other party all reasonable fees and expenses of enforcing any right of the prevailing party, including reasonable attorneys' fees and expenses. Prevailing party means the party determined by the court to have most nearly prevailed even if such party did not prevail in all matters. This provision will not be construed to entitle any party other than Landlord, Tenant and their respective Affiliates to recover their fees and expenses.

(n) **WAIVER OF JURY TRIAL.** EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING UNDER ANY THEORY OF LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE TRANSACTIONS IT CONTEMPLATES.

(o) **Incidental Fees.** Unless specified in this Agreement, no unilateral fees or additional costs or expenses are to be applied by either party to the other party, including review of plans, structural analyses, consents, provision of documents or other communications between the parties.

(p) **Further Acts.** Upon request, Landlord will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents, and assurances as Tenant may request from time to time in order to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all transactions and permitted use contemplated by this Agreement.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the Effective Date.

"LANDLORD"

City of Haysville Kansas

By: [Signature]
Print Name: Russ Kessler
Its: Meyer
Date: 11/12/2024

"TENANT"

New Cingular Wireless PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation
Its: Manager

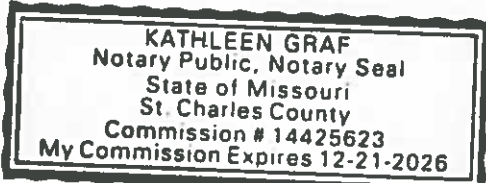
By: [Signature]
Print Name: MICHAEL BRIDWELL
Its: Area Mgr - Const & Eng
Date: 12/16/24

[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE]

TENANT ACKNOWLEDGMENT

STATE OF Missouri)
) ss:
COUNTY OF St Charles)

On the 16 day of December, 2024, before me personally appeared Michael Bridwell, and acknowledged under oath that he/she is the Area Mgr - Const & Eng. of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Tenant.



Kathleen Graf
Notary Public: Kathleen Graf
My Commission Expires: 12/21/2026

LANDLORD ACKNOWLEDGMENT

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

On the 12th day of November, 2024 before me, personally appeared Russ Kessler, who acknowledged under oath, that he/she is the person/officer named in the within instrument, and that he/she executed the same in his/her stated capacity as the voluntary act and deed of the Landlord for the purposes therein contained.

Angela Fulton
Notary Public: Angela Fulton
My Commission Expires: 8/27/28



EXHIBIT 1

DESCRIPTION OF PROPERTY AND PREMISES

Page 1 of ____

to the Option and Lease Agreement dated _____, 20____, by and between City of Haysville Kansas, as Landlord, and New Cingular Wireless PCS, LLC, a Delaware limited liability company, as Tenant.

The Property is legally described as follows:

PARENT PARCEL DESCRIPTION (AS-PROVIDED):

Lot 1, Grand Addition, Haysville, Sedgwick County, Kansas, as recorded in Instrument No. D-7-24.

LEASE AREA DESCRIPTION:

That part of Lot 1, Grand Addition, Haysville, Sedgwick County, Kansas and being more particularly described as follows:

Referring the Southeast corner of Section 31, a #5 Rebar with plastic found for corner; thence westerly, on a Grid bearing of South 89°04'57" West, on the South line of the Southeast Quarter of said Section 31, 483.79 feet; thence departing said South line, northerly, North 00°55'03" West, 283.15 feet to the Point of Beginning for the described Lease Area; thence following the perimeter of the Lease Area on the following bearings and distances: westerly, South 88°42'53" West, 90.00 feet; thence northerly, North 01°17'07" West, 50.00 feet; thence easterly, North 88°42'53" East, 90.00 feet; thence southerly, South 01°17'07" East, 50.00 feet to the Point of Beginning.

Containing a total calculated area of 4,500 square feet, or 0.103 acres, more or less.

ACCESS/UTILITY EASEMENT DESCRIPTION:

An Access/Utility Easement, 20 feet in width, located in that part of Lot 1, Grand Addition, Haysville, Sedgwick County, Kansas, the centerline being more particularly described as follows:

Referring the Southeast corner of Section 31, a #5 Rebar with plastic found for corner; thence westerly, on a Grid bearing of South 89°04'57" West, on the South line of the Southeast Quarter of said Section 31, 483.79 feet; thence departing said South line, northerly, North 00°55'03" West, 283.15 feet to the Southeast corner of the described Lease Area; thence following the perimeter of the Lease Area on the following bearings and distances: westerly, South 88°42'53" West, 90.00 feet; thence northerly, North 01°17'07" West, 50.00 feet; thence easterly, North 88°42'53" East, 90.00 feet to the Northeast corner of the described Lease Area; thence departing said Northeast corner, easterly, North 88°42'53" East, 10.00 feet to the Point of Beginning for the centerline of the described Access/Utility Easement; thence following the centerline of the easement, southerly, South 01°17'07" East, 60.00 feet; thence westerly, South 88°42'53" West, 115.84 feet to a point of intersection on the easterly right-of-way line of North Campbell Drive, also being the Point of Termination for the centerline of the described Access/Utility Easement.

