



MEETING OF THE  
MIAMI COUNTY PLANNING COMMISSION

January 5, 2021 | 7:00 p.m.  
Miami County Administration Building | Commission Chambers

**NOTE: Masks and/or social distancing are required pursuant to Governor Kelly's [Executive Order No. 20-68](#), dated November 18, 2020.**

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**AGENDA**

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. ROLL CALL
- IV. OATHS OF OFFICE (Randy Kitchen, Mark Oehlert, and Mark Ross)
- V. ELECTION OF OFFICERS
- VI. ADOPTION OF CALENDAR
- VII. DISCLOSURE OF ANY EX PARTE COMMUNICATIONS OR POTENTIAL CONFLICTS OF INTEREST
- VIII. ADOPTION OF THE AGENDA
- IX. CONSENT AGENDA
  - A. **Minutes:** Approval of the December 1, 2020 Planning Commission Minutes.
- X. REGULAR AGENDA
  - A. **Old Business**

**B. New Business**

**1. Public Hearing 20004-CUP: Miami County Communications Tower**

Consideration of an application for a Conditional Use Permit for a 250' tall communications tower, including an equipment shelter and appurtenant equipment, per Sections 6-2.01.14, and 14-2.01.4 of the Miami County, Kansas Zoning Regulations. The subject property of approximately 5,625 square feet is located approximately 147 feet south of 399th St, and approximately 440 feet west of Metcalf Rd, in the NW 1/4 of Section 17, Twp 19, Range 25, Sugar Creek Twp. Submitted by Trevor Wood with Selective Site Consultants on behalf of Miami County, Kansas, the applicant. Wildwood Outdoor Education Center, Inc. is the property owner of record.

**2. Public Hearing 20002-TA: Zoning Regulations Amendments (Billboard Signs)**

Consideration of draft amendments to the Zoning Regulations of Miami County, Kansas, pertaining to Billboard Signs (Off-Premises Outdoor). Affected regulations include Article 2 (Definitions); and Article 18 (Signs).

**XI. GENERAL DISCUSSION**

**A. Possible Future Amendments to Zoning and Subdivision Regulations**

1. Common Access Easement requirements
2. Sign Regulations
3. Telecommunications Regulations
4. Height limits for radio, television, internet antennas and satellite dishes designed for individual residences.

**XII. ANNOUNCEMENTS BY STAFF/COMMISSIONERS**

1. **Scheduling Planning Commission Workshop (Comp Plan) the week of May 24<sup>th</sup>.**

**XIII. ADJOURNMENT**

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## Hearing Procedure

1. Chairman announces the agenda item.
2. Members describe what, if any, communication they have had with applicant or interested party regarding the case; indicating the nature of the communication and whom it was with.
3. Members describe what, if any, conflicts of interest they may have and recuse themselves from the hearing room for the duration of the hearing.
4. Staff presents their report with recommendations on the request.
5. Applicant or agent of the applicant makes a brief presentation of the request. (Except for clarifications, Planning Commissioners should withhold questions or comments until the public hearing is closed.)
6. Chairman explains how public comments will be received during the public hearing.
7. Chairman opens the public hearing and solicits comments from the audience.
8. Once invited to speak, the speaker clearly states his / her name and address before providing comment. Speaker has a maximum of 3 minutes to provide comments, and must direct all comments to the Planning Commission. Proper meeting decorum is expected. Miami County reserves the right to remove from the meeting anyone who fails to act properly.
9. Staff reads aloud any comments received after the meeting packet was published.
10. Applicant clarifications or rebuttals.
11. Chairman closes the public hearing.
12. Planning Commissioners deliberate the request in light of the *Golden Criteria* and other pertinent information, and take action if able to do so.
13. Planning Commissioners clearly state a motion either in favor or denial of the request, or to table the item until a future date, whatever the case may be. Planning Commissioners should present their findings to substantiate the action taken.
14. Once a motion is made and seconded, Chairman restates the motion on the floor. If there are no further questions, corrections, or additions, Chairman proceeds to conduct a vote of the Planning Commission.
15. All votes are conducted by roll call. Planning Commissioners must verbally articulate their vote. If a Planning Commissioner abstains from the vote, he/she must provide a reason for the abstention.
16. Chairman announces the vote tally, and whether the motion passes or fails.
17. Staff announces when the request will be heard by the Board of County Commissioners.

18. Staff announcement of the 14-day Protest Period, which begins after the Public Hearing is closed.

- \* **Protest Petitions:** Any protest petition must be filed with the Office of the County Clerk within 14 days from the conclusion of the public hearing held by the Planning Commission. A sample protest petition may be obtained by contacting the Planning Department at 201 S. Pearl Street, Suite 201, Paola, KS 66071; (913) 294-9553; or [planning@miamicountyks.org](mailto:planning@miamicountyks.org).

## MIAMI COUNTY PLANNING DEPARTMENT

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### 2021 Planning Commission Annual Elections

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**DATE:** January 5, 2021 – Planning Commission Meeting  
**TO:** Miami County Planning Commission  
**FROM:** Teresa Reeves, Planning Director

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Per the By-Laws of the Planning Commission, Election of Officers shall be held annually at the regular meeting in the month of January. An affirmative vote of a majority of the voting members shall be required for election. If no candidate receives a clear majority vote on the first ballot, voting shall continue until one (1) candidate receives a clear majority vote.

- The Chairman shall be limited to two (2) consecutive terms.
  - Mark Oehlert has now served one (1) term as Chairman and is still eligible.
- Vice-Chairman and Executive Secretary may succeed themselves indefinitely.
  - John Menefee is currently serving as Vice-Chairman.
  - The County Planning Director or his/her designee shall serve as the Executive Secretary.
- Election of one (1) member for appointment recommendation to the Board of Zoning Appeals shall be held annually. Appointment shall be made by the Board of County Commissioners. The appointee may succeed himself/herself indefinitely.
  - Mark Ross is the Planning Commissioner currently seated on the Board of Zoning Appeals.

**MIAMI COUNTY PLANNING DEPARTMENT**

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**2021 – 2022 Planning Commission Calendar**

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**DATE:** January 5, 2021 – Planning Commission Meeting  
**TO:** Miami County Planning Commission  
**FROM:** Teresa Reeves, Planning Director

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Staff has updated the Planning Commission calendar, which includes meeting dates and deadlines for submitting applications and legal notice. None of the meeting dates conflict with the County Clerk's office and use of the Commission Chamber.

If the Planning Commission finds the proposed 2021-2022 calendar to be acceptable, the calendar should be officially adopted.

**2021 - 2022**  
**Miami County Planning Commission Submittal Deadlines & Meeting Dates**

Application Submittal Deadline Dates			Legals	Planning Commission Meeting / Hearing	County Commission Meeting / Hearing (earliest date)	
CUP/Rezoning/Preliminary Plat	Final and Small Plats	Site Plans	Legal Notice		Final Plats	CUP/Rezoning
11/20/2020	12/1/2020	12/4/2020	12/4/2020	<b>January 5, 2021</b>	1/20/2021	1/27/2021
12/18/2020	12/29/2020	1/1/2021	1/1/2021	<b>February 2, 2021</b>	2/17/2021	2/24/2021
1/15/2021	1/26/2021	1/29/2021	1/29/2021	<b>March 2, 2021</b>	3/17/2021	3/24/2021
2/19/2021	3/2/2021	3/5/2021	3/5/2021	<b>April 6, 2021</b>	4/21/2021	4/28/2021
3/19/2021	3/30/2021	4/2/2021	4/2/2021	<b>May 4, 2021</b>	5/19/2021	5/26/2021
4/16/2021	4/27/2021	4/30/2021	4/30/2021	<b>June 1, 2021</b>	6/16/2021	6/23/2021
5/21/2021	6/1/2021	6/4/2021	6/4/2021	<b>July 6, 2021</b>	7/21/2021	7/28/2021
6/18/2021	6/29/2021	7/2/2021	7/2/2021	<b>August 3, 2021</b>	8/18/2021	8/25/2021
7/23/2021	8/3/2021	8/6/2021	8/6/2021	<b>September 7, 2021</b>	9/22/2021	9/29/2021
8/20/2021	8/31/2021	9/3/2021	9/3/2021	<b>October 5, 2021</b>	10/20/2021	10/27/2021
9/17/2021	9/28/2021	10/1/2021	10/1/2021	<b>November 2, 2021</b>	11/17/2021	11/24/2021
10/22/2021	11/2/2021	11/5/2021	11/5/2021	<b>December 7, 2021</b>	12/22/2021	12/29/2021
11/19/2021	11/30/2021	12/3/2021	12/3/2021	<b>January 4, 2022</b>	1/19/2022	1/26/2022
12/17/2021	12/28/2021	12/31/2021	12/31/2021	<b>February 1, 2022</b>	2/16/2022	2/23/2022
1/14/2022	1/25/2022	1/28/2022	1/28/2022	<b>March 1, 2022</b>	3/16/2022	3/23/2022
2/18/2022	3/1/2022	3/4/2022	3/4/2022	<b>April 5, 2022</b>	4/20/2022	4/27/2022
3/18/2022	3/29/2022	4/1/2022	4/1/2022	<b>May 3, 2022</b>	5/18/2022	5/25/2022
4/22/2022	5/3/2022	5/6/2022	5/6/2022	<b>June 7, 2022</b>	6/22/2022	6/29/2022
5/20/2022	5/31/2022	6/3/2022	6/3/2022	<b>July 5, 2022</b>	7/20/2022	7/27/2022
6/17/2022	6/28/2022	7/1/2022	7/1/2022	<b>August 2, 2022</b>	8/17/2022	8/24/2022
7/22/2022	8/2/2022	8/5/2022	8/5/2022	<b>September 6, 2022</b>	9/21/2022	9/28/2022
8/19/2022	8/30/2022	9/2/2022	9/2/2022	<b>October 4, 2022</b>	10/19/2022	10/26/2022
9/16/2022	9/27/2022	9/30/2022	9/30/2022	<b>November 1, 2022</b>	11/16/2022	11/23/2022
10/21/2022	11/1/2022	11/4/2022	11/4/2022	<b>December 6, 2022</b>	12/21/2022	12/28/2022

If an application submittal deadline falls on a weekend or holiday, the deadline will automatically fall to the next business day.

\*Site plan deadline requiring review by the Planning Commission is 30 days prior to the next scheduled Planning Commission meeting per Article 19-4.01 of the Zoning Regulations.

\*Conditional Use Permit (CUP) and Rezoning requests must be submitted at least forty-five (45) days prior to a scheduled Planning Commission meeting per Article 22-1.03 of the Zoning Regulations.

\*A protest petition regarding a CUP or Rezoning request must be filed with the County Clerk within fourteen (14) days after the date of the Planning Commission hearing per Article 14-1.03 and Article 22-7.07 of the Zoning Regulations & K.S.A. 12-757(f).

\*Preliminary Subdivision Plat submittal deadline is 45 days prior to the next regularly scheduled Planning Commission meeting.

\*Final and Small Subdivision Plat submittal deadline is at least 35 days prior to the next regularly scheduled Planning Commission meeting.

\*Planning Commission meetings are scheduled for the first (1st) Tuesday of each month at 7:00 p.m., and are held in the County Administration Building (Commission Chambers), unless otherwise noted on this schedule. Said meetings are subject to change with proper notice.

***MINUTES OF THE  
MIAMI COUNTY PLANNING COMMISSION  
DECEMBER 1, 2020***

***MIAMI COUNTY ADMINISTRATION BUILDING  
COMMISSION CHAMBERS  
201 SOUTH PEARL STREET  
PAOLA, KANSAS 66071***

**ATTENDANCE**

**CHAIR:** Mark Oehlert

**VICE-CHAIR:** John Menefee

**PLANNING COMMISSION** Joshua Brown, Randy Kitchen, Bret Manchester,  
and Mark Ross

**ABSENT MEMBERS:** Kelli Broers, Kevin Collins, and Phil Elliott

**EX-OFFICIO MEMBERS:** None present

**PLANNING DIRECTOR:** Teresa Reeves

**COUNTY COUNSELOR:** David Heger

**PLANNER:** Kenneth Cook

**PC SECRETARY:** Angie Baumann

**ECONOMIC DEVELOPMENT** Janet McRae

**COUNTY COMMISSION:** None Present

**COUNTY CLERK:** Not Present

**PRESS:** Miami County Republic

## MINUTES

DECEMBER 1, 2020

### MIAMI COUNTY PLANNING COMMISSION

#### CALL TO ORDER

Chair Mark Oehlert called the meeting to order at 7:00 p.m.

#### PLEDGE OF ALLEGIANCE

#### ROLL CALL

Roll Call was taken and six (6) members were present, constituting a quorum. Broers, Collins, and Elliott were absent.

#### DISCLOSURE OF ANY EX PARTE COMMUNICATIONS OR POTENTIAL CONFLICTS OF INTEREST

None disclosed.

#### ADOPTION OF THE AGENDA

Ross moved to adopt the Agenda as presented. Menefee seconded, and the motion passed unanimously, 6-0, by a roll call vote.

#### CONSENT AGENDA

- **November 10, 2020** Planning Commission Minutes.

Menefee moved to adopt the Consent Agenda as presented. Manchester seconded, and the motion passed unanimously, 6-0, by a roll call vote.

#### REGULAR AGENDA

##### Old Business:

##### **Continued Discussion: 20001-TA: Draft Amendments to the Zoning Regulations for Accessory Dwelling Units (ADUs)**

Consideration of draft amendments to the Zoning Regulations of Miami County, Kansas, pertaining to Accessory Dwelling Units. Affected regulations include Articles 2 (Definitions); 5 (Countryside); and 6 (Agricultural). A provision may also be made for Accessory Dwelling Units in Article 4 (Planned Development) and Article 4A (Rural Residential). All of these Districts allow single-family residential uses.

Reeves stated that the Planning Commission has directed staff to use the Johnson County, Kansas regulations for accessory dwelling units as a template for modifying our Zoning Regulations for Accessory Dwelling Units. She reported that since last month's meeting, staff has added a definition for "Principal Dwelling". Other minor, grammatical changes were made to ensure that defined terms, such as "Accessory Dwelling Unit" and "Primary Dwelling", are consistently written throughout the text. Reeves explained that changes are highlighted in blue, but that the text otherwise remains the same since last month's meeting.

Staff's recommendation is that the Planning Commission recommend that the Board of County Commissioners adopt the amendments to the Zoning Regulations, as proposed.

Oehlert opened the public hearing. There being no public comments, Oehlert closed the public hearing.

Menefee recalled, from last month's meeting, that the Planning Commission just needed staff to add a definition for "Principal Dwelling".

Reeves confirmed, and added that the addition of the definition for "Principal Dwelling" is the most significant change made since last month's meeting. She summarized that the proposed text amendments relax the existing Regulations somewhat; clarify the existing Regulations; allow for detached ADUs; and increase the maximum allowed total floor area of the ADU to 50% of the total floor area of the Principal Dwelling.

Oehlert asked if there will be any deed restrictions for properties with ADUs.

Reeves answered that staff plans to have a document recorded with the property, which evidences that the property has an ADU that must comply with the Zoning Regulations. She pointed out that the provision pertaining to a deed restriction is included in the proposed text amendments (Item "e.", under "Performance Standards").

Oehlert then asked how the deed restriction will be worded.

Reeves recalled that the deed restriction will include language providing that non-compliance with the Zoning Regulations for ADUs could result in the property owner being required to remove the ADU.

Menefee moved to recommend, to the Board of County Commissioners, approval of 20001-TA: Zoning Regulation Amendments regarding ADUs, as presented. Ross seconded the motion, and the motion carried via a roll vote of 5-1<sup>1</sup> (Kitchen voted "No").

Reeves announced that this will go before the Board of County Commissioners on December 23<sup>rd</sup> at 1:00 p.m.

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<sup>1</sup> The two Planning Commissioners who initiated and seconded the motion (Menefee and Ross) were not queried for their votes.

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Existing language in the Zoning Regulations is shown below, with all modifications highlighted. Text proposed to be added is italicized.

