

## **PLANNING COMMISSION MEETING**

City of Gardner, Kansas  
Tuesday, March 28, 2017  
7 p.m.  
Gardner City Hall  
120 E. Main Street

### **CALL TO ORDER**

The meeting of the Gardner Planning Commission was called to order at 7:02 p.m. on Tuesday, March 28, 2017, by Chairman Adrianna Meder.

### **PLEDGE OF ALLEGIANCE**

Chairman Meder led the Pledge of Allegiance.

### **ROLL CALL**

Commissioners present:

Chairman Meder  
Commissioner Austin  
Commissioner Brady  
Commissioner Freeman  
Commissioner Limer  
Commissioner Livella  
Commissioner Roberts

Staff members present:

Larry Powell, Director of Business & Economic Development  
Kelly Drake Woodward, Chief Planner  
Michelle Leininger, Principal Planner  
Kristie Hatley, Planning Technician  
Charles Dunlay, City Attorney

There were 5 members of the public in attendance.

### **CONSENT AGENDA**

- 1. Standing approval of the minutes as written for the meeting on February 28, 2017.**

**Motion to approve the consent agenda made by Freeman, seconded by Limer.**

**Motion carried 7-0.**

## **REGULAR AGENDA**

### **1. O'REILLY AUTO PARTS EXPANSION**

**SP-17-02:** Consider a site plan for an expansion to O'Reilly Auto Parts located at 525 E. Mail Street. Lesley Guillot of Buddy D. Webb Architect and Consultant applicant, O'Reilly Auto Enterprises, LLC, property owner of record.

Ms. Kelly Drake Woodward, Chief Planner, presented the existing site conditions and the proposed improvements. She explained the building design standards and the site design standards that were not met, their proposed compliances and the staff comments on each. These standards pertained to massing, blank wall and ornamentation and sidewalks.

Ms. Leslie Guillot, Buddy Webb Architects, spoke about the deviations from the design standards and emphasized the desire to maintain a cohesiveness between the original building and this new addition. They wanted the addition to look consistent with the original for a seamless transition. The sidewalk width noncompliance was due to the location of an existing landscape island.

#### **Commission Discussion:**

Commissioner Austin questioned the 8' width of the sidewalk adjacent to the landscape islands as necessary because car overhang would not be an issue.

Commissioner Freeman agreed and felt the applicant's response to the facade standards was correct in when these ordinances and policies do not accomplish the intended goal. The addition of ornamentation to the blank facades for this building would interrupt the seamless transition between the existing building and the addition.

Commissioner Brady asked Ms. Guillot if there were other ideas besides a paint trim change on the west side to break up the facade.

Ms. Guillot said they had struggled for ideas to make that facade look drastically different.

Commissioner Brady commented that a drastic look would make it more noticeable and be a distraction, other members agreed.

Commissioner Limer asked if the sidewalk layout would meet ADA requirements.

Ms. Woodward replied the ADA requirements would be reviewed within the building permit application process.

Ms. Guillot said the 5' width sidewalk shown on the plans was workable with protection measures around the tree. If it was to be wider, the tree would be removed and replaced with a new tree.

**After review of Application SP-17-02, a site plan for 525 E. Main St. dated March 14, 2017, and staff report dated March 28, 2017, the Planning Commission approves the application as proposed including deviations from the following standards, upon a finding that the proposed deviations will equally or better meet the purpose, intent or design objectives of these regulations per the applicable review criteria of the Administrative Adjustment process:**

- 1. Deviation for the east facade not to include off-sets of at least one foot to meet massing standards.**
- 2. Deviation for the west facade not to include off-sets of at least one foot to meet massing standards.**
- 3. Deviation for the west facade not to include ornamental architectural details on the area of the new building addition.**
- 4. Deviation for the sidewalk along the east building facade to include a section that is a minimum of 5' wide instead of the required 8' wide.**

**Motion made by Freeman, and seconded by Austin.**

**Motion carried 7-0.**

## **2. DAIRY QUEEN**

Property located at 517 E. Shawnee St, 116 N. White Dr, 518 & 526 E. Main Street. John Odom, Architect applicant, A N Properties, LLC and 526 Main, LLC property owners of record.

- a. **PP-17-01:** Consider a Preliminary Plat for Dairy Queen, a 2 lot commercial subdivision.
- b. **FP-17-01:** Consider a Final Plat for Dairy Queen, a 2 lot commercial subdivision.
- c. **FDP-17-01:** Consider a Final Development Plan for Dairy Queen restaurant and office uses.

Ms. Michelle Leininger, Principal Planner, presented PP-17-01 and FP-17-01 by reviewing the site and changes to the plats discussed by the Commission at the February 28 meeting. She also spoke of the City requirement for a floodplain modeling submission by the applicant using HEC-RASA model. Staff was recommended approval of the preliminary plat and approval of the final plat with conditions.

Mr. John Odom, Architect, added that he completed the floodplain modeling and it was submitted to the City on March 27, 2017.

**After review of Application PP-17-01, a preliminary plat for Dairy Queen located at 517 E. Shawnee St, 116 N. White Dr. and 518 and 526 E. Main Street, the preliminary plat dated March 23, 2017, and staff report dated March 28, 2017, the Planning Commission approves the application.**

**Motion made by Brady, and seconded by Limer.**

**Motion carried 7-0.**

## **2. B No Commission discussion on item**

**After review of Application FP-17-01, a final plat for Dairy Queen located at located at 517 E. Shawnee Street, 116 N. White Drive and 518 and 526 E. Main Street, and final plat dated March 23, 2017, and staff report dated March 28, 2017, the Planning Commission approves the application provided the following conditions are met:**

- a. **Construction plans for utilities, infrastructure and public facilities including HEC-RASA modeling, shall be submitted to the City for review and approval prior to the**

**release of the final plat.**

**b. Remove the building line from the plat document.**

**c. Provide a Street and Landscape Tree plan for approval by staff based on approved final development plan FDP-17-01.**

**and recommends the Governing Body accept the dedication of right-of-way and easements.**

**Motion made by Freeman, and seconded by Austin.**

**Motion carried 7-0.**

**2. c. FDP-17-01:** Consider a Final Development Plan for Dairy Queen restaurant and office uses.

Ms. Leininger reminded the Commission of their previous review of this information on the preliminary development plan but that there were minor changes to the elevations and signs. She presented the landscape design and explained how the existing utilities made the street tree standards difficult for compliance but the trees could be used at other locations on the site instead. She explained the ten landscape conditions attached to the recommended motion by staff and the reasons for them. There were also sign conditions presented for discussion.

Mr. Odom expressed concerns about the signage, which were standards from Dairy Queen corporate. Per City standards, the monument sign was allowed only 25 square feet with a 6' height. That would be a challenge as the sign would disappear into the landscape. He would hope the city could make an exception for a 12' width while maintaining the 6' height to accommodate City sign regulations.

He continued with the landscaping and the constraints caused by utilities and the new underground, boxed culvert. He agreed with staff in eliminating the fence along Shawnee Street but keeping it along the west side of the property. The north side was heavily landscaped with shrubs even without the fence, the rest of the site was lushly designed and he requested to move forward with the plan shown.

Mr. Odom spoke about the changes made to the plans since the last meeting. One was the deletion of the first two parking spaces upon entering the site from Main Street which improved safety. The drive was reduced down 2' to make room for a wider sidewalk.

#### **Commission Discussion:**

Commissioner Freeman questioned the impact of the fence removal along Shawnee St. on light pollution in the homes along there during evening hours.

Mr. Odom responded by stating the Commission would need to determine which was the lesser of two evils between a wood fence that would require maintenance throughout the years or the amount of light pollution during the later hours. The shrubbery along there was designed to be dense.

Ms. Leininger noted that the shrubs along the north side were to be a minimum 18" at planting and would continue to grow up and out to fill the area.

Commissioner Freeman agreed that the monument sign should be lowered to the standard of

6' height and asked if the sign size would be scaled down proportionately.

Mr. Odom replied the company had standard sized signs purchased in packages and the cost would be too great to make a custom size, if it were even possible. The height was flexible but the sign width was not.

Commissioner Freeman agreed with Mr. Odom on the landscape and wondered if the City was requiring too much for the type of use of the site.

Mr. Odom replied the front of the building had little opportunity for landscape but the areas they felt important to be heavily landscaped such as the trash enclosure, perimeter buffer along Shawnee St. and parking lot were done so and would benefit the area residents.

Commissioner Brady asked staff about the possibility of adding a fence along Shawnee St. in the future, should it be necessary, and if the Commission could make the recommendation.

Ms. Leininger replied the City would work with the business owner and that most of them were willing to work with the community. Neither the Commission nor the City would be able to require the fence.

Commissioner Austin asked staff their thoughts on providing a 4' height fence along the north side instead of a 6' height privacy fence.

Ms. Leininger replied the 4' fence would be similar in height to the shrubbery and suggested the use of more evergreen shrubs in the mix.

Commissioner Livella said she was concerned about the removal of the fence in the plan and the after dark light created by the traffic.

Commissioner Freeman interjected the possibility of the introduction of graffiti into the neighborhood on the fence.

It was discussed among the Commissioners that the proposed landscape with the introduction of additional evergreens would create a softer, warmer, welcome than the fence.

Mr. Odom reminded the Commission that evergreens would require a larger spacing from one another and a large hedgerow, if desired, would be possible but would take time to grow. He suggested the use of arborvitae.

Commissioner Limer wanted clarification that the shrubs shown were intended as a foreground for the proposed fence. The discussion would need to include what plants would be used instead to create the barrier and asked if berms could be integrated along with a staggered planting verses a straight line.

Kristie Hatley, Planning Technician, responded that although arborvitae do look good, they often harbor diseases and are short lived. She suggested expanding the idea of the ornamental grasses found on the landscape plan. The larger ornamentals such as Fountain Grass grow tall, add interest in the winter and although would be cut down in the spring, grow quickly. These along with arborvitae would be staggered and add variety.

The Commission agreed the landscape on the north side of the property would be redesigned using an evergreen and ornamental grasses mix without the fence.

Commissioner Austin mentioned the monument sign being 170% larger than allowed and was not comfortable with it.

Ms. Leininger clarified the signs were measured by drawing an imaginary box around the logo and any other identifying elements to determine the square footage. The overall square footage included the imaginary box total plus the monument base square footage.

Mr. Odom remarked if the monument sign was kept at the 12'-8" width but reduced to the maximum 6' height, it would be in proportion to the context of the signs of surrounding businesses.

Commissioner Freeman said he did not feel that the sign would appear out of compliance with the current code and it would match the signs along Main St. to the east.

Chairwoman Meder began going through the list of conditions to get concurrence from the Commissioners. These are found in the motion.

Commissioner Austin asked if a condition rewritten by the Commissioners to revise a portion of the landscape plan would require the applicant to re-submit the revisions to the Commission for approval.

Mr. Charles Dunlay, City Attorney, replied staff could approve if the Commission provided sufficient guidance within the condition in the motion.

Ms. Leininger said the only condition with flexibility was number 9 which was the landscape re-design along the north property line.

Mr. Odom said he and Ms. Leininger had enough information to solve the issue and would work together on it.

**After review of Application FDP-17-01, a final development plan for Dairy Queen located at 517 E. Shawnee Street, 116 N. White Drive, 518 E. Main Street and 526 E. Main Street, and final development plan document dated March 16, 2017, and staff report dated March 28, 2017, the Planning Commission approves the application provided the following conditions are met:**

- 1. The final plat for the property shall be approved and recorded prior to the issuance of a building permit.**
- 2. Submittal and approval of public improvement plans including HEC-RASA modeling shall be completed prior to the issuance of a building permit.**
- 3. Spread out the clustered shrubs along the parking spaces adjacent to N. White Street.**
- 4. Provide 1 tree along the parking spaces adjacent to E. Main Street.**
- 5. Remove any notes regarding to seeding for turf ground cover and revise notes to read sod.**
- 6. Work with staff to increase landscaping along E. Shawnee St. for better screening from light pollution and remove the fence along E. Shawnee St.**

7. **Provide 2 more trees, 1 more evergreen and 11 more shrubs along the western property line, adjacent to the R-2 District zoning.**
8. **Comply with the 6' maximum height for a freestanding sign.**

**Motion made by Freeman, and seconded by Limer.**

**Motion carried 7-0.**

### **3. LAND DEVELOPMENT CODE TEXT AMENDMENTS**

Hold a public hearing on and consider text amendments to the Land Development Code for the following:

- c. **TA-16-14:** Section 17.05.05 Specific Use Standards for Food and Beverage-Mobile Uses and Temporary Uses.
- d. **TA-16-15:** Section 17.05 regarding Wireless Communication Antenna Uses.

c. **TA-16-14:** Section 17.05.05 Specific Use Standards for Food and Beverage-Mobile Uses and Temporary Uses.

Ms. Woodward presented all proposed changes recommended by staff for these two sections of the LDC found on the third page of the Staff Report.

Chairman Meder opened the public hearing.

No questions or comments from the public.

**Motion to close the public hearing made by Livella, and seconded by Limer.**

**Motion carried, 7-0.**

#### **Commission Discussion:**

Commissioner Austin asked about the term "intermittent" operations (found in P.1.g.) and felt it was not written specific enough since there was also a provision that the mobile unit would not be left unattended. If the intent was to not allow a food truck to park in the same spot every day for the 180 days then the revised language used would not support that intent. If the City would be okay with the unit parked in the same spot every day then the language would suffice.

Ms. Woodward answered she felt a continuous stay was for the mobile unit to be in one location several days consecutively and then moved to another location for business.

Mr. Dunlay said that legally, "continuous" would be interpreted as the food truck staying in the same location. The intent of what the City wanted it to mean would be up to the Planning Commission to decide whether it be specific or more general. If the truck stayed in one location but the operator went home for the night and came back, he did not believe that would not be construed as continuous operation.

Commissioner Austin asked what the interpretation would be if the operator took their truck home each night.

Mr. Dunlay replied that if the truck moved, it would not be there continuously but if it were back the next day at the same location it would be another day. If that happened every day he considered that a permanent site. If the Commission wished to be more specific as to how long a food truck may be in one location that could be included.

Discussion among the Commissioners and staff determined there needed to be an interpretation by the Commission for all to use.

Commissioner Freeman said he felt what was written gave the City the opportunity for enforcement if necessary whereas if there were a limited number of days, there would be no one on staff daily to check the trucks and their locations. What was needed were enforcement provisions for persons abusing this.

Commissioner Austin questioned the text crossed out regarding mobile food vending units not being left unattended.

Ms. Woodward said that text was originally included so that the trucks would have to be taken home each night to make it more of a temporary use. It was removed so the trucks could be left.

Larry Powell, Director of Business and Economic Development, provided an example of a mobile food vendor in another city who had the permission of a landowner to park his truck on the property year around and conduct business out of it 3 days/week. That would not be a mobile vending type business. This vendor wanted to do the same in Gardner which was to set up a full time, non-brick and mortar business. The meaning of "intermittent" was important in this case.

Mr. Dunlay said P.1.g. as written, suggested some code enforcement issues and needed clarity on the phrase "intermittent, not continuous or permanent". It sounded too vague.

Discussion amongst the Commission of whether the inclusion of a specified number of days was necessary.

Chairman Meder was in favor of the text as proposed.

Commissioner Brady agreed and suggested to accept staff's recommendation but changes could be made in the future, as needed.

The Commission agreed.

The Commission agreed to accept staff's recommendation to strike P.3.a. vii regarding unattended food vending units.

Commissioner Austin asked if Z.4. regarding the location of temporary uses was not applicable to mobile food trucks from the change of 50' to the proposed 30' from residentially zoned property.



Ms. Woodward clarified that the intent was a mobile food truck could be on a residential lot but not within 30' of the property lines of adjacent lots.

After much discussion on options to rewrite this standard, it was agreed to change the text as found below.

**Motion to recommend that the Governing Body approve TA-16-14 as presented in Attachment I of the March 28, 2017 staff report with the following change:**

**Section 17.05.05 Specific Use Standards**

**Z. Temporary Use**

**4. No portion of the temporary use, or accessory activities associated with the temporary use, shall be located within 30 feet of the property line of an existing residence or a residentially zoned district.**

**Motion made by Roberts, seconded by Brady.**

**Motion carried 7-0.**

d. **TA-16-15:** Section 17.05 regarding Wireless Communication Antenna Uses.

Ms. Woodward introduced the text amendments for TA-16-15 Section 17.05 regarding Wireless Communication Antenna Uses for discussion only. This was a basic approach for staff to receive input from the Commission. The City attorney would be matching language with that of the statutory regulations. The statutory regulations continue to change with technology. Gardner needed to adapt City regulations to those of the state and federal yet remain consistent with other Johnson County jurisdictions. The towers were currently Conditional Uses in all districts, subject to additional standards. Staff took a two-tier approach where some towers would be approved administratively and others by a Conditional Use, which required Governing Body approval. Staff questioned why all were not approved administratively since there was not much allowance for variety due to mandatory compliance with statutory regulations. An idea that staff provide the site plan reviews for these towers arose but the question became whether the Governing Body should approve new tower proposals.

Mr. Dunlay spoke about the changes and the law required by the Kansas New Wireless Deployment Act or Kansas Wireless Siting Act related to federal laws and regulations that provided for the number of limits on municipalities to regulate the placement of certain wireless communication facilities. This was related to changes in technology and small cell facilities such as those found on tops of streetlights. The advantage was instead of having one massive structure for cell use, several smaller units provide increased cellular service. There were restrictions that if a municipality did not act within 60 or 90 days with an approval, the structure was automatically approved which would be difficult using a Conditional Use Permit process. A different approach we had was to completely remove wireless communications from the Conditional Use Permit as Ms. Woodward presented. He tried to structure a process based on my understanding of the present LDC such that if the requested use was presently a permitted use within the structure of the code or required a 60 day approval process subject to administrative approval. If there was a substantial modification as a new giant tower, then a Conditional Use subject to proper

reviews. Most state and Johnson County municipalities attempt to structure a somewhat separate process for wireless communication facilities through zoning while also having a right-of-way function. One reason these need to be in zoning is Kansas law permits regulations and exercises police power through zoning that isn't allowed anywhere else.

**Motion to extend the meeting 15 minutes made by Roberts, and seconded by Brady.**

**Motion passed 7-0.**

Ms. Woodward spoke about the additions to the site plan and design review of communications facilities for wireless services that would include new towers, modifications of existing tower or base stations that incur substantial change and other applications described in Section 17.11.020. Any of these would be presented to the Commission. She listed the communications facilities for wireless services that would be approved under the administrative process. She then referred to the Commission for their input on the two tier process presented.

Commissioner Limer asked if the alternative would be to create a new application only for wireless communication facilities that specified one part would be a conditional use and another part went to staff for administrative approval.

Ms. Woodward said a new application would not be created but one that was specific to the information needed for a wireless cell facility. We wanted to use the existing processes we had in place for approvals, which now is only the conditional use process.

The two levels of site plan review and no conditional use was agreed upon by all Commissioners.

Commissioner Brady asked what this version was patterned off of and where the language came from.

Mr. Dunlay answered he used the work for many Johnson County municipalities and the League of Kansas Municipalities but the proposal the Commission had was different than the one he proposed.

Ms. Woodward said she tried to simplify some of the language of the definitions as it was difficult to understand.

Mr. Dunlay said it was dense and written for the wireless carriers and their lawyers. It would be up to the Governing Body whether or not they wanted to see these, subject to the recommendation of the Commission. He wanted the recommendation of the Commission just as staff did so that he makes sure what their goal was.

The Commission agreed not to include any information within these standards that was already covered by state and federal statutes.

**Motion to initiate text amendments to Title 17 (Land Development Code) of the Gardner Municipal Code to address issues as summarized in the March 28, 2017 staff report pertaining to wireless communications infrastructure and services.**

**Motion made by Austin, and seconded by Limer.**

**Motion carried 7-0.**

**ADJOURNMENT**

**Motion to adjourn made by Brady, and seconded by Limer.**

**Motion carried 7-0.**

Meeting adjourned at 10:08 p.m.

DRAFT



# Planning Commission

March 28, 2017

Name

Address

Rick Poppitz

Gardner News

Jerry L Kellogg SR

GARDNER

Jim Coughen  
Abdul

Palumbo Bank

9536 Tallgrass Dr Lenexa

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**PROJECT NUMBER / TITLE: PP-17-02 Preliminary Plat for Quail Meadows II**  
**FP-17-02 Final Plat for Quail Meadows II**

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**PROCESS INFORMATION**

**Type of Request:** Preliminary and Final Plats for Quail Meadows II  
**Date Received:** March 9, 2017

**APPLICATION INFORMATION**

**Applicant:** Jim Long, Allenbrand-Drews & Associates LLC  
**Owner:** Quail Meadows LLC  
**Parcel ID:** CF221422-3012  
**Location:** Southwest of the intersection of 167<sup>th</sup> Street and Waverly Road, at the end of Pratt Street.

**REQUESTED ACTION**

The applicant requests approval of the preliminary and final plats for Quail Meadows II, a single-family residential subdivision.

**EXISTING ZONING AND LAND USE**

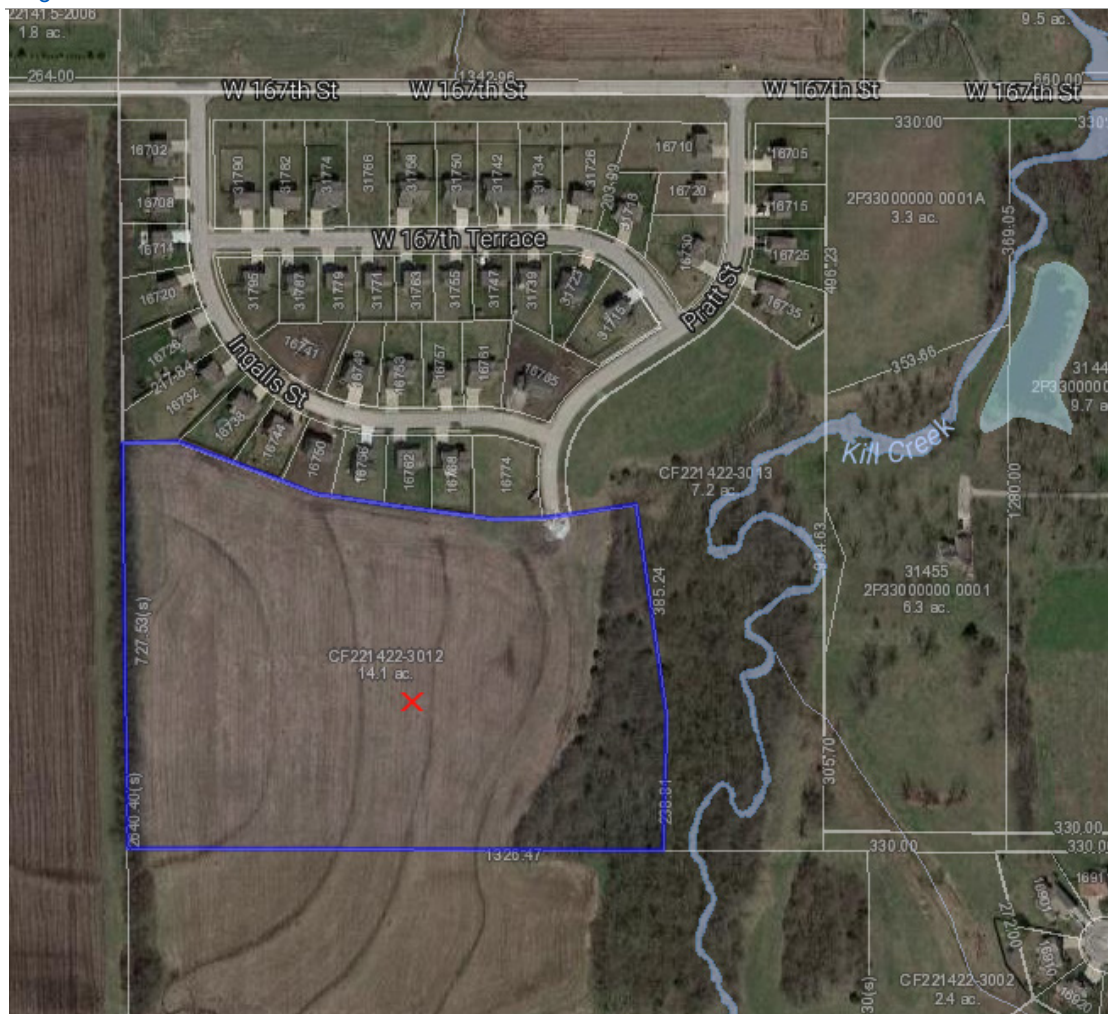
Currently the property is zoned R-1 Single-Family Residential District. The property is currently undeveloped.

