BOARD OF ZONING APPEALS MEETING
CITY OF GARDNER, KANSAS
January 7, 2014

The Board of Zoning Appeals met in regular session on the above date at the Gardner City Hall, 120 E. Main Street, Gardner, Kansas.

CALL TO ORDER

Chairman Willnauer called the meeting to order at 6:32 p.m.

PLEDGE OF ALLEGIANCE

Chairman Willnauer led those in attendance in the Pledge of Allegiance.

ROLL CALL

Board Members Present:

Colleen Wuertz
Vice-Chair Mike Hutton
Chairman Kipp Willnauer
Neale Wooten
Kevin King

Staff members in attendance were:

Community Development Director, Michael Hall
Planning Manager, Michelle Leininger
Planning Technician, Travis Hulse

There were approximately ten interested individuals present at the meeting.

CONSENT AGENDA

1. **Approval of the November 5, 2013 meeting minutes as written.**

2. **Approval of the revised 2014 BZA Meeting Schedule**

Discussion
Chairman Willnauer asked to have Consent Agenda Item No. 1 pulled in order to make corrections from Board Member Wuertz. Board Member Wuertz cited the need to change Board Member Hutton's nomination of "Chairman" to read "Vice-Chairman."

Motion to approve Consent Agenda Item No.1 with the suggested changes made by Willnauer with no second.
Vote Made 5-0.

Motion to approve Consent Agenda Item No. 2 made by Willnauer with no second.
Vote Made 5-0.

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REGULAR AGENDA

1. BZA-13-02 Perkins Restaurant & Bakery

Staff Presentation
Michelle Leininger, Planning Manager, presented the staff report for consideration of a variance application with a recommendation that the Board of Zoning Appeals deny a variance for a height increase to permit a 70' flag pole to be constructed at 2000 E. Santa Fe Street.

Chairman Willnauer asked if it was true that a 75' pole sign would be allowed at the site.

Manager Leininger responded that a 75' pole sign would be allowed within 1000' of the interstate as stated in Gardner Municipal Code. Adding that signage is regulated in the sign portion of code, whereas flag pole height is regulated in the zoning portion of code.

Chairman Willnauer inquired as to why a meeting was being held if the Federal Aviation Association had not provided any findings concerning air traffic safety.

Manager Leininger noted that the FAA findings would be advisory in nature. If the Board was to consider approving the variance, staff would recommend waiting until the FAA had made their findings.

Board Member Wooten asked for clarification between a sign and a flag pole.

Manager Leininger quoted the "sign" definition as provided in Chapter 18.10 of Gardner Municipal Code.

Applicant Presentation
Matt Rahfaldt, Vice-President of Operations at CyHawk Hospitality, provided a handout to all Board Members and submitted it for the record (See Appendix A). He presented a historical account of Perkins Restaurant & Bakery and the display of the official flag for the United States of America.

Public Hearing
Chairman Willnauer opened the public hearing at 6:46 p.m.

Joe Herbert, Commander for the American Legion Post 19, issued a statement of support in behalf of the entire Leroy Hill Post 19. He added that it would be important to maintain the safety of all automobile and air traffic potentially affected by a tall flag pole.

Ernie Honas, resident of Gardner, stated his support for Perkins' variance request citing his belief of what the American flag represents for both himself and the community.

Matt Rahfaldt, applicant, added his belief that historical precedence for others who may desire a similar variance has never been apparent in his past dealings with other communities.

Board Member Wuertz asked for clarification regarding the variance request made with the City of Independence, Missouri.

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Mr. Rahfaldt stated that a variance request, from a 25' flag pole regulation, for a 70' flag pole was granted.

Board Member Wuertz asked for more information about the variation of flag size in relation to the flag pole height of 45'.

Mr. Rahfaldt was unaware of the exact size, but assumed for a shorter pole it would be considerably smaller than the 20' by 30' flag requested to be flown at Perkins.

Board Member Hutton asked if the applicant was aware if Perkins would abide by the United States flag code.

Mr. Rahfaldt responded in the affirmative, certain employees would be trained in the proper handling and retiring of the flag including lowering to half-staff when necessary.

Clint Barney, resident of Gardner, expressed his support for the variance request adding that it could help bring consumers into the city.

Motion to close the public hearing made by Wooten, seconded by Hutton. Motion Carried 5-0. Public hearing closed at 7:00 p.m.

Discussion

Board Member Wooten stated the importance of differentiating between a sign and a flag. He added his support of hanging the American flag, but was concerned that it would be difficult to regulate future businesses from flying a less desirable flag.