## PROPOSED DRAFT AMENDMENTS TO DEFINITIONS

### Article 2 Definitions

#### Basement

That portion of a building which *has more than one-half of its floor-to-ceiling height below the average grade of the adjoining ground.*

#### **DWELLING, PRINCIPAL:**

*When the principal use conducted on a lot, tract, or parcel is a single-family dwelling unit, then the principal use shall also be known as the principal dwelling (aka Primary Dwelling). In the case of a lot, tract, or parcel containing only one dwelling unit, the dwelling unit is the principal dwelling. In the case of a lot, tract, or parcel containing a principal dwelling and an Accessory Dwelling Unit, the principal dwelling is the larger of the dwelling units.*

#### **DWELLING UNIT, ACCESSORY:**

An additional, self-contained, subordinate dwelling unit located within, ~~or~~ attached to, *or detached from* a single-family Principal Dwelling and having independent access. An accessory dwelling *unit* shall be secondary to a Principal Dwelling. *The following types of accessory dwellings are referred to in these regulations:*

##### **1. Attached Accessory Dwelling Unit**

*An accessory dwelling unit within a portion of or connected to the Principal Dwelling. An accessory dwelling unit shall be considered to be attached to the Principal Dwelling if it has a wall in common with the Principal Dwelling; or, if it is connected to the Principal Dwelling by way of a Livable Area.*

##### **2. Detached Accessory Dwelling Unit**

*An accessory dwelling unit standing apart and detached from the Principal Dwelling, and located on the same lot, tract, or parcel.*

#### **FLOOR AREA:**

The sum of the gross horizontal areas of the several floors of a building measured from the exterior faces of the exterior walls, or from the centerline of walls separating two buildings, computed as follows:

(A) For Determining Gross Floor Area: The sum of the following areas: (1) the *livable areas of the* basement floor area when more than one-half (1/2) of ~~the basement height~~ *its floor-to-ceiling height* is above the ~~finished lot grade level where curb level has not been established~~ *average grade of the adjoining ground, or when an emergency egress door and windows exist or are installed in compliance with the adopted building/fire code;* (2) elevator shafts and stairwells at each floor *minus the area of the opening to the floor below;* (3) floor space used for mechanical equipment (except equipment, open or enclosed, located on the roof); (4) penthouses; (5) *lofts and finished* attic space having headroom of seven feet, ~~ten inches~~ *or more when accessible by a*

*conventional stairway; (6) interior balconies and mezzanines; (7) enclosed porches and sunrooms which are finished and climate controlled; and (8) floor area devoted to accessory uses. Space devoted to off-street parking or loading shall not be included in the floor area. The floor area of structures devoted to bulk storage of materials, including, but not limited to, grain elevators and petroleum storage tanks, shall be computed by counting each ten feet of height, or fraction thereof, as being equal to one floor.*

(B) For Determining the Off-Street Parking and Loading Requirement: The sum of the following areas: (1) gross floor space devoted to the principal use of the premises; and (2) any basement area devoted to retailing activities or to the production or processing of goods or to business or professional offices. For this purpose, floor area shall not include space devoted primarily to storage purposes, off-street parking or loading facilities, including aisles, ramps and maneuvering space, or basement floor area other than area devoted to retailing activities, the production or processing of goods, business or professional offices, or meeting rooms.

### **Habitable Floor**

*Any floor used for living, which includes working, sleeping, eating, cooking or recreation or combination thereof. A floor used only for storage purposes is not a habitable floor.*

### **Kitchen**

*Any place or part of a building that is used for the preparation and cooking of food and the washing of dishes with the exception that a wet bar shall not be considered a kitchen for the purpose of determining the existence of two dwellings on one lot if used for preparing and serving drinks and snacks but not entire meals. Such wet bar may include countertops, cabinets, a sink with an inner base area not to exceed 145 sq. in., a refrigerator, a beer or wine cooler, and a microwave or toaster oven, and shall not include a stove, oven, or other type of cooking appliance.*

### **Livable Area**

*A space within a dwelling unit that is heated, has a ceiling height of at least seven feet, and has finished walls, floors, and ceilings. Walls and ceilings shall be deemed finished if they are covered with plaster, wallboard, wood paneling, or similar material. Floors shall be deemed finished only if they are covered with carpeting, tile, linoleum, finished wood, decorative concrete, or similar material.*

*This definition includes hallways, closets, dormers, laundry room facilities, stairs, attics, lofts and storage rooms if they are a functional part of the living area, and are accessible by a conventional stairway, and not part of an unfinished area such as an unfinished attic or unfinished basement. In rooms with sloped ceilings (e.g., finished attics) livable area is considered that portion of the room with a ceiling height of at least five feet.*

## **PROPOSED DRAFT AMENDMENTS TO RESIDENTIAL DISTRICTS:**

### **Article 4 - Planned Development**

(Staff is proposing the addition of the following language to Section 4-2.01.1, pertaining to Residential uses in the Planned Development District):

*Accessory Dwelling Units as defined in these regulations and per Section 5-2.01.12.*

**Article 4A - Rural Residential Section 4A-2.01.9**

(Staff is proposing the following addition to Section 4A-2.01, pertaining to Use Regulations in the Rural Residential District):

*4A-2.01.9 - Accessory Dwelling Units as defined in these regulations and per Section 5-2.01.12.*

**Article 5 Countryside, Section 5-2.01.12**

(Staff's proposed amendments to this Section are provided on the pages that follow.)

**Article 6 Agricultural, Section 6-2.01.13**

(Staff proposes to strike all of the existing standards in this Section, and instead include the following language):

*Accessory Dwelling Units as defined in these regulations and per Section 5-2.01.12.*

***One Accessory Dwelling Unit*** ("ADU" or "ADUs", as the case may be), ***subject to the Performance Standards listed below.***

*1. Purpose. Accessory Dwelling Units are allowed in certain situations to:*

- a. Create new housing units while respecting the appearance and scale of single-family dwellings;*
- b. Support more efficient use of existing housing stock and infrastructure; and*
- c. Provide housing that responds to changing family needs, smaller households, and increasing housing costs, accessible housing for seniors, and persons with disabilities.*

*Allowing ADUs is not intended to replace duplex and other multi-family zoning districts and dwellings. An ADU is different than a duplex in that typically the two units that make up a duplex are attached to each other, are relatively equal in size and height, and one unit usually does not dominate the other. In contrast, an ADU may or may not be attached and is subordinate in size, location, and appearance to the Principal Dwelling ~~unit~~ that it accompanies. Additionally, both duplex units may be rented while an ADU or its accompanying Principal Dwelling ~~unit~~ shall be owner-occupied.*

*2. Performance Standards:*

- a. The Accessory Dwelling Unit shall be constructed within, attached to, or detached from an existing Principal Dwelling.*
- b. An Attached Accessory Dwelling Unit shall be physically connected to the Principal Dwelling. ~~by, at a minimum, a roofed structure no longer than 25 feet.~~*
- c. A Detached Accessory Dwelling Unit shall be located within 200 feet of the Principal Dwelling and shall have continuous driveway access provided to the ADU for fire safety.*
- d. A Detached Accessory Dwelling Unit shall not be located in front of the Principal Dwelling.*
- e. The property owner shall reside in either the Principal Dwelling or the Accessory Dwelling Unit. A deed restriction shall be signed by the property owner and recorded with the Miami County Register of Deeds, providing notice that the ADU is located on the property and must be used in compliance with the requirements of the Miami County Zoning Regulations, and that the lawful existence of the ADU is subject to the occupancy of the property owner in*

*either the Principal Dwelling or Accessory Dwelling Unit. Violation of the ADU regulations may result in the property owner being responsible for removal of the ADU.*

- f. Construction of an Accessory Dwelling Unit in an existing garage of the Principal Dwelling shall not relieve the requirement of providing a garage or comparable *non-residential* accessory structure for the Principal Dwelling as noted in the parking regulations of this article.
  - g. The entryway to ~~the~~ *an Attached* Accessory Dwelling Unit *shall be oriented away from the main street, and/or be located on a different façade and/or building plane, and be smaller with less detail* ~~shall not be located on the same plane as than~~ the Principal Dwelling's main entrance.
  - h. The minimum required total floor area of the Accessory Dwelling Unit shall be 250 square feet.
  - i. The maximum allowed total floor area of the Accessory Dwelling Unit shall be the lesser of ~~25%–~~ *50%* of the total floor area of the Principal Dwelling, excluding the Principal Dwelling's garage, or 900 square feet.
  - j. The Accessory Dwelling Unit shall not be allowed within or attached to a mobile home but may be allowed within or attached to a manufactured home.
  - k. The Accessory Dwelling Unit shall use the same driveway *entrance* as the Principal Dwelling. A second driveway *entrance* accessing the Accessory Dwelling Unit shall not be allowed.
  - l. The Accessory Dwelling Unit may have to be served with an onsite wastewater system separate from that of the Principal Dwelling if the existing onsite wastewater system is inadequate per code to serve the *new dwelling Accessory Dwelling Unit*.
  - ~~m. The accessory dwelling shall not be located within a barn unless the principal dwelling is also located within a barn.~~
  - m. The Accessory Dwelling Unit shall be ~~constructed of the same or similar building materials as the principal dwelling,~~ *complement the architecture and design patterns of the neighborhood in which it is located.*
  - n. The Accessory Dwelling Unit shall meet all other applicable development codes and regulations of the county.
  - o. An ADU shall be located on a lot, tract, or parcel no smaller than *two (2) acres in size unless both the Principal Dwelling and Accessory Dwellings-Unit are able to connect to public sewer.*
  - p. *The proposed ADU must gain approval from the appropriate utility companies, including but not limited to electric, gas, water, and sewer/wastewater for the additional use.*
  - q. *The ADU or Principal Dwelling cannot be used as a short-term rental or bed and breakfast unless approved with a conditional use permit.*
  - r. *If there is a conditional use permit in effect on the subject property, then an ADU shall only be allowed if reviewed and approved by the Planning Commission.*
  - s. *The ADU shall have a minimum of one (1) parking space made available on the subject property.*
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## **New Business:**

### **Public Hearing 20001-VAC: Petition to Vacate Setbacks / Easements**

Reeves presented the staff report for consideration of a petition to vacate the drainage easements, the 75-foot setback from the right-of-way, and the 50-foot setback from the side yard and rear yard, as identified on Lot 3, and possibly Lots 1 and 2 of the Final Plat of Aiken Acres Subdivision; and to recognize the current effective floodplain locations rather than the outdated floodplain as shown on the Final Plat. The subject property is located at the northeast corner of K-68 Hwy and Coldwater Springs Rd, in the SW ¼ of Section 26, Township 16S, Range 25E, Wea Twp. Submitted by Russell and Katie Satrom, property owners of Lot 3, Aiken Acres.

Reeves reported that the Zoning and Subdivision Regulations in effect at the time Aiken Acres Subdivision was created required a 75' setback from the ultimate right-of-way and a 50' setback from the side yards and rear yard. Since that time the Regulations have been revised and now require a 50' setback from the ultimate right-of-way and a 20' setback from the side yards and rear yard.

She explained that the Applicant wishes to build on the subject property. Not only do the setbacks, as shown on the Final Plat, present a problem for the Applicant, but also the drainage and floodplain easements, which cover the majority of Lot 3. Reeves added that the drainage and floodplain easements, as shown on Lot 3 on the Final Plat, do not match any current or historical floodplain maps whatsoever.

Reeves stated that Mr. Satrom had planned to ask the other property owners in the Aiken Acres subdivision if they would like to participate in the Petition; and, staff also mailed letters to those property owners, inviting them to participate in this Petition. She reported that staff has received no response from the other property owners.

Staff recommends that the current effective floodplain maps be recognized instead of the drainage and floodplain easements, as shown on the Final Plat. Staff also recommends reducing the setbacks on Lot 3 to 50' from the ultimate right-of-way and 20' from the sides and rear. Reeves noted that of the drainage easements shown on the property the only drainage easement that should remain is the one for the blue-line stream, which flows primarily north of Lot 3.

Reeves reported that staff has also notified the utility companies, and received no negative comments. She added that this would not affect any utilities, and is applicable only to Lot 3.

Reeves then presented to the Planning Commission a graphic of the original Final Plat, overlaid with the current effective floodplain. She pointed out that the current effective floodplain on Lot 3 is not nearly as substantial as the floodplain shown on the original Final Plat.

Oehlert asked if there are any possible negative consequences if this Vacation is approved.

Reeves answered that she does not believe so. She added that staff follows the floodplain regulations that are currently in place. She commented that she does not know how the floodplain calculations on the original Final Plat were derived, as they do not match any of the historical floodplain maps.

Oehlert asked if the Applicants are present this evening.

Reeves responded that they are not.

Oehlert then opened the public hearing. There being no public comments, Oehlert closed the public hearing.

Reeves reiterated that the proposed Vacation affects only Lot 3 of Aiken Acres.

Ross moved to approve 20001-VAC: Petition to Vacate Setbacks / Easements, as presented, and subject to staff's Findings. Menefee seconded, and the motion passed unanimously, 6-0<sup>2</sup>, by a roll call vote.

Reeves announced that the Vacation will go before the Board of County Commissioners on December 23<sup>rd</sup> at 1:00 p.m.

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### **Findings**

1. The public will suffer no loss or inconvenience by such Vacation, and no private rights will be injured or endangered.
2. The proposed Vacation will correct the setbacks to comply with the current Regulations, and will correct the floodplain location to allow the owners to have better use of their property.
3. The property owners of Lots 1 and 2 of Aiken Acres were notified of the proposal to Vacate and were invited to join the petition. To date, no opposition to the petition has been received.

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### **Public Hearing 20003-Z: Rezone from Countryside (CS) to Commercial (C-2)**

Reeves presented the staff report for consideration of an application to rezone approximately 9.13 acres from Countryside (CS) to Commercial (C-2), in accordance with Sections 8 and 22 of the Miami County, Kansas Zoning Regulations. The subject property, also known as Midway Drive-in, is addressed as 29591 W 327th St, and is located on the south side of 327th St, between Osawatomie Rd and Lookout Rd, in the NW ¼ of Section 36, Twp 17, Range 22, Valley Twp. Submitted by Woodys Entertainment, LLC, property owner of record.

Reeves reported that the new property owner approached the County's Economic Development Director and inquired about the possibility of having additional activities—such as swap meets—on the property. Reeves further reported that the drive-in theater use is a grandfathered conditional use permit, which was granted upon the adoption of Countywide zoning. She explained that, as a result, use of the subject property is restricted to a drive-in theater only. She further explained that the subject property does not have Commercial zoning; therefore, it will need to be rezoned to allow the additional uses the property owner is proposing.

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<sup>2</sup> The two Planning Commissioners who initiated and seconded the motion (Ross and Menefee) were not queried for their votes.

Reeves pointed out that the entrance would need to be upgraded to a commercial entrance. She reported that the Applicant plans to open a second ticket booth window to help prevent vehicle-stacking on 327<sup>th</sup> Street.

Reeves noted that staff has received a number of positive comments regarding this Application, and no negative comments. She added that three additional comments were received, via email, after the meeting packets were published, all of which were supportive of the proposed Rezoning. (Staff provided to the Planning Commissioners printed copies of the additional comments.)

She then briefly highlighted several of the *Golden Criteria* to be used by the Planning Commission when making Findings to approve or deny the requested Rezoning:

**1. Character of the neighborhood.**

**2. The zoning and uses of property nearby.**

**3. The suitability of the subject property to its present use.**

Reeves noted that the use is not changing significantly. Rather, some uses that are typically associated with a drive-in theater are being proposed, in addition to the existing drive-in theater use.

**4. The extent to which removal of the present zoning will detrimentally affect nearby property.**

Reeves reported that the Comprehensive Plan identifies the airport “area” as a Short-term Area of Regional Significance, and is therefore projected to increase in appropriate commercial-type uses.

**6. The relative gain to the public health, safety, and welfare by the destruction of the value of the nearby property as compared to the hardship imposed upon the individual landowner.**

Staff does not anticipate a negative impact on surrounding property values if the additional uses proposed are operating on the property. In fact, staff believes the proposed Rezoning would be beneficial—not only for the Applicant, but also for the community as a whole.

Reeves explained that the drive-in theater itself is a regional attraction; and, the additional uses proposed would help support the Midway Drive-In operation.