**SURROUNDING ZONING AND LAND USE**

<b>Zoning</b>	<b>Use(s)</b>
<b>North of subject property</b>	
R-1 Single-Family Residential District	Single-family residences
<b>East of subject property</b>	
R-1 District	Undeveloped park
<b>South of subject property</b>	
R-1 District	Crop agriculture
<b>West of subject property</b>	
RUR District (County rural/agricultural)	Crop agriculture

**EXISTING CONDITIONS**

The subject property are a second phase of Quail Meadows development. Currently the property is zoned for single-family residential use but unplatted. The property is being utilized for crop agriculture and the eastern portion is a stream buffer for Kill Creek.



## **BACKGROUND / HISTORY**

The subject property was originally part of the preliminary plat for Quail Meadows approved in 2006. The first phase which is developed, was final platted later that same year. Phase 2 was subsequently never final platted and the preliminary plat expired. The proposed preliminary layout is very similar to the previously approved plat.

## **STAFF ANALYSIS-PRELIMINARY PLAT REVIEW CRITERIA**

### **17.03.020 (D1) Review Criteria:**

- a. The application is in accordance with the Comprehensive Plan and in particular the physical patterns, arrangement of streets, blocks, lots and open spaces, and public realm investments that reflect the principles and concepts of the plan.

**Staff Comment:** *The application is in accordance with the Comprehensive Plan. The Plan identifies the property for low density residential use. The property directly adjacent to the subject property to the east is owned by the City and planned to be developed as a park. The proposed street layout provides for future connectivity to the west on Mockingbird Street and to the south on Pratt Street. Sidewalks are provided on both sides of the streets to match the original Quail Meadows development and to provide pedestrian connectivity to the future park.*

- b. Compliance with the requirements of this Land Development Code, and in particular the blocks and lots proposed are capable of meeting all development and site design standards under the existing or proposed zoning.

**Staff Comment:** *The development is being developed under the Local-Standard street type, Suburban Yard frontage type and Detached House-Suburban building type. The preliminary plat meets all the standards for the block size and connectivity and details of the local-standard street type cross section.*

*The Code requires the dedication of open space for developments over five acres. This development is directly adjacent to a future neighborhood park and trail connection. Because the proposed development is within the service area of the future park, no additional open space is required to be dedicated. However a tract to provide for connectivity to the future park, between Lots 78 and 79 is being dedicated to the city.*

*The one potential issue that could come up with the construction are the limits on the access and hardscape in the Suburban Yard frontage type, specifically for Lots 60-63 around the cul-de-sac. The Code permits 30% of the lot width for access which on the lots with the 41.24' width, permits for a 12.327' access at the property line. The driveway can flair out after the property line with the limitation of 40% hardscape in the frontage area, the space between the property line and the front of the house. If the intent is for these lots to have homes with three-car garages, these two standards may become an issue depending on what is planned to be constructed on these lots.*

*The proposed building type for the development is the Detached House-Suburban building type. This provides for the lot standards and setbacks for development. All of the proposed lots meet the minimum lot size of 8,000 sf with them ranging from 9,000 sf to ,21,987 sf. Building envelopes (setbacks) are designated on each lot and minimum lot width (measured at street or at building line) meet the standard.*

- c. Any phasing proposed in the application is clearly indicated and demonstrates a logical and coordinated approach to development, including coordination with existing and potential development on adjacent property.

**Staff Comment:** *the applicant has proposed phasing of developing Lots 53-75 first and Lots 76-98 in a future phase. This provides for logical development from north where the existing development is located. Additionally Mockingbird and Pratt Streets are set up to extend to adjacent property for connectivity in the future.*

- d. Any impacts identified by specific studies or technical reports, including a preliminary review of storm water, are mitigated with generally accepted and sound planning, engineering, and urban design solutions that reflect long-term solutions and sound fiscal investments.

**Staff Comment:** *The specific studies are generally accepted. The following issues still need to be resolved on the preliminary plat document.*

#### **Stormwater**

*Lots 76-79 are within the 100 year floodplain. The 100 year elevations need to be shown on Lots 76-79. The storm sewer shown on Lot 79 must be extended past the east property line and grading modified accordingly. Additionally Lots 63-71 and 80-88 need to be raised to allow for a 2% minimum grade for drainage.*

#### **Sanitary Sewer**

*Sanitary sewer shall be shown to extend to the western extent of the development for future connection.*

e. The application does not deter any existing or future development on adjacent property from meeting the goals and policies of the Comprehensive Plan.

**Staff Comment:** *This application does not deter any existing or future development on adjacent property as street connectivity is provided for in addition to utility extension and storm water maintenance.*

f. The design does not impede the construction of anticipated or planned future public infrastructure within the area.

**Staff Comment:** *The design does not impede the construction of anticipated public infrastructure within the area. Extension of streets and utilities will be provided for and the plan supports the future development of the adjacent park by providing a future access to the facilities.*

g. The recommendations of professional staff, or any other public entity asked to officially review the plat.

**Staff Comment:** *Staff recommends approval of the preliminary plat Quail Meadows II.*

#### **STAFF ANALYSIS-FINAL PLAT REVIEW CRITERIA**

##### **17.03.020 (E1) Review Criteria:**

a. The layout and design of the final plat is in substantial compliance with the approved preliminary plat considering the number of lots or parcels; the block layout, street designs and access; the open space systems and civic design elements; the infrastructure systems; or other elements of coordinated developments.

**Staff Comment:** *The final plat is in substantial compliance with the preliminary plat. It is a first phase of the preliminary plat which includes Lots 53-75 and the adjacent streets. The access and hardscape in frontage standards noted above.*

b. The construction plans for any utilities, infrastructure or public facilities meet all technical specifications.

**Staff Comment:** *The public improvement plans will be reviewed and approved prior to the release of the final plat for recording. The applicant is proposing to contain the open drainage into a box culvert. This is a condition of approval.*

c. The phasing and timing of public improvements ensures construction and performance guarantees.

**Staff Comment:** *Public improvements will be constructed upon final plat approval and plat being recorded. The developer will be required to submit a Performance and Maintenance Bond to the City when they pick up their Public Improvement Permit.*

d. Any deviations in the final plat from the preliminary plat brings the application in further compliance with the Comprehensive Plan and the purposes and intent of this Code.

**Staff Comment:** *No deviations from the preliminary plat are proposed.*

e. The recommendations of professional staff, or any other public entity asked to officially review the plat.

**Staff Comment:** *Staff recommends approval of the final plat with the conditions proposed in the recommended motion section.*



### **EXCISE TAX**

The subject properties qualify for the levying of excise tax base on Section 17.04.060. The amount for excise tax is \$0.20/square foot of platted property. The property is 7.017 acres which is 307,969.2 sf \* .20 = \$61,593.84. This is required to be paid prior to the release of the plat for recording.

### **ATTACHMENTS**

- I. Preliminary Plat
- II. Final Plat
- III. Applications

### **RECOMMENDATION-PRELIMINARY PLAT**

Staff recommends approval of preliminary plat PP-17-02 for Quail Meadows II with conditions .

#### **Recommended Motion:**

After review of Application PP-17-02, a preliminary plat for Quail Meadows II, property tax ID CF221422-3012 located south of W. 167<sup>th</sup> Street and the extension of Pratt Street, the preliminary plat dated April 17, 2017, and staff report dated April 25, 2017, the Planning Commission approves the application with the following conditions:

- a. *The 100 year elevations need to be shown on Lots 76-79.*
- b. *The storm sewer shown on Lot 79 must be extended past the east property line and grading modified accordingly.*
- c. *Lots 63-71 and 80-88 need to be raised to allow for a 2% minimum grade for drainage.*

### **RECOMMENDATION-FINAL PLAT**

Staff recommends approval of the final plat of Quail Meadows II with the conditions outlined in the recommended motion.

#### **Recommended Motion:**

After review of Application FP-17-02, a final plat for Quail Meadows II property tax ID CF221422-3012 located south of W. 167<sup>th</sup> Street and the extension of Pratt Street, final plat dated April 17, 2017, and staff report dated April 25, 2017, the Planning Commission approves the application provided the following conditions are met:

- a. Construction plans for utilities, infrastructure and public facilities shall be submitted to the City for review and approval prior to the release of the final plat.
- b. Payment of the Excise Tax in the amount of \$61,593.84 prior to the release of the plat for recording.

and recommends the Governing Body accept the dedication of right-of-way and easements.

# PRELIMINARY PLAT OF *Quail Meadows II* City of Gardner Johnson County, Kansas

All that part of the Northeast Quarter of Section 22, Township 14, Range 22, in the City of Gardner, Johnson County, Kansas, described as follows: Commencing at the Northwest corner of the Northeast Quarter of said Section 22, thence South 0 degrees 35 minutes 32 seconds East, a distance of 630.69 feet, along the West line of said Northeast Quarter, to the Point of Beginning; thence North 89 degrees 24 minutes 28 seconds East, along the South line of Lot 45, Quail Meadows, a subdivision in the City of Gardner, Johnson County, Kansas, a distance of 99.11 feet; thence South 69 degrees 32 minutes 54 seconds East, along the South lines of Lots 46, 47 and 48 of said Quail Meadows, a distance of 266.93 feet; thence South 81 degrees 56 minutes 10 seconds East, along the South lines of Lots 48, 49, 50, 51 and 52 of said Quail Meadows, a distance of 325.86 feet; thence North 89 degrees 20 minutes 37 seconds East, along the South line of Lot 52, of said Quail Meadows, a distance of 84.49 feet, to a point on the West right-of-way line of Pratt Street; thence North 81 degrees 32 minutes 46 seconds East, a distance of 170.00 feet; thence South 8 degrees 27 minutes 14 seconds East, a distance of 385.24 feet; thence South 2 degrees 02 minutes 30 seconds West, a distance of 385.24 feet; thence North 89 degrees 45 minutes 11 seconds West, a distance of 965.11 feet to a point on the West line of the Northeast Quarter of said Section 22; thence North 0 degrees 35 minutes 32 seconds West, along the West line of the Northeast Quarter of said Section 22, a distance of 727.59 feet to the point of beginning, containing 14.09 acres more or less.

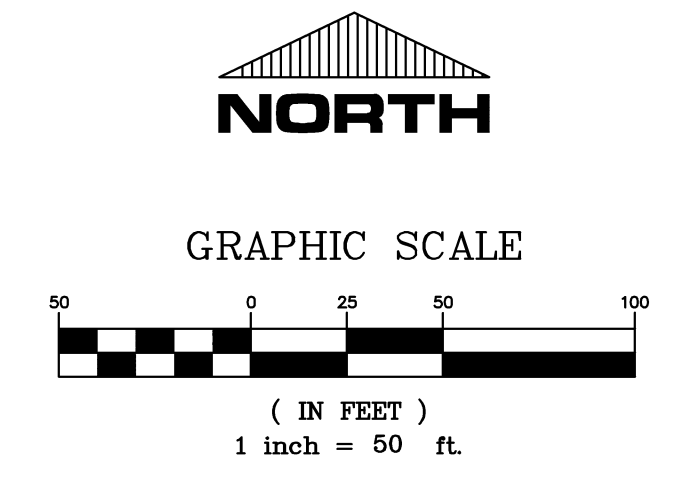
**Lot Information**  
 Minimum lot width: 70'  
 Front Setback: 25'-50'  
 Minimum interior side setback: 7'  
 Minimum street side setback: 20'  
 Minimum rear setback: 25'  
 Minimum lot area: 8,711 SF

Note: Building envelopes shown go to the minimum front, side, or rear setback or easement, whichever is greater.

DEVELOPER:  
**QUAIL MEADOWS, LLC**  
 Contact: Jim Spielbusch  
 31455 W 167th Street  
 Gardner, KS 66030  
 Phone: (816) 728-1438

**LEGEND**

▲ MONUMENT FOUND AS DESCRIBED	— EX-W — EXISTING WATER LINE
⊕ FIRE HYDRANT	— W — PROPOSED WATER LINE
⊕ STORM SEWER CURB INLET	— EX-STW — EXISTING STORM LINE
⊕ STORM SEWER YARD INLET	— STW — PROPOSED STORM SEWER LINE
⊕ SANITARY SEWER MANHOLE	— EX-SAN — EXISTING SANITARY SEWER LINE
U/E UTILITY EASEMENT	— SAN — PROPOSED SANITARY SEWER LINE
S/E SANITARY SEWER EASEMENT	--- 1000' --- EXISTING GRADE CONTOUR
TT/E TEMPORARY TURNAROUND EASEMENT	— 1000' — PRELIMINARY FINISH GRADE CONTOUR
R/W STREET RIGHT-OF-WAY	⊕ TREE LINE
B/B BACK OF CURB TO BACK OF CURB	

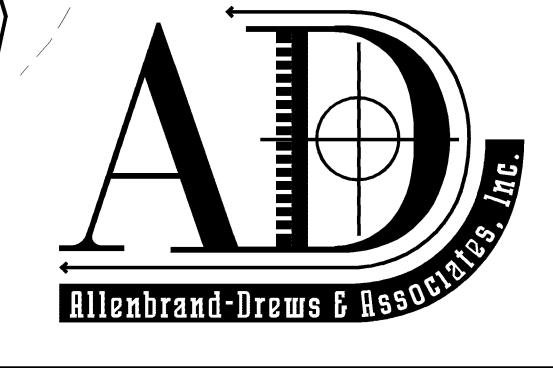


**Quail Meadows II**  
 PP-17-02

**CIVIL ENGINEERS**  
**LAND SURVEYORS - LAND PLANNERS**

122 N. WATER STREET  
 OLATHE, KANSAS 66061  
 PHONE: (913) 764-1076  
 FAX: (913) 764-8635

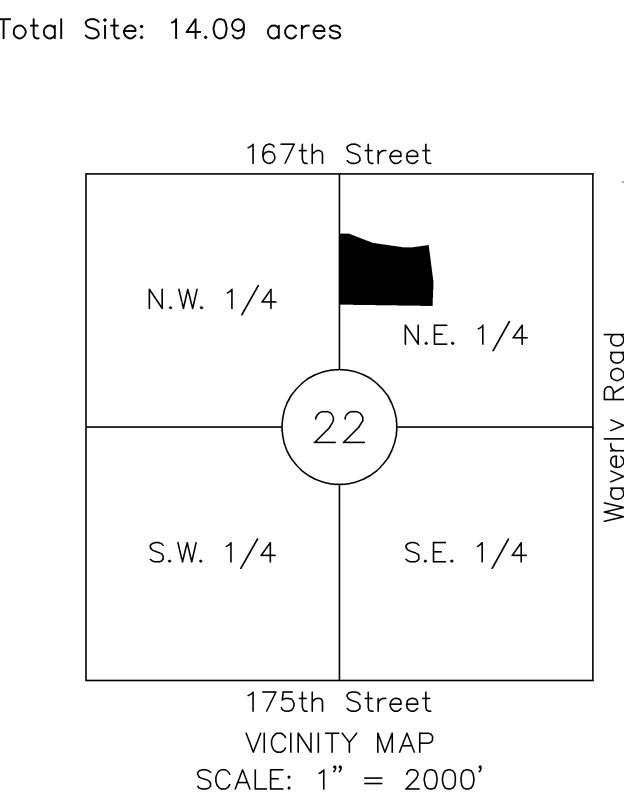
14 W. PEORIA  
 PAOLA, KANSAS 66071  
 PHONE: (913) 557-1076  
 FAX: (913) 557-6904



DATE PREPARED: 3/09/2017  
 REVISED: 4/04/2014

**NOTES:**  
 1. Contours shown were obtained from previous plans for the first plat of Quail Meadows.  
 2. Stream corridor is measured to the ordinary high water mark as obtained from AIMS.  
 3. Floodplain information shown per FEMA FIRM number 20091C0104C, revised August 3, 2009.

LOT	SQ. FT.
53	10,106
54	9,444
55	9,452
56	9,875
57	10,298
58	11,843
59	11,618
60	11,334
61	21,987
62	13,610
63	16,633
64	10,142
65	9,711
66	9,255
67	9,927
68	10,159
69	8,711
70	9,339
71	11,191
72	9,000
73	9,000
74	9,000
75	9,000
76	9,733
77	10,927
78	10,365
79	11,718
80	11,504
81	9,161
82	9,200
83	9,740
84	10,131
85	10,176
86	9,979
87	10,983
88	13,290
89	12,287
90	10,828
91	10,900
92	10,954
93	10,390
94	9,763
95	9,787
96	9,750
97	9,750
98	12,384
Tract A	1,596
RW	118,009



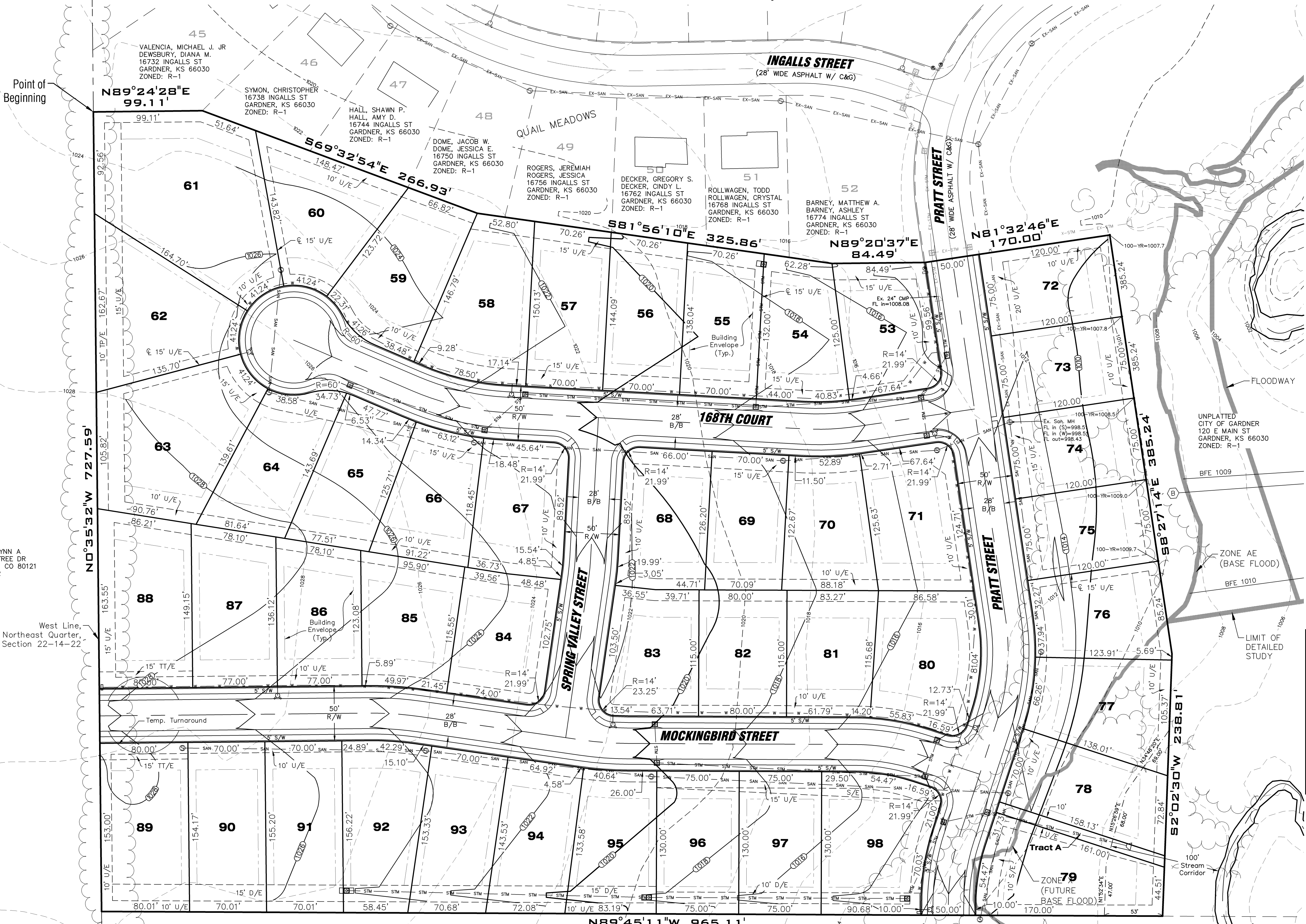
Point of Commencing  
 Northwest Corner,  
 Northeast Quarter,  
 Section 22-14-22  
 Found 2" Aluminum Disc  
 Stamped "Johnson County  
 Section Corner"

Point of Beginning

UNPLATTED  
 JOHNSON, LYNN A  
 2326 CRABTREE DR  
 CENTENNIAL, CO 80121  
 ZONED: RUR

West Line,  
 Northeast Quarter,  
 Section 22-14-22

UNPLATTED  
 SEJ LLC  
 15755 S KEELER TER  
 OLATHE, KS 66062  
 ZONED: R-1



FLOODWAY

UNPLATTED  
 CITY OF GARDNER  
 120 E MAIN ST  
 GARDNER, KS 66030  
 ZONED: R-1

ZONE AE  
 (BASE FLOOD)

BFE 1009

BFE 1010

LIMIT OF  
 DETAILED  
 STUDY

100'  
 Stream  
 Corridor

Tract A

ZONE 79  
 (FUTURE  
 BASE FLOOD)

100'

Stream  
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# FINAL PLAT OF *Quail Meadows II* City of Gardner Johnson County, Kansas

**Legal Description**

This is a survey and subdivision of a part of the Northeast Quarter of Section 22, Township 14, Range 22, now in the City of Gardner, Johnson County, Kansas, described as follows:

Commencing at the Northwest corner of the Northeast Quarter of said Section 22, thence South 0 degrees 35 minutes 32 seconds East, a distance of 630.69 feet, along the West line of said Northeast Quarter, to the Point of Beginning, said point being the Southwest corner of Lot 45, Quail Meadows, a subdivision in the City of Gardner, Kansas; thence North 89 degrees 24 minutes 28 seconds East, along the South line of said Lot 45, a distance of 99.11 feet; thence South 69 degrees 32 minutes 54 seconds East, along the South lines of Lots 46, 47 and 48 of said Quail Meadows, a distance of 266.93 feet; thence South 81 degrees 56 minutes 10 seconds East, along the South lines of Lots 48, 49, 50, 51 and 52 of said Quail Meadows, a distance of 325.86 feet; thence North 89 degrees 20 minutes 37 seconds East, along the South line of Lot 52, of said Quail Meadows, a distance of 84.49 feet, to a point on the West right-of-way line of Pratt Street; thence North 81 degrees 32 minutes 46 seconds East, a distance of 170.00 feet; thence South 8 degrees 27 minutes 14 seconds East, a distance of 300.00 feet; thence South 81 Degrees 32 minutes 46 seconds West, a distance of 170.00 feet; thence South 8 degrees 27 minutes 14 seconds East, a distance of 2.26 feet; thence North 89 degrees 45 minutes 11 seconds West, a distance of 289.56 feet; thence North 83 degrees 51 minutes 01 seconds West, a distance of 135.07 feet; thence North 80 degrees 58 minutes 57 seconds West, a distance of 377.86 feet, to a point on said West line of the Northeast Quarter of said Section 22; thence North 0 degrees 35 minutes 32 seconds West, along said West line of the Northeast Quarter of said Section 22, a distance of 361.05 feet to the point of beginning, containing 7.07 acres more or less.

**Dedication**

The undersigned proprietors to the above described tract of land have caused the same to be subdivided in the accompanying plat, which subdivision and plat shall hereafter be known as "Quail Meadows II".