Board Member King commented that it is important to address any issues from the perspective of regulations outlined in code.

Chairman Willnauer added his primary concern was that the FAA had not provided any findings at this point in the process.

Mr. Rahfaldt requested to provide clarification about the FAA process. He explained that two separate requests were submitted in early November for a sign, and a flag pole. The flag pole request was lost at some point, while the sign request received immediate approval. Referring to the resubmitted flag pole request he said, "My gut tells me that they will approve it."

Chairman Willnauer reiterated the purpose of the Board was to determine whether or not a variance should be granted. He added his belief that a variance should be granted and that it would help to promote Gardner being visible from Interstate-35.

Board Member Hutton agreed, stating that he has no problem with the request so long as it is restricted to allow only the American flag. He added that the determination of a variance should be made in agreement of all Board members.

Board Member Wuertz expressed her concern that approving the variance might set precedence for others to request a similar flag pole height at their business.

Board Member Wooten agreed and added that only the height of the flag is being considered, not what type of flag, or the content of the flag.

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Board Members Wooten, Willnauer, and Hutton discussed whether or not the type of flag could be determined on a case-by-case basis.

A member of the audience spoke out requesting that the Board members refer to it as the United States of America flag, not just “a flag” saying it was disrespectful.

Chairman Willnauer stated that they agree about what the flag represents. Board Member Hutton responded that as a veteran he does respect the United States of America flag, regardless of referring to it as “the flag.”

Director Hall provided more insight to the variance request process, specifically relating to any future determination to be made by the FAA. He recommended the Board table the item until the next meeting in February if they were unable to articulate their rationale for approval. Stating that the Board would need to state their specific findings to establish support for the criterion of a variance approval. He also commented that the type of flag was not under consideration, but the height of the pole from which it would be flown.

Board Member Wooten asked Director Hall to further clarify what was meant by “official flag.”

Director Hall said that the term official flag does not have to be the United States of America flag, but could potentially be another unit of government i.e. country, state, or otherwise. He added that the Board may not legally be able to make a distinction within their purview. He again recommended that the Board wait until the next meeting in February if they intend to make the findings to support an approval.

Board Member Wooten asked when staff would receive the findings from the FAA.

Manager Leininger stated that due to the apparent oversight on behalf of the FAA, staff will work with the applicant to help expedite the process. She added that there was no certainty for how long it would take, but that the sign request took approximately four weeks.

Chairman Willnauer stated his interest to entertain a motion.

Board Member Hutton asked the applicant if a delayed determination by the board would harm their interests.

Mr. Rahfaldt responded that it could potentially delay the opening date of the restaurant but that it should not pose any undue hardship on plans moving forward.

Board Member Hutton asked staff if the Board could condition the approval to allow for them to make a decision contingent upon supported findings by the FAA.

Director Hall recommended that the Board not attempt to make a decision until the next meeting.

Board Member Wuertz asked the applicant if Perkins intends to fly the American flag regardless of the approved pole height.

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Mr. Rahfaldt confirmed that Perkins will fly the maximum allowable flag regardless of pole height.

Board Member Hutton asked staff if the recommendation to the Board was to table the item, until the FAA was able to provide findings concerning safety.

Director Hall responded that if the Board intends to approve the application, they recommend that the Board should wait until all information is available to them including the FAA findings. Adding they will need to provide their findings of support for each of the variance criterion. He added that it is the discretion of the Board to follow staff's recommendation or not.

The Board members discussed the option of conditioning a recommendation of approval versus tabling the item until the next meeting in February.

Motion to approve BZA-13-02 with the condition of finding from the Federal Aviation Administration of "DETERMINATION OF NO HAZARD TO AIR NAVIGATION," made by Hutton, seconded by none. Motion failed for a lack of second.

Motion to table BZA-13-02 until February 4, 2013 made by Wooten seconded by Wuertz
Motion carried 3-2 (0-absent)

ADJOURNMENT

Motion to adjourn made by Wooten, seconded by King. Motion Carried 5-0.

Meeting adjourned at 7:29 p.m.