**10. Such additional matters as may apply in individual circumstances.**

To avoid traffic problems along 327<sup>th</sup> Street, staff recommends that the Applicants open a second ticket booth window upon opening the facility.

Staff's recommendation is that the Planning Commission recommend approval of the proposed Rezoning, based upon the Findings listed in the staff report. Reeves explained that there are no Conditions because a Rezoning cannot be made subject to Conditions.

Oehlert asked if the Applicant will need to apply for a conditional use permit in the future.

Reeves answered that there is an existing conditional use permit for the drive-in theater use. She explained that the proposed Rezoning to Commercial (C-2) would allow these additional uses that would not otherwise be allowed in the Countryside (CS) zoning district.

Oehlert asked if a conditional use permit is specific to the owner or to the property.

Reeves answered that a CUP runs with the land. She again noted that the CUP for this property is grandfathered in, and is not affected by the proposed Rezoning.

Kitchen asked if a CUP will continue to be necessary if the property is rezoned to Commercial (C-2).

Reeves answered that the current Zoning Regulations for the C-2 district require a CUP for a drive-in theater.

Ross asked if it is the CUP that allows the drive-in theater use and the Rezoning to C-2 that will allow the other proposed uses.

Reeves confirmed this to be correct. She added that all of the uses in the Zoning Regulations that are allowed by right in the C-2 district would be allowed on the subject property, subject to the Performance Standards provided in the Zoning Regulations for that District. She noted that the Miami County Adult Entertainment Code restricts adult entertainment uses from occurring within so many feet of a platted subdivision.

Kitchen noted that according to the staff report adult entertainment uses cannot be within 1,000 feet of a platted subdivision.

Reeves confirmed that this is correct, and noted that two platted subdivisions abut the subject property.

There being no further questions for staff, Oehlert invited the Applicant to speak.

Heather Wood, of Woodys Entertainment, LLC (37655 Osawatomie Rd., Osawatomie) approached the podium and stated that her husband could not be present this evening, as he is home with their children. She commented that Reeves has sufficiently covered everything. Mrs. Wood explained that when they purchased the property they were not aware of its zoning nor the conditional use permit. She reported receiving much positive feedback from the community, and that many people have been especially supportive of the swap meets proposed for weekend mornings, as no swap meets are available locally.

With regard to the uses allowed by right in the Commercial (C-2) zoning district, Mrs. Wood expressed that she and her husband have no intentions of making any significant changes to the

property or do anything that is not beneficial to the community. Rather, they want to retain what is there and are working to revive and refresh the drive-in theater operation. She explained that the other uses will provide investment income, which will benefit the drive-in theater operation.

She expressed that they want to be family-friendly, and noted that they have young children. She further expressed that they fell in love with the drive-in theater nearly six years ago when they took their children there for the first time.

Mrs. Wood then invited questions from the Planning Commission.

Manchester asked if the Applicants have obtained estimates for upgrading the entrance to a commercial entrance.

It is Mrs. Wood's understanding that, at one point in time, both sides of the ticket booth were manned in order to prevent traffic from backing up on 327<sup>th</sup> Street. However, she recalled from personal experience that only one window of the ticket booth was open and traffic was backing up. Mrs. Wood explained that the existing ticket booth has two windows, (one on each side of the booth), which would enable two lines of vehicles to enter the property. She reported that they plan to utilize both windows. Mrs. Wood expressed that one of her main concerns is a traffic back-up on 327<sup>th</sup>, especially because the speed limit is 55 mph. She assured the Planning Commission that the second window will be ready in time for opening day and will be utilized.

Ross noted that Road & Bridge Director J.R. McMahon had commented that the area from the road to the right-of-way will need to be paved.

Kitchen asked whether it is the property owner's or the County's responsibility to maintain the right-of-way on a driveway.

Reeves clarified that McMahon is referring to the area beginning at the edge of the highway pavement and ending at the parking lot. She explained that this area will need to be upgraded to a concrete or paved surface.

Mrs. Wood responded that this is something they will do if that is what is required in the C-2 district.

Oehlert noted that Conditions cannot be placed on a Rezoning.

Reeves confirmed, and explained that this is a Road & Bridge entrance requirement.

Oehlert noted that the Narrative specifies the lot will accommodate up to 245 cars and approximately 600 people. He asked what the Applicant plans to do if they reach that limit during a swap meet, which he anticipates will draw a large crowd.

Mrs. Wood answered that they have considered many options. She noted that there is additional space on the lot that could be graveled and utilized for parking. They have also considered requiring people to pre-register for swap meets. She commented that they have nothing to refer to at this point, and will have to play it by-ear to see how busy it actually is.

Oehlert commented that he is concerned about people attempting to park along the side of 327<sup>th</sup> Street during a swap meet if the lot is full.

Mrs. Wood responded that they could try to plan for such an occurrence by graveling additional space on the lot to accommodate parking. She added that if she were to observe people attempting to park alongside 327<sup>th</sup>, she would discourage this and would ask people to move their vehicles. Mrs. Wood added that she does not anticipate this happening because they already have in mind an anticipated number of people who want to buy in as vendors at the swap meets versus how many spaces they can allow for shoppers. She explained that if 245 people want to vend, they won't allow that number of vendors because the lot can't accommodate 245 cars plus shoppers entering and exiting the property.

Oehlert asked Reeves if we could request that the Road & Bridge Department post "No Parking" signs along 327<sup>th</sup> Street.

Reeves confirmed, and commented that we probably should. She also suggested that the Applicant post a sign notifying passersby when the lot has reached capacity.

With regard to evening activities, Oehlert asked if lighting will be an issue.

Reeves answered that she does not know if the Applicant plans to install any new lighting, but any new lighting will have to comply with the Parking Standards in the Zoning Regulations, and must be fully shielded and directed downward.

Oehlert asked if permits will be required before any new lighting may be installed.

Reeves confirmed, and added that any change will require an updated site plan, building permits, lighting plans, etc.

Oehlert asked if the Applicant has plans for onsite security during any of the events.

Mrs. Wood responded that they do not currently anticipate any security issues, but can look into this further in the future.

Oehlert asked Mrs. Wood to clarify the operating hours for evening events.

Mrs. Wood responded that on weekends, they will follow fairly closely the previous hours of operation, with the exception of extending the movie viewing season. She noted that movies would begin at 6:00 p.m. or 7:00 p.m.; and, on weekends only, they would end at midnight or 1:00 a.m. She noted that any weeknight events that could hinder or be a nuisance to neighbors, such as motorcycle shows or bike rallies, would end by 6:00 p.m. or 7:00 p.m. Mrs. Wood expressed that they do not wish to be a nuisance to neighbors. She added that quieter events could end by 9:00 p.m. Mrs. Wood also noted that they do not anticipate many motorcycle shows or bike runs on weeknights; rather, they would likely take place on weekends, and primarily during the middle of the day. She anticipates having possibly five such events per year.

Oehlert then opened the public hearing. There being no public comments, Oehlert closed the public hearing.

Menefee asked if the majority of the surrounding area is zoned Commercial (C-2).

Reeves answered that the surrounding zoning is mixed: Commercial, Industrial, and Business Park.

Oehlert commented that he likes the idea of Rezoning, as it provides greater opportunity to utilize the property. He added that he would like to see the previously discussed concerns addressed.

Menefee moved to approve 20001-Z<sup>3</sup>: Rezone from Countryside (CS) to Commercial (C-2), based upon the Findings in the staff report. Kitchen seconded the motion, and the motion passed unanimously, 6-0<sup>4</sup>, via a roll vote.

Reeves announced that the Board of County Commissioners will make the final decision on December 23<sup>rd</sup> at 1:00 p.m.

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## **Findings**

1. The proposed Rezoning conforms to the Goals and Objectives of the Comprehensive Plan as a Short-term Area of Regional Significance.
2. The proposed Commercial (C-2) zoning is compatible with surrounding mixed uses in the area near the airport and is compatible with the existing drive-in theater use on the property.

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## **GENERAL DISCUSSION**

### **Possible Future Amendments to Zoning and Subdivision Regulations**

1. Common Access Easement requirements
2. Sign Regulations
3. Telecommunications Regulations
4. Height limits for radio, television, internet antennas and satellite dishes designed for individual residences.

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<sup>3</sup> NOTE: The staff report referenced an incorrect Application number (No. 20001-Z). However, the published legal notice; notice provided to property owners within 1,000'; and the meeting Agenda all reference the correct Application number (Application No. 20003-Z).

<sup>4</sup> The two Planning Commissioners who initiated and seconded the motion (Menefee and Kitchen) were not queried for their votes.

Reeves noted that this item appears on the Agenda simply as a reminder. There was no objection among the Planning Commissioners to continuing discussion on these possible text amendments to a later date.

**ANNOUNCEMENTS BY STAFF / COMMISSIONERS**

Reeves announced that the Comprehensive Plan Virtual Visioning Workshops for Stakeholder and Technical Committee members are scheduled for December 15<sup>th</sup> and 17<sup>th</sup>. Postcards have been sent to the public, notifying of the public survey.

Reeves briefly announced the items on next month’s Agenda, including the election of officers; adoption of the 2021-2022 Planning Commission calendar; a conditional use permit for an emergency communications tower; and a public hearing on proposed text amendments for billboard sign regulations.

Reeves also announced that Dave Delp has been hired as the new Code Services Director.

There being no further announcements, Oehlert asked for a motion to adjourn. Ross moved to adjourn the meeting, Menefee seconded, and the meeting was adjourned by unanimous vote at 7:52 p.m.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Angie Baumann, PC Secretary

\_\_\_\_\_  
Chair, Mark Oehlert / Vice-Chair, John Menefee

Minutes taken by Angie Baumann

**MIAMI COUNTY PLANNING DEPARTMENT**

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**PUBLIC HEARING – Communications Tower – Miami County**

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**DATE:** January 5, 2021

**TO:** Miami County Planning Commission

**FROM:** Teresa Reeves, Director

**RE:** **Public Hearing 20004-CUP: Miami County Communications Tower**  
Consideration of an application for a Conditional Use Permit for a 250' tall communications tower, including an equipment shelter and appurtenant equipment, per Sections 6-2.01.14, and 14-2.01.4 of the Miami County, Kansas Zoning Regulations. The subject property of approximately 5,625 square feet is located approximately 147 feet south of 399th St, and approximately 440 feet west of Metcalf Rd, in the NW 1/4 of Section 17, Twp. 19, Range 25, Sugar Creek Twp. Submitted by Trevor Wood with Selective Site Consultants on behalf of Miami County, Kansas, the applicant. Wildwood Outdoor Education Center, Inc. is the property owner of record.

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**Property Owner(s)** Wildwood Outdoor Education Center, Inc.

**Current Zoning** Agricultural  
Z-109-CUP (Outdoor Education School)  
17004-CUP (Borda Productions)

**Comp Plan** Rural Agriculture (20-Ac. density)

**Acreage** Approximately 5,625 Square Feet plus access / utility easements

**CAMA #** Pt. 214-17-0-00-00-002.00-0

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**Background**

**September 5, 1991:** Resolution 09051-01 was approved, which adopted countywide zoning and zoning map, including zoning identifiers for various existing uses. The subject property was assigned Zoning Identifier #Z-109 for a CUP to recognize the existing Outdoor Education School. The current zoning is Agricultural.

**July 5, 2017:** Resolution R17-07-025 was approved for a CUP for a live entertainment event venue, including camping and recreational activities.

## Proposal

Miami County is in the process of upgrading its emergency communications network by collocating antennas on existing towers/structures where possible, and constructing new towers where collocation is not possible. The Zoning Regulations encourage collocation of communications antennas to increase coverage and minimize the need for additional facilities. However, local authorities are restricted from mandating collocation per State Statute. Collocation requires only administrative approval of a building permit.

Miami County entered into a lease agreement with Wildwood Education Center, Inc., to construct a 250' tall self-supporting tower within a 75' x 75' lease area on the Wildwood property. The proposal includes a 1,000 gallon underground propane tank and a 12' x 26' equipment shelter. The compound/lease area will be enclosed by a six foot (6') high chain link fence topped with three strands of barbed wire. Proposed access to the site is from 399<sup>th</sup> Street, which is identified as a Local road on the 1995 Comprehensive Transportation Plan Map. The right-of-way along this section of 399<sup>th</sup> Street is 50-feet total and has an average improved surface width of 22-24 feet with a gravel road surface. The tower is proposed to be located approximately 202 feet south of the centerline of 399<sup>th</sup> St., and approximately 800 feet east of the west property line. Communications towers are exempt from the lot size and height requirements of the district in which they are located. The normal height restriction in the AG District is 2½ stories, or 35'. Tower lighting will be in compliance with the FAA.

Trevor Wood, of Selective Site Consultants, submitted a narrative describing how the proposal complies with Miami County's Zoning Regulations for towers. As noted by Mr. Wood in his narrative, some requirements pertaining to telecommunications towers/facilities in Miami County's Zoning Regulations are outdated and do not comply with the Kansas New Wireless Deployment Act adopted in 2016. KSA 66-2019(f)(17) prohibits local jurisdictions from "imposing a greater setback or fall-zone requirement for a wireless support structure than for other types of commercial structures of a similar size." Miami County doesn't have 250' tall structures; therefore, staff believes the proposed tower must comply with the fall-zone requirement.

The following italicized information pertains to the exact same tower construction/height for a similar application that was submitted to the Planning Commission in November of this year. Staff is including this information as it is also relative to the proposed tower.

*On September 25, 2020, a fall-zone letter from James Kaiser, an engineer with Valmont Industries, Inc. was submitted in conjunction with a similar tower proposal at a different location. Mr. Kaiser's letter describes the proposed tower as a "Class III/IV" tower, and explains the differences between the structure classes of towers, stating that Class III/IV towers require a higher standard for safety than Class II towers.*

*In comparison, Mr. Wood's Narrative states that:*

*"...these towers, in the highly unlikely event of collapse are weakest higher up (as they are tapered) and will likely twist in on themselves or kink rather than tip over".*

*Staff requested additional engineering details to evidence why a fall-zone would not be necessary for this tower, which was received on November 5, 2020. Other than the increased fall zone for towers, the tower complies with the regular setbacks for other structures in this district. Setbacks in the AG District are 50' front yard; and 20-feet from side and rear yard. The centerline of the tower will be located approximately 147 feet from the edge of the right-of-way. No other property line is in question.*

### **Public Notice**

Written notice of the hearing was mailed to 6 property owners located within 1,000' of the proposed tower lease area; and a sign was posted near the driveway. In addition, legal notice was published in the Miami County Republic on December 9, 2020.

In response, one letter of objection was received on December 22, 2020 from Andrew F. Thompson, with Communication Enhancement, LLC, representing the tower located on the north side of 399<sup>th</sup> St, and approximately 1000 feet northwest of this proposal. Mr. Thompson disputed Selective Site Consultant's (SCC) claim that there were no other collocations or structures in the area that would provide the needed coverage for Miami County's emergency services in this area, and noted that his company had not been contacted regarding possible collocation. Staff forwarded Mr. Thompson's email to Shane Krull, County Administrator who has been working with SCC and Tusa Consulting Services on placement of a tower and collocation of emergency equipment. Staff received communication between Mr. Krull and Tusa, who indicated that the County had determined from previous applications that it would be more cost effective in the long run to construct its own tower rather than pay a \$10,500 application fee to determine if space could be made available for the radio equipment, plus the monthly rental fees on a commercial tower.

### **Discussion**

The Zoning Regulations require that minimum development standards be addressed for communications tower applications and that information be provided to adequately justify the location of the tower. These minimum development standards are provided below, and are followed by staff comments with regard to whether the Applicant has satisfactorily addressed each of the standards.

- A. The applicant shall present satisfactory proof that the proposed location and use is reasonably necessary. In providing said proof, a Communication Facilities Master Plan shall be submitted to the Planning Commission for their review and approval, if a Master Plan has not yet been approved, prior to the Planning Commission acting on the conditional use permit request for a new facility (the Master Plan***

*may be reviewed at the same hearing as the conditional use permit request). The Master Plan shall show the locations and types of existing facilities and the approximate locations, but not the types, of future facilities, for the company proposing said facility. The Master Plan shall include existing and future locations for the incorporated and unincorporated areas of the county. Any amendment to a communication company's Master Plan shall again be submitted to the Planning Commission for their review and approval.*

Although the county can require a search ring, the county cannot require that an applicant collocate on existing towers rather than construct a new tower.