The undersigned proprietors of said property shown on this plat do hereby dedicate for public use and public ways and thoroughfares, all parcels and parts of land indicated on said plat as streets, terraces, places, roads, drives, lanes, parkways, avenues, courts, and alleys not heretofore dedicated. Where prior easement rights have been granted to any person, utility or corporation on said parts of the land so dedicated, and any pipes, lines, poles and wires, conduits, ducts or cables heretofore installed thereupon and therein are required to be relocated, in accordance with proposed improvements as now set forth, the undersigned proprietor hereby absolves and agrees to indemnify the City from any expense incident to the relocation of any such existing utility installations within said prior easement.

An easement or license to enter upon, locate, construct, use and maintain or authorize the location, construction or maintenance and use of conduits, water, gas, sewer pipes, poles, wires, drainage facilities, irrigation systems, ducts and cables, and similar facilities, upon, over and under these areas outlined and designated on this plat as "Utility Easement" or "U/E" is hereby granted to the City of Gardner, with subordinate use of the same by other governmental entities and public utilities as may be authorized by state law to use such easement for said purposes. Utility easements shall be kept clear of obstructions that impair the strength or interfere with the use and/or maintenance of public utility located within the easement.

**Consent to Levy**

The undersigned proprietors of the above described land hereby consent and agree that the Board of County Commissioners of Johnson County, Kansas, shall have the power to release such land proposed to be dedicated for public ways and thoroughfares, or parts thereof, for public use, from the lien and effect of any special assessments, and that the amount of the unpaid special assessments on such land dedicated shall become and remain a lien on the remainder of this land fronting or abutting on such dedicated public ways or thoroughfares.

**Execution**

IN TESTIMONY WHEREOF, Quail Meadows, LLC, a Limited Liability Corporation, has caused this instrument to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Quail Meadows, LLC, a Limited Liability Corporation

By: \_\_\_\_\_  
James Spielbusch, Managing Member

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS:

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came James Spielbusch, Managing Member, of Quail Meadows, LLC, a Limited Liability Corporation, who is personally known to be the same person who executed the within instrument of writing, and such person duly acknowledged the execution of the same for himself and for the uses and purposes herein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

My Commission Expires: \_\_\_\_\_

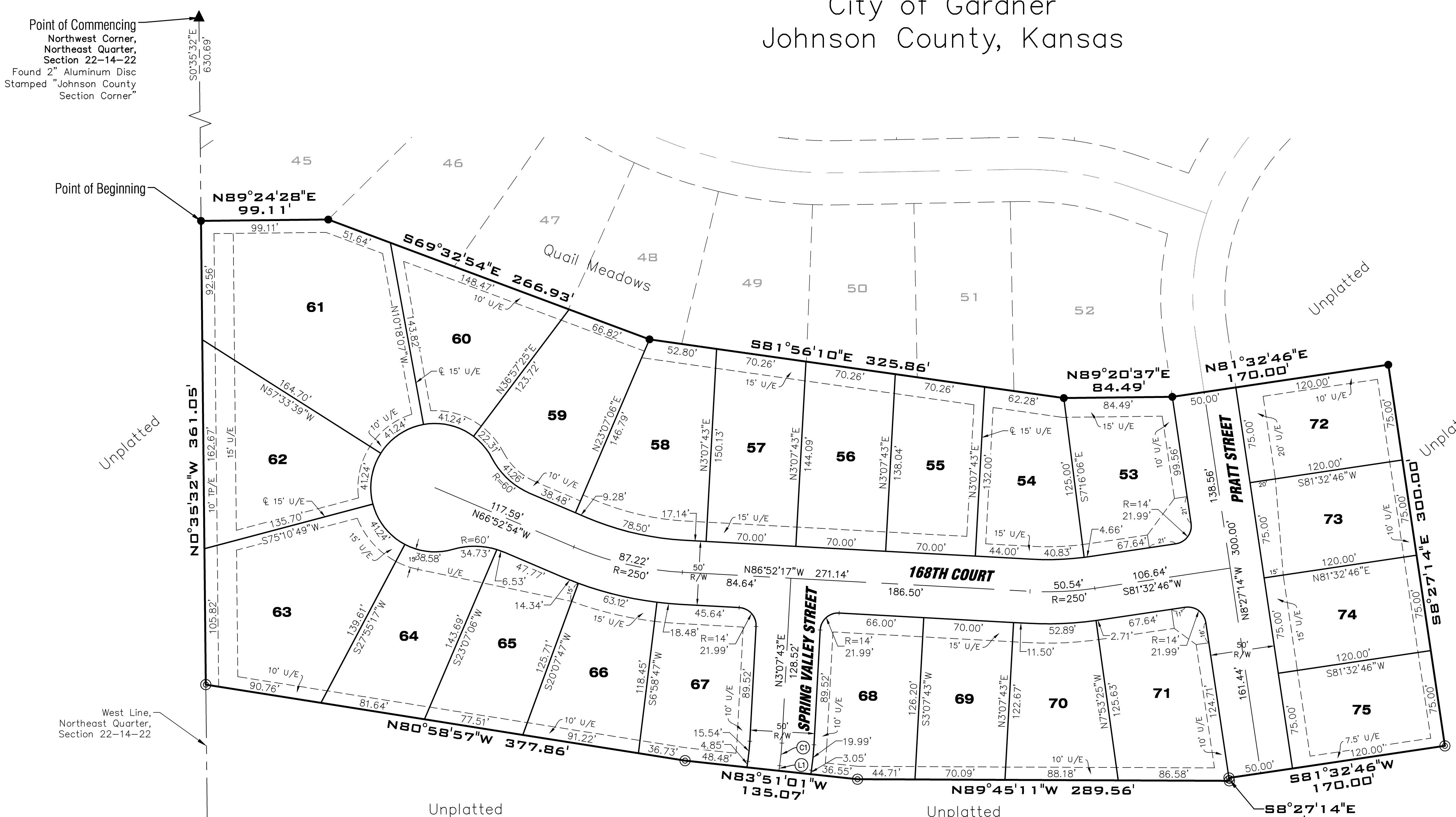
**Approvals**

APPROVED BY, the Planning Commission of the City of Gardner, Johnson County, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

By: \_\_\_\_\_  
Adrianna Meder, Chair

ACCEPTANCE OF DEDICATIONS AND EASEMENTS BY, the Governing Body of the City of Gardner, Johnson County, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

By: \_\_\_\_\_ Attest: \_\_\_\_\_  
Chris Morrow, Mayor City Clerk



Point of Commencing  
Northwest Corner,  
Northeast Quarter,  
Section 22-14-22  
Found 2" Aluminum Disc  
Stamped "Johnson County  
Section Corner"

West Line,  
Northeast Quarter,  
Section 22-14-22

Southwest Corner,  
Northeast Quarter,  
Section 22-14-22  
Found 1/2" Bar  
(Origin Unknown)

**LINE & CURVE TABLE**

L1 N81°13'04"E 3.95'  
C1 R=200' 17.76'

ERROR OF CLOSURE  
Perimeter: 2582.20' Area: 308084.83 Sq. Ft.  
Error Closure: 0.0093 Course: N22°55'17"W  
Error North: 0.00853 East: -0.00361  
Precision 1:277654.84  
Basis of Bearings: Final Plat of Quail Meadows

LOT	SQ. FT.	LOT	SQ. FT.
53	10,106	65	9,711
54	9,444	66	9,255
55	9,452	67	9,927
56	9,875	68	10,159
57	10,298	69	8,711
58	11,843	70	9,339
59	11,618	71	11,191
60	11,334	72	9,000
61	21,987	73	9,000
62	13,610	74	9,000
63	16,633	75	9,000
64	10,142	RW	57,451

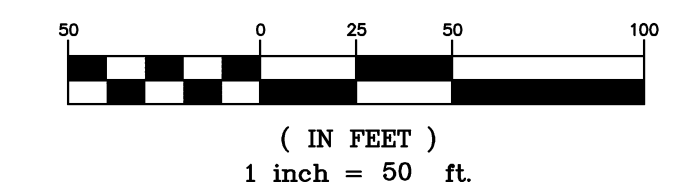
Total Site: 7.07 acres

**LEGEND**

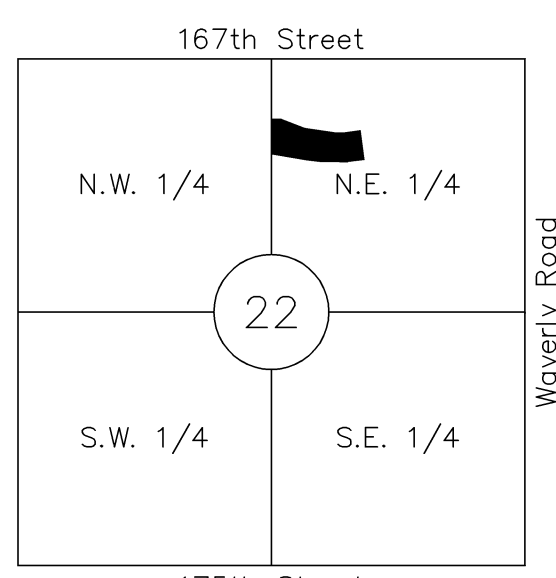
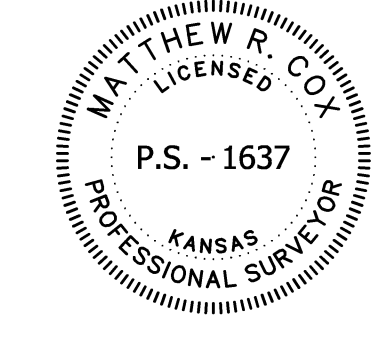
- ▲ MONUMENT FOUND AS DESCRIBED
- BAR FOUND AS DESCRIBED
- FOUND 1/2" REBAR WITH PLASTIC KS CLS 93 CAP (IN CONC.)
- SET 1/2" X 24" REBAR WITH PLASTIC KS CLS 93 CAP (IN CONC.)
- B/L BUILDING LINE
- U/E UTILITY EASEMENT



**GRAPHIC SCALE**



THIS IS TO CERTIFY THAT ON THE 8TH DAY OF MARCH 2017, THIS FIELD SURVEY WAS COMPLETED ON THE GROUND BY ME OR UNDER MY DIRECT SUPERVISION AND THAT SAID SURVEY MEETS OR EXCEEDS THE "KANSAS MINIMUM STANDARDS" FOR BOUNDARY SURVEYS PURSUANT TO K.A.R. 66-12-1.



DEVELOPER:  
**QUAIL MEADOWS, LLC**  
Contact: Jim Spielbusch  
31455 W 167th Street  
Gardner, KS 66030  
Phone (816) 728-1438

**Quail Meadows II**  
FP-17-02

**CIVIL ENGINEERS**  
**LAND SURVEYORS - LAND PLANNERS**



122 N. WATER STREET  
OLATHE, KANSAS 66061  
PHONE: (913) 764-1076  
FAX: (913) 764-8635

14 W. PEORIA  
PAOLA, KANSAS 66071  
PHONE: (913) 557-1076  
FAX: (913) 557-6904

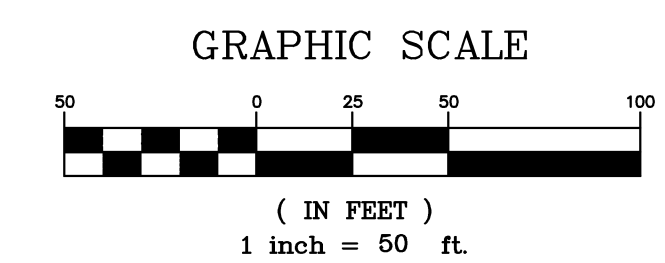
# Street Tree Plan Quail Meadows II



## STREET TREES

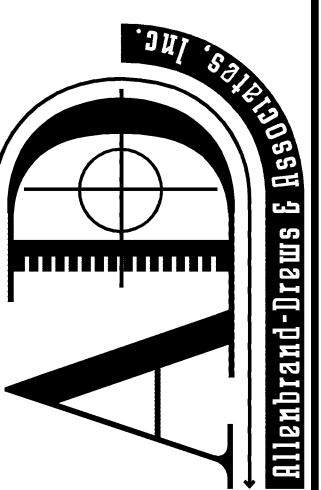
PLANT LIST				
SYMBOL	COMMON NAME	BOTANICAL NAME	QUANTITIES	PLANTING SIZE
	Shantung Maple	<i>Acer truncatum</i>	5	Min. 1.5" Caliper
	State Street Miyabe Maple	<i>Acer miyabe 'Morton'</i>	5	Min. 2" Caliper
	Paper Bark Maple	<i>Acer griseum</i>	5	Min. 2" Caliper
	Columnar Crabapple	<i>Malus 'Velvet Pillar'</i>	5	Min. 1.5" Caliper
	Japanese Tree Lilac	<i>Syringa reticulata Ivory Silk</i>	5	Min. 1.5" Caliper
	Skyline Honeylocust	<i>Gleditsia trichanthos 'Skyline'</i>	5	Min. 2" Caliper

- Trees are to be spaced at 60' on center.
- Type of tree used shall be based on availability.
- If the type listed is unavailable, a similar substitute can be used, provided that no species constitute greater than 20% of the total trees.
- All trees shall be guaranteed for at least one year.
- No obstructions of limbs or foliage are allowed in sight triangles between heights of 2' to 8' above the ground.



Designed By: MRC  
 Drawn By: MRC  
 Checked By: MRC  
 Date: 4/4/2017  
 Job No.: 31875

**CIVIL ENGINEERS  
 LAND SURVEYORS - LAND PLANNERS**  
 14 W. PEORIA  
 PAOLA, KANSAS 66071  
 PHONE: (913) 764-1076  
 FAX: (913) 764-8635

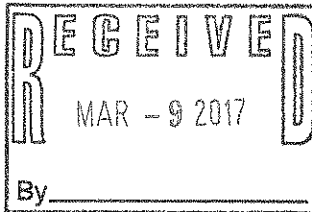


Quail Meadows II  
**Street Tree Plan**

Sheet No.  
 1 of 1

No.	Date	Revisions
1	4/7/17	Revised per Planning Comments
2		
3		
4		

T:\DRAWINGS\31875\1875\_Quail Meadows II Street Tree Plan.dwg, Scale=1:1, Drawn: April 17, 2017 - 8:36am By: Matt



Business & Economic Development  
 Planning Division  
 120 E. Main St. Gardner, KS 66030  
 P: 913.856.0913 | F: 913.856.4562  
 www.gardnerkansas.gov

**PRELIMINARY PLAT APPLICATION**

Pre-App Date	
App Date	3/09/17
Fee	\$526.00
File No.	PP-17-02

**OWNER INFORMATION**

Name(s) Quail Meadows, LLC  
 Contact Jim Spielbusch  
 Address 31455 W 167th Street  
 City Gardner State KS Zip 66030  
 Phone 816.728.1438 Email jimspielbusch@yahoo.com

**APPLICANT/AGENT INFORMATION**

Name(s) Allenbrand-Drews & Associates, Inc.  
 Contact Jim Long  
 Address 122 N Water  
 City Olathe State KS Zip 66061  
 Phone 913.764.1076 Email jlong@allenbrand-drews.com

**SITE INFORMATION**

Property Address/Location South of Ingalls Street & Pratt Street  
 Legal Description (Attach If Necessary) Attached  
 Number of Existing Lots \_\_\_\_\_ Number of Proposed Lots 46  
 Total Site Area 14.09 acres Present Zoning R-1  
 Number of Existing Structures 0 Present Land Use open ground  
 Proposed Street Design Type(s) & Class Local-Standard  
 Proposed Type(s) Open & Civic Space \_\_\_\_\_  
 Proposed Frontage Type(s) Suburban Yard  
 Proposed Building Type(s) Detached House-Suburban

**SIGNATURE**

I/We, the undersigned am/are the (owner(s)), (duly authorized agent), (Circle One) of the aforementioned property. By execution of my/our signature, I/we do hereby officially apply for preliminary plat as indicated above.

Signature(s)  Date 3-8-2017  
 \_\_\_\_\_ Date \_\_\_\_\_

## PRELIMINARY PLAT APPLICATION CHECKLIST

### APPLICATION SUBMITTAL REQUIREMENTS

- |     | Yes                                 | No                                  |  |
|-----|-------------------------------------|-------------------------------------|--|
|     | <input type="checkbox"/>            | <input type="checkbox"/>            | 1. <b>Complete application packet</b>  |
|     | <input type="checkbox"/>            | <input type="checkbox"/>            | 2. <b>Application fee</b>  |
|     | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 3. <b>10 complete sets of plans printed</b>  |
|     | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 4. <b>Digital copies (PDF) of the completed application, plans, and legal description</b>  |
| N/A | <input type="checkbox"/>            | <input type="checkbox"/>            | 5. <b>1 copy of existing covenants and restrictions applicable to the development, if any (reference book and page).</b>   |
| N/A | <input type="checkbox"/>            | <input type="checkbox"/>            | 6. <b>Letter of intent</b> as to whether a Homeowners Association will be created and if any covenants and restrictions are proposed by the subdivider.  |
| N/A | <input type="checkbox"/>            | <input type="checkbox"/>            | 7. <b>Preliminary Floodplain modeling</b> using HEC-RAS model provided by the City if encroachment is proposed within a FEMA or Shaded Zone X 100-year floodplain. (Contact City Engineer to obtain model and requirements). |
|     | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 8. <b>Preliminary Stormwater Management Plan</b> (2 printed and 1 digital copy)  |
|     | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 9. <b>Preliminary Traffic Assessment</b> See Access Management Code. (2 printed and 1 digital copy)  |

### PRELIMINARY PLAT REQUIREMENTS

- |                                     |                          |  |
|-------------------------------------|--------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 1. <b>Name of subdivision</b> (unique and numerically consistent and the words "PRELIMINARY PLAT," prominently displayed as the title.)  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 2. <b>Names, addresses, and phone numbers</b> of all companies, firms, or individuals involved in the preparation of the plat (i.e. property owner, engineer, surveyor, etc.).   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 3. <b>Date of preparation</b> of preliminary plat and/or revisions.  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 4. <b>Vicinity map</b> (drawn at a scale of 1"=2,000', locating the proposed subdivision in relation to the section of land, including township and range, section street names, and a north arrow.)                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 5. <b>A legal boundary description</b> with angular bearings and linear distances, referenced to section or quarter-section corners, Point of Commencing and/or Point of Beginning, and the overall area of the plat in acres. |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 6. <b>Location of monuments</b> , shown in reference to existing official monuments or the nearest established ¼ section corner, including the bearings and distances to such reference points or monuments.                   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 7. <b>Boundary lines</b> of the subdivision shall be enclosed with one continuous bold line, showing approximate dimensions (bearings and distances).  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 8. <b>All public streets</b> within the plat conform to the applicable minimum design standards set forth in the Land Development Code and Technical Specifications.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 9. <b>Building setback lines</b> along public and private streets with dimensions in feet.   |

- | Yes                                 | No                                  |   |
|-------------------------------------|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 10. <b>Platted and unplatted land</b> adjacent to the plat boundary. Include identification of adjacent platted subdivisions and unplatted tracts with external bearings and distances of adjacent plats and property owners for a distance of not less than 400 feet. Include original plat names if replatted. Exterior dimensions shall coincide with adjoining plats unless differences are noted |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 11. <b>Lots and tracts</b> identified clearly, with blocks numbered or lettered boldly and clearly in the center of the block, and lot dimensions with bearings and distances, and area in square feet.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 12. <b>Note on plat</b> indicating intended ownership, purpose, and maintenance responsibilities for any parcels labeled as tracts.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 13. <b>Existing streets, driveways, trails, and sidewalks</b> which abut, touch upon or extend through the subdivision and/or streets located within 400 feet of the plat. The description shall include types and widths of existing surfaces, right-of-way widths, and dimensions of any bridges and culverts, access points and signals.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 14. <b>Location of existing open space, alleys, parks, streams, ponds, vegetation,</b> or other similar features within plat, and whether they are to be retained or removed.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 15. <b>Location of existing buildings</b> and structures within 200 feet of the plat.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 16. <b>Existing utilities,</b> including sanitary sewer, force main, water main, gas mains, culverts and storm sewer pipe, street lights, electric conduits, and invert elevations of sewers at points of proposed connection.  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 17. <b>Topography</b> of the area contained in the plat and within 20 feet of the plat boundary shown by 2-foot contour intervals and proposed preliminary grading. Contour lines shall be legible but not overpowering.  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 18. <b>Proposed street network,</b> including right-of-way, bearings, tangents, and horizontal and vertical curvature data (use of flow direction arrows and percent of grade is permitted at preliminary for vertical curve data, unless otherwise specified/required) along the centerline of each street.  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 19. <b>Proposed sidewalks</b> and/or trail locations including proposed widths.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 20. <b>Proposed utilities,</b> including approximate location of sanitary sewer, water main, street lights, storm sewer, detention and treatment facilities.  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 21. <b>Existing and proposed easements</b> with dimensions. Existing easements shall be labeled with book and page number.  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 22. <b>Any area within a federally designated floodplain.</b> Location, stations, and elevations of the 100-year floodplain within the plat and 100-year elevations at rear lot corners adjacent to FEMA and Shaded Zone X floodplains. The source of the floodplain information shall be clearly labeled (example: FIRM, Map #20091C0041D, September 27, 1991).                                      |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 23. <b>Stream corridor boundary</b> and dimensions.   |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 24. <b>Intersection site distance analysis.</b>   |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 25. <b>Copies of all pertinent exception documents,</b> or a copy of a current American Land Title Association (ALTA) survey, or both.  |

Written explanations for any items not checked or checked "No" (attach additional sheets, if necessary):

8. WILL BE PROVIDED LATER. 9. PROJECT IS AT THE END OF A DEAD  
END STREET. TRAFFIC SHOULD NOT BE AVERSELY AFFECTED.  
24. NO INTERSECTION  
25. WILL BE PROVIDED LATER.

I hereby submit all information required for preliminary plat review. I understand that failure to provide the required information may result in a postponement of my request for review until all information has been submitted. By signing this application, I acknowledge that all public streets and public infrastructure within the plat shall conform to the applicable minimum design standards set forth in the Gardner Municipal Code and the Technical Specifications.

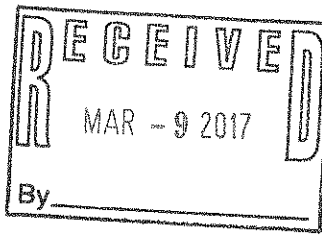
  
Signature of Applicant

3-8-2017  
Date



## **Quail Meadows II Preliminary Plat Description**

Commencing at the Northwest corner of the Northeast Quarter of said Section 22, thence South 0 degrees 35 minutes 32 seconds East, a distance of 630.69 feet, along the West line of said Northeast Quarter, to the Point of Beginning; thence North 89 degrees 24 minutes 28 seconds East, along the South line of Lot 45, Quail Meadows, a subdivision in the City of Gardner, Johnson County, Kansas, a distance of 99.11 feet; thence South 69 degrees 32 minutes 54 seconds East, along the South lines of Lots 46, 47 and 48 of said Quail Meadows, a distance of 266.93 feet; thence South 81 degrees 56 minutes 10 seconds East, along the South lines of Lots 48, 49, 50, 51 and 52 of said Quail Meadows, a distance of 325.86 feet; thence North 89 degrees 20 minutes 37 seconds East, along the South line of Lot 52, of said Quail Meadows, a distance of 84.49 feet, to a point on the West right-of-way line of Pratt Street; thence North 81 degrees 32 minutes 46 seconds East, a distance of 170.00 feet; thence South 8 degrees 27 minutes 14 seconds East, a distance of 385.24 feet; thence South 2 degrees 02 minutes 30 seconds West, a distance of 238.81 feet; thence North 89 degrees 45 minutes 11 seconds West, a distance of 965.11 feet to a point on the West line of the Northeast Quarter of said Section 22; thence North 0 degrees 35 minutes 32 seconds West, along said West line, a distance of 727.59 feet to the point of beginning, containing 14.09 acres more or less.