Containing a total calculated area of 3,517 square feet or 0.081 acres, more or less.

Parallel lines from the described centerline are intended to lengthen or shorten to intersect the lines described.

UTILITY EASEMENT DESCRIPTION:

A Utility Easement located in that part of Lot 1, Grand Addition, Haysville, Sedgwick County, Kansas and the centerline being more particularly described as follows:

Referring the Southeast corner of Section 31, a #5 Rebar with plastic found for corner; thence westerly, on a Grid bearing of South 89°04'57" West, on the South line of the Southeast Quarter of said Section 31, 483.79 feet; thence departing said South line, northerly, North 00°55'03" West, 283.15 feet to the Southeast corner of the described Lease Area; thence following the South line of the Lease Area, westerly, South 88°42'53" West, 90.00 feet, to the Point of Beginning for the described Utility Easement; thence following the perimeter of the easement on the following bearings and distances: westerly, South 88°42'53" West, 15.76 feet, to a point of intersection on the easterly right-of-way line of North Campbell Drive; thence northerly, North 00°48'31" West, on said right-of-way, 31.13 feet; thence departing the easterly right-of-way line of North Campbell Drive, easterly, North 88°42'53" East, 15.50 feet, to a point of intersection on the West line of the described Lease Area; thence southerly, South 01°17'07" East, on said West line, 31.13 feet, to the Point of Beginning.

Containing a total calculated area of 487 square feet, or 0.011 acres more or less.

END OF DOCUMENT



CITY OF HAYSVILLE

PO Box 404
200 W. Grand
Haysville, KS 67060
Phone: 316/529-5900 | Fax: 316/529-5925
www.haysville-ks.com

**Conditional Use
Application**

THE RECEIPT OF MONIES DOES NOT CONSTITUTE APPROVAL OF THE APPLICATION

APPLICANT INFORMATION

Name of Applicant: NETWORK REAL ESTATE YO AT&T WIRELESS	Phone: 314.229.5410
Mailing Address: 5055 HWY N SUITE 200	Email: NETWORK RC.NET. CALVIN.KROGER@C
City, State, ZIP ST. CHARLES, MO 63304	
Name of Authorized Agent or Additional Applicant: CITY OF HAYSVILLE	Phone: 316.529.5900
Mailing Address: 200 W. GRAND AVE.	Email: RKROSSLER@HAYSVILLE-KS.COM
City, State, ZIP HAYSVILLE, KS 67060	
Relationship of applicant to property is that of: <input type="checkbox"/> Owner <input type="checkbox"/> Tenant <input checked="" type="checkbox"/> Lessee <input type="checkbox"/> Other	

CONDITIONAL USE INFORMATION

The applicant(s) propose to establish a: NEW 125' MONOPOLE COMMUNICATION TOWER
For property located at: 200 W. GRAND AVE. HAYSVILLE, KS 67060
Presently zoned as: LIGHT COMM 4C
And legally described as: <i>(If appropriate, metes and bounds descriptions may be provided in the space below or on an attached sheet.)</i> SEE ATTACHED
The conditional use described above is requested for the following reasons: AT&T WIRELESS IS REQUESTING THIS CUP TO BUILD A NEW 125' MONOPOLE TOWER. THIS NEW TOWER WILL SIGNIFICANTLY IMPROVE AT&T WIRELESS COVERAGE FOR THE CITY OF HAYSVILLE.

The Haysville Planning Commission may, in certain instances, recommend a conditional use permit of property located within the city limits. The following items should accompany all requests:

1. Legal description
2. Proof of ownership
3. Sketch of property

4. Certified (prepared by an abstract company) ownership list for all properties within 200 feet of subject property if all property is within the city limits or 1000 feet of subject property if all property is outside the city limits or a combination

5. Copy of restrictive covenants (if any)

6. fee: The application must be accompanied by a filing fee of \$375.00.

I (we), the applicant(s), acknowledge receipt of the instruction sheet explaining the method of submitting this application. I (we) realize filled in; is accompanied by a current abstractor's certificated list as required in the instruction sheet; and is accompanied by the appropriate fee. I (we) further certify that the above and foregoing information is true and correct to the best of my (our) knowledge. I (we) acknowledge that the governing body shall have authority to impose such conditions as it deems necessary in order to serve the public interest and welfare.

Note: at least one owner must sign this application. Other owners may be represented by an agent or agents.

SIGNATURE

Applicant: 	Date: 11/13/24
Agent or Additional Applicant:	Date:
Agent or Additional Applicant:	Date:

OFFICE USE ONLY

This application was received at the office of the Planning Commission at _____ (am/pm) on _____, 20____. It has been checked and found to be correct and accompanied by required documents and the appropriate fee of \$375.00.