- B. *None of the above uses shall be required to comply fully with the lot size and height regulations of the zoning district in which they are located except as may be required by the conditions imposed upon the applicant.***

The site consists of a 75' x 75' leased area and the height of the tower will be 250'.

- C. *Such structures must be set back from all adjacent property lines and streets and highways a distance equal to not less than its height plus ten (10) feet.***

The proposed 250' tall tower does not comply with this standard. The tower will be located approximately 800 feet from the west property line and approximately 147' from the right-of-way of 399<sup>th</sup> Street. Selective Site Consultants submitted a revised letter, further explaining why this requirement is not necessary (please see the attached November 5, 2020 letter pertaining to a similar tower).

- D. *The applicant must document that co-location on an existing tower or other existing structure within five (5) miles of the proposed location is not feasible, or that efforts were made to locate on existing towers or other existing structures, but such efforts were not successful. Documentation of this requirement shall be placed in the record by affidavit of the applicant or intended user of the tower. At the request of the Planning Commission, additional evidence in the form of testimony may be required from the applicant or intended user of the tower.***

This is no longer allowed.

- E. *All proposed communication towers 150 feet or less in height, not including lightning rods, shall be designed to accommodate at least one (1) additional PCS/Cellular or other similar platform. All proposed communication towers in excess of 150 feet shall be designed to accommodate at least two (2) additional PCS/Cellular or other similar platforms.***

This is no longer allowed.

**F. Any application for a proposed tower in excess of 150 feet in height shall include documentation regarding the necessity for the proposed height from an RF and/or other Licensed Professional Engineer. Such documentation shall be in the form of an affidavit acceptable to the Planning Commission and signed by said Engineer. At the request of the Planning Commission, additional evidence in the form of testimony may be required from said Engineer.**

This is no longer allowed.

**G. The tower and accessory equipment must meet all requirements of the Federal Aviation Administration. To the extent allowed by such requirements, any required lighting for such tower shall be red during time of darkness.**

Lighting on the tower will be in compliance with the FAA.

In addition to making Findings on the standards noted above, the Planning Commission needs to consider all comments made at the public hearing, and then consider, but not limit its consideration, to the following *Golden Criteria* in making findings to approve or deny the requested conditional use permit.

**1. Character of the neighborhood.**

The tower is proposed to be located on a small 75'x75' lease area within a 140 +/- acre property owned by Wildwood Education Center, which hosts summer camps for kids and various other outdoor retreats and educational experiences. Another CUP was approved on this property in 2017 for Borda Productions, which hosts 2-3 music festivals each year. The neighborhood is mostly agricultural with a few residences and includes LaCygne Lake with the KCPL Power Plant, south of the property. Much of the area is held in ownership by KCPL as a wildlife preserve. Additionally, Kansas City Youth for Christ (Youthfront) owns property for camps to the west and south into Linn County. US 69 Highway is located approximately 1 mile west. A communications tower, and a fiber optic facility (01001-CUP) are located approximately 1000 feet northwest of the proposal.

**2. The zoning and uses of property nearby.**

The subject property as well as surrounding properties are zoned Agricultural (AG) and in agricultural use. In addition there are several CUP's in the immediate area including Borda Productions, Wildwood Outdoor Education, KCYFC Camp, PF Net (for a fiber optic facility), and a tower facility, which was constructed prior to the adoption of countywide zoning. As noted above, LaCygne Lake and the KCP&L power plant are located south, into Linn County, and much of the surrounding area is owned by KCP&L as a wildlife area. There are also several residences in the area on larger acreages.

**3. *The suitability of the subject property to the uses to which it is restricted.***

The subject property is improved with multiple structures that are accessory to the camp use, and several times a year, Borda Productions hosts large music events. The subject property is well suited to these uses.

**4. *The extent to which removal of the present zoning restrictions will detrimentally affect nearby property.***

Communications towers have become commonplace and in great demand. With the existence of another tower and fiber optic facility in the immediate area, it is difficult to determine whether the addition of a tower to this property would create a detrimental effect on nearby properties or serve as a benefit. The engineering report received from Valmont Structures addresses the tower design and evidence for not providing a fall zone, which the planning commission will need to evaluate. The tower will be setback from the road far enough that the base should be screened from neighboring properties.

**5. *The length of time the subject property has remained vacant as zoned.***

This is not applicable.

**6. *The relative gain to the public health, safety, and welfare by maintaining the zoning restrictions compared to the hardship the restrictions impose upon the individual landowner (applicant).***

The proposed tower is for emergency communications, which will greatly benefit the public health, safety, and welfare of Miami County citizens and visitors. As long as any potential negative impacts can be mitigated, and the planning commission believes the November 5, 2020 engineering report received from Valmont Structures provides sufficient evidence to show that a fall-zone is not necessary for the tower, staff believes there will be no hardship.

If the application is denied, the Applicant will need to search for alternative locations for the emergency radio equipment which is already behind schedule. Another hardship to the Applicant would be that the fall-zone requirement needs to be enforced, which means the currently proposed location would need to be moved approximately 103 feet further south to comply with the fall zone requirement. This could be problematic due to change of terrain and could create a hardship for the County because this site was selected as a high point on the property, and is also the most suitable location to meet the coverage needs for proper radio transmission. In addition, the hearing would need to be continued since the notification area was based upon the current proposed lease area.

Considering the existing zoning and character of the neighborhood, staff believes there will be no detrimental effect, but a gain to the public's health, safety, and welfare with the addition of this tower, as long as evidence submitted adequately demonstrates that the fall-zone is not necessary.

**7. *Whether the proposed conditional use permit would be consistent with the intent and purpose of the Zoning Regulations.***

The Zoning Regulations require approval of a conditional use permit for communications towers in most of the zoning districts in the County, unless the tower is below a certain height and within a certain distance of a highway, arterial, or collector road. To comply with recent federal and State legislation, and in consideration of the need to upgrade emergency radio systems, this proposal meets the spirit and intent of the Zoning Regulations to promote the health, safety, morals, comfort and general welfare of the citizens of Miami County, Kansas, subject to the planning commission's determination that the Valmont Structures engineering report provides adequate evidence that the fall-zone is not required.

**8. *The recommendations of the County's permanent or professional staff.***

After weighing the merits of the request and its implications to the surrounding property owners, planning staff recommends approval of the request, subject to the Conditions listed at the end of this report, and subject to the planning commission's determination that the Valmont Structures engineering report provides adequate evidence that the fall-zone is not required.

**9. *The conformance of the requested conditional use permit to the adopted Miami County Comprehensive Plan.***

The Comprehensive Plan designates this site as Rural Agriculture. The Comprehensive Plan is silent on this specific type of use, but permits utility type uses if negative impacts can be mitigated. If the lack of the required fall-zone can be adequately addressed, and the Planning Commission feels it is not necessary to collocate on the existing tower on the north side of 399<sup>th</sup> St, staff believes the proposed use will be significantly beneficial to the citizens of the county.

**10. *Such additional matters as may apply in individual circumstances.***

Consideration of the objection posed by Mr. Thompson with Communication Enhancement, LLC, representing the tower on the north side of 399<sup>th</sup> St.

## **Recommendation**

Staff recommends that the Planning Commission recommend **approval** of the request for a conditional use permit to allow the construction and use of a 250' tall communications tower with appurtenant ground equipment, based upon the following Findings and subject to the following Conditions.

## **Findings**

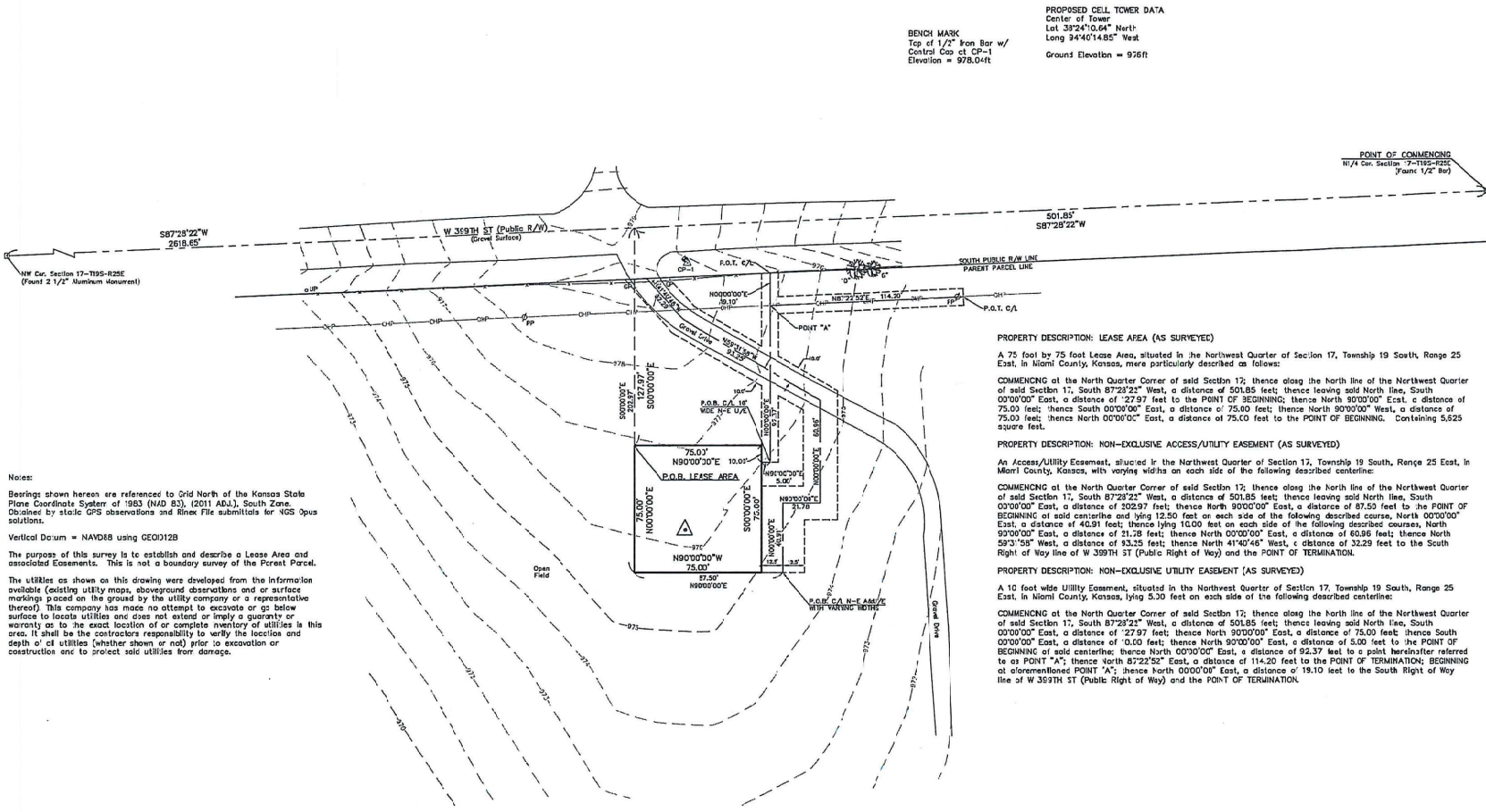
1. The requested use, as conditioned, will be compatible with the surrounding zoning and character of the neighborhood.
2. The proposed communications tower will provide essential coverage for emergency communications to protect and benefit the health, safety, and welfare of the citizens and visitors of Miami County.
3. With the Valmont Structures engineering report, sufficient evidence has been provided that a fall zone is not necessary, and there is no evidence to suggest that the requested use will detrimentally affect nearby properties.
4. The Consulting Firms representing the County have determined it is in the County's best financial interest over the long run to construct this tower.

## **Conditions**

1. Except as amended by these Conditions, the property shall be developed according to the site, attached hereto as Exhibit "A".
2. Except as amended by these Conditions, the property shall be developed according to the applicant's narrative report, attached hereto as Exhibit "B".
3. Development shall comply with all local, state, and federal codes and permit requirements that are applicable.
4. The tower shall be removed within six (6) months of cessation of use as a communications tower.

**Attachments:** Site Documents (Pg 1 of 1; A-1.0; A-1.1; A-2.0) (Exhibit "A")  
Narrative (Exhibit "B")  
Vicinity Map  
Tower/Fiber Comparison Map  
Objection Letter (Communication Enhancement, LLC)

**WILDWOOD**  
PART OF THE NW 1/4, SECTION 17, T19S, R25E,  
IN MIAMI COUNTY, KANSAS



**BENCH MARK**  
Top of 1/2" Iron Bar w/  
Central Co at CP-1  
Elevation = 978.0-ft

**PROPOSED CELL TOWER DATA**  
Center of tower  
Lat. 38°24'0.64" North  
Long 94°40'14.85" West  
Ground Elevation = 976-ft

**Notes:**

Bearings shown herein are referenced to Grid North of the Kansas State Plane Coordinate System of 1983 (NAD 83), (2011 ADJ.), South Zone. Obtained by stic GPS observations and RINEX file submissions for NGS Opus solutions.

Vertical Datum = NAVD83 using GED012B

The purpose of this survey is to establish and describe a Lease Area and associated Easements. This is not a boundary survey of the Parent Parcel.

The utilities as shown on this drawing were developed from the information available (existing utility maps, aboveground observations and/or surface markings placed on the ground by the utility company or a representative thereof). This company has made no attempt to excavate or go below surface to locate utilities and does not extend or imply a warranty or warranty as to the exact location or complete inventory of utilities in this area. It shall be the contractor's responsibility to verify the location and depth of all utilities (whether shown or not) prior to excavation or construction and to protect said utilities from damage.

**PROPERTY DESCRIPTION: LEASE AREA (AS SURVEYED)**

A 75 foot by 75 foot Lease Area, situated in the Northwest Quarter of Section 17, Township 19 South, Range 25 East, in Miami County, Kansas, more particularly described as follows:

COMMENCING at the North Quarter Corner of said Section 17; thence along the north line of the Northwest Quarter of said Section 17, South 87°28'22" West, a distance of 501.85 feet; thence leaving said North line, South 00°00'00" East, a distance of 27.97 feet to the POINT OF BEGINNING; thence North 90°00'00" East, a distance of 75.00 feet; thence South 00°00'00" East, a distance of 75.00 feet; thence North 90°00'00" West, a distance of 75.00 feet; thence North 00°00'00" East, a distance of 75.00 feet to the POINT OF BEGINNING. Containing 5,625 square feet.

**PROPERTY DESCRIPTION: NON-EXCLUSIVE ACCESS/UTILITY EASEMENT (AS SURVEYED)**

An Access/Utility Easement, situated by the Northwest Quarter of Section 17, Township 19 South, Range 25 East, in Miami County, Kansas, with varying widths on each side of the following described centerline:

COMMENCING at the North Quarter Corner of said Section 17; thence along the north line of the Northwest Quarter of said Section 17, South 87°28'22" West, a distance of 501.85 feet; thence leaving said North line, South 00°00'00" East, a distance of 202.97 feet; thence North 90°00'00" East, a distance of 87.50 feet to the POINT OF BEGINNING of said centerline and lying 12.50 feet on each side of the following described course, North 00°00'00" East, a distance of 40.91 feet; thence lying 10.00 feet on each side of the following described courses, North 90°00'00" East, a distance of 21.78 feet; thence North 00°00'00" East, a distance of 80.98 feet; thence North 50°00'00" West, a distance of 93.25 feet; thence North 41°40'46" West, a distance of 92.22 feet to the South Right of Way line of W 359TH ST (Public Right of Way) and the POINT OF TERMINATION.