Travis Hulse, Planning Technician

DRAFT

Board of Zoning Appeals Meeting

City of Gardner, Kansas

January 7, 2014

PLEASE PRINT NAME & ADDRESS

Name	Address
Joseph M. Hebert	223 W. MAIN
MARK DONNER	32642 W 172nd TERR
ERNIE HONAS	370 N. Evergreen
LEN FAUSER	P.O. Box 385 GARDNER
Matt Rahfaldt	12604 Ensley Lane
Tory Roberts	gardner, Ks.
Clint Barney	136 N Cedar St
JEFF BARBER	542 COLLEEN DR.
JERRY L KELLOGG SR	31620 W 174 Ter.
Kenny PRITCHARD	P.O. Box 53 Edgerton KS

Appendix A

HISTORY OF THE FLAG AT PERKINS

The idea of the flag came during the early 70's. Perkins was building a training center in Edina. The U.S. was in the throes of the Vietnam War, and there was a lot of turmoil and flag burning in the Country.

The behavior in the Country disturbed Wyman Nelson, as he grew up when everyone was patriotic and had a flag. He decided to place a large flag in front of the training building. It was special-made and cost about $600 at the time.

The Veterans of Foreign Wars saw it, loved it and the press got a hold of it, also. There was a lot of resulting positive exposure, and the public enjoyed the flag/patriotism. It would not be unusual for people to visit the site to take pictures with the flag.

Wyman decided to use the flag as an identifier and spread it to other Perkins locations.

The price eventually was reduced, too, to a more reasonable amount. The aluminum flagpoles were bought by the pound during this period.

Other local businesses picked up on the flag idea and ran with it.

Some city officials where Perkins were located did not want the large flags flying in front of the restaurants; however, the media reported this and then the public jumped all over the issue to get the flags approved.

There could not be a standard flag developed for every restaurant, as exceptions were needed. Des Moines had to have a short flagpole because of the proximity of the airfield. Also, some flags had to be a little smaller for safety reasons due to surrounding power lines.

Another time there was a public outcry was at the time of the death of Matt Perkins. The flag was flown at half-mast and the company was criticized for doing so. The media picked up on that, ran a story, and there was public support for the actions of Perkins.

Occasionally, there may be danger associated with the flags. They become like sails during high winds. Once Wyman anticipated a storm and went outside to take down the flag. He was holding the flag when a wind picked him up along with the flag and tossed him about 30 feet. He was fearful he would wind up on the highway. According to Wyman, there's nothing to do but let it go when the wind picks up quickly.

Click the Options button to edit this Widget's HTML.

Giant flag earns Americanism honor

Dale Hogg

Dec 25, 9:01 a.m.

The giant American flag flies over the Great Bend Perkins restaurant parking lot non-stop. Because of this unwavering display of American pride, the Sons of the Plains Chapter of the Sons of the American Revolution honored the eatery with its Americanism Award last Thursday morning. Chapter President Stan Jantz and Secretary John Ames presented a plaque to Perkins Regional Manager Lori Jamieson as a gentle breeze tried to stir the massive banner.
"This is quite an honor," Jamieson said. She, Jantz, Ames, Associate Manager Christy Turner and Kitchen Manager Joyce Nelson met in the shadow of the flag's pole.
"We try to do this at different times during the year," Jantz said. "Our goal is to promote patriotism."
Why the big flag? A news release from Perkins tells the story.
The feeling in America in the early 1970s was changing, full of turmoil and political unrest. America was beginning to retreat in Vietnam, and the Watergate scandal was draining citizens

of their patriotism. The negative public sentiment and disrespect toward America and the flag deeply disturbed our owner at that time, Wyman Nelson. During all of this, Perkins was expanding rapidly with an average of two store openings per month bringing the total up from 12 stores to over 350 in a few short years.

Wyman Nelson and an associate from Corporate Development were in Coralville, Iowa, on a site selection tour when they came upon an enormous American flag flying proudly in the morning sunshine. Seeing this brought back memories of growing up as the son of a World War I veteran with his family proudly displaying the flag from a small pole on their front porch. Wyman and his associate began discussing the idea of flying the flag over the new restaurant and headquarters being built on 50th St. and Highway 100 in Edina, Minn.

He found a business in Pennsylvania to make a flag of giant proportions. The aluminum used for the poles was priced per pound and fluctuated greatly and often depending on supply and demand, and the flag itself cost over $600. At that time there was no company able to repair such a huge flag, so Wyman's wife, Charlotte, repaired them herself in their living room at home. Wyman remembers an evening when he went to take down the flag before a storm. The wind came up as he was gathering it and caught it like a sail sending him flying through the air about 30 feet. He recalls he was fearful he would end up lying on the highway. According to Wyman, in that situation there is nothing to do but let go.