Business & Economic Development  
 Planning Division  
 120 E. Main St. Gardner, KS 66030  
 P: 913.856.0913 | F: 913.856.4562  
[www.gardnerkansas.gov](http://www.gardnerkansas.gov)

## FINAL PLAT APPLICATION

Pre-App Date	
App Date	3/09/17
Fee	\$394.00
File No.	FP-17-02

### OWNER INFORMATION

Name(s) Quail Meadows LLC  
 Contact Jim Spielbusch  
 Address 31455 W 167th Street  
 City Gardner State Kansas Zip 66030  
 Phone 816.728.1438 Email jimspielbusch@yahoo.com

### APPLICANT/AGENT INFORMATION

Name(s) Allenbrand-Drews & Associates, Inc.  
 Contact Jim Long  
 Address 122 N Water  
 City Olathe State KS Zip 66061  
 Phone 913.764.1076 Email jlong@allenbrand-drews.com

### SITE INFORMATION

Property Address/Location South of Ingalls Street & Pratt Street  
 Legal Description (Attach If Necessary) Attached  
 Number of Existing Lots 0 Number of Proposed Lots 24  
 Total Site Area 7.07 acres Present Zoning R-1  
 Number of Existing Structures 0 Present Land Use Open field  
 Proposed Street Design Type(s) & Class Local Standard  
 Proposed Type(s) Open & Civic Space \_\_\_\_\_  
 Proposed Frontage Type(s) Suburban Yard  
 Proposed Building Types(s) Detached House-Suburban

### SIGNATURE

I/We, the undersigned am/are the (owner(s)), (duly authorized agent), (Circle One) of the aforementioned property. By execution of my/our signature, I/we do hereby officially apply for final plat as indicated above.

Signature(s):  Date 3-9-2017  
 \_\_\_\_\_ Date \_\_\_\_\_

## FINAL PLAT APPLICATION CHECKLIST

### APPLICATION SUBMITTAL REQUIREMENTS

- |     | Yes                                 | No                                  |   |
|-----|-------------------------------------|-------------------------------------|---|
|     | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 1. Complete application packet  |
|     | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 2. Application fee  |
|     | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 3. 10 complete sets of plans printed and folded   |
|     | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 4. Digital copies (PDF) of the completed application, plans, and legal description  |
| N/A | <input type="checkbox"/>            | <input type="checkbox"/>            | 5. 1 copy of existing covenants and restrictions applicable to the development, if any (reference book and page).   |
| N/A | <input type="checkbox"/>            | <input type="checkbox"/>            | 6. Letter of intent as to whether a Homeowners Association will be created and if any covenants and restrictions are proposed by the subdivider, if not submitted with the Preliminary Plat. Covenants and restrictions, as well as evidence of the establishment of the agency for the ownership and maintenance of any common space, shall be submitted to the City for review and approval prior to recording of the plat. |
| N/A | <input type="checkbox"/>            | <input type="checkbox"/>            | 7. Final Floodplain modeling using HEC-RAS model provided by the City if encroachment is proposed within a FEMA or Shaded Zone X 100-year floodplain. (Contact City Engineer to obtain model and requirements).   |
|     | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 8. Final Stormwater Management Plan (2 printed and 1 digital copy)  |
|     | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 9. Final Traffic Impact Study (TIS) as required by the Access Management Code. (2 printed and 1 digital copy)   |
| N/A | <input type="checkbox"/>            | <input type="checkbox"/>            | 10. Development Agreement, if required  |
|     | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 11. Street tree plan  |

### FINAL PLAT DOCUMENT REQUIREMENTS

- |  |                                     |                          |   |
|--|-------------------------------------|--------------------------|---|
|  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 1. Name of subdivision (unique and numerically consistent and the words "FINAL PLAT," prominently displayed as the title.)  |
|  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 2. Names, addresses, and phone numbers of all companies, firms, or individuals involved in the preparation of the plat (i.e. property owner, engineer, surveyor, etc.).   |
|  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 3. Date of preparation and/or revisions.  |
|  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 4. Vicinity map (drawn at a scale of 1"=2,000', locating the proposed subdivision in relation to the section of land, including township and range, section street names, and a north arrow.)                           |
|  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 5. A legal boundary description with angular bearings and linear distances, referenced to section or quarter-section corners, Point of Commencing and/or Point of Beginning, and the overall area of the plat in acres. |

- | Yes                                 | No                       |   |
|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 6. <b>Provide the following sentence after the Legal Description</b> "The undersigned proprietors of the above described tract of land have caused the same to be subdivided in the accompanying plat, which subdivision and plat shall hereafter be known as "Plat Name".  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 7. <b>Location of monuments</b> , shown in reference to existing official monuments or the nearest established ¼ section corner, including the bearings and distances to such reference points or monuments.  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 8. <b>Boundary lines</b> of the subdivision shall be enclosed with one continuous bold line, showing approximate dimensions (bearings and distances).   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 9. <b>Accurate dimensions for all lines, angles, and curves</b> , used to describe boundaries, streets, easements and areas to be reserved for public use. Data for all curves shall include radius, arc length, chord length, and central angle.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 10. <b>Platted and unplatted land</b> adjacent to the plat boundary. Include identification of adjacent platted subdivisions and unplatted tracts with external bearings and distances of adjacent plats and property owners for a distance of not less than 400 feet. Include original plat names if replatted. Exterior dimensions shall coincide with adjoining plats unless differences are noted |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 11. <b>Blocks, lots and tracts</b> identified clearly, with blocks numbered or lettered boldly and clearly in the center of the block, and lot dimensions with bearings and distances, and area in square feet.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 12. <b>Note on plat</b> indicating intended ownership, purpose, and maintenance responsibilities for any parcels labeled as tracts.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 13. <b>Existing and proposed easements</b> with dimensions. Existing easements shall be labeled with book and page number.  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 14. <b>Any area within a federally designated floodplain</b> . Location, stations, and elevations of the 100-year floodplain within the plat and 100-year elevations at rear lot corners adjacent to FEMA and Shaded Zone X floodplains. The source of the floodplain information shall be clearly labeled (example: FIRM, Map #20091C0041D, September 27, 1991).                                     |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 15. <b>Stream corridor boundary</b> and dimensions.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 16. <b>Proposed street right-of-way with dimensions</b> which conform to the applicable minimum design standards set forth in the Land Development Code and Technical Specifications.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 17. <b>Endorsement of the Planning Commission</b> as evidenced by the signature of its Chairperson. Endorsement line shall contain the printed name of the Chairperson and their title.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 18. <b>Acceptance of Dedication by the Governing Body</b> , as indicated by the signature of the Mayor and attested by the City Clerk. The Endorsement Line shall contain the printed name and title of the person signing.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 19. <b>Signature of Owner</b> , properly attested.  |

- | Yes                                 | No                                  |   |
|-------------------------------------|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 20. <b>A dated signature and seal of the licensed Land Surveyor responsible for the survey and a note stating:</b> "This survey conforms to the Kansas Minimum Standards for Boundary Surveys."   |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 21. <b>Copies of all pertinent exception documents</b> , or a copy of a current American Land Title Association (ALTA) survey, or both.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 22. <b>Calculation documents</b> containing the following data: coordinates of the plat boundary and the unadjusted error of closure of the field traverse that established the plat.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 23. <b>A statement on the plat concerning prior easement rights</b> as follows: The undersigned proprietor of said property shown on this plat does hereby dedicate for public use and public ways and thoroughfares, all parcels and parts of land indicated on said plat as streets, terraces, places, roads, drives, lanes, parkways, avenues and alleys not heretofore dedicated. Where prior easement rights have been granted to any person, utility or corporation on said parts of the land so dedicated, and any pipes, lines, poles and wires, conduits, ducts or cables heretofore installed thereupon and therein are required to be relocated, in accordance with proposed improvements as now set forth, the undersigned proprietor hereby absolves and agrees to indemnify the City from any expense incident to the relocation of any such existing utility installations within said prior easement. |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 24. <b>A statement on the plat concerning utility easements</b> as follows: An easement or license to enter upon, locate, construct, use and maintain or authorize the location, construction or maintenance and use of conduits, water, gas, sewer pipes, poles, wires, drainage facilities, irrigation systems, ducts and cables, and similar facilities, upon, over and under these areas outlined and designated on this plat as "Utility Easement" or "U/E" is hereby granted to the City with subordinate use of the same by other governmental entities and public utilities as may be authorized by state law to use such easement for said purposes. Utility easements shall be kept clear of obstructions that impair the strength or interfere with the use and/or maintenance of public utilities located within the easement.  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 25. <b>A statement on the plat concerning drainage easements</b> as follows: An easement or license to enter upon, locate, construct, use and maintain or authorize the location, construction, maintenance or use of conduits, surface drainage facilities, subsurface drainage facilities, and similar facilities, upon, over and through those areas outlined and designated on this plat as "Drainage Easement" or "D/E" is hereby granted to the City. Drainage easements shall be kept clear of obstructions that impair the strength or interfere with the use and/or maintenance of storm drainage facilities.  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 26. <b>Certification of dedication of all streets, highways and other rights-of-way or parcels for public park or other public use</b> , signed by the owners and all other parties who have a mortgage or lien interest in the property.   |

Written explanations for any items not checked or checked "No" (attach additional sheets, if necessary):

8. IN PROGRESS WILL BE PROVIDED LATER. 9. PROJECT SHOULD NOT  
ADVERSELY AFFECT TRAFFIC. ALL STREET TREE PLAN IS IN PROGRESS.  
21. WILL BE PROVIDED LATER

I hereby submit all information required for final plat review. I understand that failure to provide the required information may result in a postponement of my request for review until all information has been submitted. By signing this application, I acknowledge that all public streets and public infrastructure within the plat shall conform to the applicable minimum design standards set forth in the Gardner Municipal Code and the Technical Specifications.

  
Signature of Applicant

3-9-17  
Date

**OWNER AFFIDAVIT**

I/WE Quail Meadows LLC, hereby referred to as the "Undersigned", being of lawful age, do hereby on this 9 day of March, 2017, make the following statements to wit:

1. I/We the Undersigned, on the date first above written, am/are the lawful owner(s) in fee simple absolute of the following described real property:

See "Exhibit A, Legal Description" attached hereto and incorporated herein by reference.

2. I/We the undersigned, have previously authorized and hereby authorize Alfordland-Drew & Assoc., Inc. (Herein referred to as "Applicant"), to act on my/our behalf for the purpose of making application with the City of Gardner, regarding Quail Meadows II (common address), the subject property, or portion thereof. Such authorization includes, but is not limited to, all acts or things whatsoever necessarily required of Applicant in the application process. I/We further attest that I/We agree to be legally bound by the application made on our behalf by applicant and the resultant action upon such application by the City of Gardner.
3. It is understood that in the event the Undersigned is a corporation or partnership then the individual whose signature appears below for and on behalf of the corporation or partnership has in fact the authority to so bind the corporation or partnership to the terms and statements contained within this instrument.

IN WITNESS THEREOF, I, the Undersigned, have set my hand and seal below.

[Signature]  
Owner

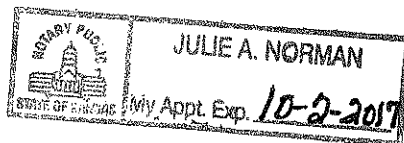
\_\_\_\_\_  
Owner

STATE OF Kansas  
COUNTY OF Johnson

The foregoing instrument was acknowledged before me on this 9<sup>th</sup> day of March 2017, by Jim Spielbusch.

My Commission Expires:

[Signature]  
Notary Public



## **Quail Meadows II Final Plat Description**

Commencing at the Northwest corner of the Northeast Quarter of said Section 22, thence South 0 degrees 35 minutes 32 seconds East, a distance of 630.69 feet, along the West line of said Northeast Quarter, to the Point of Beginning; thence North 89 degrees 24 minutes 28 seconds East, along the South line of Lot 45, Quail Meadows, a subdivision in the City of Gardner, Johnson County, Kansas, a distance of 99.11 feet; thence South 69 degrees 32 minutes 54 seconds East, along the South lines of Lots 46, 47 and 48 of said Quail Meadows, a distance of 266.93 feet; thence South 81 degrees 56 minutes 10 seconds East, along the South lines of Lots 48, 49, 50, 51 and 52 of said Quail Meadows, a distance of 325.86 feet; thence North 89 degrees 20 minutes 37 seconds East, along the South line of Lot 52, of said Quail Meadows, a distance of 84.49 feet, to a point on the West right-of-way line of Pratt Street; thence North 81 degrees 32 minutes 46 seconds East, a distance of 170.00 feet; thence South 8 degrees 27 minutes 14 seconds East, a distance of 300.00 feet; thence South 81 Degrees 32 minutes 46 seconds West, a distance of 170.00 feet; thence South 8 degrees 27 minutes 14 seconds East, a distance of 2.26 feet; thence North 89 degrees 45 minutes 11 seconds West, a distance of 289.56 feet; thence North 83 degrees 51 minutes 01 seconds West, a distance of 135.07 feet; thence North 80 degrees 58 minutes 57 seconds West, a distance of 377.86 feet, to a point on the West line of the Northeast Quarter of said Section 22; thence North 0 degrees 35 minutes 32 seconds West, along said West line, a distance of 361.05 feet to the point of beginning, containing 7.07 acres more or less.



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**PROJECT NUMBER / TITLE: FP-17-03: Final Plat for Gardner Truck Plaza Fifth Plat**

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**PROCESS INFORMATION**

**Type of Request:** Final Plat  
**Date Received:** March 23, 2017

**APPLICATION INFORMATION**

**Applicant:** Judd Claussen, Phelps Engineering  
**Owner:** Gardner Hospitality LLC  
**Parcel ID:** CP33810000 0T0A and CP33810000 0001  
**Location:** Southeast of the intersection of E. Santa Fe St and S. Cedar Niles Rd., adjacent to I-35.

**REQUESTED ACTION**

The applicant requests approval of the final plat for Gardner Truck Plaza Fifth Plat.

**EXISTING ZONING AND LAND USE**

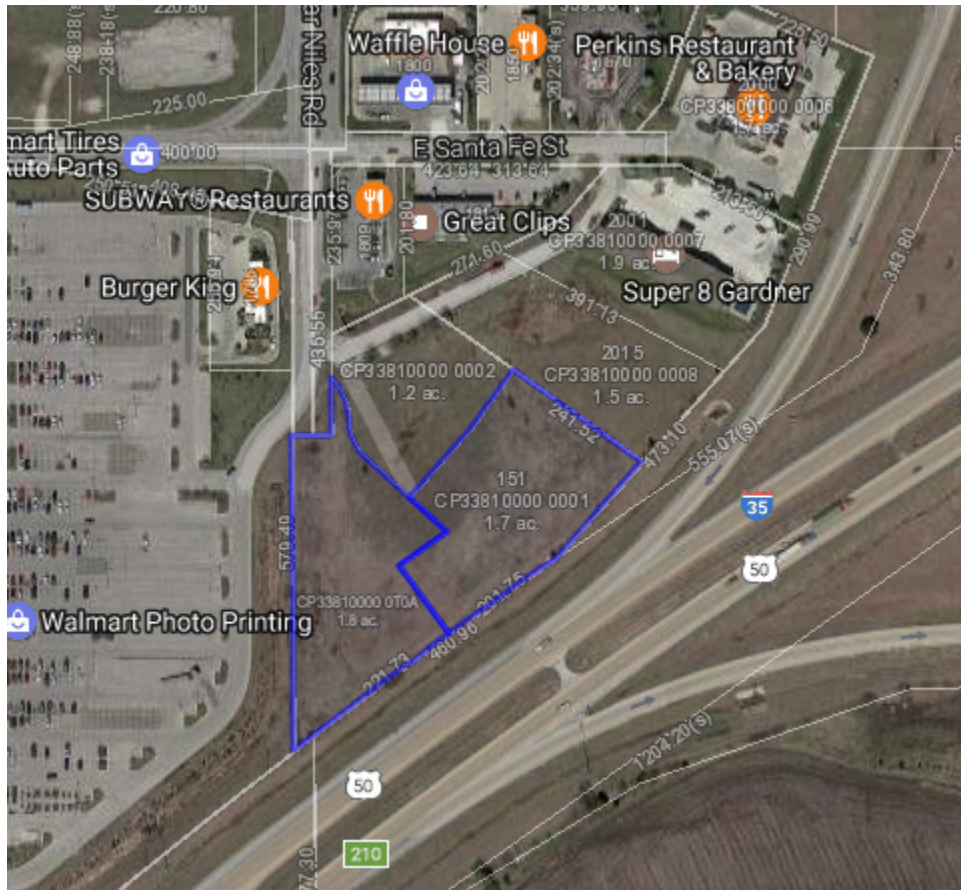
The properties are currently zoned C-3 Heavy Commercial District and undeveloped.

**SURROUNDING ZONING AND LAND USE**

<b>Zoning</b>	<b>Use(s)</b>
<b>North of subject property</b>	
C-3 Heavy Commercial District	Retail uses
<b>East of subject property</b>	
C-3 District	Undeveloped
<b>South of subject property</b>	
	I-35 right-of-way
PEC3 Planned Light Industrial Park District (County Zoning)	Crop agriculture
<b>West of subject property</b>	
CP-2 Planned General Business District	Retail uses

**EXISTING CONDITIONS**

The properties are currently undeveloped. The site once contained a sales lot and office for mobile homes. The western lot contains some floodplain and an existing gas main. The western property (Tract A) is located within the Airport Overlay District boundaries and the western portion is located within the 1,000' buffer of the centerline of the north/south runway at New Century AirCenter. This requires review by the Johnson County Airport Commission and Johnson County Board of County Commissioners.



### **BACKGROUND / HISTORY**

Subject parcels were annexed into the City in 1991 and rezoned to C-3 District in 2004. The current plat, was recorded in 2008 as Gardner Truck Plaza Fourth Plat. The parcels are Lot 1 and Tract A of the Gardner Truck Plaza Fourth Plat.

### **STAFF ANALYSIS - FINAL PLAT**

#### **17.03.020 (E1) Review Criteria:**

- a. The layout and design of the final plat is in substantial compliance with the approved preliminary plat considering the number of lots or parcels; the block layout, street designs and access; the open space systems and civic design elements; the infrastructure systems; or other elements of coordinated developments.

**Staff Comment:** *The final plat is in substantial compliance with the approved preliminary plat. The lot configuration and number are the same as is the boundaries. The easements are better defined based on the approval of the site plan. The plat meets this criteria.*

- b. The construction plans for any utilities, infrastructure or public facilities meet all technical specifications.

**Staff Comment:** *Public improvement plans have not been submitted for review. This will be a condition of approval for the plat that the plans shall be approved prior to the release of the plat for recording.*

c. The phasing and timing of public improvements ensures construction and performance guarantees.

**Staff Comment:** *Public improvements will be constructed upon final plat approval and said plat being recorded. The applicant/developer will be required to submit a Performance and Maintenance Bond to the City when they pick up their Public Improvement Permit.*

d. Any deviations in the final plat from the preliminary plat brings the application in further compliance with the Comprehensive Plan and the purposes and intent of this Code.

**Staff Comment:** *No deviations from the preliminary plat are proposed.*

e. The recommendations of professional staff, or any other public entity asked to officially review the plat.

**Staff Comment:** *Typically with the review of a final plat, a street tree plan is submitted. This property has already compiled the site plan review process where street trees were approved as part of the required landscaping. Because of this, staff did not require another street tree plan but will add the condition that the street trees be installed based on the approved site plan.*

*Staff recommends approval of the final plat with conditions that the public improvement plans are submitted and approved prior to the release of the plat for recording and that the street trees be planted based on approved site plan SP-16-05.*

### **EXCISE TAX**

The subject properties qualify for an exception from the levying of excise tax base on Section 17.04.060.D.2. Any replat of previously platted land area which was approved by the City and recorded prior to January 5, 2000, and where the replat does not increase the density or intensity of the approved land uses. No payment of excise tax is required with this plat.

### **ATTACHMENTS**

- I. Plat document
- II. Application

### **RECOMMENDATION**

Staff recommends approval of the final plat for Gardner Truck Plaza Fifth Plat with conditions outline below and recommends forwarding a recommendation to the Governing Body that they accept the dedication of right-of-way and easements.

### **Recommended Motion:**

After review of Application FP-17-03, a final plat for 151 S. Cedar Niles Rd, and final plat dated April 7, 2017, and staff report dated April 25, 2017, the Planning Commission approves the application provided the following conditions are met:

- a. Construction plans for utilities, infrastructure and public facilities shall be submitted to the City for review and approval prior to the release of the final plat.
- b. Street trees shall be planted based on the approved site plan SP-16-05.

and recommends the Governing Body approve the application/accept dedication of right-of-way and easements.

# GARDNER TRUCK PLAZA FIFTH PLAT

RESURVEY AND REPLAT OF LOT 1 AND TRACT A, GARDNER TRUCK PLAZA FOURTH PLAT, A SUBDIVISION OF LAND IN THE NORTHWEST QUARTER SECTION 29 AND NORTHEAST QUARTER OF SECTION 30 ALL IN TOWNSHIP 14 SOUTH, RANGE 23 EAST, IN THE CITY OF GARDNER, JOHNSON COUNTY, KANSAS

**LEGAL DESCRIPTION**  
Resurvey and replat of Lot 1 and Tract A, GARDNER TRUCK PLAZA FOURTH PLAT, a platted subdivision of land in the City of Gardner, Johnson County, Kansas, containing 3.4625 acres, more or less, of replatted land.

The undersigned proprietors of the above described tract of land have caused the same to be subdivided in the manner shown on the accompanying plat, which subdivision and plat shall hereafter be known as "GARDNER TRUCK PLAZA FIFTH PLAT".

**DEDICATION**  
The undersigned proprietors of said property shown on this plat do hereby dedicate for public use and public ways and thoroughfares, all parcels and parts of land indicated on said plat as streets, terraces, places, roads, drives, avenues, lanes and alleys not heretofore dedicated. Where prior easement rights have been granted to any person, utility or corporation on said parts of land so dedicated, and any pipes and wires, conduits, ducts or cables heretofore installed proposed improvements as now set forth, the undersigned proprietors hereby absolve and agree to indemnify the City of Gardner from any expense incident to the relocation of any such existing utility installations within said prior easement.

An easement or license to enter upon, locate, construct, use and maintain or authorize the location, construction or maintenance and use of conduits, water, gas, sewer pipes, poles, wires, drainage facilities, irrigation systems, ducts, cables and similar facilities, upon, over and under these areas outlined and designated on this plat as "Utility Easement" or "U/E", "Sanitary Sewer Easement" or "S/E", are for sanitary sewer facilities only, "Waterline Easement" or "W/E" is for waterline facilities only is hereby granted to the City with subordinate use of the same by other governmental entities and public utilities as may be authorized by state law to use such easement for said purposes. Utility easements shall be kept clear of obstructions that impair the strength or interfere with the use and/or maintenance of public utilities located within the easement.

An easement or license is hereby granted and reserved by the undersigned and proprietor of the above described land unto itself and developer and/or the homes association and/or adjacent property owner to enter upon, for the purpose of ingress-egress of the stated parties and patrons by the undersigned proprietor and the developer and/or business association and/or adjacent property owner upon, over or under those areas outlined and designed on this plat as "Access Easement" or "A/E".

**CONSENT TO LEVY**  
The undersigned proprietors of the above described land hereby consent and agree that the Board of County Commissioners of Johnson County, Kansas, shall have the power to release such land proposed to be dedicated for public ways and thoroughfares, or parts thereof, for public use, from the lien and effect of any special assessments, and that the amount of the unpaid special assessments on such land dedicated shall become and remain a lien on the remainder of this land fronting or abutting on such dedicated public ways or thoroughfares.