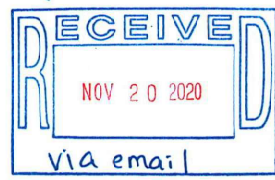
**PROPERTY DESCRIPTION: NON-EXCLUSIVE UTILITY EASEMENT (AS SURVEYED)**

A 10 foot wide Utility Easement, situated in the Northwest Quarter of Section 17, Township 19 South, Range 25 East, in Miami County, Kansas, lying 5.00 feet on each side of the following described centerline:

COMMENCING at the North Quarter Corner of said Section 17; thence along the north line of the Northwest Quarter of said Section 17, South 87°28'22" West, a distance of 501.85 feet; thence leaving said North line, South 00°00'00" East, a distance of 27.97 feet; thence North 90°00'00" East, a distance of 75.00 feet; thence South 00°00'00" East, a distance of 10.00 feet; thence North 90°00'00" East, a distance of 5.00 feet to the POINT OF BEGINNING of said centerline; thence North 00°00'00" East, a distance of 92.37 feet to a point hereinafter referred to as POINT "A"; thence North 87°22'58" East, a distance of 114.40 feet to the POINT OF TERMINATION; BEGINNING at aforementioned POINT "A"; thence North 00°00'00" East, a distance of 19.10 feet to the South Right of Way line of W 359TH ST (Public Right of Way) and the POINT OF TERMINATION.

LEGEND		PROPERTY LEGEND	
POWER POLE	⊕ PP	SECTION CORNER	□
UTILITY PROBE/STAKE	⊙ UP	RIGHT OF WAY	R/W
TOWER	⊕	CENTERLINE	C/L
TREE (DIA)	⊙	POINT OF BEGINNING	P.O.B.
FENCE	— x —	POINT OF TERMINATION	P.O.T.
OVERHEAD POWER LINE	— OP —	ACCESS/UTILITY EASEMENT	AMU/E
BENCHMARK	⊕	UTILITY EASEMENT	U/E
CONTROL POINT	⊕	NON-EXCLUSIVE	N-E
		BROKEN SCALE	— / —

**EXHIBIT A**  
PAGE 1 OF 4 PAGE(S)



**CERTIFICATION:**

I HEREBY CERTIFY THAT A SURVEY WAS MADE BY ME, OR UNDER MY DIRECT SUPERVISION, ON THE GROUND OF THE LEASE AREA, AND ASSOCIATED EASEMENT PREMISES HEREIN DESCRIBED, AND THE RESULTS OF SAID SURVEY ARE REPRESENTED HEREON TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF.

JEFFREY B. LOVELACE KS-LS1326  
DATE: 11-19-20; REVISED PER COMMENTS

W 359TH ST		UTICAMP RD
SITE		
<p><b>Hayden</b> TOWER SERVICE, INC. 2936 N.W. Hwy 24 Topeka, KS 66618 Phone: (785) 232-1840 Fax: (785) 232-1877</p>		
<p><b>LOVELACE &amp; ASSOCIATES</b> Land Surveying - Land Planning Telecommunications Surveys 819 SE 3rd Street, Lawrence, Kansas 66044 Phone: (816) 347-9997 Fax: (816) 347-9979</p>		
<p><b>SURVEY COORDINATED BY:</b> LOVELACE AND ASSOCIATES, LLC P.O. BOX 68, LEE'S SUMMIT, MO 64083 TELEPHONE: 816-347-9997 FAX: 816-347-9979</p>		
<p><b>SURVEY PROVIDED BY:</b> LOVELACE AND ASSOCIATES, LLC P.O. BOX 68, LEE'S SUMMIT, MO 64083 TELEPHONE: 816-347-9997 FAX: 816-347-9979</p>		
<p><b>SURVEY PROVIDED FOR:</b> HAYDEN TOWER 2936 NW HWY 24, TOPEKA, KS 66618 TELEPHONE: 785-232-1840</p>		
<p align="center">SCALE 30' 0 30' 60'</p>		
<p><b>FLOOD NOTE:</b></p> <p>According to my interpretations of Community Panel No. 20121003500 of the Flood Insurance Rate Map for Miami County, Kansas, dated 01-16-2014, the subject property is in Flood Zone "X", i.e. areas determined to be outside the 0.2% annual chance floodplain.</p>		
<p align="center">  KANSAS STATE SEAL KANSAS DEPT. OF REVENUE KANSAS DEPT. OF REVENUE, INC.         </p>		
<p>SITE I.D.: HYKSD046 SITE NAME: WILDWOOD SITE LOCATION: CITY OF LACYONE, MIAMI COUNTY, KS LA PROJECT NO.: 20220 DRAWN BY: A.C.T. CHECKED BY: J.B.L. DATE: 10-08-20 FIELDWORK DATE: 10-06-20</p>		
<p align="center">SHEET NUMBER 1 OF 1</p>		



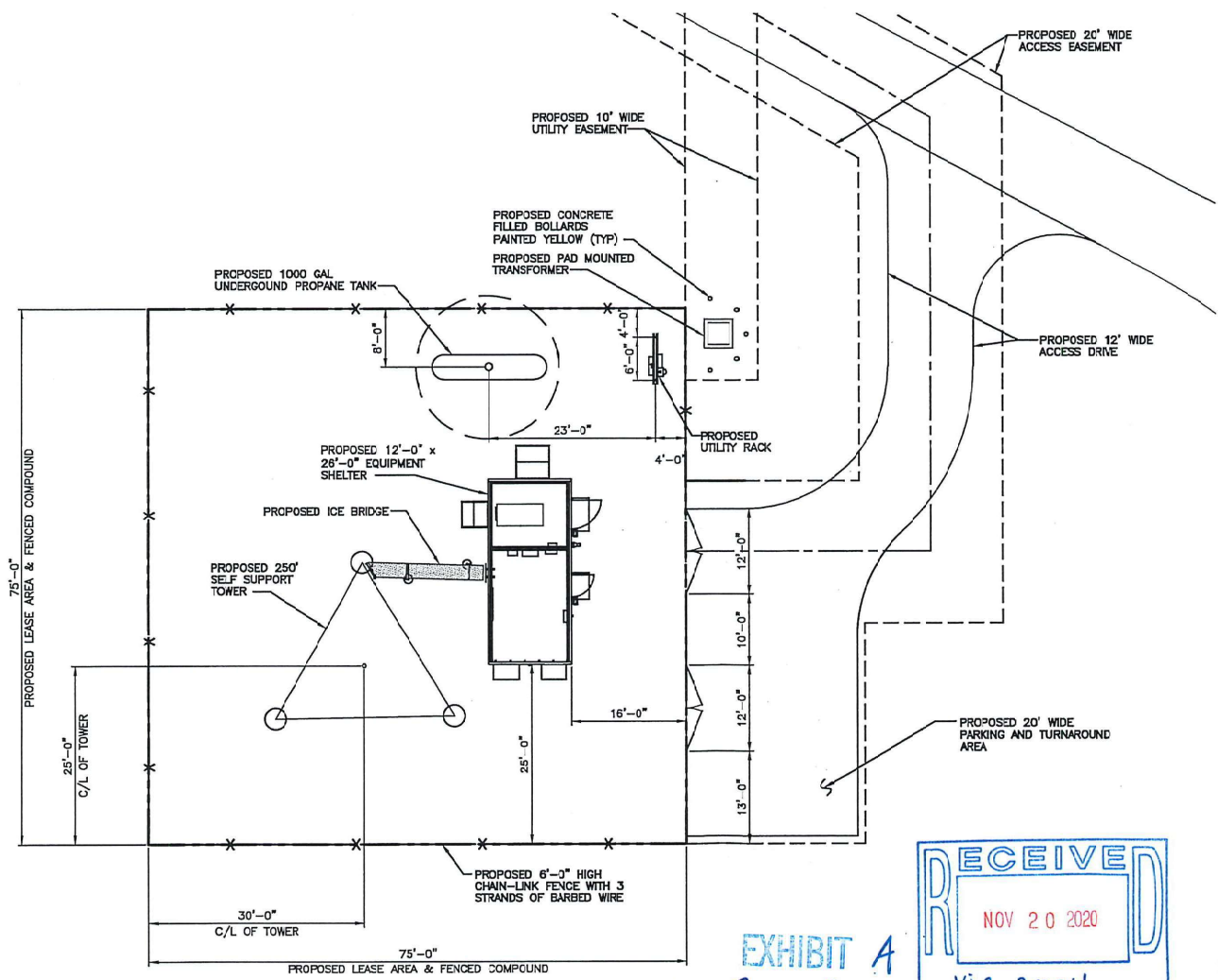


EXHIBIT A  
PAGE 3 OF 4 PAGE(S)



ENLARGED SITE PLAN

3/16" = 1'-0" (22"x34")  
3/32" = 1'-0" (11"x17") 1

STAMP:

ENGINEERING LICENSE  
STATE OF KANSAS  
PE CERTIFICATE OF AUTHORIZATION #  
ENGINEER:  
NRK NICHOLAS R. KILGUS CIVIL  
NRK ROBERT L. KILGUS CIVIL  
REJ ROBERT J. KILGUS CIVIL  
SDK S... 13854 ELECTRICAL  
TMS T... SUPER 8250 ELECTRICAL

**PRELIMINARY ISSUE**



DRAWING NOTICE:  
THIS DRAWING HAS NOT BEEN PUBLISHED AND IS THE SOLE PROPERTY OF SSC, INC. AND IS LOANED TO THE BORROWER FOR THEIR CONFIDENTIAL USE ONLY, AND IN CONSIDERATION OF THE LOAN OF THIS DRAWING, THE BORROWER PROMISES AND AGREES TO RETURN IT UPON REQUEST AND AGREES THAT IT WILL NOT BE REPRODUCED, COPIED, LENT OR OTHERWISE DISPOSED OF DIRECTLY OR INDIRECTLY, NOR USED FOR ANY PURPOSE OTHER THAN FOR WHICH IT IS FURNISHED.

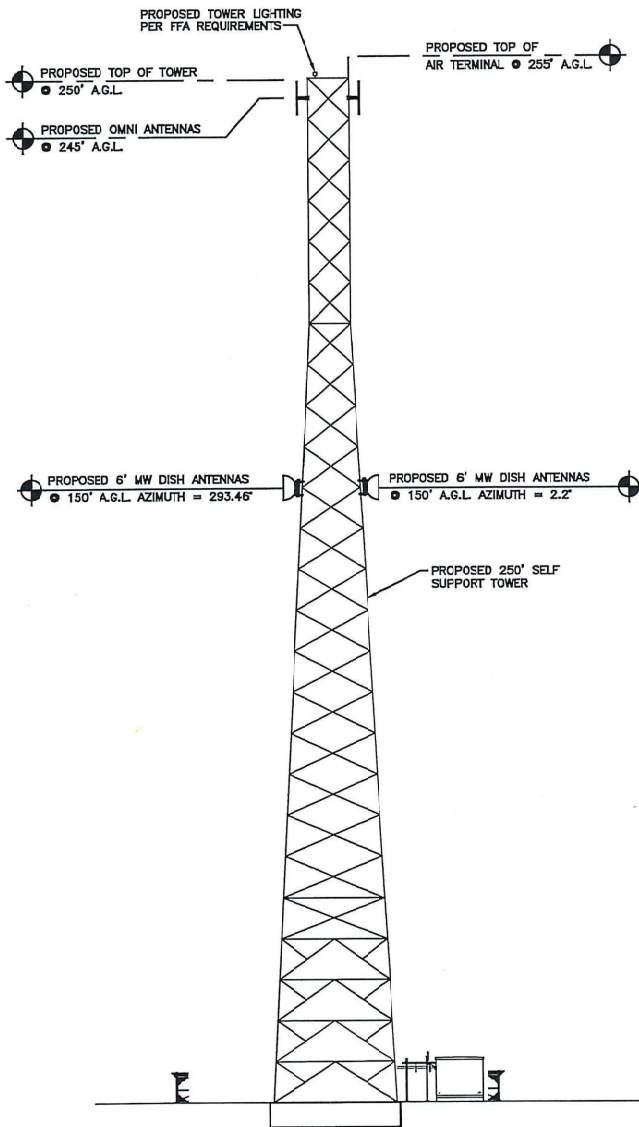
SUBMITTALS:	DESCRIPTION	DATE	BY	REV
ISSUED FOR ZONING		10/21/20	DCP	A
ISSUED FOR ZONING		10/28/20	DDS	B
ISSUED FOR ZONING		11/19/20	DCP	C

APPLICANT SITE NAME:  
WILDWOOD

SITE ADDRESS:  
7095 W. 399th STREET  
LACYGNE, KANSAS 66040

SHEET DESCRIPTION:  
ENLARGED SITE PLAN

SHEET #:  
A-1.1



ANTENNA LOADING KEY								
ANTENNA MODEL #	QTY.	ANTENNA BASE ELEVATION	LINE SIZE	AZIMUTH	EQUIPMENT	ANTENNA SIZE	ANTENNA MOUNT	PROPOSED OR FUTURE LOADING
DS7C14PPTU-D	1	245'-0"	7/8"	N/A		8'X6 1/2'X6"	2' STAND-OFF	PROPOSED
DS7C14PPTU-D	1	245'-0"	7/8"	N/A		8'X6 1/2'X6"	2' STAND-OFF	PROPOSED

MICROWAVE LOADING KEY								
MICROWAVE MODEL #	QTY.	MICROWAVE ELEVATION	LINE SIZE	AZIMUTH	EQUIPMENT	DISH SIZE	DISH MOUNT	PROPOSED OR FUTURE LOADING
RFS CELWAVE PAD6-W57A	1	150'-0"	E-60	293.46°		6'	2' STAND-OFF	PROPOSED
RFS CELWAVE PAD6-W57A	1	150'-0"	E-60	2.2°		6'	2' STAND-OFF	PROPOSED

**ANTENNA NOTES:**

1. ANTENNA CONTRACTOR SHALL INSURE ALL ANTENNA MOUNTING PIPES ARE PLUMB.
2. MULTI PORT ANTENNAS: TERMINATE UNUSED ANTENNA PORTS WITH CONNECTOR CAP & WEATHERPROOF THOROUGHLY.
3. CONTRACTOR MUST FOLLOW ALL MANUFACTURER'S RECOMMENDATIONS REGARDING THE INSTALLATION OF COAXIAL CABLES, CONNECTORS, AND ANTENNAS.
4. WEATHERPROOF ALL ANTENNA CONNECTORS WITH SELF AMALGAMATING TAPE.
5. ANTENNA CONTRACTOR SHALL PERFORM A "TAPE DROP" MEASUREMENT TO CONFIRM/VALIDATE ANTENNA CENTER LINE (ACL) HEIGHT. CONTRACTOR SHALL SUBMIT A COMPLETED HEIGHT VERIFICATION FORM TO THE CONSTRUCTION MANAGER.
6. ALL AZIMUTHS ARE ORIENTED CLOCKWISE FROM TRUE NORTH.

STAMP:

ENGINEERING LICENSE:  
STATE OF KANSAS  
PE CERTIFICATE OF AUTHORIZATION #  
ENGINEER: \_\_\_\_\_  
NSK NICHOLAS R. KULCZYNSKI CIVIL  
KUY KEVIN M. VAUGHAN CIVIL  
RES POSITIVE 6899 CIVIL  
SDK TMS ELECTRICAL SUPERVISOR 13854 ELECTRICAL  
250 9250 ELECTRICAL  
P.M. D.C.O.



PLANS PREPARED BY:  
SSC

DRAWING NOTICE:  
THIS DRAWING HAS NOT BEEN PUBLISHED AND IS THE SOLE PROPERTY OF SSC, INC. AND IS LOANED TO THE BORROWER FOR THEIR CONFIDENTIAL USE ONLY, AND IN CONSIDERATION OF THE LOAN OF THIS DRAWING, THE BORROWER PROMISES AND AGREES TO RETURN IT UPON REQUEST AND AGREES THAT IT WILL NOT BE REPRODUCED, COPIED, LENT OR OTHERWISE DISPOSED OF DIRECTLY OR INDIRECTLY, NOR USED FOR ANY PURPOSE OTHER THAN FOR WHICH IT IS FURNISHED.