Over the years, it has become a Perkins tradition to fly the largest American flag possible over the restaurants. At each new store opening members of the community and local veterans' groups are invited to gather around for an official flag raising ceremony. Wyman was accused of flying the flag as a marketing strategy even though he was actually marketing respect and loyalty to the American flag.

The flag has gained support and renewed interest due to the events of Sept. 11, 2001, as well as the recent wars in Iraq and Afghanistan. In fact, after 9/11 the Edina Support Center received so many letters and calls thanking Perkins for displaying the flag that they began stocking extras to be loaned out for events in the local community. Through all of America's future endeavors Perkins will continue to proudly fly the flag and to inspire new feelings of patriotism in Americans across the country.

Additional Media

Image 1

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Form Approved OMB No. 2120-0001
Expiration Date: 8/31/2014

U.S. Department of Transportation
Federal Aviation Administration

Failure To Provide All Requested Information May Delay Processing of Your Notice

Notice of Proposed Construction or Alteration

FOR FAA USE ONLY
Aeronautical Study Number

1. Sponsor *(person, company, etc. proposing this action):*
Attn. of:
Name: BIG GAME ENTERPRISES, LLC
Address: 25326 332nd ST
City: SIOUX CITY State: IA Zip: 51108
Telephone: 712-330-8431 Fax: 712-239-7235

2. Sponsor's Representative *(if other than #1):*
Attn. of:
Name:
Address:
City: State: Zip:
Telephone: Fax:

3. Notice of: ☑ New Construction ☐ Alteration ☐ Existing
4. Duration: ☑ Permanent ☐ Temporary (___ months, ____days)
5. Work Schedule: Beginning 11/25/13 End 01/17/14
6. Type: ☐ Antenna Tower ☐ Crane ☐ Building ☐ Power Line ☐ Landfill ☐ Water Tank ☑ Other FLAGPOLE
7. Marking/Painting and/or Lighting Preferred:
☐ Red Lights and Paint ☐ Dual - Red and Medium Intensity
☐ White-Medium Intensity ☐ Dual - Red and high Intensity
☐ White -High Intensity ☑ Other
8. FCC Antenna Structure Registration Number *(if applicable)*:

9. Latitude: 38 ° 48 ' 39 " 87
10. Longitude: 94 ° 53 ' 15 " 81
11. Datum: ☑ NAD 83 ☐ NAD 27 ☐ Other
12. Nearest: City: GARDNER State KS
13. Nearest *Public-use* *(not private-use)* or Military Airport or Heliport:
NEW CENTURY AIR CENTER
14. Distance from #13. to Structure: 0.6 miles from end of runway
15. Direction from #13. to Structure: SOUTH
16. Site Elevation *(AMSL)*: 1038 ft.
17. Total Structure Height *(AGL)*: 70 ft.
18. Overall Height (#16 + #17) *(AMSL)*: 1108 ft.
19. Previous FAA Aeronautical Study Number *(if applicable)*:
2007-ACE-5356-OE

20. Description of Location: *(Attach a USGS 7.5 minute Quadrangle Map with the precise site marked and any certified survey)*

THIS SITE IS LOCATED ON THE SOUTHWEST CORNER OF I-35 AND 175TH ST IN GARDNER, KANSAS. THE SITE IS AN EXISTING SITE/BUILDING THAT IS BEING REMODELED TO A PERKINS RESTAURANT. THE NEW CENTURY AIR CENTER IS DIRECTLY NORTH OF THE PROPERTY APPROXIMATELY (1) MILE AWAY.

21. Complete Description of Proposal:

INSTALL A 70' TALL FLAGPOLE FOR NEW PERKINS RESTAURANT ON EXISTING SITE.

Frequency/Power (kW)	

Notice is required by 14 Code of Federal Regulations, part 77 pursuant to 49 U.S.C., Section 44718. Persons who knowingly and willingly violate the notice requirements of part 77 are subject to a civil penalty of $1,000 per day until the notice is received, pursuant to 49 U.S.C., Section 46301(a)