**EXECUTION**  
IN TESTIMONY WHEREOF, Gardner Hospitality LLC, a Kansas Limited Liability Company, has caused this instrument to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

by: Deepak Parmar, Member

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS:

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Deepak Parmar, Member of Gardner Hospitality LLC, a Kansas Limited Liability Company, who is personally known to me to be the same person who executed, as such officer, the within instrument of writing on behalf of said company, and such person duly acknowledges the execution of the same to be the act and deed of the same said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public \_\_\_\_\_ My Appointment expires: \_\_\_\_\_

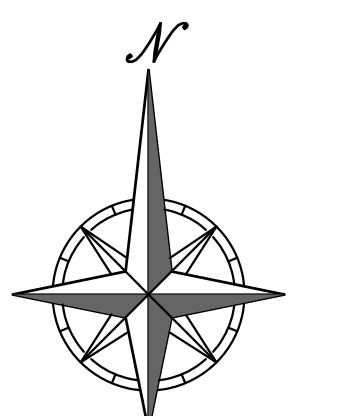
Print Name \_\_\_\_\_

APPROVED BY: the Planning Commission of the City of Gardner, Johnson County, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Chairman: Adrianna Meder

APPROVED BY: the Governing Body of the City of Gardner, Johnson County, Kansas, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

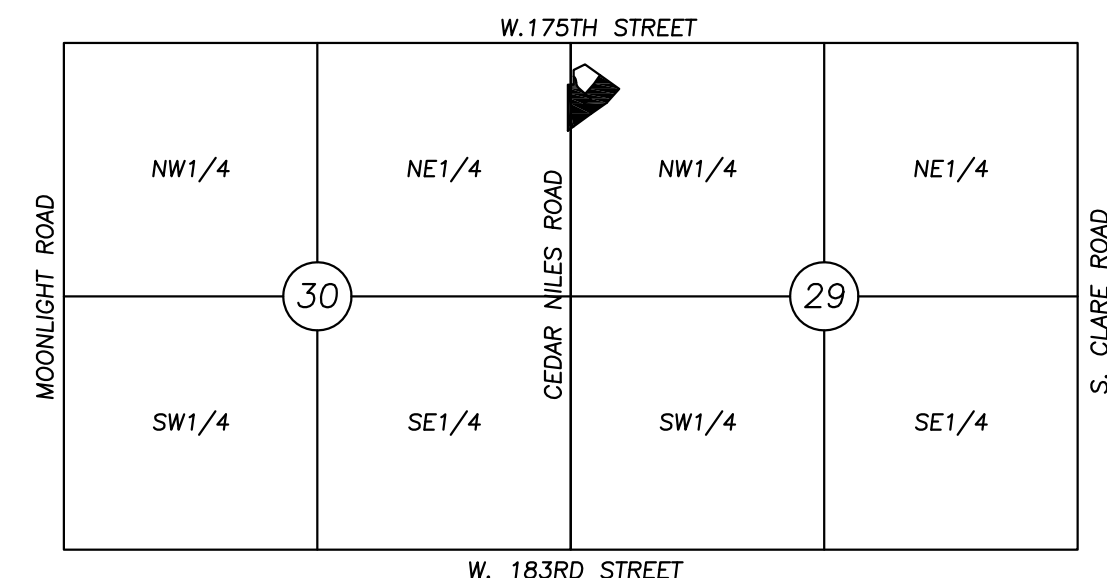
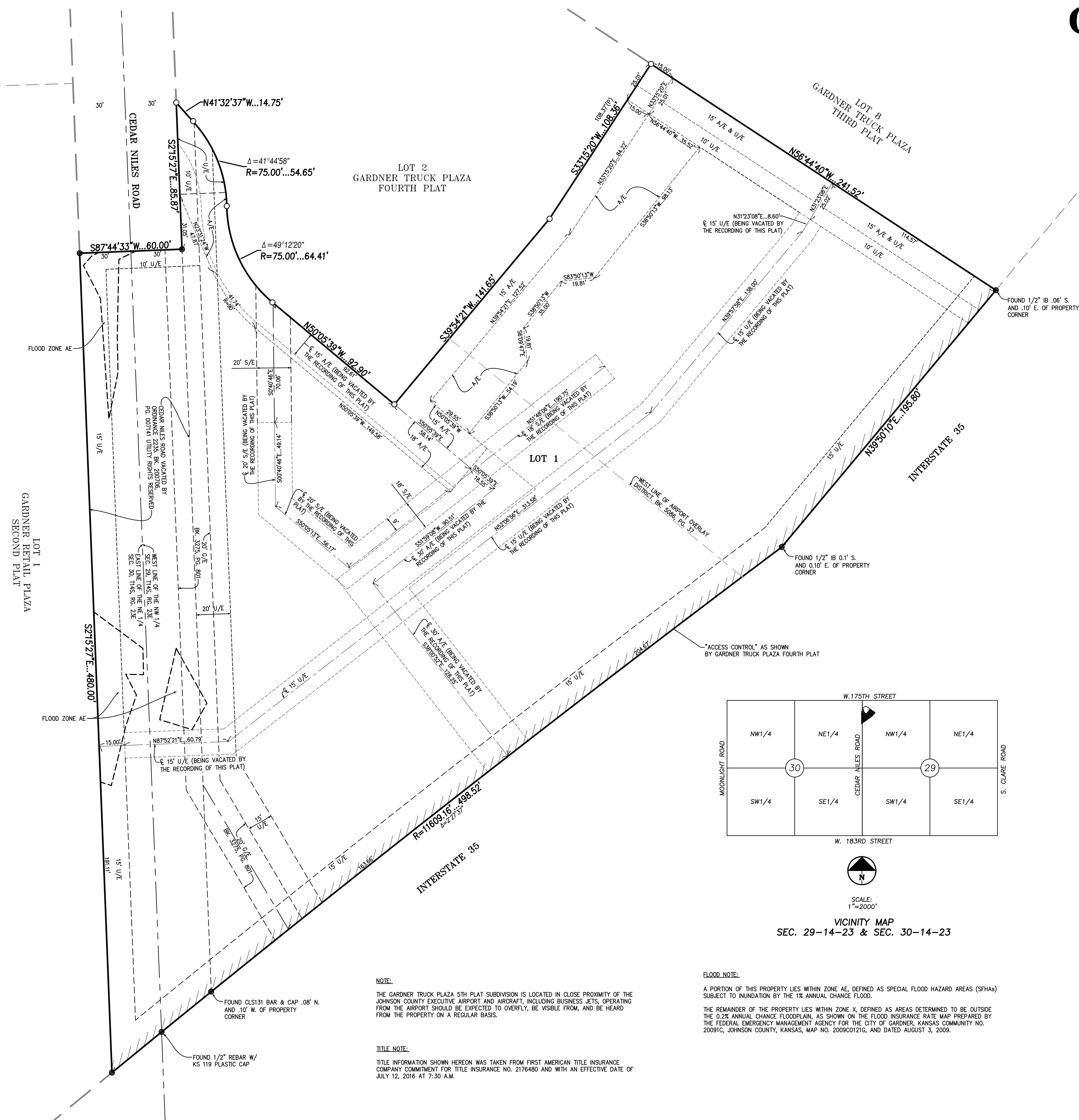
Mayor: Chris Morrow Attest \_\_\_\_\_  
City Clerk:



SCALE: 1"=30'  
BEARING BASIS: RECORDED PLAT OF "GARDNER TRUCK PLAZA FOURTH PLAT"

- LEGEND**
- DENOTES SET 1/2"x24" REBAR W/PHELPS CORP. CLS-82 PLASTIC CAP IN CONCRETE
- DENOTES FOUND 1/2" REBAR W/ PG KS CLS 131 PLASTIC CAP IN CONCRETE, UNLESS OTHERWISE NOTED
- U/E DENOTES UTILITY EASEMENT
- S/E DENOTES SANITARY SEWER EASEMENT
- A/E DENOTES ACCESS EASEMENT
- G/E DENOTES EXISTING GAS EASEMENT

LOT AREAS		
PARCEL	AREA (S.F.)	AREA (AC.)
PLAT--LOT 1	150826.73	3.4625



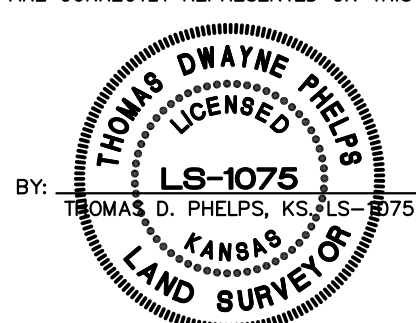
VICINITY MAP  
SEC. 29-14-23 & SEC. 30-14-23

**NOTE:**  
THE GARDNER TRUCK PLAZA 5TH PLAT SUBDIVISION IS LOCATED IN CLOSE PROXIMITY TO THE JOHNSON COUNTY EXECUTIVE AIRPORT AND AIRCRAFT, INCLUDING BUSINESS JETS, OPERATING FROM THE AIRPORT SHOULD BE EXPECTED TO OVERFLY, BE VISIBLE FROM, AND BE HEARD FROM THE PROPERTY ON A REGULAR BASIS.

**TITLE NOTE:**  
TITLE INFORMATION SHOWN HEREON WAS TAKEN FROM FIRST AMERICAN TITLE INSURANCE COMPANY COMMITMENT FOR TITLE INSURANCE NO. 2176480 AND WITH AN EFFECTIVE DATE OF JULY 12, 2016 AT 7:30 A.M.

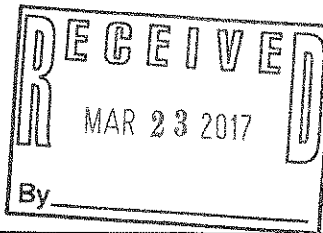
**FLOOD NOTE:**  
A PORTION OF THIS PROPERTY LIES WITHIN ZONE AE, DEFINED AS SPECIAL FLOOD HAZARD AREAS (SFHAs) SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD.  
THE REMAINDER OF THE PROPERTY LIES WITHIN ZONE X, DEFINED AS AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN, AS SHOWN ON THE FLOOD INSURANCE RATE MAP PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY FOR THE CITY OF GARDNER, KANSAS COMMUNITY NO. 20091C, JOHNSON COUNTY, KANSAS, MAP NO. 200900121G, AND DATED AUGUST 3, 2009.

I, THOMAS D. PHELPS, HEREBY CERTIFY THAT IN MARCH 2017, I OR SOMEONE UNDER MY DIRECT SUPERVISION HAVE MADE A SURVEY OF THE ABOVE DESCRIBED TRACT OF LAND AND THE RESULTS OF SAID SURVEY ARE CORRECTLY REPRESENTED ON THIS PLAT.



CERTIFICATE OF AUTHORIZATION  
KANSAS  
LAND SURVEYING - LS-82  
ENGINEERING - E-391  
CERTIFICATE OF AUTHORIZATION  
MISSOURI  
LAND SURVEYING-2007001128  
ENGINEERING-2007009068

**PEI** PLANNING ENGINEERING IMPLEMENTATION  
PHELPS ENGINEERING, INC.  
1270 N. Winchester  
Olathe, Kansas 66061  
(913) 393-1155  
Fax (913) 393-1166



Business & Economic Development  
 Planning Division  
 120 E. Main St. Gardner, KS 66030  
 P: 913.856.0913 | F: 913.856.4562  
 www.gardnerkansas.gov

**FINAL PLAT APPLICATION**

Pre-App Date	_____
App Date	3.23.17
Fee	\$ 157 pd.
File No.	FP-17-03

**OWNER INFORMATION**

Name(s) GARDNER HOSPITALITY, LLC  
 Contact DEEPAK "DAVE" PARMAR  
 Address 4032 S. LYNN CT. DRIVE  
 City Independence State MO Zip 64055  
 Phone 816.914.9888 Email dpermar62@gmail.com

**APPLICANT/AGENT INFORMATION**

Name(s) PHelps ENGINEERING, INC  
 Contact JUDD D. CLAUSSEN, P.E.  
 Address 1270 N. WINCHESTER  
 City OLATHE State KS Zip 66061  
 Phone 913-393-1155 Email jclausson@phelpsengineering.com

**SITE INFORMATION**

Property Address/Location 2025 E. SANTA FE STREET, GARDNER  
 Legal Description (Attach If Necessary) lengthy, see attached.  
 Number of Existing Lots 2 Number of Proposed Lots 1  
 Total Site Area 3.46 Ac. Present Zoning C-3  
 Number of Existing Structures 0 Present Land Use Vacant  
 Proposed Street Design Type(s) & Class N/A  
 Proposed Type(s) Open & Civic Space N/A  
 Proposed Frontage Type(s) Buffer Edge  
 Proposed Building Type(s) General Commercial

**SIGNATURE**

I/We, the undersigned am/are the (owner(s)), duly authorized agent, (Circle One) of the aforementioned property. By execution of my/our signature, I/we do hereby officially apply for final plat as indicated above.

Signature(s): Judd D. Clausson Date 3/23/17  
Agent for owner. Date \_\_\_\_\_

## FINAL PLAT APPLICATION CHECKLIST

### APPLICATION SUBMITTAL REQUIREMENTS

- | Yes                                 | No                                      |   |
|-------------------------------------|---|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/>                | 1. Complete application packet  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>                | 2. Application fee  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>                | 3. 10 complete sets of plans printed and folded   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>                | 4. Digital copies (PDF) of the completed application, plans, and legal description  |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> N/A | 5. 1 copy of existing covenants and restrictions applicable to the development, if any (reference book and page).   |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> N/A | 6. Letter of intent as to whether a Homeowners Association will be created and if any covenants and restrictions are proposed by the subdivider, if not submitted with the Preliminary Plat. Covenants and restrictions, as well as evidence of the establishment of the agency for the ownership and maintenance of any common space, shall be submitted to the City for review and approval prior to recording of the plat. |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> N/A | 7. Final Floodplain modeling using HEC-RAS model provided by the City if encroachment is proposed within a FEMA or Shaded Zone X 100-year floodplain. (Contact City Engineer to obtain model and requirements).   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>                | 8. Final Stormwater Management Plan (2 printed and 1 digital copy) <i>Previously Approved</i>   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>                | 9. Final Traffic Impact Study (TIS) as required by the Access Management Code. (2 printed and 1 digital copy) <i>Previously Approved.</i>   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>                | 10. Development Agreement, if required <i>Previously Approved.</i>  |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> N/A | 11. Street tree plan <i>Landscape plan was approved previously.</i>   |

### FINAL PLAT DOCUMENT REQUIREMENTS

- |                                     |                          |   |
|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 1. Name of subdivision (unique and numerically consistent and the words "FINAL PLAT," prominently displayed as the title.)  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 2. Names, addresses, and phone numbers of all companies, firms, or individuals involved in the preparation of the plat (i.e. property owner, engineer, surveyor, etc.).<br><i>ENGINEER ON PLAT. DEVELOPER ON APPLICATION.</i> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 3. Date of preparation and/or revisions.<br><i>LOWER LEFT CORNER OF PLAT.</i>   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 4. Vicinity map (drawn at a scale of 1"=2,000', locating the proposed subdivision in relation to the section of land, including township and range, section street names, and a north arrow.)                                 |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 5. A legal boundary description with angular bearings and linear distances, referenced to section or quarter-section corners, Point of Commencing and/or Point of Beginning, and the overall area of the plat in acres.       |

- | Yes                                 | No                                  |   |
|-------------------------------------|-------------------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 6. <b>Provide the following sentence after the Legal Description</b> "The undersigned proprietors of the above described tract of land have caused the same to be subdivided in the accompanying plat, which subdivision and plat shall hereafter be known as "Plat Name".  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 7. <b>Location of monuments</b> , shown in reference to existing official monuments or the nearest established ¼ section corner, including the bearings and distances to such reference points or monuments.  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 8. <b>Boundary lines</b> of the subdivision shall be enclosed with one continuous bold line, showing approximate dimensions (bearings and distances).   |
|                                     |                                     | 9. <b>Accurate dimensions for all lines, angles, and curves</b> , used to describe boundaries, streets, easements and areas to be reserved for public use. Data for all curves shall include radius, arc length, chord length, and central angle.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 10. <b>Platted and unplatted land</b> adjacent to the plat boundary. Include identification of adjacent platted subdivisions and unplatted tracts with external bearings and distances of adjacent plats and property owners for a distance of not less than 400 feet. Include original plat names if replatted. Exterior dimensions shall coincide with adjoining plats unless differences are noted |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 11. <b>Blocks, lots and tracts</b> identified clearly, with blocks numbered or lettered boldly and clearly in the center of the block, and lot dimensions with bearings and distances, and area in square feet.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 12. <b>Note on plat</b> indicating intended ownership, purpose, and maintenance responsibilities for any parcels labeled as tracts. <i>(NO TRACTS)</i>  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 13. <b>Existing and proposed easements</b> with dimensions. Existing easements shall be labeled with book and page number. <i>N/A.</i>  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 14. <b>Any area within a federally designated floodplain</b> . Location, stations, and elevations of the 100-year floodplain within the plat and 100-year elevations at rear lot corners adjacent to FEMA and Shaded Zone X floodplains. The source of the floodplain information shall be clearly labeled (example: FIRM, Map #20091C0041D, September 27, 1991).                                     |
| <input type="checkbox"/>            | <input checked="" type="checkbox"/> | 15. <b>Stream corridor boundary</b> and dimensions. <i>N/A.</i>   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 16. <b>Proposed street right-of-way with dimensions</b> which conform to the applicable minimum design standards set forth in the Land Development Code and Technical Specifications.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 17. <b>Endorsement of the Planning Commission</b> as evidenced by the signature of its Chairperson. Endorsement line shall contain the printed name of the Chairperson and their title.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 18. <b>Acceptance of Dedication by the Governing Body</b> , as indicated by the signature of the Mayor and attested by the City Clerk. The Endorsement Line shall contain the printed name and title of the person signing.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/>            | 19. <b>Signature of Owner</b> , properly attested.  |

- | Yes                                 | No                       |   |
|-------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 20. <b>A dated signature and seal of the licensed Land Surveyor responsible for the survey and a note</b> stating: "This survey conforms to the Kansas Minimum Standards for Boundary Surveys."   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 21. <b>Copies of all pertinent exception documents</b> , or a copy of a current American Land Title Association (ALTA) survey, or both.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 22. <b>Calculation documents</b> containing the following data: coordinates of the plat boundary and the unadjusted error of closure of the field traverse that established the plat.   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 23. <b>A statement on the plat concerning prior easement rights</b> as follows: The undersigned proprietor of said property shown on this plat does hereby dedicate for public use and public ways and thoroughfares, all parcels and parts of land indicated on said plat as streets, terraces, places, roads, drives, lanes, parkways, avenues and alleys not heretofore dedicated. Where prior easement rights have been granted to any person, utility or corporation on said parts of the land so dedicated, and any pipes, lines, poles and wires, conduits, ducts or cables heretofore installed thereupon and therein are required to be relocated, in accordance with proposed improvements as now set forth, the undersigned proprietor hereby absolves and agrees to indemnify the City from any expense incident to the relocation of any such existing utility installations within said prior easement. |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 24. <b>A statement on the plat concerning utility easements</b> as follows: An easement or license to enter upon, locate, construct, use and maintain or authorize the location, construction or maintenance and use of conduits, water, gas, sewer pipes, poles, wires, drainage facilities, irrigation systems, ducts and cables, and similar facilities, upon, over and under these areas outlined and designated on this plat as "Utility Easement" or "U/E" is hereby granted to the City with subordinate use of the same by other governmental entities and public utilities as may be authorized by state law to use such easement for said purposes. Utility easements shall be kept clear of obstructions that impair the strength or interfere with the use and/or maintenance of public utilities located within the easement.  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 25. <b>A statement on the plat concerning drainage easements</b> as follows: An easement or license to enter upon, locate, construct, use and maintain or authorize the location, construction, maintenance or use of conduits, surface drainage facilities, subsurface drainage facilities, and similar facilities, upon, over and through those areas outlined and designated on this plat as "Drainage Easement" or "D/E" is hereby granted to the City. Drainage easements shall be kept clear of obstructions that impair the strength or interfere with the use and/or maintenance of storm drainage facilities.  |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | 26. <b>Certification of dedication of all streets, highways and other rights-of-way or parcels for public park or other public use</b> , signed by the owners and all other parties who have a mortgage or lien interest in the property.   |





**Written explanations** for any items not checked or checked "No" (attach additional sheets, if necessary):

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I hereby submit all information required for final plat review. I understand that failure to provide the required information may result in a postponement of my request for review until all information has been submitted. By signing this application, I acknowledge that all public streets and public infrastructure within the plat shall conform to the applicable minimum design standards set forth in the Gardner Municipal Code and the Technical Specifications.

Signature of Applicant

3/22/2017

Date

**OWNER AFFIDAVIT**

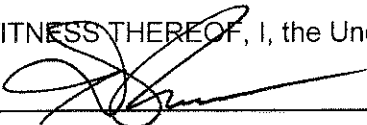
I/WE Gardner Hospitality, LLC, (Deepak "Dave" Parmar), hereby referred to as the "Undersigned", being of lawful age, do hereby on this 23 day of MARCH, 2017, make the following statements to wit:

1. I/We the Undersigned, on the date first above written, am/are the lawful owner(s) in fee simple absolute of the following described real property:

See "Exhibit A, Legal Description" attached hereto and incorporated herein by reference.

2. I/We the undersigned, have previously authorized and hereby authorize Phelps Engineering, Inc. (Herein referred to as "Applicant"), to act on my/our behalf for the purpose of making application with the City of Gardner, regarding final plat application for 2025 E Santa Fe Drive (Hampton Inn) (common address), the subject property, or portion thereof. Such authorization includes, but is not limited to, all acts or things whatsoever necessarily required of Applicant in the application process. I/We further attest that I/We agree to be legally bound by the application made on our behalf by applicant and the resultant action upon such application by the City of Gardner.
3. It is understood that in the event the Undersigned is a corporation or partnership then the individual whose signature appears below for and on behalf of the corporation or partnership has in fact the authority to so bind the corporation or partnership to the terms and statements contained within this instrument.

IN WITNESS THEREOF, I, the Undersigned, have set my hand and seal below.

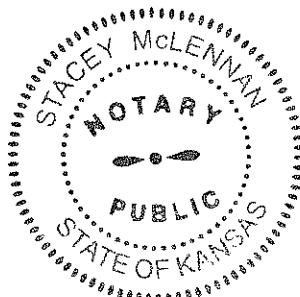
  
\_\_\_\_\_  
Owner

\_\_\_\_\_  
Owner

STATE OF Kansas  
COUNTY OF Johnson

The foregoing instrument was acknowledged before me on this 23rd day of March, 2017, by Deepak "Dave" Parmar.

My Commission Expires:  
5-16-2017



  
\_\_\_\_\_  
Notary Public

Description:

Resurvey & Replat of All of Lot 1 and All of Tract A, GARDNER TRUCK PLAZA FOURTH PLAT, a subdivision of land in the Northwest Quarter Section 29, Township 14 South , Range 23 East in the City of Gardner, Johnson County, Kansas, containing 3.463 acres, more or less.

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**PROJECT NUMBER / TITLE:** Consider proposed text amendments to the Gardner Land Development Code pertaining to Communications Facilities for Wireless Services

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**REQUESTED ACTION**

Hold a public hearing and recommend proposed text amendment TA-16-15 to the Gardner Land Development Code to the Governing Body for approval. (TA-16-10 and TA-16-13 deferred)

**BACKGROUND / HISTORY**

The Gardner Land Development Code (LDC) was adopted on June 20, 2016, and became effective on August 1, 2016. The Planning Commission agreed to support the initiation of Code amendments as summarized in the October 25, 2016 and December 20, 2016 staff reports.

On November 15, 2016, eight proposed amendments (TA-16-01 through TA-16-08) were presented, and seven (all but TA-16-02) were recommended for action. On December 5, 2016, the Governing Body approved all those recommended amendments, with a slight change in wording to the amendment dealing with the submission of color palettes for detached houses and duplexes. These amendments are now in effect.

On December 20, 2016, the Commission recommended approval of amendment TA-16-02 (pertaining to final plat approval) as written, and approval of amendment TA-16-11 (pertaining to approval of home occupations) with one change. The Commission voted to recommend denial of proposed text amendment TA-16-12 pertaining to the prohibition of massage businesses as home occupations. On February 28, 2017, the Commission recommended approval of amendment TA-16-09 pertaining to Accessory Buildings.