DESCRIPTION	DATE	BY	REV
ISSUED FOR ZONING	10/2/20	DCP	A
ISSUED FOR ZONING	10/28/20	DDS	B
ISSUED FOR ZONING	11/19/20	DCP	C

APPLICANT SITE NAME:  
WILDWOOD

SITE ADDRESS:  
7095 W. 399th STREET  
LACYGNE, KANSAS 66040

SHEET DESCRIPTION: TOWER ELEVATION  
SHEET #: A-2.0

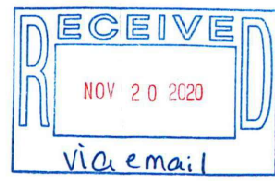
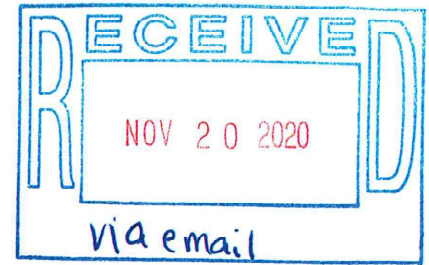


EXHIBIT A  
PAGE 4 OF 4 PAGE(S)



November 20, 2020

**VIA ELECTRONIC MAIL**



Teresa Reeves  
Planning Director  
Administration Building  
201 S. Pearl Suite 201  
Paola KS 66071  
913.294.9553  
[Treeves@miamicountyks.org](mailto:Treeves@miamicountyks.org)

Kenneth Cook  
Planner II  
Administration Building  
201 S. Pearl Suite 201  
Paola KS 66071  
913.294.9553  
[Kcook@miamicountyks.org](mailto:Kcook@miamicountyks.org)

RE: Miami County Emergency Communication Services Tower on real property owned by Wildwood Outdoor Education Center located at 7095 W 399<sup>th</sup> Street, LaCigne KS 66040 - Conditional Use Permit for a 250' self-support tower

Dear Ms. Reeves and Mr. Cook:

Attached is an application for conditional use permit with Miami County for a two hundred fifty foot (250') tall self-support communications facility to be located on real property owned by the Wildwood Outdoor Education Center on the South side of 399<sup>th</sup> Street, in Miami County, Kansas.

Please find attached herewith:

1. A Miami County application for the Conditional use permit
2. A list of property owners within 1,000 feet of the parent parcel (provided by County)
3. Electronic Site plans showing the location of the tower and an elevation of the tower after it has been constructed (11" x 17" sets)

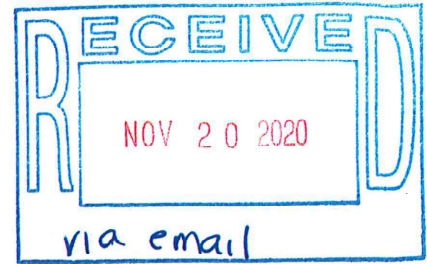
We will supplement the application with photos of the current site conditions, a Tax Map showing the location of the site on the parent parcel, and a fall zone letter from Valmont Structures, the tower fabricator for the project, early next week.

We will provide additional information regarding Miami County's network needs in the area to support the application.

EXHIBIT B  
PAGE 1 OF 3 PAGE(S)

7171 WEST 95TH STREET, SUITE 600  
OVERLAND PARK, KANSAS 66212

p 913.438.7700  
f 913.438.7777  
ssc.us.com



### APPLICANTS/CONTACTS

Miami County, KS, care of Shane Krull, County Administrator (Co-applicant)  
Miami County, KS Sheriff's Department, C/O Sheriff Frank Kelly (Co-applicant)  
Miami County, KS Sheriff's Department, C/O Undersheriff Wayne Minckley (Co-applicant)  
Hayden Tower Service, C/O David Blaha (Tower construction management team)  
TUSA (Consultant to County C/O Dennis Ward, PM)  
TUSA (Consultant to County C/O Dean Hart, Principal)  
Motorola, C/O Scott Pittman, (Program Manager)  
Robyn Ratcliff, Executive Director, Wildwood Outdoor Education Center  
Robert, Jensen, Selective Site Consultants, Inc. (Civil Engineer)

### SITE DESIGN

A site plan accompanies this application. The proposed facility will be within the limits of a 75' x 75' lease area and will be secured by a chain link fenced area. The proposed fenced area will enclose the tower and future wireless carriers for collocation.

### Lighting and Signs

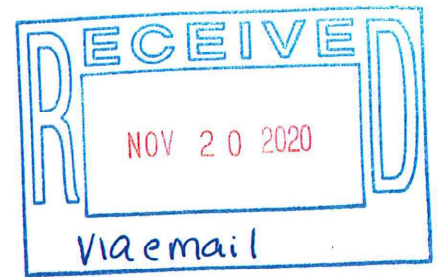
This tower will be lighted in accordance with FAA requirements. Tower lighting has made tremendous advancement in the last two decades, and the lighting is designed to emanate upward to alert pilots of the structure while minimizing any intrusion at ground level. There will be no signs at this site except for safety and identification as required by the Federal Communications Commission. These are not lighted and are affixed to the front / gate area of the site.

The site is generally designed to meet the criteria set out in Section 14-2.01 *et seq.* of the Miami County Land Use Code, although a number of those provisions have been rendered invalid due to 2016 Kansas HB 2131, (KSA 66-2019 *et seq.*) which limits a jurisdiction's ability to mandate technical studies regarding the need for a tower. This tower will meet all building codes, just as if it were a twenty-five story building, and the failure rate of towers, particularly of this sort of construction (self-support lattice tower) renders that setback arbitrary and capricious.

Without waiving any of the County's rights under 2016 KS HB 2131, of note:

- There are no possible collocations or structures in the area that will provide the required coverage for Miami County's emergency services in this area.
- The project meets the setbacks to other towers set out in the Code.
- All equipment shall be removed within one year following termination of service at applicant's expense.
- A fall zone letter has been provided. While technical in nature, the conclusion is effectively that these towers, in the highly unlikely event of a collapse, are weakest higher up (as they are tapered) and likely to twist in on themselves or kink rather than tip over.

EXHIBIT B



- This project is necessary for the public convenience at this location. Miami County Emergency Broadcast Services is experiencing network performance issues in the area.
- The project is designed, located, and proposed to be operated so that it will not be injurious to the District in which it will be located. The parcel is located on the Wildwood Outdoor Education Center's Headquarters, at a high point near LaCygne, where high quality emergency communication service is critical.
- The tower site is located as far from all residential uses as possible, in a remote area along 399<sup>th</sup> Street, blocking the view of the base of the site.
- The property is not a current non-conforming use.

**ADDITIONAL MATTERS**

As stated above, this project is required to improve emergency communication services for Miami County. This proposed site will vastly improve service to the Sheriff's department in once commissioned.

We appreciate your consideration and support of this application under the guidelines of Miami County, the State of Kansas and the Telecommunications Act of 1996.

Please let me know what additional information you need. We understand this application will be considered by the Miami County Planning Commission on January 4, 2021. We understand the County will notify all residents within 1,000 feet of the project of the hearing and post appropriate signs on-site.

Respectfully submitted,

Trevor Wood

Attachments (7)

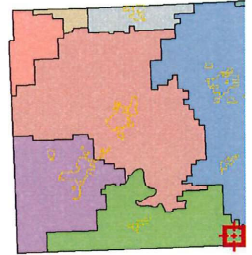
Cc:

- Miami County, KS, care of Shane Krull, County Administrator (Co-applicant)
- Miami County, KS Sheriff's Department, C/O Sheriff Frank Kelly (Co-applicant)
- Miami County, KS Sheriff's Department, C/O Undersheriff Wayne Minckley (Co-applicant)
- Hayden Tower Service, C/O David Blaha (Tower construction management team)
- TUSA (Consultant to County C/O Dennis Ward, PM)
- TUSA (Consultant to County C/O Dean Hart, Principal)
- Motorola, C/O Scott Pittman, (Program Manager)
- Jerry Bennett, Rural Water District #2 General Manager (Property Owner)
- Robert Jensen, PE, Selective Site Consultants, Inc. (Civil Engineer)
- Larry Louk, SSC
- Dallas Pelland, SSC








EXHIBIT B



Overview



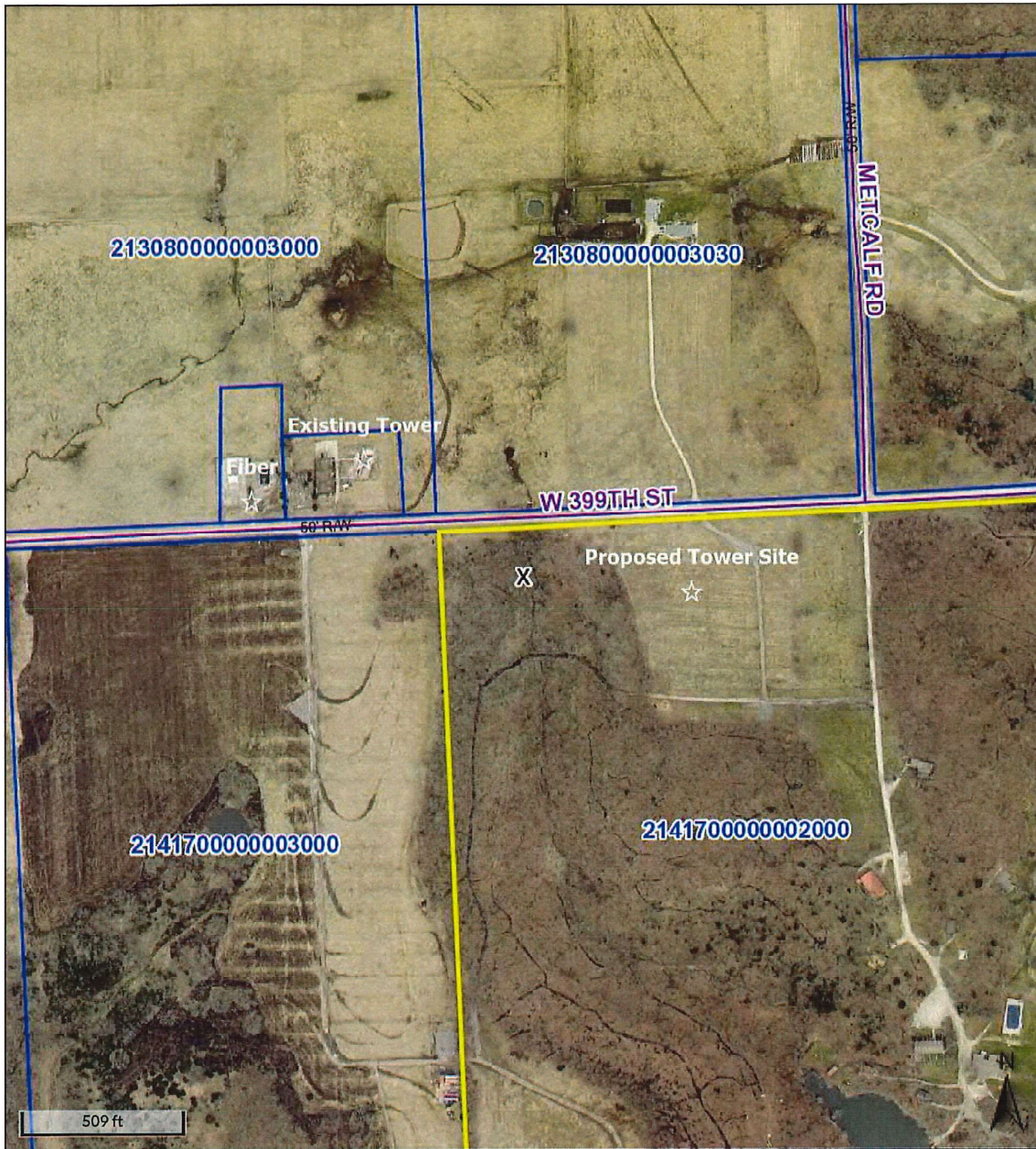
Legend

-  City Limits
-  Centerlines
-  Parcels
-  Lakes
- Flood Zones
  -  0.2 PCT ANNUAL CHANCE FLOOD HAZARD
  -  A
  -  AE

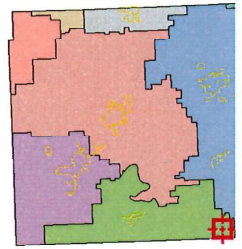
Parcel ID= 214170000002000  
Acres= 139.90360532

Date created: 12/30/2020  
Last Data Uploaded: 12/30/2020 7:14:47 AM








Developed by  Schneider  
GEOSPATIAL



Overview



Legend

-  City Limits
-  Centerlines
-  Parcels
-  Lakes
- Flood Zones**
-  0.2 PCT ANNUAL CHANCE FLOOD HAZARD
-  A
-  AE

Date created: 12/30/2020  
Last Data Uploaded: 12/30/2020 7:14:47 AM

Developed by  Schneider  
GEOSPATIAL

## Teresa Reeves

---

**From:** Andrew F. Thompson <athompson@ce-llc.com>  
**Sent:** Tuesday, December 22, 2020 11:47 AM  
**To:** Miami County Planning and Zoning  
**Subject:** 20021/LaCygne Communications Tower  
**Attachments:** Miami County Planning Department Letter.pdf

Hi Angela,

I hope all is well with you. Our office just received the attached letter from you with regard to proposals to construct a communications tower on land adjacent to ours. My company manages the 330ft tower across the road from where this proposed tower is to be constructed. Details of our tower can be found on our website:

<https://www.ce-llc.com/Towers/Kansas/20021.php>

With regard to the planning/zoning application our company obviously would like to lodge a formal protest against the proposed construction. On the second page of the letter from SSC, they state:

“There are no possible collocations or structures in the area that will provide the required coverage for Miami County’s emergency services in this area”.

That is obviously not true. Our tower is literally across the road from the proposed new tower. Nobody from SSC or Miami County have contacted us to enquire about possibly collocating their emergency equipment on our tower (which is taller than the proposed new build). It’s not like you can miss our tower - it isn’t exactly hidden in woodland, you have to drive right by it to get to the location of the proposed new build.

If someone from Miami County (or a representative from whichever firm they might have contracted out their emergency communications buildout to) had contacted us we would have advised that our tower is open for collocation (we currently have AT&T, Midwest Connections & US Cellular as tenants) and I’m pretty sure we would charge much less rent than is being proposed for the new tower.

I don’t know what the next steps are for this, whether a formal protest at the hearing (we wouldn’t be able to attend in person) is sufficient or whether the whole hearing should be put on hold at least temporarily until the County can determine whether they have a) been misled by SSC; and b) whether our tower would be suitable for collocation.

Just as a side note, I’m currently dealing with another county in Iowa where we own another tower. This particular county is also building out an emergency service network. I was contacted a few months ago by someone from the county completing an audit they wanted to see if I had been contacted by the company completing the network build out for them. The County had been led to believe that we were un-reachable, our tower was not a candidate for collocation and so they were proceeding with building their own, at great cost. I provided emails and correspondence from 3 years ago proving we had been contacted and we had provided information on our tower and a quote for the rent. They have now cancelled the new build and are collocating on our tower.

Thanks!  
Andrew

*Andrew F. Thompson | Communication Enhancement, LLC*  
Mobile (US): +1 609-217-8095 | Web: [www.ce-llc.com](http://www.ce-llc.com)

**MIAMI COUNTY PLANNING DEPARTMENT  
MEMORANDUM**

---

**DATE:** January 5, 2021  
**TO:** Miami County Planning Commission  
**FROM:** Kenneth A. Cook, AICP, CFM - Planner  
**RE:** **Zoning Regulations Amendments (Billboard Signs)**

---

**Background**

**September 8, 2003**

As part of a proposed Zoning Regulation amendment that included various changes to the Zoning Regulations, a number of amendments to the Sign Regulations regarding billboard signs were also approved. These amendments included:

- Provided that billboard signs greater than 64 square feet and equal to or less than 750 square feet must be within 660 feet of the ROW of I-35, K-68 and US-169 and advertising toward said ROWs. Also prohibited billboards along US-69.
  - Specified billboard signs are not allowed within three hundred feet of any property zoned Planned Development, Rural Residential, Countryside, or Agricultural and removed wording that such signs were not allowed within three hundred feet of any property “boundaries in the PD District or within three hundred (300) feet of any structure occupied as a residential, institutional or other non-commercial or non-industrial use.”
  - Added that a billboard may not be located within 500 feet of an interchange, intersection at grade or a safety rest area.
- An allowance that one off-premise outdoor billboard sign equal to or less than 64 square feet per sign face could be constructed on each property in the C-2, I-1 and I-2 districts. Each sign was allowed two sign faces (could be back-to-back or V-shaped but not more than two sign faces) with a maximum height of fifteen feet from grade.