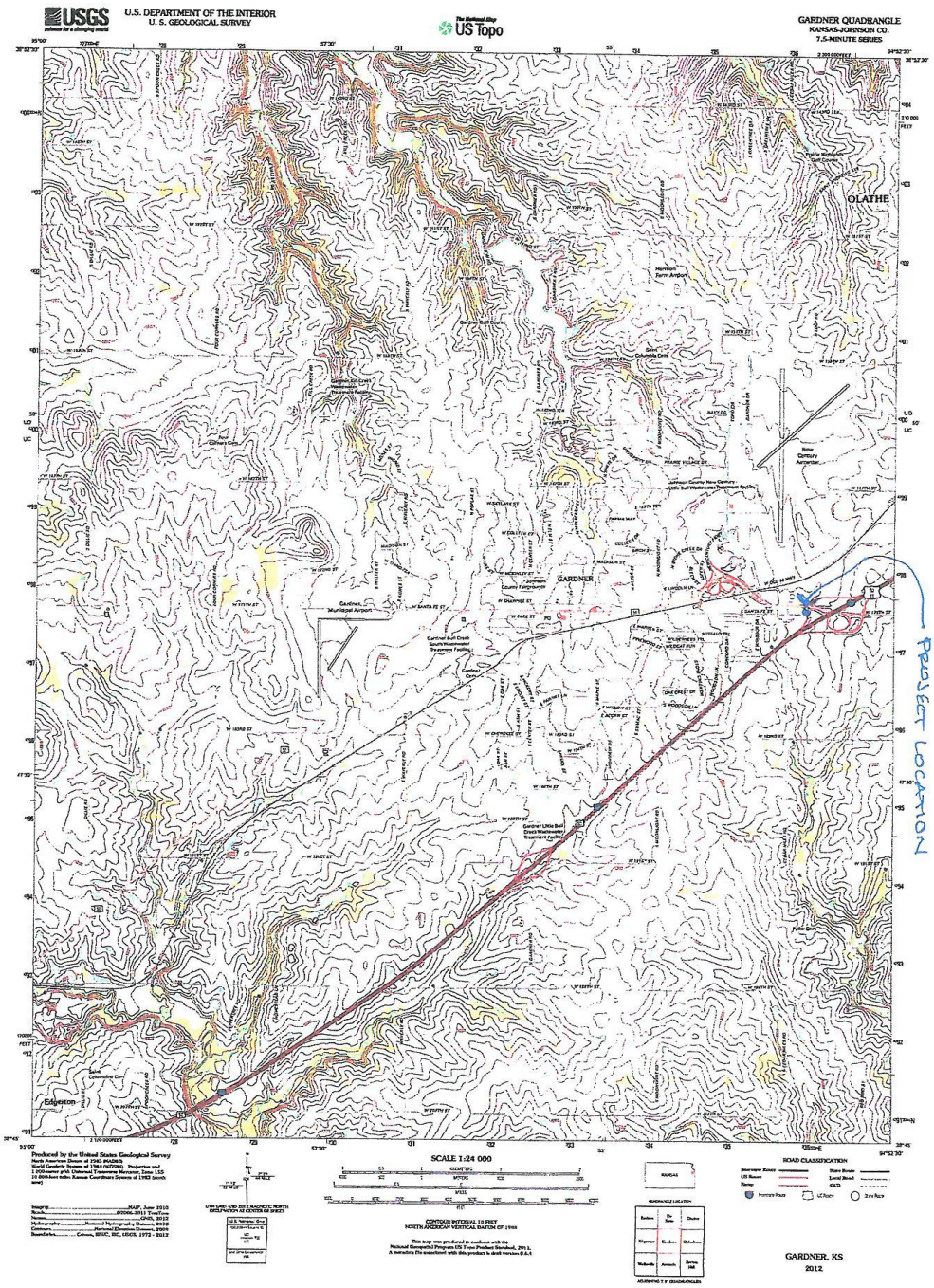
I hereby certify that all of the above statements made by me are true, complete, and correct to the best of my knowledge. In addition, I agree to mark and/or light the structure in accordance with established marking & lighting standards as necessary.

Date	Typed or Printed Name and Title of Person Filing Notice	Signature
11/6/2013	JIM RAHFALDT	Jim Rahfaldt