At the March 28, 2017 meeting, the Planning Commission held a public hearing and recommended approval of amendment TA-16-14 (pertaining to Food and Beverage – Mobile and Temporary uses) with one recommended change to Section 17.05.050 (Z.4). The Commission was also introduced to proposed amendment TA-16-15 regarding the permitting of wireless communications facilities as necessitated by State regulatory changes, and agreed to initiate such text amendment as summarized in the March 28, 2017 staff report.

At this meeting, the Planning Commission will hold a public hearing and consider a recommendation for TA-16-15.

All recommended amendments will be included in a consolidated presentation to the Governing Body at the soonest possible date.

**STAFF ANALYSIS AND RECOMMENDATIONS FOR REGULATORY CHANGE**

- a. **TA-16-15: LDC amendments pertaining to Communication Facilities for Wireless Services**

The following are reasons for the consideration of this text amendment:

1. To address the necessary revisions in light of the Kansas New Wireless Deployment Act (aka the Wireless Siting Act) which is K.S.A. 66-2019.
2. To address the necessary revisions in light of the federal regulations, including FCC regulations, contained within 47 C.F.R. 1.40001.

The City will also adopt amendments to the right-of-way ordinance as many of the new small cell communications facilities are located in the right-of-way and thus under Public Works jurisdiction.

Staff has worked closely with the City Attorney to draft the proposed amendment to multiple sections of the *Land Development Code*.

Following are comments and highlights pertaining to particular revisions as summarized in Attachment I.

1. Section 17.03.010, Subsections (D), (G), (H), (I) – reference to specific process, decision, appeal, and timeframe requirements of Chapter 17.11 pertaining to communication facilities for wireless services.
2. Section 17.03.050 (C) – clarification of the statutory requirement that approvals for communications facilities for wireless services are mandated for a longer timeframe than other conditional uses per the LDC.
3. Sections 17.03.060 and 17.03.070 – insertion of additional items with the applicability statements for Site Plan and Design Review and Administrative Site Plan processes to address the review and approval of particular types of communications facilities for wireless services. The current regulations really do not address these types of modifications or additions to existing facilities (addresses only new towers).

Per the amendment, there are three possible processes related to the review and approval of communications facilities for wireless services including:

- **Conditional Use Permit** process for new towers as indicated in Table 5-2: Use Table (consistent with current practices).
- **Site Plan and Design Review** process for modifications to existing facilities that qualify as a substantial change, or new installations on existing buildings and other installations that don't qualify as eligible facilities requests.
- **Administrative Site Plan** process for modifications to existing facilities that are not a substantial change or qualify as eligible facilities requests, or new antenna on existing facilities that do not represent a substantial change. The public works department will handle the permitting of facilities within the public right-of-way.

See the new Chapter 17.11 for the definitions of “substantial change” and “eligible facilities request”.

4. Section 17.03.070 (A), last paragraph – additional clarification because there are statutory limitations on the authority of the Director to modify processes, mostly related to mandatory timeframes.

5. Section 17.03.100 (A) – clarification of the statutory requirement for a different timeframe for appeals that what is contained in the LDC.
6. Section 17.05.010 (C) – reference to development type standards for communications facilities for wireless services.
7. Section 17.05.030 (A) – reference to specific use standards for communications facilities for wireless services.
8. Addition of new categories of communications facilities in the use table. Note that these facilities are permitted subject to additional standards as follows (currently there is only one category which equates to a new tower, permitted as a Conditional Use in all districts):
  - Small cell/DAS antenna systems in the public right-of-way are permitted in all districts.
  - Communications facilities designed as an architecturally compatible element mounted or collocated on non-residential buildings are permitted as accessory uses in all districts.
  - Communications facilities designed as an architecturally compatible element mounted or collocated on mixed use or live/work buildings are permitted as accessory uses in the R-4, R-5, C-O, CO-A, and C-1 districts (these are the districts where these mixed uses are permitted).
  - New towers are permitted as conditional uses in all districts.
9. Section 17.05.030 (B) – revised general description for communication facilities for wireless services, including a reference to specific standards.
10. Sections 17.05.040 and 17.05.050 – reference to specific standards for communication facilities for wireless services in Chapter 17.11. Also the removal of former standards out of Section 17.05.050 to be contained in Chapter 17.11, which is dedicated exclusively to communications facilities for wireless services. And finally, the renumbering of items to reflect this deletion.
11. Section 17.07.010 (B) – clarification that the building standards to not apply to communication facilities for wireless services.
12. Section 17.11.020 – new definitions pertaining to communications facilities for wireless services. We considered adding them to Chapter 2 definitions, but decided it would be more convenient for applicants to include them with the applicable standards. Sign types are also described within their own chapter, so this is a similar approach. We have attempted to maintain the approach of the LDC to define only terms of art without a common dictionary meaning, however, we also wish to maintain a consistent approach with other nearby jurisdictions. It is also important to match statutory definitions. Please particularly review the following definitions:
  - Modification or Modify
  - Replacement
  - Stealth or Stealth Technology
  - Substantial Change

13. Section 17.11.030 – specific policy statements pertaining to regulations for communication facilities for wireless services.
14. Section 17.11.040 – contains specific review and approval procedures per statute.
  - Subsection (A) contains the statutory timeframes for review and approval, categorized by process.
  - Subsection (B) contains provisions for the application process. These are mostly new provisions as described in item #3 above.
  - Subsection (C) contains provisions for application contents. There are statutory limitations on the kinds of information you can require for these applications, such as our formerly requested justification of the selected site or need for the facility. The newly proposed standards do require additional technical information to assist decision makers in evaluating the aesthetic compatibility, structural capacity, and certification that the cumulative effect of RF emissions or exposure and electromagnetic radiation meets FCC standards. It is also required that applicants provide public notice.
  - Subsection (D) provides for third party independent technical review.
15. Section 17.11.050 – provides for encouragement of location of new facilities on existing facilities or structures.
16. Section 17.11.060 – contains the building and design standards for communications facilities as follows:
  - Subsection (A) addresses height. There is a 10' reduction in maximum height from the current requirement for the tallest towers in the A and M-2 districts, but this is because the associated measurement standard does not include a 10' lightning rod in the height calculation. Otherwise the height standards remain unchanged, except that there are new standards pertaining to the height of towers in the public right-of-way and for base stations.
  - Subsection (B) addresses design standards for towers, base stations, and antennas. The design standards for towers are consistent with the current code. Design standards for base stations are consistent with applicable building types and complimentary to existing uses. The design standards for antennas are new.
  - Subsection (C) addresses setbacks. These are consistent with current regulations, although there is a clarification for facilities in the public right-of-way.
  - Subsection (D) has further requirements for accessory facilities.
  - Subsection (E) limits parking and storage at these facilities.
  - Subsection (F) is consistent with current requirements for parking areas and drives.
  - Subsection (G) has more specific standards for screens and fencing.
  - Subsection (H) has more specific standards for landscaping.
  - Subsection (I) has more specific standards for lighting.
  - Subsection (J) requires underground utilities.
  - Subsection (K) is consistent with current security requirements.
  - Subsection (L) is a new standard limiting signage.
  - Subsection (M) provides new standards pertaining to construction and maintenance and periodic inspection.

- Subsection (N) provides assurances of future compliance with agency structural, height, radio frequency, radiation, and other operational standards, including electromagnetic interference.
  - Subsection (O) addresses removal of abandoned communication facilities (revised from current).
  - Subsection (P) addresses unsafe facilities or those that are ill-maintained.
17. Section 17.11.070 – criteria and processes reflecting statutory requirements pertaining to denial of applications.
18. Section 17.11.080 – new provisions for emergency provision of communication facilities.
19. Section 17.11.090 – typical severability statement.

### **ATTACHMENTS**

- I. Draft amendment TA-16-15
- II. Current specific standards for wireless communication antenna
- III. K.S.A. 66-2019

### **RECOMMENDATION**

Staff recommends that the Planning Commission recommend the proposed text amendment TA-16-15 pertaining to Communication Facilities for Wireless Services to the Governing Body for approval, as presented in the April 25, 2017 staff report or with changes as agreed.

#### **Recommended Motion for TA-16-15:**

The Planning Commission recommends that the Governing Body approve TA-16-15, text amendments pertaining to Communication Facilities for Wireless Services, as presented in Attachment I of the April 25, 2017 staff report.

#### **Alternative Motion:**

The Planning Commission recommends that the Governing Body approve TA-16-15, text amendments pertaining to Communication Facilities for Wireless Services, as presented in Attachment I of the April 25, 2017 staff report with the following changes:



## Chapter 17.03 APPLICATIONS AND PROCEDURES

### 17.03.010 General – All Applications

D. **Staff Review.** Upon receipt of an application, the Director shall take the following steps:

**4. Notwithstanding the above, applications for communication facilities shall follow the process contained in and be subject to the provisions, definitions and requirements of GMC Chapter 17.11.**

G. **Action by Review Bodies.** Review bodies shall take the actions indicated in Table 3-1. A review body may take any action on the application consistent with notice given or criteria in this chapter, regardless of the presence of the applicant, including the following (or recommend the following when the review body is a recommending body):

**5. Notwithstanding the above, actions by review bodies on applications for communication facilities shall follow the process and applicable timeframes contained in GMC Chapter 17.11.**

H. **Appeals.** Where a review body is designated as the appellate body in Table 3-1, the following appeal procedures apply:

1. Appeals shall be filed with the Director within seven days of the decision by the decision-making review body; **provided that, this section shall not apply to any person who avails themselves of the appeal provisions set forth under K.S.A. 66-2019 (h)(6).**

I. **Technical Studies.** The Director, on behalf of any public official, department, or agency, the Planning Commission or the Governing Body may require applicants for development or permit approval to submit technical studies as may be necessary to evaluate the application. Technical review by outside entities with expertise or jurisdiction over some aspects of the application may be required in place of, in addition to, or in association with any studies. Examples of technical studies that may be required include traffic studies, engineering studies, geologic or hydrologic studies, environmental impact assessments, noise studies, market studies or economic impacts. The persons or firms preparing the studies shall be subject to the approval of the Director. The costs of all studies shall be borne by the applicant. Any application that is determined to require technical studies or review from entities outside of the City may require special schedules based on the reasonable time frames to conduct those studies or additional reviews. **Technical studies reasonably required for applications for communication facilities for wireless services shall be subject to the applicable provisions of state and federal law and regulations, and shall be processed within the applicable timeframes and tolling provisions set forth in GMC 17.11.040.**

### **17.03.050 Conditional Use Permit**

C. **Effect of Decision.** Approval of a conditional use permit by the Governing Body shall authorize the applicant to apply for a building permit, and other applicable permits. Approval shall be valid for two years, and the Governing Body may grant a one-year extension; **provided that, approvals for communication facilities for wireless services shall be for a term of not less than 10 years.** Any application not acted upon according to the approval and conditions within this time period shall be void. Any amendment to a conditional use permit shall require the same process as the original approval.

### **17.03.060 Site plan and Design Review**

A. **Applicability.** The site plan and design review process is a way to coordinate development projects within the public realm and with adjacent sites, and specifically to demonstrate how new projects meet the development and design standards of this Code for compatible arrangement of buildings, pedestrian and vehicle access, lighting and landscaping. Site plans may be initiated by the owners or authorized agents of any property affected. In addition to the general requirements in Table 3-1 and GMC 17.03.010, the following requirements are specific to site plan and design review applications. The site plan and design review process specifically applies to:

1. Any new building, except detached houses and duplexes.
2. Any expansion to an existing building footprint by more than 15 percent, except detached houses and duplexes.
3. Any site development activity which expands the impervious surface by more than 25 percent of existing impervious surface on the lot.
4. Any changes to the site access and circulation which present a significant change impacting the design of the public realm or traffic conditions near the site.

#### **5. Communications Facilities for Wireless Services:**

- a. **The modification of an existing tower or base station that incurs a substantial change as described in GMC 17.11.020.**
- b. **Any other application for placement, installation or construction of transmission equipment that does not constitute an eligible facilities request as described in GMC 17.11.020.**

### **17.03.070 Administrative Site Plan**

A. **Applicability.** The administrative site plan process is a way to ensure that routine development projects meet the development and design standards of this Code, and all other standards applicable to the property. Administrative site plans may be initiated by the owners or authorized agents of any property affected. In addition to the general requirements in Table 3-1 and GMC 17.03.010, the following requirements are specific to administrative site plan applications. The administrative site plan process does not apply to detached houses or duplexes, but applies to all other buildings and sites subject to the following:

1. Structural alterations to an existing building that do not change the footprint.

2. Any expansion to an existing building footprint by 15 percent or less.
3. Any change or intensification of use which alters access and parking requirements of this Code.
4. Any site development activity which expands the existing impervious surface 25 percent or less.
5. Minor changes to the site access and circulation which do not present a significant change impacting the design of the public realm or traffic conditions near the site.
6. Significant exterior design alterations to an existing building that do not change the footprint. This excludes ordinary maintenance, but may include things such as refacing or changing exterior materials, altering the composition of the facade by changing patterns of windows and doors, changing architectural details and ornamentation.

**7. Communications Facilities for Wireless Services:**

- a. **The modification of an existing tower or base station that does not incur a substantial change or that otherwise qualifies as an eligible facilities request as described in GMC 17.11.020.**
- b. **New antenna (including small cell/DAS facilities) on an existing tower, base station, utility pole, street light; or replacement of a tower, utility pole or street light that does not constitute a substantial change. Provided that, a new tower or utility pole for small cell/DAS facilities in the public right-of-way is subject to the issuance of a Right-of-Way Permit pursuant to Chapter 12.05 GMC.**

The Director may determine that any application meeting these eligibility criteria still presents significant change or potential impacts on the area, or presents substantial interpretation questions on the application of development standards, and is not eligible for the administrative site plan process. These applications must be reviewed through the full site plan and design review process; **provided however, that, communication facilities for wireless services shall be subject to the provisions, definitions, and requirements of GMC Chapter 17.11 for administrative site plan review.**

**17.03.100 Appeal of Administrative Decisions**

A. **Applicability.** The appeal of administrative decisions is a process to determine if there was an error in any final decision in the interpretation, administration or enforcement of this Code by an administrative official of the City. Appeals of administrative decisions may be filed by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the officer administering the zoning ordinance. Appeals of administrative decisions shall be filed within 30 days of the date of the decision being appealed; **provided that, this section shall not apply to any Person who avails themselves of the appeal provisions set forth under K.S.A. 66-2019 (h)(6).**

## Chapter 17.05 ZONING DISTRICTS AND USE STANDARDS

### 17.05.010 Zoning Districts and Intent

For the purpose of regulating and restricting the use and development of land and buildings, the following districts are established, with the intent given for relationship to the Comprehensive Plan.

C. **Development Standards.** The Development Standards for each district are dependent on and specific to the range of building types enabled in each district in Chapter 17.07 GMC. **Communication facilities for wireless services are subject to the location, building and design standards of Chapter 17.11 GMC.**

### 17.05.030 General Use Standards

A. **Permitted Uses.** In order to implement the intent of each zoning district, facilitate complementary transitions between districts, and to regulate a variety of compatible uses within zoning districts, use categories and general uses have been established for principal uses of land and buildings. Table 5-2 indicates permitted uses (P) subject to general district and building type standards, permitted accessory uses (A) subject to specific accessory use standards, temporary uses (T) subject to limited permits, and conditional uses (C) subject to the discretionary review process in GMC 17.03.050. All uses may be subject to more specific standards, limitations and performance criteria as identified by an asterisk in Table 5-2 and in GMC 17.05.040, **and GMC 17.05.050 and Chapter 17.11 GMC**. Use categories, general uses and specific types of uses are more specifically described in subsection (B) of this section.

**Table 5-2: Use Table**

	A	RE	R-1	R-2	R-3	R-4	R-5	RM-P	C-O	CO-A	C-1	C-2	C-3	M-1	M-2	REC
<b>COMMUNICATIONS AND UTILITIES</b>																
<b>Small cell and distributed antenna systems mounted or collocated on monopoles, utility poles, or street lights in the public right-of-way</b>	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*
<b>Communication facilities designed as an architecturally compatible element mounted or collocated on non-residential buildings</b>	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*	A*
<b>Communication facilities designed as an architecturally compatible element mounted or collocated on mixed use or live/work buildings</b>						A*	A*		A*	A*	A*					
<b>New tower (not in the public right-of-way)</b>	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*	C*
<b>Modification of an existing tower or base station that does not incur a substantial change to the tower or base station or that otherwise qualifies an eligible facilities request</b>	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*

### 17.05.030 General Use Standards

B. **Description of Uses.**

## COMMUNICATIONS AND UTILITIES

The Communications and Utilities category is for buildings, structures, or other infrastructure improvements that provide essential public services.

~~Wireless Communication Antenna.~~ **Communication Facilities for Wireless Services.** Any structure or device used to collect or transmit electromagnetic waves for the provision of commercial wireless ~~communications services~~, including all accessory equipment, **facilities and support structures, and including all buildings used as a support structure. Such services include specialized mobile radio (SMR), personal communications services (PCS), commercial satellite services, microwave services, radio, television, and any commercial wireless service not licensed by the Federal Communication Commission. For more specific definitions and applicable site, development, building and design standards, see Chapter 17.11 GMC.**

### 17.05.040 Accessory Uses

Accessory uses are clearly incidental to and customarily associated with an otherwise permitted or conditionally allowed use, and generally do not need any specific enabling or development standards, other than the generally applicable standards. Examples include gardens, play equipment, pools, and ~~communication amateur radio and receive-only~~ **antennas and small satellite dishes**. The following accessory uses may be customarily incidental to otherwise permitted uses in the district, provided they meet the following additional limitations, performance standards and design criteria **(such standards for accessory facilities associated with Communication Facilities for Wireless Services is in Chapter 17.11 GMC)**.

### 17.05.050 Specific Use Standards

The following specific uses may have particular impacts different than the uses generally enabled in the zoning districts. These uses shall have the following additional limitations, performance standards, and design standards as specified and indicated in Table 5-2 **(such standards for specific uses associated with Communication Facilities for Wireless Services are contained within Chapter 17.11 GMC)**.

~~W.—Wireless Communication Antenna. Wireless communication antennas shall require a conditional use permit and, in addition to the requirements and criteria of Chapter 17.03 GMC, shall require the following:~~

~~1.—Submittal Information. Each application for a conditional use permit for a communication tower shall be accompanied by the following information:~~

~~a.—A site plan.~~

~~b.—A report from a licensed professional structural engineer which describes the tower capacity including the number and type of antennas it can accommodate.~~

~~c.—A report indicating the justification of the site selected for the communication tower and comparing all potential sites within a one-half mile radius. The report shall indicate why any existing tower within the one-half mile radius cannot be utilized by the applicant.~~

~~d.—A photo simulation of the proposed facility from affected properties and the public right-of-way may be required.~~

~~e.—An explanation of the need for the facility to maintain the integrity of the communication system. A map showing the service area of the proposed tower shall be submitted.~~

~~f.—A signed statement from the applicant indicating the intention to share space on the tower with other carriers.~~

~~g.—A copy of the lease between the applicant and the landowner. The lease shall contain the following provisions:~~

~~(1)—The landowner and the applicant shall have the ability to enter into a lease with other carriers for co-location.~~

~~(2)—The landowner shall be responsible for the removal of the communication tower or facility within six months in the event the lessee fails to remove it upon abandonment.~~

~~2.—Tower Standards. All towers shall meet the following standards, which may be further limited through the conditional review process based on context and location.~~

~~a.—Height. The height shall be controlled based on the specific context, but in no case shall wireless communication antennas exceed the following:~~

~~(1)—One hundred sixty feet in the A and M-2 zoning districts;~~

~~(2)—One hundred thirty feet in the M-1, REC, C-3, and C-2 zoning districts;~~

~~(3)—One hundred feet in all residential districts;~~

~~(4)—No more than 20 feet above the top of a building when mounted on the roof or include a stealth on-building design in the C-O, CO-A, and C-1 districts.~~

~~b.—Additional Carriers. All towers 100 feet or more shall be designed to accommodate at least two additional providers. The location of additional providers on a legally existing tower shall not require additional approval of the Planning Commission or Governing Body.~~

~~c.—Setbacks. All towers and antennas, and accessory structures, shall meet the required setbacks of the zoning district. In addition to complying with the district regulations, the tower and antenna shall be set back from the property lines a distance equal to the height of the communication tower. A lesser setback may be approved with the conditional use permit, upon demonstration by a licensed structural engineer registered in the State of Kansas that the fall zone of the communication tower is within the radius of the setback. If the communication tower and antenna are set back less than the height of the tower or antenna, they shall be inspected and approved upon construction by a licensed structural engineer registered in the State of Kansas. Such towers shall be reinspected every five years to ensure the structural integrity and safety of the antenna.~~

~~d.—Tower Design. All communication towers shall be of a monopole design unless required by the Planning Commission or Governing Body to be architecturally compatible to surrounding development.~~

~~e.—Tower Color. All communication tower and antenna structures shall be galvanized metal, except otherwise required by the Planning Commission or Governing Body. Exceptions may be granted, based on FAA or FCC regulations.~~

~~f.—Equipment Storage. Mobile or immobile equipment not used in direct support of the tower facility shall not be stored or parked on the site of the communication tower unless repairs to the tower are being made.~~

~~g.— *Accessory Structures.* All ground equipment shall be stored with a structure built of materials compatible with the location and types of surrounding land uses. Use of metal buildings is prohibited.~~

~~h.— *Landscaping.* All equipment buildings shall be screened with landscaping or fencing appropriate to the location and types of surrounding land uses. The site shall be landscaped per Chapter 17.08 GMC.~~

~~i.— *Access.* Access from a public or private roadway. The Governing Body may waive surfacing materials, curbing and stormwater drainage requirements, if recommended by the City Engineer.~~

~~j.— *Security Fencing.* Sites shall be enclosed by security fencing to be indicated on the site plan.~~

~~3.— *Permitting.* A building permit with structural and electrical drawings, sealed by an engineer licensed to practice in the State of Kansas, is required.~~

(reletter subsequent sections appropriately)

~~XW.~~ **Wind Energy Conversion System.**

~~YX.~~ **Solar Collector.**

~~ZY.~~ **Temporary Use.**

#### **17.07.010 Intent and Applicability**

B. **Applicability.** The building standards apply to all new structures dependent on the appropriate Building Type; **provided, however, that communication facilities for wireless services are subject to the application, location, building and design standards of Chapter 17.11 GMC.** Specifically, ~~#~~ **building standards applies apply** to:

## CHAPTER 17.11 COMMUNICATION FACILITIES FOR WIRELESS SERVICES

### 17.11.010 Statement of Intent

The Telecommunications Act of 1996 affirmed the City's authority concerning the placement, construction, and modification of communications facilities. The intent of this chapter is to ensure the provision of quality wireless services within the City limits; establish a fair and efficient process for the review and approval of communications facility applications; assure an integrated, comprehensive review of environmental impacts of communications facilities, and promote the public health, safety, security, and general welfare of the City.

### 17.11.020 Definitions

**Accessory Facility:** means a building, structure or equipment being used in conjunction with communications facilities and generally located on the same site as the communications facilities, including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, storage sheds or cabinets, or similar structures.

**Antenna:** means communications equipment that transmits or receives electromagnetic radio signals used in the provision of wireless services.

- A. **Distributed Antenna System (DAS):** means a network that distributes radio frequency signals and consisting of:
1. Remote communications or antenna nodes deployed throughout a desired coverage area, each including at least one antenna for transmission and reception;
  2. A high capacity signal transport medium that is connected to a central communications hub site; and
  3. Radio transceivers located at the hub's site to process or control the communications signals transmitted and received through the antennas to provide wireless or mobile service within a geographic area or structure.
- B. **Small Cell Facility:** means a communications facility that meets both of the following qualifications:
1. Each antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and,
  2. Primary equipment enclosures that are no larger than 17 cubic feet in volume, or facilities comprised of such higher limits as the FCC has excluded from review pursuant to 54 U.S.C. § 306108. Accessory facilities may be located outside the primary equipment, and if so located, are not to be included in the calculation of equipment volume. Accessory facilities includes, but is not limited to, any electric meters, concealment, telecommunications demarcation boxes, ground-based enclosures, back-up power systems, grounding equipment, power transfer switches, cut-off switches and vertical cable runs for the connection of power and other services.