**May 9, 2012**

Zoning Regulations amending for changes to the Sign Regulation article to add a definition for “incidental signs” and “directly illuminated signs”, clarifying the ability to reface nonconforming signs, and allowing incidental signs in commercial and industrial districts.

**November 18, 2015**

Discussion on possible changes to the sign code in 2015 were initiated by the Board of County Commissioners with the specific request to consider an amendment to allow electronic signs. The Planning Commission held a number of meetings, including discussions and Public Hearings for proposed changes to allow electronic signs, along with some additional changes to the sign regulations were recommended for approval by the Planning Commission. Upon considering the recommended changes, the Board of County Commissioners remanded the proposed amendments back to the Planning Commission with direction to consider pole signs, other modifications, and to consider simplification of the text.

The Planning Commission reconsidered the proposed changes and made a recommendation to approve amendments to the sign code including for pole signs, adding several definitions, general changes and some simplification of the document. These changes included amendments to the billboard sign regulations including wording noting that US-69 is a Scenic By-way, allowing Electronic (LED) signs for billboards, and stating that billboard signs shall not be located within a stream channel. It also appears that discussion included possible changes to the billboard requirements to match the state requirements. These changes to match the state requirements were not recommended by the Planning Commission. The Board of County Commissioner adopted the amendments.

**March 7, 2018**

The Board of Zoning Appeals approved a variance requested by Fred Wingert on property located at 32807 Clover Drive and zoned Light Industrial (I-1). The variance requested was to replace two existing billboard signs (one single sided sign; and one double stacked single sided sign) with two new double stacked billboard structures. The single sided sign was considered an “official sign” for the City of Osawatomie as described by the State of Kansas. This designation as an official sign allowed for the original placement of the sign without needing to meet the State of Kansas spacing requirements.

The Board of Zoning Appeals approved the variance based upon the unique conditions of the site and due to the proposal including the replacement of two signs which already existed on the property. The variance allowed for a reduced separation distance between the two signs (from 1,000’ to 500’) based upon the property already having two separate sign structures and due to a number of gas pipelines that crossed the property that made greater separation between the signs impossible. The variance also allowed for a reduction in the setback from the highway right-of-way from 50-feet to 35-feet.

**May 16, 2018**

The Board of Zoning Appeals approved a second variance request by Fred Wingert on the property located at 32807 Clover Drive and which is the same property and signs that received variance approval at the March 7, 2018 meeting. This variance was requested after the sign permit applications were submitted and included changes from the plans approved by the Board of Zoning Appeals. The sign permit submitted proposed the center pole of the sign being setback 35-feet from the ROW as rather than the edge of the sign and increased the size of the sign faces from 35’ x 10’ to 36’ x 10’-6”, which exceeded the maximum sign area of 750 square feet (756 square feet). Upon further review of the

billboard sign regulations it was noted that the regulations specify that each face of a billboard sign is considered a separate sign no matter the configuration. This was determined to include that with each sign structure being a double stacked, double faced (v-shaped) sign that the sign area of each structure was considered to have 1,512 square feet rather than only one face of the sign being used for the calculation of sign area.

The variance granted included a further reduction of the setback to the highway right-of-way to 10-feet and increased the maximum sign area permitted for each sign from 750 square feet to 1,512 square feet. This allowed for the total area of billboard signage on this property to increase from 750 square feet, which would have been allowed by the Zoning Regulations, to 3,024 square feet.

### **October 16, 2019**

The Board of Zoning Appeals approved a variance submitted by Ad-Trend for the location of a billboard sign on property located on the East side of 169 Highway and South of 215<sup>th</sup> Street. The subject property is directly adjacent to the City of Spring Hill. The variance requested was for a reduction in the setback from US 169 Highway to 10-feet from the required 50-foot setback. Upon performing research on the request, it was noted that the City of Spring Hill constructed a sanitary sewer line across this property near the location of the proposed billboard sign. While the construction plans appeared to show a 20-foot wide easement, it does not appear that an easement was ever acquired. Staff contacted the City of Spring Hill regarding this issue and the City requested that no portion of the sign be allowed to extend over the easement area shown on their plans. The Board of Zoning Appeals granted a reduction in the 50-foot setback with the requirement that the sign be placed outside of the sanitary sewer easement shown on the plans. Following approval of the variance, the applicant submitted sign permit applications for two billboard signs with each sign meeting the 50-foot setback. These sign permits have been approved and the applicant has specified his intent to reapply for a new variance from the setback requirements for both signs.

### **Sign Regulations**

A copy of Mr. Wingert's proposed amendments have been attached to this report. Selected portions of the sign regulations have been included with this report that directly relate or impact the billboard sign regulations, while other sections have not been included.

### **Article 18 – Sign Regulations**

#### **Section 18-1. Purpose**

18-1.01 The purpose of this article is to implement the following necessary and proper objectives:

1. To protect the general public from damage and injury which may be caused by the faulty and unregulated construction of signs.
2. To prevent the obstruction of traffic visibility and confusion with traffic

control devices resulting from improperly placed and designed signs.

3. To ensure the visual quality of signs and preserve and promote the aesthetic quality of Miami County by reducing visual clutter.

4. To control the magnitude, placement and number of signs in the County, recognizing that signs in the County generally tend to be highly visible because of low-density development patterns and few, if any, development features or other signs which compete visually for attention, thereby necessitating controls to protect the visual integrity of the unincorporated portion of the County. (Res. R15-11-033 (Exh. A))

#### **Section 18-4. General Sign Requirements**

18-4.01 The following general sign requirements shall apply to all signs in all zoning districts:

1. No sign, or any portion thereof, shall be erected, constructed, or maintained within the ultimate right-of-way of any road, street, or highway as designated by the County's Comprehensive Transportation Plan, or within any alley, road easement, or sight visibility triangle at the intersection of any street or driveway in such a manner as to obstruct free and clear vision, or at any location where, by reason of the position, shape or color, it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal or device or emergency vehicle lighting.

2. Lighting shall be permitted on signs, provided, however, the reflectors shall be provided with proper lenses, concentrating the illumination on the area of the sign so as to prevent glare upon the street or adjacent property, and the appropriate building permit has been obtained. It shall be unlawful for any person or entity to have any sign which is wholly or partially illuminated so as to interfere with the vision of pedestrian or vehicular traffic.

3. Signs shall be maintained so as to be structurally sound and in a safe condition, and shall be kept in a state of undeteriorated appearance by means of painting, sealing or coating and repair or replacement of damaged parts, panels or lights. Signs pertaining to businesses, activities, places or occupants that are no longer using the premises or the activity to which the sign relates shall be removed by the permittee or property owner within sixty (60) days.

4. Sign area shall include the entire surface area within a single perimeter enclosing the outside limits or boundaries of such sign. Where the perimeter boundaries are irregular or are not parallel, the sign area shall be the surface of the regular geometric shape which most nearly closes the outside limits or boundaries. Only one (1) face of a ground or pole sign designed as a double-faced sign, with both faces parallel and no more than 1 foot between structures or faces, shall be considered in determining the sign area.

5. Unless otherwise provided for in these Regulations, no sign hereafter erected shall be less than 300 feet from any other existing sign or allowed configuration of signs on the same property.
6. Unless otherwise provided for in these Regulations, height shall be the distance as measured above average grade to the top edge of any one (1) sign.
7. Any sign displayed on a parked trailer, truck or other vehicle where the primary purpose of the vehicle is to advertise a product, service, business, or other activity is prohibited. These regulations shall permit the use of business logos, identification or advertising on currently licensed vehicles which are primarily and actively used for business purposes and/or personal transportation.
8. Animated, flashing, strobe, inflatable, and mechanically moving signs, and attention attracting devices, are prohibited in all districts.
9. Indirectly illuminated signs, regardless of the placement of the lighting, shall have lighting fixtures or luminaries that are fully shielded.
10. Any advertising sign located within 3 feet of a driveway, travel way, parking or loading area shall have its lowest elevation at least 10 feet above the grade of the driveway, travel way, parking or loading area. (Res. R15-11-033 (Exh. A))

#### **Section 18-5. Billboard Signs (Off-Premises Outdoor)**

18-5.01 Off-premises outdoor billboard signs greater than 64 square feet and equal to or less than 750 square feet shall be permitted only in the C-2, I-1 and I-2 Districts, and only within 660 feet of the rights-of-way of I-35, K-68 and US-169, with advertising being directed only toward said rights-of-way. Billboard signs visible from US-69 and erected with the purpose of their message being read from US-69 shall be prohibited since US-69 is a scenic byway. All provisions of the Kansas Highway Advertising and Control Act must be met for any sign located within 660 feet of the rights-of-way of the above listed state and federal highways. (Res. R15-11-033 (Exh. A))

#### 18-5.02 Location:

1. Billboard signs shall not be located within 300 feet of any property zoned Planned Development, Rural Residential, Countryside, or Agricultural.
2. Billboard signs shall not be located within 50 feet of any state or federal highway, to be measured from the edge of the right-of-way.
3. Billboard signs shall not be attached to the roof or wall of any building.
4. Billboard signs shall not be located within a stream or drainage channel. (Res. R15-11-033 (Exh. A))

18-5.03 Maximum Height: The top edge of any one (1) billboard sign shall not exceed 50 feet above average grade. (Res. R15-11-033 (Exh. A))

18-5.04 Maximum Sign Area:

1. The maximum sign area of any billboard sign shall not exceed a total of 750 square feet.
2. The maximum height or vertical dimension shall not exceed 15 feet. The maximum width or horizontal dimension of any one (1) billboard sign shall not exceed 50 feet.
3. For purposes of this subsection, each face of a billboard sign, whether double-faced, V-shaped, or some other configuration, shall be considered a separate sign. (Res. R15-11-033 (Exh. A))

18-5.05 Lighting: Billboard signs may be indirectly illuminated, but shall not cast glare upon any adjacent highway so as to pose a hazard to vehicular traffic. Electronic (LED) signs must display a static image for a minimum of eight (8) seconds, and have an interval change time of two (2) seconds or less. Only sign structures that are classified legal conforming may be modified to LED signs. (Res. R15-11-033 (Exh. A))

18-5.06 Minimum Spacing Requirements: No billboard sign hereafter erected shall be less than 1,000 feet from any other existing billboard sign or allowed configuration of signs on the same side of the street. Such minimum spacing distance shall be measured along the center line of the frontage street, trafficway or interstate highway from a point opposite any edge of a billboard sign and perpendicular to the center line of each street, trafficway or interstate highway. (Res. R15-11-033 (Exh. A))

18-5.07 Distance from Intersection: No sign shall be located adjacent to or within 500 feet of an interchange, intersection at grade or a safety rest area, with such distance measured along the freeway or interstate highway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the freeway or interstate highway. (Res. R15-11-033 (Exh. A))

## **Discussion**

On September 23, 2020, Mr. Fred Wingert submitted a letter requesting that Miami County consider amending its sign regulations regarding billboard signs and provided suggested changes. Staff presented this letter to the Planning Commission at the October 6, 2020 meeting and the Planning Commission agreed to place the item on a future agenda for discussion.

The Planning Commission held general discussion on Mr. Wingert's request at the November 10, 2020 Planning Commission meeting. While some concern was expressed in regards to updating only the portion of the sign regulations dealing with billboard signs, the Planning Commission appeared to be generally supportive of many of the proposed

amendments and directed staff to set a public hearing to consider amendments to Section 18-5 of the Zoning Regulations pertaining to billboard signs.

Staff would note that many of the proposed changes have been discussed by the Board of Zoning Appeals as they considered recent variance cases involving billboard signs, especially as it relates to the question of why Miami County has adopted higher standards than the State of Kansas under the State of Kansas Highway Beautification Highway Advertising Control Act of 1972 – Revised 2006. This discussion has centered on the required setbacks from highway right-of-way, separation distance between signs and the way in which sign area is calculated. While many of Mr. Wingert’s proposed changes appear to be minor and would bring the Miami County Sign Regulations closer to the State of Kansas requirements, some will require modifications to other portions of the sign regulations or be adjusted to make sure the sign regulations are consistent in how they are enforced across the various types of signs. While considering previous changes to the sign code, it also appears that the Planning Commission has considered changes to the billboard regulations that would have matched the state’s and chose to maintain the existing county requirements.

The Miami County Sign Regulations specifies that the purpose of the sign regulations are to:

1. To protect the general public from damage and injury which may be caused by the faulty and unregulated construction of signs.
2. To prevent the obstruction of traffic visibility and confusion with traffic control devices resulting from improperly placed and designed signs.
3. To ensure the visual quality of signs and preserve and promote the aesthetic quality of Miami County by reducing visual clutter.
4. To control the magnitude, placement and number of signs in the County, recognizing that signs in the County generally tend to be highly visible because of low-density development patterns and few, if any, development features or other signs which compete visually for attention, thereby necessitating controls to protect the visual integrity of the unincorporated portion of the County. (Res. R15-11-033 (Exh. A))

### **Comparison with other Jurisdictions**

It should be noted that while the State of Kansas has adopted the Highway Advertising Control Act, local jurisdictions do of the authority to adopt higher standards if they so choose. Section 68-2234(c)(1) of this act specifies regarding the spacing of billboards that “signs shall conform to all applicable building codes and ordinances of the city, county or state, whichever is applicable by reason of the locations of the signs.” Section 68-2234(f) of this act further specifies that:

“Application to local zoning authorities. Nothing in article 22 of chapter 68 of Kansas Statutes Annotated, and amendments thereto, shall be construed as prohibiting a local zoning authority from controlling the erection, maintenance, size, spacing and lighting of signs in all areas within its jurisdiction by adopting standards which may be consistent with, or more or less restrictive than the

highway advertising control act, and amendments thereto, except that along interstate highways, the size and spacing requirements of subsections (b) and (c) of K.S.A. 68-2234, and amendments thereto, shall be met. The standards adopted by a local zoning authority shall include the regulation of size, of lighting and of spacing of all such signs and shall restrict the erection of new signs, other than signs described by subsections (a), (b) and (c) of K.S.A. 68-2233, and amendments thereto, to zoned commercial or industrial areas.”

While sign regulations adopted by other jurisdictions vary in the method used to calculate different criteria, staff has tried to prepare a table (attached) comparing regulations between other counties. The current Miami County regulations for billboard signs do not appear to be outside “normal” in comparison to these other jurisdictions. The one outlier that should be noted is that it appears Leavenworth County does not permit the placement of billboards within the county. The setback and height requirements of the current Miami County regulations are on the upper end of what other jurisdictions allow. This includes that two other jurisdictions (Franklin & Johnson) require a minimum setback of 50-feet from a state or federal highway. Franklin County also allows for a maximum height of 50-feet above average grade with the next closest being Jefferson County with a 35-foot maximum height.

Some of the counties also have significantly more restrictive requirements for the maximum size of sign and the spacing requirements of signs such as Linn County allowing a maximum sign area per face of 100 square feet and total sign area of 200 square feet. Linn County allows the minimum spacing of billboards to be 300-feet but also limits the total number of billboards on either side of a road to a maximum of four within one mile. Douglas County has a maximum sign area of 300 square feet for each outdoor advertising signs or structures and has a minimum spacing requirement of 1,500 feet.

### **Considerations:**

The following section includes portions of the sign regulations that currently impact the billboard sign requirements and changes proposed by staff in regard to Mr. Wingert’s request. Please note that the regulation of signage impacts speech. The regulations can only take into consideration restrictions on time, place and manner and cannot address any content in relation to signage.

The current text of the regulations will be in regular text, proposed wording will be highlighted in yellow, proposed deletions will be struck through, and staff’s comments will be italicized.