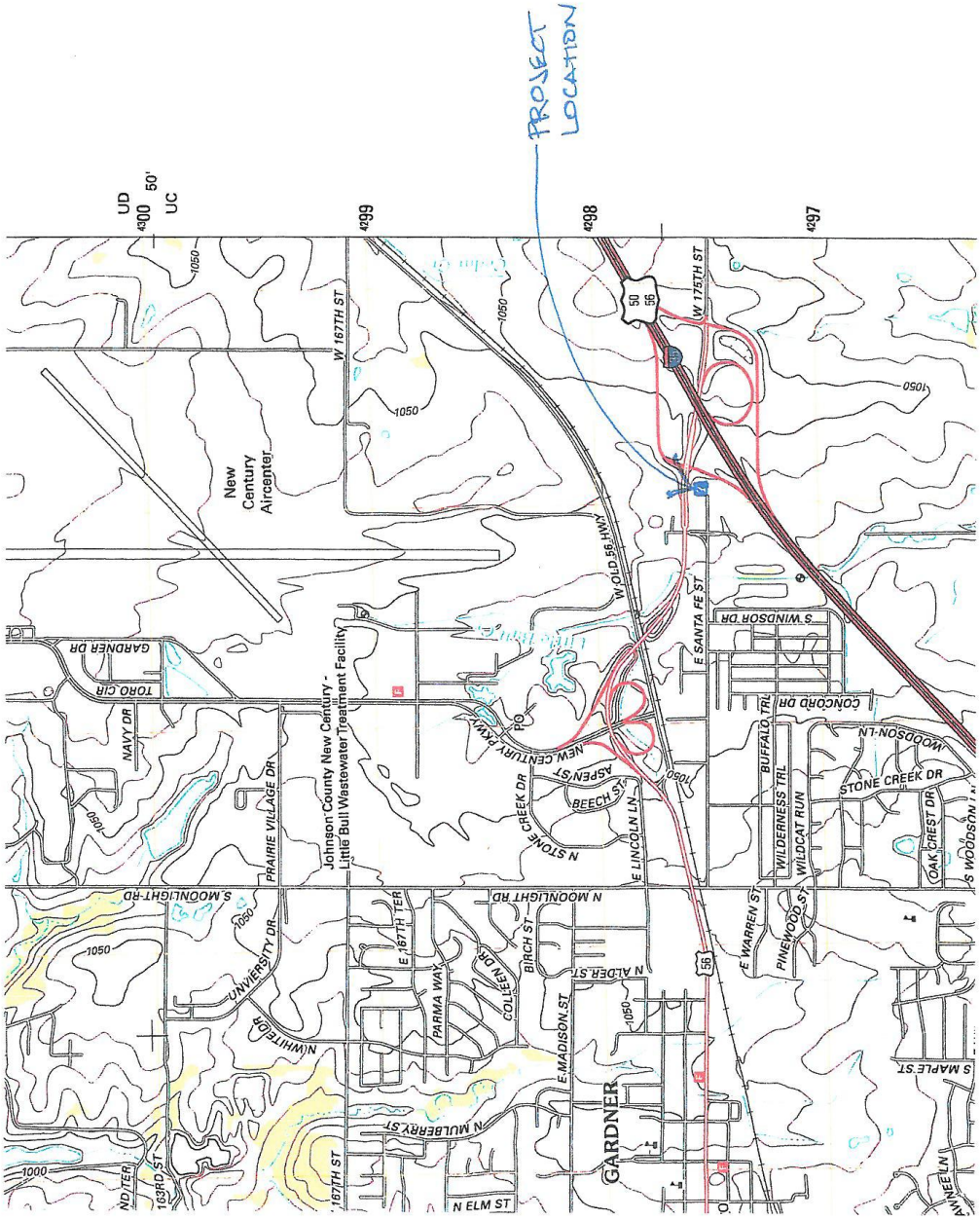
FAA Form 7460-1 (2-12) Supersedes Previous Edition

NSN: 0052-00-012-0009

Planning Commission Meeting
City of Gardner, Kansas
January 7, 2014



PROJECT LOCATION


PROJECT LOCATION
New Century Aircenter
Johnson County New Century - Little Bull Wastewater Treatment Facility
GARDNER
W 167TH ST
W 175TH ST
W OLD 56 HWY
E SANTA FE ST
S WINDSOR DR
CONCORD DR
BUFFALO TRL
WOODSON LN
STONE CREEK DR
OAK CREST DR
WILDERNESS TRL
WILDCAT RUN
E WARREN ST
PINEWOOD ST
S MAPLE ST
N MOONLIGHT RD
S MOONLIGHT RD
E LINCOLN LN
N STONE CREEK DR
ASPEN ST
BEECH ST
NEW CENTURY PKWY
PRAIRIE VILLAGE DR
GARDNER DR
TORO CIR
NAVY DR
UNIVERSITY DR
N WHITE DR
E 167TH TER
PARMA WAY
COLLEEN DR
BIRCH ST
N ALDER ST
E MADISON ST
N MULBERRY ST
N ELM ST
167TH ST
163RD ST
1050
1000