**C. *Small Cell Network:*** means a collection of interrelated small cell facilities designed to deliver wireless service.

***Base Station:*** means a station that includes a structure that currently supports or houses accessory facilities at a specific site that enables FCC-licensed or authorized wireless service to mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics. The term does not mean a tower or equipment associated with a tower, or any structure that, at the time the relevant application is filed with the City, does not support or house equipment described in this paragraph, for example, a building, church steeple, water tower, street light, utility pole or other non-tower structure that can be used as a support structure for antennas or transmission equipment.

***Collocation:*** means the mounting or installation of transmission equipment on an existing tower or base station for the purpose of transmitting and/or receiving radio frequency signals for wireless service.

***Communications Facility:*** means a structure or location that supports antennas or other transmission equipment used in wireless services, specialized mobile radio (SMR), personal communications services (PCS), commercial satellite services, microwave services, radio, television, and any commercial wireless service not licensed by the FCC. This includes, but is not limited to, towers of all types, accessory facilities, and base stations, and buildings, church steeples, water towers, signs, or other functionally equivalent structures that can be used to support antennas, transmission equipment, or accessory facilities.

***Eligible Facilities Request:*** means any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

- A. Collocation of new transmission equipment;
- B. Removal of transmission equipment; or
- C. Replacement of transmission equipment.

***Existing:*** means a constructed tower or base station that has been reviewed and approved under the applicable zoning or siting process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, shall also be considered existing.

***FAA:*** means the Federal Aviation Administration.

***FCC:*** means the Federal Communications Commission.

***Modification or Modify:*** means the addition, removal or change of any of the physical and noticeably visible components or aspects of a communications facility such as antenna, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any noticeably visible components, vehicular access, parking, upgrade or exchange of equipment for better or more modern equipment. Modification shall not include replacement of such components in kind. A collocation which changes the physical configuration of the existing facility or structure shall be considered a modification. The Director shall determine when changes such as enlarging the ground-mounted equipment area, increasing the screen wall height or installing additional equipment changes the physical and noticeably visible aspects of a communications facility.

***Replacement:*** means substitution of an existing communications facility with a new facility of comparable proportions and height or such other height that would not constitute a substantial change;

provided that a replacement tower shall be located within 15 feet, as measured horizontally along the ground, of an existing tower, and the existing tower shall be removed within 30 days from the installation of the replacement tower. The Director may approve a separation greater than 15 feet. Includes any associated removal of the pre-existing communications facilities.

**Site:** means, for towers not located in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site; and, for other existing tower or base stations, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

**Stealth or Stealth Technology:** means using techniques to minimize adverse aesthetic and visual impacts of the communications facilities on adjacent properties or right-of-ways. For example, accessory facilities mounted onto a tower or structure shall not project greater than one foot, as measured horizontally, from the surface of the tower or structure and shall be painted or screened with materials that are a complementary color as the tower or structure; and cables shall not be allowed to travel along the exterior of a tower or structure. Understanding that new technologies are anticipated to change the components of communications facilities, the Director may determine if a communications facility or component is designed to be stealth or utilizes stealth technology.

**Substantial Change:** means a modification that changes the physical dimensions of an existing tower or base station by any of the following criteria:

- A. *Height.* Changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally (such as on buildings' rooftops); in other circumstances, changes in height are measured from the dimensions of the tower or base station.
  - 1. For towers not in public rights-of-way, an increase in the height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater.
  - 2. For towers or base stations in public rights-of-way, an increase in the height of the structure by more than 10%, or more than 10 feet, whichever is greater.
- B. *Width/Girth.*
  - 1. For towers not in public rights-of-way, adding an appurtenance to the body of the tower that protrudes from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater.
  - 2. For towers or base stations in public rights-of-way, adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet.
- C. *New equipment cabinets.*
  - 1. For any existing tower or base station, the installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets.

2. For towers and base stations in public rights-of-way, the installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets, or the installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure.

- D. Any excavation or deployment outside the current site.
- E. Defeating the stealth technology or concealment elements of the existing tower or base station.
- F. Not complying with conditions of approval, except when noncompliance does not exceed the thresholds identified in subsections one through four herein.

**Transmission Equipment:** means equipment that facilitates transmission for any FCC-licensed or authorized wireless service; private, broadcast and public safety services; and unlicensed and fixed wireless services such as microwave backhaul. Such equipment includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply.

**Tower:** means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas, transmission equipment, their accessory facilities and the associated site.

- A. **Monopole** means a tower consisting of a single pole, constructed without guy wires and ground anchors.
- B. **Lattice** means a guyed or self-supporting three or four sided, open, steel frame tower.

**Wireless Services:** means “personal wireless services” and “personal wireless service facilities” as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through communications facilities or any fixed or mobile wireless services provided using communications facilities.

### 17.11.030 Overall Policy

In order to ensure that the placement, construction, and modification of communications facilities protects the public health, safety, security, and general welfare of the City, the following policies are hereby adopted (subject to applicable state and federal law):

- A. Optimize the number of communications facilities in the City.
- B. Encourage opportunities for user collocation on existing communications facilities, buildings and other structures and maximize replacement strategies.
- C. Comply fully with established planning guidelines regarding land use and building, design and performance standards.
- D. Emphasize the use of stealth technology to visually integrate communications facilities, and to use existing communications facilities instead of building new communications facilities.
- E. Protect the public interests, where practical and applicable, in a competitively neutral, nondiscriminatory manner.

F. Project the public health, safety and welfare.

### **17.11.040 Review and Approval Procedures**

#### **A. Application Timeframe.**

1. A final decision for applications that qualify for Site Plan and Design Review per GMC 17.03.060 or a Conditional Use Permit per GMC 17.03.050 shall be issued within 150 days for new tower, and within 90 days for all others.
2. A final decision for applications that qualify for an Administrative Site Plan per GMC 17.03.070 shall be issued within 60 days.
3. Such timeframes begin when an application is filed following the required pre-application meeting per GMC 17.03.010 (C). The applicable timeframe may be tolled by mutual agreement, or in cases where the City determines that the application is incomplete. The timeframe shall pause on the date that the City provides written notice to the applicant, within 30 days of receipt of the application, specifically delineating all missing documents and information. The timeframe begins running again when the applicant makes a supplemental submission responding to the City's notice. The City then has 10 days to notify the applicant that the supplemental submission did not provide the information identified in the original notice. The timeframe is tolled in the case of second or subsequent notices pursuant to this subsection. Second or subsequent notices may not specify missing documents or information that were not delineated in the original notice of incompleteness.

#### **B. Application Process.**

1. A pre-application meeting is required before filing an application per GMC 17.03.010 (C), unless waived by the Director. Pre-application meetings for small cell/DAS facilities in the public right-of-way will be conducted with the City's Director of Public Works.
2. Applications that qualify for Site Plan and Design Review shall be processed according to GMC 17.03.060.
3. Applications that qualify for an Administrative Site Plan shall be processed according to GMC 17.03.070.
4. Applications that qualify for a Conditional Use Permit shall be processed according to GMC 17.03.050 (see GMC 17.05.030 Table 5-2: Use Table). Conditional use permits for communication facilities for wireless services shall be for a term of not less than 10 years.
5. Pursuant to Kansas Statute, an applicant may file one consolidated application for a small cell network with up to 25 individual small cell facilities of a substantially similar design. The City may require a separate application for any small cell facilities that are not of a substantially similar design.
6. No zoning or siting approval is required for the construction, installation or operation of any small cell or DAS facilities located in an interior structure or upon the site of any campus, stadium or

athletic facility; provided, however, this exemption does not exempt any such facility from any applicable building or electrical code provision.

- C. **Application Contents.** An application for the replacement or modification of an existing communications facility or the construction of a new communications facility shall include the following information and requirements, unless waived by the Director:
1. A site plan with all requirements as stated in the application.
  2. A descriptive statement of the proposed communications facility. For towers or base stations, the statement shall provide the capacity of the structure, including the number and type of antennas it can accommodate.
  3. An affidavit from the applicant stating that it conducted a thorough analysis of available collocation opportunities within the applicable search ring.
  4. Elevation drawings of the proposed communications facilities showing all towers, base stations, antennas, transmission equipment, accessory facilities, cabinets, fencing, screening, landscaping, lighting, and other improvements related to the facility. The applicant shall note all specific colors and materials to be used.
  5. Digital photo simulations of the site providing “before and after” views demonstrating the true visual impact of the proposed communications facilities on the surrounding environment. Staff or the approval authority may require photo simulations from any specific vantage point.
  6. A report from a licensed professional engineer which describes the communications facility’s structural capacity, including a statement to the effect that the communications facility can safely accommodate all antennas, transmission equipment and/or accessory equipment. This may include structural calculations, geotechnical foundation studies, and other data as determined by the Director, as applicable, and in compliance with all City codes. In the event an existing communications facility is to be used, the report shall describe the condition of the existing communications facility based on a physical inspection and its ability to accommodate any additional accessory equipment and/or antennas.
  7. A landscape plan that demonstrates the effective screening of the proposed communications facility and any accessory facilities as required by GMC 17.11.060 (H), in compliance with Chapter 17.08 GMC. The landscape plan shall be sealed by a professional landscape architect, unless this requirement is waived by the approval authority.
  8. If lighting is required by the FCC or the FAA, the applicant shall submit the proposed lighting plan and identify an available lighting alternative. If security lighting is to be used, the applicant may be required to submit a photometric plan to ensure that lighting is unobtrusive and inoffensive and that no light is directed towards adjacent properties or rights-of-way.
  9. If an emergency power system will be utilized, the applicant will provide sufficient details showing the location and proposed use of the same; a proposed plan for any intended non-emergency use (e.g., testing); and certification that the system will not violate local health and safety requirements and local noise control ordinances.

10. A statement that the proposed communications facility and any accessory facilities and/or landscaping shall be maintained within City ordinances, under what arrangement, and by whom. The statement shall provide contact information for the responsible party.
11. An engineer's certification that the proposed communications facilities and the cumulative effect of all communications facilities on the site comply with all FCC standards, including but not limited to, certifying that all provisions and regulations for radio frequency (RF) emissions or exposure are met, and that anticipated levels of electromagnetic radiation to be generated, including the effective radiated power (ERP) of all transmission equipment, shall be within the guidelines established by the FCC.
12. When applicable, a signed copy of the lease between the applicant and the landowner or other acceptable documentation signed by the landowner evidencing the landowner's approval for the proposed communications facility. The lease or other documentation shall contain a provision stating that the landowner shall be responsible for the demolition and/or removal of the communications facility in the event the lessee fails to remove it upon abandonment of the facilities or the termination of the lease.
13. Applicants for communications facilities shall provide notice by certified mail to the owners of record of all property within 200 feet of the proposed location. The notice shall provide a City-issued case number (if available); a description of the proposed facility; the location of the proposed facility; a plan sheet showing the proposed location and the facility improvements; and the applicant's contact information and a statement that the owner shall have 20 days from the date of the notice to provide the City with any input regarding the application. Each communications facility location shall be provided with its own notice; notices for multiple locations, even if under the same City case number, may not be provided in a single letter. No application will be approved until the applicant submits an affidavit affirming that the required notice was sent.
14. For locations near an airport, the applicant must submit an affidavit stating that the application is in compliance with applicable FAA and Johnson County Airport regulations.
15. Any other information to satisfy the performance standards in GMC 17.11.060 or that, as determined by the Director, will assist the review and approval process for communications facilities.

**D. Independent Third Party Review.**

1. The applicant may be required to provide an independent review of the application as determined by the Director.
2. The Director will select and approve a list of acceptable consultants to be used for the third party independent review.
3. The scope of the third party review will be determined by the Director and may vary with the scope and complexity of the application; the scope will be determined following the pre-application meeting. The independent third party review will generally be focused on the technical review of wireless services and verification of the information submitted by the applicant such as federal RF emissions standards, and other technical requirements to ensure that the modeling parameters and

data used in developing these technical requirements are valid and representative of the proposed communications facility.

#### **17.11.050 Location of Communications Facilities**

- A. When possible, the City encourages – but does not require – new communications facilities to be located on existing communications facilities or on existing structures (for example, non-residential buildings, water towers, utility poles and street lights), and to be architecturally integrated or otherwise camouflaged in a stealth manner to minimize the intrusion upon the public space and adjacent properties. New towers and base stations should be similarly located and designed to minimize the intrusion and to be architecturally integrated or camouflaged.
- B. The applicable review authority shall not discriminate against applicants with respect to the placement of communications facilities for wireless services as to other investor-owned utilities, wireless service providers, wireless infrastructure providers, or wireless carriers.

#### **17.11.060 Building and Design Standards for Communications Facilities**

##### **A. Height.**

1. *Towers.* The maximum height as indicated below includes any transmission equipment on top of the tower. A lightning rod 10 feet in height or less shall not be included within the height limitations. While tower height shall be controlled based on the specific context consistent with the provisions of this Chapter and other applicable provisions of the Land Development Code, in no case shall towers or antennas exceed the following:
  - a. 150' in the A and M-2 zoning districts;
  - b. 130' in the M-1, REC, C-3, and C-2 zoning districts;
  - c. 100' in all residential districts;
  - d. No more than 20' above the top of a building when mounted on the roof or include a stealth on-building design in the C-O, CO-A, and C-1 districts.
2. *Towers in Right-of-Way.* The maximum height which may be approved for a tower and related transmission equipment in the public right-of-way is: 50' along an arterial street; 40' along a collector street; and 20' along a local street as defined within GMC 12.10.010.
3. *Base Stations.* Base stations shall comply with any applicable height requirement for its particular type of structure as set forth in the applicable zoning district.

##### **B. Design and Color.**

1. *Towers.*
  - a. *Design* – Towers shall be a monopole or some other stealth or stealth technology design unless required by the approval authority to be architecturally compatible to the surrounding development. Guy and lattice towers are not allowed. Towers must be designed in compliance with all current applicable technical, safety, and safety-related codes adopted by the City or other applicable regulatory authority.





- c. *Color and Finish* – Antennas and visible accessory facilities shall be colored and finished in a manner consistent with the tower or base station and any surrounding elements to camouflage their appearance in a stealth manner. Such facilities shall be of a neutral color that is identical to, or closely compatible with, the color of the tower or base station to make such facilities as visually unobtrusive as possible. Antennas mounted on the side of a building or structure shall be painted to match the color of the building or structure or the background against which they are most commonly seen.

**C. Setbacks.**

1. Communications facilities shall, at minimum, meet the greatest minimum setback requirement for all building types in that district. If the proposed communications facilities will exceed the maximum height allowed for all building types in that district, the communications facilities shall be setback a distance equal to the height of the facility; provided that a lesser setback may be approved upon demonstration by a licensed structural engineer registered in the State of Kansas that the fall zone of the tower, antenna, or communications facility is within the radius of the setback.
2. Small cell/DAS facilities on utility poles or street lights shall not be subject to the setback requirements above; provided that, such small cell/DAS facilities on utility poles or street lights placed within the right-of-way shall comply with the City's requirements and permits for the use of the public right-of-way as set forth with Chapter 12.05 GMC and in the City's Technical Specifications.

**D. Accessory Facilities.** Accessory facilities shall include only such structures and facilities necessary for transmission functions for wireless services, but shall not include broadcast studios, offices, vehicle storage areas, or other similar uses not necessary for the transmission function. Accessory facilities shall be constructed of building materials consistent with the primary use of the site and shall be subject to the applicable approval process.

**E. Equipment Storage.** Mobile or immobile equipment not used in direct support of a communications facility shall not be stored or parked on the site of the communications facility unless repairs to the communications facility are being made or pursuant to emergency approval as set forth in GMC 17.11.080.

**F. Parking Areas and Drives.** All parking areas and drives associated with a communications facility shall comply with Chapter 17.09 GMC; provided that, the applicable approval authority may waive the requirements for curbing and drainage facilities when they are not needed for drainage purposes. All access roads and turn-arounds shall be provided to ensure adequate emergency and service access.

**G. Screens and Fencing.** Accessory facilities located at the base of a tower or base station shall be screened from view with a solid opaque fence or wall a minimum of six feet in height. Fences shall meet the materials requirements of GMC 17.08.030. The materials of the wall, including any proposed razor wire or other security wire, shall be of a material designed to match the architecture of the surrounding structures. The landowner or provider shall be responsible for maintenance of the screening. The applicable approval authority shall have the ability to waive or reasonably modify this requirement where the design of the accessory facility is architecturally compatible to the primary use

of the site or where the accessory facility will have no visible impact on the public right-of-way and any other nearby property.

- H. **Landscaping.** A continuous landscaped area shall be provided around the perimeter of the accessory building or screening fence/wall; and utility boxes shall be screened according to the requirements of GMC 17.08.040 (A). All plant materials are subject to Chapter 17.08 GMC and shall include a mixture of deciduous and coniferous planting materials. Drought tolerant plant materials are encouraged. The owner or provider shall be responsible for maintenance of all approved landscaping. Where the visual impact of the equipment building would be minimal, the landscaping requirement may be reduced or waived by the applicable approval authority.
- I. **Lighting.** Communications facilities shall only be illuminated as required by the FCC and/or the FAA. If lighting is required, the approval authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views. Security lighting around the base of a tower shall meet the requirements of GMC 17.08.050 and other applicable City requirements.
- J. **Utilities.** All utilities at a communications facility site shall be installed underground and in compliance with applicable codes.
- K. **Security.** All communications facilities shall be located, fenced, or otherwise secured in a manner that prevents unauthorized access.
- L. **Signage.** Signage at the site is limited to non-illuminated warning and equipment identification signs required by the FCC or applicable regulatory body or otherwise approved by the approval authority.
- M. **Building Codes and Inspection.**
1. *Construction and Maintenance Standards.* To insure structural integrity, communications facilities shall be constructed and maintained in compliance with the standards contained in applicable local building codes and the applicable standards for communications facilities published by the Electronic Industries Association, (EIA) or any applicable regulatory authority (as amended from time to time). If upon inspection the City concludes that a communications facility fails to comply with such codes and standards and constitutes a danger to persons or property, then the facility owner or landowner shall have 30 days following written notice to bring such facility into compliance. If the facility owner or landowner fails to bring such facility into compliance within this period, the City may order the removal or cause the removal of such facility at the facility owner or landowner's expense. Failure of the City to inspect the facility shall not relieve the facility owner or landowner of their responsibility to comply with this provision.
  2. *Inspection.* Not less than every 24 months, the communications facility shall be inspected by an expert who is regularly involved in the maintenance, inspection and/or erection of communications facilities. At a minimum, this inspection shall be conducted in accordance with the inspection checklist provided in the Electronic Industries Association (EIA) Standard 222, Structural Standards for Steel Antenna Towers and Antenna Support Structures (as amended from time to time). A copy of the inspection record shall be provided to the City upon request. The inspection shall be conducted at the facility owner or landowner's expense.

**N. Operational Standards.**

1. Communications facilities shall meet or exceed all minimum structural, height, radio frequency radiation and other operational standards as established by the FCC, FAA, Environmental Protection Agency, and/or other applicable federal regulatory agencies. If such standards and regulations are changed, then the communications facilities shall be brought into compliance with the revised standards and regulations within six months of the effective date of the ordinance or law from which these standards and regulations are derived, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring communications facilities into compliance with any revised standards and regulations shall constitute grounds for the removal of the facility at the owner or provider's expense.
2. It is the responsibility of the wireless service provider to promptly resolve any electromagnetic interference problems in accordance with any applicable law or FCC regulation.

**O. Removal of Abandoned Communications Facilities.** Any communications facility that is not operated for a continuous period of 12 months shall be considered abandoned and a nuisance, and the owner of such facility or the landowner shall remove the same within 90 days of a receipt of notice from the City. If such facility is not removed within said 90 days, the City may remove such facility at the facility owner or landowner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.

**P. Unsafe Communications Facilities.** Any communications facility which is not maintained to a suitable degree of safety and appearance (as determined by the City and any applicable code, statute, ordinance, law, regulations or standard) will be considered a nuisance and will be upgraded or removed at the owner or provider's expense.

**17.11.070 Denial of Application.**

A. The City may deny an application for any of the following reasons:

1. Failure to submit any or all required application documents and information.
2. Conflict with safety and safety-related codes and requirements.
3. Conflict with the historic nature or character of the surrounding area pursuant to federal or state law.
4. The use or construction of a communications facility is contrary to the previously stated purpose of a specific zoning or land use designation, fails to comply with this Code, and/or creates an unacceptable risk to the public health, safety, and welfare.
5. The placement and location of the communications facility would create an unacceptable risk, or the reasonable probability of such, to residents, the public, businesses, City employees, or employees of the wireless service provider.

6. Conflict with a public health, safety and welfare issue, including, but not limited to, violation of noise ordinance, flashing or other light nuisance, and conflict with required sidewalk widths (including ADA accessibility requirements).
  7. Conflict with planned future public improvements.
  8. Conflict with or violation of any provision contained within this Chapter or any other applicable City code or with any applicable federal or state law.
- B. In the event of a denial, the approval authority or the City shall notify the applicant in writing of the City's final decision, supported by substantial evidence contained in a written record and issued contemporaneously. Such notice shall be made within the applicable timeframe set forth in GMC 17.11.040.
- C. Any denial shall not discriminate against the applicant with respect to the placement of communications facilities of other investor-owned utilities, wireless service providers, wireless infrastructure providers, or wireless carriers.

#### **17.11.080 Emergencies and Disasters**

In the event of a declared emergency or disaster, the City Administrator, or his or her designee, or the Director may authorize any temporary towers, base stations, transmission equipment or accessory equipment necessary to temporarily restore wireless services.

#### **17.11.090 Interpretation and Severability**

The provisions of this Chapter shall be construed in a manner consistent with all applicable federal, state and local laws and standards regulating communications facilities. In the event any federal or state law or standard is mandatory or is more stringent than provisions of this Chapter, then such provisions shall be revised accordingly. If any section, subsection, clause, phrase or portion of this Chapter is for any reason held invalid or unenforceable by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

### 17.05.050 Specific Use Standards

The following specific uses may have particular impacts different than the uses generally enabled in the zoning districts. These uses shall have the following additional limitations, performance standards, and design standards as specified and indicated in Table 5-2.

W. **Wireless Communication Antenna.** Wireless communication antennas shall require a conditional use permit and, in addition to the requirements and criteria of Chapter 17.03 GMC, shall require the following:

1. *Submittal Information.* Each application for a conditional use permit for a communication tower shall be accompanied by the following information:
  - a. A site plan.
  - b. A report from a licensed professional structural engineer which describes the tower capacity including the number and type of antennas it can accommodate.
  - c. A report indicating the justification of the site selected for the communication tower and comparing all potential sites within a one-half mile radius. The report shall indicate why any existing tower within the one-half mile radius cannot be utilized by the applicant.
  - d. A photo simulation of the proposed facility from affected properties and the public right-of-way may be required.
  - e. An explanation of the need for the facility to maintain the integrity of the communication system. A map showing the service area of the proposed tower shall be submitted.
  - f. A signed statement from the applicant indicating the intention to share space on the tower with other carriers.
  - g. A copy of the lease between the applicant and the landowner. The lease shall contain the following provisions:
    - (1) The landowner and the applicant shall have the ability to enter into a lease with other carriers for co-location.
    - (2) The landowner shall be responsible for the removal of the communication tower or facility within six months in the event the lessee fails to remove it upon abandonment.