Authorized Signature: _____

Title: _____

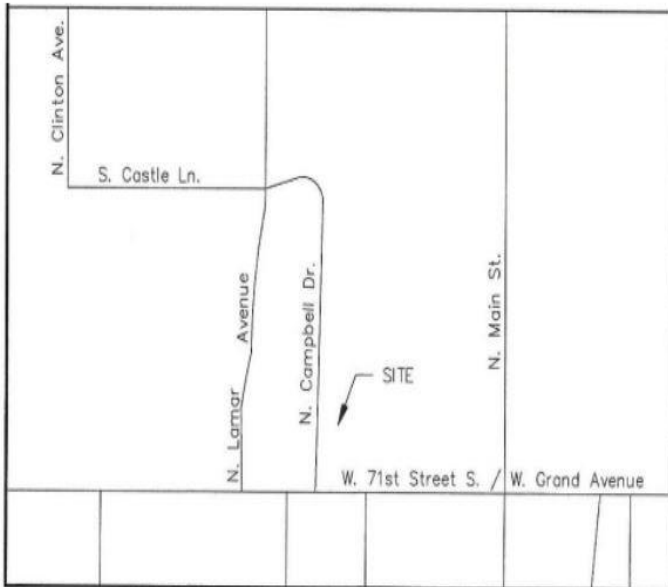
NOTICE OF PUBLIC HEARING

TO WHOM IT MAY CONCERN: At 6 p.m., Thursday, January 23, 2025, in the Council Chambers at City Hall, 200 W Grand, Haysville, Kansas, the Haysville Planning Commission will hold a public hearing to consider a request for a conditional use permit to build a new wireless communication facility tower on the property generally described as **200 W Grand Ave**, legally described as **Lot 1, Grand Addition, Haysville, Sedgwick County, Kansas 67060**.

Comments, both written and oral, will be heard by the Planning Commission at the time of the hearing. Comments can be submitted to: City of Haysville, Attn: Planning Department, 200 W Grand Ave, P.O. Box 404, Haysville, Kansas 67060 or by email to khogan@haysville-ks.com. Written comments will be accepted up to 4 p.m. on the day of the meeting.

For additional information call 529-5900 or visit the City's website at www.haysville-ks.com.

(to be published December 19, 2024)



Feels colder



7:57 AM
12/19/2024





Legal Notices

On September 11, 2023, the Haysville Governing Body adopted Charter Ordinance No. 29 exempting the City from the provisions of K.S.A. 12-1651 and providing substitute provisions which relate to the official naming of an official newspaper. On December 11, 2023, the Governing Body adopted Resolution No. 23-13 officially designating the City website (www.haysville-ks.com) as the official City newspaper for legal notices that do not require publication in a newspaper of general circulation. All notices meeting this definition will be published on this page.

Posting Date	Type of Posting	Description
2025		
01/09/2025	Other	Violation - Nuisance Automobile - 8-401a - 242 S. Wayne Avenue
01/13/2025	Public Hearing	Public Hearing for request for a conditional use permit to build a new wireless communication facility tower
01/15/2025	Ordinance	#1136 - Ordinance Amending Chapter 16A, Zoning Regulations

Type	Definition
Ordinance	Comprise the body of local Haysville law which governs the management of local affairs, the conduct of persons, the use of property, and other matters on which the City of Haysville government exercises its power. General ordinances remain in effect until repealed by another ordinance.
Resolution	Less formal than ordinances. Generally used when (1) required by State statute, (2) when the formality or permanency of an ordinance is not required, (3) when a separately written record is advisable, or (4) when there is doubt that a simple motion of the Governing Body, recorded in the Governing Body minutes, is not sufficient.
Public Hearing	A formal public hearing held in order to receive testimony from all interested parties - including the general public - on a proposed issue or action.
Other Legal Notices	Financial reports, specific meeting agendas, and any other item that does not fit within the previous three categories but still requires publication.



Affidavit of Publication

Kayla Hope Rausch
Of lawful age being duly sworn upon oath states
That she is the lawful billing clerk/asst at

**Times-Sentinel Newspapers, LLC
State of Kansas**

A weekly newspaper printed in the state of Kansas,
And published in and of general circulation in **Sedgwick
County**, with a general paid circulation on a yearly
Basis in Sedgwick County of Kansas, and that said
Newspaper is not a trade, religious, or fraternal
Publication. That said newspaper has been published
At least weekly 50 times a year, has been so published
Continuously and uninterruptedly in said county and state
For a period of more than five years prior to the first
Publication of said notice and has been admitted to the
Post Office of Cheney, Kansas, in Sedgwick County as
Second class matter. That the attached is a true copy
Thereof and was published on the following dates in the
Regular and entire Issue of said newspaper.

First Publication was made
On the 19 Day of Dec, 2024
Second Publication was made
On the _____ Day of _____, 2024
Third Publication was made
On the _____ Day of _____, 2024

Total Publication Fee \$ 73 50

Kayla Rausch

Subscribed and sworn to before me this
23 Day of Dec, 2024

Melissa Olthoff

Notary Public

My Commission expires on 5/23/28



PUBLIC NOTICE

First Published in TSnews December 19, 2024 (1t)

NOTICE OF PUBLIC HEARING

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