2. *Tower Standards.* All towers shall meet the following standards, which may be further limited through the conditional review process based on context and location.

a. *Height.* The height shall be controlled based on the specific context, but in no case shall wireless communication antennas exceed the following:

- (1) One hundred sixty feet in the A and M-2 zoning districts;
- (2) One hundred thirty feet in the M-1, REC, C-3, and C-2 zoning districts;
- (3) One hundred feet in all residential districts;
- (4) No more than 20 feet above the top of a building when mounted on the roof or include a stealth on-building design in the C-O, CO-A, and C-1 districts.

b. *Additional Carriers.* All towers 100 feet or more shall be designed to accommodate at least two additional providers. The location of additional providers on a legally existing tower shall not require additional approval of the Planning Commission or Governing Body.

c. *Setbacks.* All towers and antennas, and accessory structures, shall meet the required setbacks of the zoning district. In addition to complying with the district regulations, the tower and antenna shall be set back from the property lines a distance equal to the height of the communication tower. A lesser setback may be approved with the conditional use permit, upon demonstration by a licensed structural engineer registered in the State of Kansas that the fall zone of the communication tower is within the radius of the setback. If the communication tower and antenna are set back less than the height of the tower or antenna, they shall be inspected and approved upon construction by a licensed structural engineer registered in the State of Kansas. Such towers shall be reinspected every five years to ensure the structural integrity and safety of the antenna.

d. *Tower Design.* All communication towers shall be of a monopole design unless required by the Planning Commission or Governing Body to be architecturally compatible to surrounding development.

- e. *Tower Color.* All communication tower and antenna structures shall be galvanized metal, except otherwise required by the Planning Commission or Governing Body. Exceptions may be granted, based on FAA or FCC regulations.
  - f. *Equipment Storage.* Mobile or immobile equipment not used in direct support of the tower facility shall not be stored or parked on the site of the communication tower unless repairs to the tower are being made.
  - g. *Accessory Structures.* All ground equipment shall be stored with a structure built of materials compatible with the location and types of surrounding land uses. Use of metal buildings is prohibited.
  - h. *Landscaping.* All equipment buildings shall be screened with landscaping or fencing appropriate to the location and types of surrounding land uses. The site shall be landscaped per Chapter [17.08](#) GMC.
  - i. *Access.* Access from a public or private roadway. The Governing Body may waive surfacing materials, curbing and stormwater drainage requirements, if recommended by the City Engineer.
  - j. *Security Fencing.* Sites shall be enclosed by security fencing to be indicated on the site plan.
3. *Permitting.* A building permit with structural and electrical drawings, sealed by an engineer licensed to practice in the State of Kansas, is required.

**66-2019. Siting of wireless infrastructure; public lands and public right-of-way; wireless providers and governing bodies, rights and requirements for application process.** (a) The Kansas legislature finds and declares that:

(1) The permitting, construction, modification, maintenance and operation of wireless facilities are critical to ensuring that all citizens in the state have true access to broadband and other advanced technology and information;

(2) these facilities are critical to ensuring that businesses and schools throughout the state remain competitive in the global economy;

(3) wireless telecommunications facilities that enable broadband services have a significant economic benefit; and

(4) the permitting, construction, modification, maintenance and operation of these facilities, to the extent specifically addressed in this section, are declared to be matters of statewide concern and interest.

(b) As used in this section:

(1) “Accessory equipment” means any equipment serving or being used in conjunction with a wireless facility or wireless support structure including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.

(2) “Antenna” means communications equipment that transmits or receives electromagnetic radio signals used in the provision of wireless services.

(3) “Applicant” means any person or entity that is engaged in the business of providing wireless services or the wireless infrastructure required for wireless services and that submits an application.

(4) “Application” means a request submitted by an applicant to an authority for: (A) The construction of a new wireless support structure or new wireless facility;

(B) the substantial modification of a wireless support structure or wireless facility; or

(C) collocation of a wireless facility or replacement of a wireless facility.

(5) “Authority” means any governing body, board, agency, office or commission of a city, county or the state that is authorized by law to make legislative, quasi judicial or administrative decisions concerning an application. “Authority” shall not include any school district as defined in K.S.A. [72-8301](#), and amendments thereto, or any court having jurisdiction over land use, planning, zoning or other decisions made by an authority.

(6) “Base station” means a station that includes a structure that currently supports or houses 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. “Base station” does not mean a tower or equipment associated with a tower and does not include any structure that, at the time the relevant application is filed with the authority, does not support or house equipment described in this paragraph.

(7) “Collocation” means the mounting or installation of wireless facilities on a building, structure, wireless support structure, tower, utility pole, base station or existing structure for the purposes of transmitting or receiving radio frequency signals for communication purposes.

(8) “Distributed antenna system” means a network that distributes radio frequency signals and consisting of: (A) Remote communications or antenna nodes deployed throughout a desired coverage area, each including at least one antenna for transmission and reception;



(B) a high capacity signal transport medium that is connected to a central communications hub site; and

(C) radio transceivers located at the hub's site to process or control the communications signals transmitted and received through the antennas to provide wireless or mobile service within a geographic area or structure.

(9) "Existing structure" means a structure that exists at the time an application to collocate wireless facilities on a structure is filed with an authority. The term includes any structure that is currently supporting or designed to support the attachment of wireless facilities, including, but not limited to, towers, buildings and water towers.

(10) "Public lands, buildings and facilities" does not include any real property, structures or facilities under the ownership, control or jurisdiction of the secretary of transportation.

(11) "Public right-of-way" means only the area of real property in which the authority has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. "Public right-of-way" does not include any state, federal or interstate highway right-of-way, which generally includes the area that runs contiguous to, parallel with, and is generally equidistant from the center of that portion of the highway improved, designed or ordinarily used for public travel.

(12) "Replacement" includes constructing a new wireless support structure of comparable proportions and of comparable height or such other height that would not constitute a substantial modification to an existing structure in order to support wireless facilities or to accommodate collocation and includes the associated removal of the pre-existing wireless facilities, if any, or wireless support structure.

(13) "Search ring" means a shape drawn on a map to indicate the general area within which a wireless services support structure should be located to meet radio frequency engineering requirements, taking into account other factors, including topography and the demographics of the service area.

(14) "Small cell facility" means a wireless facility that meets both of the following qualifications: (A) Each antenna is located inside an enclosure of no more than six cubic feet in volume, or in the case of an antenna that has exposed elements, the antenna and all of the antenna's exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and

(B) primary equipment enclosures that are no larger than 17 cubic feet in volume, or facilities comprised of such higher limits as the federal communications commission has excluded from review pursuant to 54 U.S.C. § 306108. Associated equipment may be located outside the primary equipment, and if so located, is not to be included in the calculation of equipment volume. Associated equipment includes, but is not limited to, any electric meter, concealment, telecommunications demarcation box, ground-based enclosures, back-up power systems, grounding equipment, power transfer switch, cut-off switch and vertical cable runs for the connection of power and other services.

(15) "Small cell network" means a collection of interrelated small cell facilities designed to deliver wireless service.

(16) "Substantial modification" means a proposed modification to an existing wireless support structure or base station that will substantially change the physical dimensions of the wireless support structure or base station under the objective standard for substantial change, established by the federal communications commission pursuant to 47 C.F.R. 1.40001.

(17) “Transmission equipment” means equipment that facilitates transmission for a wireless service licensed or authorized by the federal communications commission including, but not limited to, radio transceivers, antennas, coaxial or fiber optic cable and regular and backup power supply. “Transmission equipment” includes equipment associated with wireless services including, but not limited to, private, broadcast and public safety services such as wireless local area network services, and services utilizing a set of specifications developed by the institute of electrical and electronics engineers for interface between a wireless client and a base station or between two wireless clients, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul.

(18) “Wireless facility” means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including, but not limited to: (A) 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

(B) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies and comparable equipment, regardless of technological configuration.

“Wireless facility” does not mean any wired connections from a wireless support structure or base station to a hub or switching location.

(19) “Wireless services” means “personal wireless services” and “personal wireless service facilities” as defined in 47 U.S.C. § 332(c)(7)(C), including commercial mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices through wireless facilities or any fixed or mobile wireless services provided using wireless facilities.

(20) “Wireless infrastructure provider” means any person that builds or installs transmission equipment, wireless facilities or wireless support structures, but that is not a wireless services provider.

(21) “Wireless support structure” means a freestanding structure, such as a monopole, guyed or self-supporting tower or other suitable existing or alternative structure designed to support or capable of supporting wireless facilities. “Wireless support structure” shall not include any telephone or electrical utility pole or any tower used for the distribution or transmission of electrical service.

(22) “Utility pole” means a structure owned or operated by a public utility as defined in K.S.A. [66-104](#), and amendments thereto, a municipality as defined in K.S.A. [75-6102](#), and amendments thereto, or an electric cooperative as defined in K.S.A. 2016 Supp. [17-4652](#), and amendments thereto, that is designed specifically for and used to carry lines, cables or wires for telecommunications, cable, electricity or to provide lighting.

(23) “Water tower” means a water storage tank or a standpipe, or an elevated tank situated on a support structure that was originally constructed for use as a reservoir or facility to store or deliver water.

(24) “Wireless services provider” means a provider of wireless services.

(c) (1) An authority shall not charge an application fee, consulting fee or other fee associated with the submission, review, processing and approval of an application that is not required for other wireless infrastructure providers or wireline telecommunications or broadband providers within the authority’s jurisdiction.

(2) An authority shall only assess fees or charges for the actual costs relating to the granting or processing of an application that are directly incurred by the authority and the authority shall not charge any market-based or value-based fees for the processing of an application. Such fees and charges shall be reasonably related in time to the occurrence of such costs.

(3) An authority or any third-party entity shall not include any travel expenses incurred in the review of an application for more than one trip per application to the authority's jurisdiction and an applicant shall not be required to pay or reimburse an authority for a consultant or other third-party fees based on a contingency-based or results-based arrangement. Any travel expenses included must be reasonable and directly related to the application.

(4) The total charges and fees assessed by the authority shall not exceed:

(A) \$500 for a collocation application, that is not a substantial modification, small cell facility application or distributed antenna system application; or

(B) \$2,000 for an application for a new wireless support structure or for a collocation application that is a substantial modification of a wireless support structure.

(d) (1) An authority may not charge a wireless services provider or wireless infrastructure provider any rental, license or other fee to locate a wireless facility or wireless support structure on any public right-of-way controlled by the authority, if the authority does not charge other telecommunications or video service providers, alternative infrastructure or wireless services providers or any investor-owned utilities or municipally-owned commercial broadband providers for the use of public right-of-way. If an authority does assess a charge, including a charge or rental fee for attachment to the facilities owned by the authority in the right-of-way, any such charge must be competitively neutral, with regard to other users of the public right-of-way, including investor-owned utilities or municipally-owned commercial broadband providers, and may not be unreasonable or discriminatory or violate any applicable state or federal law, rule or regulation.

(2) (A) Subject to the provisions of this subsection, a wireless services provider or wireless infrastructure provider, subject to an application, shall have the right to construct, maintain and operate wireless support structures, utility poles, small cell wireless facilities or distributed antenna systems along, across, upon, under or above the public right-of-way. The authority must be competitively neutral with regard to other users of the public right-of-way, may not be unreasonable or discriminatory and may not violate any applicable state or federal law, rule or regulation.

(B) Nothing in this subsection (d) shall be interpreted as granting a wireless services provider or wireless infrastructure provider the right to construct, maintain or operate any facility or related appurtenance on property owned by the authority outside of the public right-of-way.

(C) The right of a wireless services provider or wireless infrastructure provider to use and occupy the public right-of-way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the authority. An authority may exercise its home rule powers in its administration and regulation related to the management of the public right-of-way provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory.

(D) The authority shall have the right to prohibit the use or occupation of a specific portion of public right-of-way by a provider due to a reasonable public interest necessitated by public health, safety and welfare so long as such interest is exercised in a competitively neutral manner and is not unreasonable or discriminatory.

(E) A wireless services provider or wireless infrastructure provider shall comply with all laws and rules and regulations governing the use of public right-of-way.

(F) An authority may require a wireless services provider or wireless infrastructure provider to repair all damage to a public right-of-way caused by the activities of that provider, or of any agent, affiliate, employee or subcontractor of that provider, while occupying, installing, repairing or maintaining facilities in a public right-of-way and to return the right-of-way to the condition in which

it existed prior to the damage. If a wireless services provider or wireless infrastructure provider fails to make the repairs required by an authority, the authority may effect those repairs and charge the provider the reasonable cost of those repairs. If an authority incurs damages as a result of a violation of this paragraph, then the authority shall have a cause of action against a wireless services provider or wireless infrastructure provider for violation of this paragraph, and may recover its damages, including reasonable attorney fees, if such provider is found liable by a court of competent jurisdiction.

(G) If requested by an authority, in order to accomplish construction and maintenance activities directly related to improvements for the health, safety and welfare of the public, a wireless services provider or wireless infrastructure provider shall relocate or adjust its facilities within the public right-of-way at no cost to the authority, as long as such request similarly binds all users of such right-of-way. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any written request by the authority for such relocation or adjustment, as long as the authority provides the wireless services provider or wireless infrastructure provider with a minimum of 180 days advance written notice to comply with such relocation or adjustment, unless circumstances beyond the authority's control require a shorter period of advance notice. If any such relocation or adjustment is for private benefit, the provider shall not bear the cost of the relocation or adjustment to the extent of such private benefit and the provider shall not be obligated to commence the relocation or adjustment until receipt of funds for such relocation or adjustment. The provider shall have no liability for any delays caused by a failure to receive funds for the cost of such relocation or adjustment and the authority shall have no obligation to collect such funds.

(H) Wireless services providers and wireless infrastructure providers shall indemnify and hold the authority and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of the wireless services provider or wireless infrastructure provider, any agent, officer, director, representative, employee, affiliate or subcontractor of the provider, or their respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining facilities in a public right-of-way. The indemnity provided by this paragraph does not apply to any liability resulting from the negligence of an authority, its officers, employees, contractors or subcontractors. If a provider and the authority are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state, without waiving any governmental immunity available to the authority under state law and without waiving any defenses of the parties under state or federal law. This paragraph is solely for the benefit of the authority and the wireless services provider or wireless infrastructure provider and does not create or grant any rights, contractual or otherwise, to any other person or entity.

(I) A wireless services provider or wireless infrastructure provider or authority shall promptly advise the other in writing of any known claim or demand against the provider or the authority related to or arising out of the provider's activities in a public right-of-way.

(3) The provisions of this subsection shall not apply to or affect any authority's jurisdiction over the activities of wireless services providers or wireless infrastructure providers in public utility easements, private easements or on privately owned property.

(4) Nothing in this subsection shall be construed to prevent wireless structures and wireless facilities from being located on state, federal or interstate highway right-of-way in accordance with

reasonable policies and procedures adopted by the manager of the state, federal and interstate highway right-of-way under applicable federal and state law.

(e) (1) An authority may enter into a lease with an applicant for the applicant's use of public lands, buildings and facilities. When entering into a lease for use of publicly owned lands, an authority shall offer leases or contracts for applicants to use publicly owned lands that are at least 10 years in duration, unless otherwise agreed to by both the applicant and the authority, and at market rates. Any lease renewals shall be negotiated in good faith. Due to the benefit of increased broadband and wireless services to the citizens of the authority, an authority may choose not to charge for the placement of wireless facilities on public lands. If an authority does charge, any such charges for use of publicly owned lands and facilities must be competitively neutral with regard to other users of the publicly owned lands and facilities, including any investor-owned utilities or municipally owned commercial broadband providers, may not be unreasonable or discriminatory and may not violate any applicable state or federal law, rule or regulation.

(2) If the applicant and the authority do not agree on the applicable market rate for the use or lease of public land and are unable to agree on a process to determine the applicable market rate for any such public land, then the market rate will be determined by a panel of three appraisers. The panel will consist of one appraiser appointed by each party and a third appraiser selected by the two appointed appraisers. Each appraiser will independently appraise the appropriate lease rate and the market rate shall be set at the mean between the highest and lowest market rates among all three independent appraisals, unless the mean between the highest and lowest appraisals is greater than or less than 10% of the appraisal of the third appraiser chosen by the parties' appointed appraisers, in which case the third appraisal will determine the rate for the lease. The appraisal process shall be concluded within 150 calendar days from the date the applicant first tenders a proposed lease rate to the authority. Each party will bear the cost of the party's own appointed appraiser, and the parties shall share equally the cost of the third appraiser chosen by the two appointed appraisers.

(3) Nothing in this subsection shall be construed to prevent wireless structures and wireless facilities from being located on real property, structures or facilities under the ownership, control or jurisdiction of the secretary of transportation in accordance with reasonable policies and procedures adopted by the secretary of transportation under applicable federal and state law.

(4) This subsection (e) shall not apply to public rights-of-way governed by subsection (d).

(f) To ensure uniformity across the state with respect to consideration of every application, an authority shall not:

(1) Require an applicant to submit information about, or evaluate an applicant's business decisions with respect to, the applicant's designed service, customer demand for service or quality of the applicant's service to or from a particular area or site. An authority may require an applicant filing an application for a new wireless support structure to state in such application that the applicant conducted an analysis of available collocation opportunities on existing wireless support structures within the same search ring defined by the applicant, solely for the purpose of confirming that an applicant undertook such analysis;

(2) require information that concerns the specific need for the wireless support structure, including if the service to be provided from the wireless support structure is to add additional wireless coverage or additional wireless capacity. An authority may not require proprietary, confidential or other business information to justify the need for the new wireless support structure, including propagation maps and telecommunications traffic studies;

(3) evaluate an application based on the availability of other potential locations for the placement of wireless support structures or wireless facilities including, but not limited to, the option to collocate, instead of construct, a new wireless support structure or for substantial modifications of a support structure;

(4) dictate the type of transmission equipment or technology to be used by the applicant including, but not limited to, requiring an applicant to construct a distributed antenna system or small cell facility in lieu of constructing a new wireless support structure or discriminate between different types of infrastructure or technology;

(5) require the removal of existing wireless support structures or wireless facilities, wherever located, as a condition for approval of an application. This paragraph shall not preclude an authority from adopting reasonable rules with respect to the removal of abandoned wireless support structures or wireless facilities;

(6) impose any restrictions at or near civilian airports with respect to objects in navigable airspace height limitations, proximity to civilian airports or markings and lighting on wireless support structures or base stations that are greater than, or in conflict with, any restrictions imposed by the federal aviation administration, except that this paragraph shall not be construed so as to impact any existing height restrictions adopted by an authority as of the effective date of this section on wireless support structures or base stations located at or near civilian airports;

(7) establish or enforce regulations or procedures for radio frequency signal strength or the adequacy of service quality;

(8) impose surety requirements, including bonds, escrow deposits, letters of credit or any other type of financial surety to ensure that abandoned or unused facilities can be removed, unless the authority imposes similar requirements on other permits for other types of commercial development or land uses, and any such instrument cannot exceed a reasonable estimate of the direct cost of the removal of the facility. If surety requirements are imposed, any such requirements shall be competitively neutral, non-discriminatory, reasonable in amount and commensurate with the historical record for local facilities and structures that are abandoned;

(9) discriminate or create a preference on the basis of the ownership of any property, structure, base station or wireless support structure when promulgating rules or procedures for siting wireless facilities or for evaluating applications or require the placement of wireless support structures or wireless facilities on property owned or leased by the authority, but an authority may develop a process to encourage the placement of wireless support structures or wireless facilities on property owned or leased by the authority, including an expedited approval process. Nothing in this subsection shall be construed to hinder or restrict the siting of public safety communications towers, including, but not limited to, police and fire;

(10) impose any unreasonable requirements or obligations regarding the presentation, appearance or function of the wireless facilities and equipment including, but not limited to, those relating to any kinds of materials used and those relating to arranging, screening or landscaping of facilities. In developing such a requirement or obligation for wireless facilities located on a public right-of-way, the authority shall consider input from property owners adjoining the affected public right-of-way;

(11) impose any requirements that an applicant purchase, subscribe to, use or employ facilities, networks or services owned, provided or operated by an authority, in whole or in part, or by any entity in which the authority has a competitive, economic, financial, governance or other interest;

(12) impose environmental testing, sampling or monitoring requirements that exceed federal law;

(13) impose any compliance measures for radio frequency emissions or exposure from wireless facilities that exceed the requirements of the federal communications commission rules for radio frequency;

(14) in conformance with 47 U.S.C. § 332(c)(7)(B)(iv), reject an application, in whole or in part, based on perceived or alleged environmental effects of radio frequency emissions or exposure;

(15) prohibit the use of emergency power systems that comply with federal and state environmental requirements and do not violate local health and safety requirements and local noise control ordinances, but no local regulations shall prevent the provision of emergency power during an actual emergency;

(16) condition or require the approval of an application based on the applicant's agreement to permit any wireless facilities provided or operated, in whole or in part, by an authority or by any other entity to be placed at, or collocated with, the applicant's wireless support structure;

(17) impose a greater setback or fall-zone requirement for a wireless support structure than for other types of commercial structure of a similar size; or

(18) limit, for less than 10 years, the duration of the approval of an application. Any renewals shall be negotiated in good faith. Construction of the approved structure or facilities shall commence within one year of final approval and shall be diligently pursued to completion.

(g) An applicant for a small cell network involving no greater than 25 individual small cell facilities of a substantially similar design within the jurisdiction of a single authority shall be permitted, upon request by the applicant, to file a consolidated application and receive a single permit for the installation, construction, maintenance and repair of a small cell network instead of filing separate applications for each individual small cell facility, except that the authority may require a separate application for any small cell facilities that are not of a substantially similar design. The authority shall render a decision no later than 60 days after the submission of an application regarding small cell facilities that satisfies the authority's requirements in a single administrative proceeding.

(h) (1) Within 150 calendar days of receiving an application for a new wireless support structure and within 90 calendar days of receiving an application for a substantial modification to an existing wireless support structure or base station, or any other application for placement, installation or construction of transmission equipment that does not constitute an eligible facilities request as defined by 47 U.S.C. § 1455(a), an authority shall: (A) Review the application in light of the application's conformity with applicable local zoning regulations;

(B) make a final decision to approve or disapprove the application; and

(C) advise the applicant in writing of the authority's final decision, supported by substantial evidence contained in a written record and issued contemporaneously. If an authority denies an application, there must be a reasonable basis for the denial. An authority may not deny an application if such denial discriminates against the applicant with respect to the placement of the facilities of other investor-owned utilities, wireless service providers, wireless infrastructure providers or wireless carriers.

(2) (A) The time period for approval of applications shall begin when the application is submitted and may be tolled within the first 30 days after the submission of the application if the authority notifies the applicant that such application is incomplete, identifies all missing information and specifies the code provision, ordinance, application instruction or otherwise publicly stated procedures that require the information to be submitted.

(B) The time period for approval of applications shall begin running again when the applicant provides the necessary supplemental information. Additionally, the time period for approval of applications may be tolled by the express agreement in writing by both the applicant and the authority.

(3) An application shall be deemed approved if an authority fails to act on an application for a:  
(A) New wireless support structure within the 150-calendar day review period specified; or

(B) substantial modification to an existing wireless support structure or base station or any other applications for placement, installation or construction of transmission equipment that does not constitute an eligible facilities request as defined by 47 U.S.C. § 1455(a) within the 90 calendar days review period specified.

(4) An authority shall approve applications for eligible facilities requests, as defined by 47 U.S.C. § 1455(a), within 60 days according to the procedures established by federal law under 47 C.F.R. 1.40001.

(5) An application shall be deemed approved once an applicant has provided notice to the authority that the applicable time periods provided in this section have lapsed.

(6) Within 30 days of the notice provided pursuant to subsection (h)(5), a party aggrieved by the final action of an authority, either by the authority affirmatively denying an application or by the authority's inaction, may bring an action for review in any court of competent jurisdiction.

(i) An authority may not institute any moratorium on the filing, consideration or approval of applications, permitting or the construction of new wireless support structures, substantial modifications of wireless support structures or collocations.

(j) Subject to the provisions of this section and applicable federal law, an authority may continue to exercise zoning, land use, planning and permitting authority within the authority's territorial boundaries with regard to the siting of new or the modification of wireless support structures, wireless facilities, small cell facilities or utility poles, except that no authority shall have or exercise any zoning or siting jurisdiction, authority or control over the construction, installation or operation of any small cell facility or distributed antennae system located in an interior structure or upon the site of any campus, stadium or athletic facility.

(k) Nothing in this section shall be construed to apply to military installations.

(l) The provisions of this section shall take effect and be in force on and after October 1, 2016.

**History:** L. 2016, ch. 40, § 1; July 1.