## Section 18-4. General Sign Requirements

18-4.01 The following general sign requirements shall apply to all signs in all zoning districts:

1. No sign, or any portion thereof, shall be erected, constructed, or maintained within the ultimate right-of-way of any road, street, or highway as designated by the County's Comprehensive Transportation Plan, or within any alley, road easement, or sight visibility triangle at the intersection of any street or driveway in such a manner as to obstruct free and clear vision, or at any location where, by reason of the position, shape or color, it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal or device or emergency vehicle lighting.
2. Lighting shall be permitted on signs, provided, however, the reflectors shall be provided with proper lenses, concentrating the illumination on the area of the sign so as to prevent glare upon the street or adjacent property, and the appropriate building permit has been obtained. It shall be unlawful for any person or entity to have any sign which is wholly or partially illuminated so as to interfere with the vision of pedestrian or vehicular traffic.
3. Signs shall be maintained so as to be structurally sound and in a safe condition, and shall be kept in a state of undeteriorated appearance by means of painting, sealing or coating and repair or replacement of damaged parts, panels or lights. Signs pertaining to businesses, activities, places or occupants that are no longer using the premises or the activity to which the sign relates shall be removed by the permittee or property owner within sixty (60) days.
4. Unless otherwise provided for in these Regulations, sign area shall include the entire surface area within a single perimeter enclosing the outside limits or boundaries of such sign. Where the perimeter boundaries are irregular or are not parallel, the sign area shall be the surface of the regular geometric shape which most nearly closes the outside limits or boundaries. Only one (1) face of a ground or pole sign designed as a double-faced sign, with both faces parallel and no more than 1 foot between structures or faces, shall be considered in determining the sign area.

*Mr. Wingert has proposed that the billboard regulations be amended to allow the maximum area of any "billboard sign face" to not exceed 378 square feet with a maximum number of faces per billboard sign being 4 faces, and two faces per side. This would change the method for how sign areas are calculated for billboard signs as compared to all other signs. While staff would prefer to keep these methods the same across all sign types, adjusting the wording for billboard signs might help address specific characteristics that are unique to billboard signs, especially as it relates to V-shaped signs, signs that are separated by more than a foot as most back-to-back billboard signs are.*

5. Unless otherwise provided for in these Regulations, no sign hereafter erected shall be less than 300 feet from any other existing sign or allowed configuration of signs on the same property.

6. Unless otherwise provided for in these Regulations, height shall be the distance as measured above average grade to the top edge of any one (1) sign.

*Mr. Wingert has proposed changing how the maximum height of a billboard sign is measured. His proposal would more closely match that of the State of Kansas. All other jurisdictions that were used as comparisons used a maximum height as measured from average grade and their maximum height for billboard signs are all (other than Franklin County) significantly less than what Miami County currently allows. Staff understands that the proposal would provide more consistency as viewed by members of the public traveling along highways but has some concern in regards to how changes in elevation between the highway and the proposed location of a sign could create new issues that would need to be addressed. As an example, if the highway went over an adjacent county road (no interchange), the difference in elevation between the highway and adjacent grade could be 20 feet or more. This could allow for a sign that is 70-feet tall. This might look normal from the highway but might appear inappropriate from the county road or other adjacent property. As the proposal is currently written, this could allow for a sign that is 70-feet tall be located just outside of the ultimate ROW of a local road, with the edge of sign being located only 40-feet from the centerline of a county road.*

7. Any sign displayed on a parked trailer, truck or other vehicle where the primary purpose of the vehicle is to advertise a product, service, business, or other activity is prohibited. These regulations shall permit the use of business logos, identification or advertising on currently licensed vehicles which are primarily and actively used for business purposes and/or personal transportation.

8. Animated, flashing, strobe, inflatable, and mechanically moving signs, and attention attracting devices, are prohibited in all districts.

9. Indirectly illuminated signs, regardless of the placement of the lighting, shall have lighting fixtures or luminaries that are fully shielded.

10. Any advertising sign located within 3 feet of a driveway, travel way, parking or loading area shall have its lowest elevation at least 10 feet above the grade of the driveway, travel way, parking or loading area. (Res. R15-11-033 (Exh. A))

## Section 18-5. Billboard Signs (Off-Premises Outdoor)

18-5.01 Off-premises outdoor billboard signs greater than 64 square feet and equal to or less than 750 square feet shall be permitted only in the C-2, I-1 and I-2 Districts, and only within 660 feet of the rights-of-way of I-35, K-68 and US-169, with advertising being directed only toward said rights-of-way. Billboard signs visible from US-69 and erected with the purpose of their message being read from US-69 shall be prohibited since US-69 is a scenic byway. All provisions of the Kansas Highway Advertising and Control Act must be met for any sign located within 660 feet of the rights-of-way of the above listed state and federal highways. (Res. R15-11-033 (Exh. A))

### 18-5.02 Location:

1. Billboard signs shall not be located within 300 feet of any property zoned Planned Development, Rural Residential, Countryside, ~~or~~ Agricultural or any other property zoned for residential purpose.

*This requirement has come into questions when a recent billboard sign was proposed to be located on a parcel that was located in unincorporated Miami County and which was directly adjacent to a residential zoning district located within a municipality that was not specifically listed in the above requirement. Staff suggests that the above wording being expanded to include any property that is zoned for residential purpose. Other communities also list that billboards cannot be located within a certain distance of a structure that is being used for residential or institutional uses. Miami County used to have similar wording concerning how close a billboard sign could be placed to a residential structure, but this wording was removed in the 2003 amendments.*

2. Billboard signs shall not be located within ~~50~~ fifteen (15) feet of any state or federal highway, to be measured from the edge of the right-of-way. Billboard signs shall not be located within fifteen (15) feet of a side property line or the ultimate right-of-way of any road, street, or highway as designated by the County's Comprehensive Transportation Plan. No billboard sign may be installed to encroach over an existing utility improvement or easement.

*Mr. Wingert has requested that the maximum setback for signs from any state of federal highway be reduced to fifteen feet. The State of Kansas only requires that the signage be located outside of the right-of-way. Staff would note that this requirement only mentions the required setback from state or federal highways and so the "General Sign Requirement" found in Section 18-4.04.1 would still apply in that a billboard sign would not be allowed to be constructed within the ultimate right-of-way of any road, street, or highway as designated by the County's Comprehensive Transportation Plan. Most other jurisdictions also appear to have a minimum setback from the highway ROW for billboard signs. Some communities further provide a minimum setback from adjacent property lines or from local/county roads. Staff would note that the minimum front yard setbacks provided in the C-2 and I-1 District is 35-feet and the minimum front yard setback in the I-2 District is 50-feet. Staff can fully support a reduction in the setback for billboard signs to at least match the setback of the zoning district in which the property is located and is*

*not opposed to some further reduction, but does suggest that the minimum setback not be reduced beyond the 15 feet proposed. Staff would suggest that the Planning Commission consider adopting a minimum setback from other property lines or from county right-of-way and that signs may not be installed over existing utilities or easements.*

3. Billboard signs shall not be attached to the roof or wall of any building.
4. Billboard signs shall not be located within a stream or drainage channel. (Res. R15-11-033 (Exh. A))

18-5.03 Maximum Height: The top edge of any one (1) billboard sign shall not exceed 50 feet above average grade. (Res. R15-11-033 (Exh. A))

*Mr. Wingert has proposed changing the wording for how the maximum height is calculated to state “not to exceed 50 feet above average grade of highway.” Following is the current wording used by the state for maximum height: “the height of any portion of the sign structure, excluding cutouts or extensions, as measured vertically from the adjacent edge of the road grad of the main traveled way shall not exceed 50 feet.” Staff does not recommend the proposed change as it would create the possibility of having signs that could be significantly taller than 50 feet. Staff would also note that most other counties that were used for comparison have maximum height requirements which are 15-foot or more, less than Miami County’s current regulations. If the Planning Commission should choose to amend how the maximum height of billboard signs are measured, staff would suggest using wording from the State of Kansas.*

18-5.04 Maximum Sign Area:

1. The maximum sign area of any billboard sign shall not exceed a total of 756 square feet per sign facing with a maximum of two (2) facings. When a billboard structure includes two sign displays per facing (double decked sign), the maximum area of each display shall not exceed 378 square feet, or a total of 756 square feet per sign facing. A billboard sign may be constructed as a single faced, double-faced or V-type sign structure.

2. The maximum height or vertical dimension shall not exceed ~~fifteen (15)~~ **fourteen (14)** feet. The maximum width or horizontal dimension of any one (1) billboard sign shall not exceed ~~fifty (50)~~ **48 feet**.

3. For purposes of this subsection, each face of a billboard sign, whether double-faced, V-shaped, or some other configuration, shall be considered a separate sign. (Res. R15-11-033 (Exh. A))

*Mr. Wingert has proposed changes to the maximum size of sign that is currently permitted and the method for how that area is calculated for billboard signs. While staff typically prefers to keep the methods for how sign areas are measured the same across all types of sign, the billboard regulations provide unique issues that might be more clearly addressed through a change in how this calculation is made. First, as is currently specified in the “General Sign Requirements”, the area of a sign “includes the entire surface area within*

*a single perimeter enclosing the outside boundaries of such sign. Further, the regulations specify that “only one face of a ground or pole sign designed as a double-faced sign, with both faces parallel and not more than 1 (one) foot between structures or faces, shall be considered in determining the sign area.” The definition of “sign area” also specifies that “signs with more than one (1) face shall be calculated as one (1) face only, so long as both sides of the sign are identical.” The billboard sign regulations state that for the purpose of the calculation of maximum sign area that “each face of a billboard sign, whether double-faced, V-shaped, or some other configuration, shall be considered a separate sign.”*

*The interpretation of the maximum sign area requirement of the current regulations has been that the overall maximum sign area of a billboard structure is 750 square feet. This could include a single face sign that is 750 square feet, a double stacked sign with a total area of 750 square feet or a double faced sign where the total area of both sides is allowed to be 750 square feet (375 square feet per side). This interpretation is made in part by the requirement that the maximum area of any billboard is 750 square feet in combination with the definition of sign area that only allows for signs with identical faces to be calculated as one face and the “General Sign Requirement” that only one face of a double-faced sign is considered when both faces are parallel and no more than one foot between the structures or faces. Rewording this section would allow for billboard signs to be considered different from other signs.*

*Mr. Wingert has proposed that the maximum sign face allowed be 378 square feet, with a maximum number of faces per billboard sign of 4 faces and allowing only two faces per side. He has also proposed a maximum vertical dimension of 11 feet and maximum width of 36 feet for each face. This is a small increase in the allowed sign area for a single faced sign, as the current regulations have a maximum of 750 square feet, and the proposal would increase the size to 756 square feet. In past discussions with Mr. Wingert, he has specified that this would allow for a more standard size of billboard, such as the ones installed on the West side of 169 Highway and South of 327<sup>th</sup> Street. Allowing the four total faces of this size would officially more than double the area of sign currently permitted and would match the sign areas that have been granted recently by the Board of Zoning Appeals. Staff also received comments from another individual representing a different sign company, Jim Boeh (Ad Trend), that expressed concern in regards to limiting the size of each sign face to 378 square feet and 11' x 36', as they would prefer to have the option of constructing a single larger sign if they would choose to not have a double decker sign. He expressed that a single 14' x 48' might be preferred in some locations and would be smaller than the stacked 378 square feet signs. Mr. Boeh's proposal was to include different maximum sign areas based upon single stack (672 square feet) or double stack (2 faces each not exceeding 378 square feet).*

*The changes to the regulations shown above have been drafted to allow for a maximum 756 square feet per sign facing with two facings per billboard structure and also allowing for a sign that would be 14' x 48' in dimension. The Planning Commission will need to discuss if they determine it appropriate to double the total sign area from what is currently permitted. Staff can fully support the small increase in the sign area to 756 square feet as this is a very minor increase and allows for a more standard size of*

*billboard face. Staff also recommends that wording of this section be more specific to describe if the maximum sign area for billboard signs is intended to be a total per sign structure or per facing.*

*Staff would suggest adding a definition for Sign Facing. The State of Kansas currently defines "Sign Facing" as "Means and includes a sign display or displays at the same location and facing the same direction."*

18-5.05 Lighting: Billboard signs may be indirectly illuminated, but shall not cast glare upon any adjacent highway so as to pose a hazard to vehicular traffic. Electronic (LED) signs must display a static image for a minimum of eight (8) seconds, and have an interval change time of two (2) seconds or less. Only sign structures that are classified legal conforming may be modified to LED signs. (Res. R15-11-033 (Exh. A))

18-5.06 Minimum Spacing Requirements: No billboard sign hereafter erected shall be less than 1,000 feet from any other existing billboard sign ~~or allowed configuration of signs~~ on the same side of the street. Such minimum spacing distance shall be measured along the center line of the frontage street, trafficway or interstate highway from a point opposite any edge of a billboard sign and perpendicular to the center line of each street, trafficway or interstate highway. (Res. R15-11-033 (Exh. A))

*Mr. Wingert has proposed a reduction in the spacing of billboard signs to match the State of Kansas requirement of 500 feet. Staff would note the following two purposes of the sign regulations (Section 18-1.01):*

*3. To insure the visual quality of signs and preserve and promote the aesthetic quality of Miami County by reducing visual clutter.*

*4. To control the magnitude, placement and number of signs in the County, recognizing that signs in the County generally tend to be highly visible because of low-density development patterns and few, if any, development features or other signs which compete visually for attention, thereby necessitating controls to protect the visual integrity of the unincorporated portion of the County*

*While staff understands and supports efforts to allow for businesses to advertise, it does not recommend changing the minimum spacing requirements for billboard signs as the current 1,000-foot separation distance appear to support the accomplishment of these purposes of the sign code. Doubling the number of signs permitted along with allowing for the new method of calculating sign area could have a negative impact on the visual integrity of the unincorporated portion of the county.*

*Staff would propose removing "allowed configuration of signs" as this would appear to refer to all types of signs and not just billboard signs. The current wording would appear to require that a billboard sign could not be placed on a property if any type of sign is located within 1,000 feet. This would include a sign that was located on an adjacent property and that advertised a business occurring on that property. The general sign regulations already have a requirement that "no sign shall be less than three hundred feet from any other existing sign or allowed configuration of signs on the same property"*

*(Section 18-4.01.5). This would still require that a billboard sign would need to be located at least 300 feet of any sign that is located on the same property.*

18-5.07 Distance from Intersection: No sign shall be located adjacent to or within 500 feet of an interchange, intersection at grade or a safety rest area, with such distance measured along the freeway or interstate highway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the freeway or interstate highway. (Res. R15-11-033 (Exh. A))

**Staff Recommendation:**

Staff suggests that the Planning Commission discuss the existing billboard regulations and proposed changes in order to provide additional feedback to staff. Staff would suggest that the public hearing for amendments to the billboard signage regulation be continued until the February 2, 2021 meeting to allow staff to make additional changes based upon the feedback received from the Planning Commission.

Attachments:

- Mr. Wingert's Proposed Amendments
- Comparison Table

Fred Wingert, Wingert Sign Company  
20826 W. 91st Terrace, Lenexa, KS 66221  
PHONE (913) 201-5436 fredwingert@yahoo.com



Ms. Teresa Reeves  
Miami County Kansas Planning Department  
Administration Building  
201 S. Pearl, Suite 201  
Paola, KS 66071

Dear Teresa-

As you know, my company built two new billboards in Miami County along US 169 in 2018. My company is the only company to have built any new billboards in Miami County over the last 10+ years. We have been approached by various travel related businesses (restaurant, hospitality, fuel) in Miami County about their desire to advertise on billboards along US 169. We wanted to pursue building one or two additional billboards on US 169 for Miami County.

In order for my company to financially be able to invest the kind of resources required to build a new billboard in Miami County, we are requesting some minor adjustments to the current Miami County billboard regulations. The changes we are asking of Miami County in this request below would allow for the exact same size, spacing, location, and setback as the 2 billboards approved by the Miami County Board of Zoning appeals and the Miami County Planning Commission in 2018.

Below are the current Miami County billboard regulations. We are asking for 5 changes to these regulations in order to be able to build a double-stacked billboard sign just like was approved in 2018 by the Miami County Board of Zoning Appeals and the Miami County Zoning Department.

The changes we are asking are highlight in GREEN.

## MIAMI COUNTY SIGN REGULATIONS WITH PROPOSED CHANGES:

### Section 18-5. Billboard Signs (Off-Premises Outdoor)

**18-5.01** Off-premises outdoor billboard signs greater than 64 square feet and equal to or less than 750 square feet shall be permitted only in the C-2, I-1 and I-2 Districts, and only within 660 feet of the rights-of-way of I-35, K-68 and US-169, with advertising being directed only toward said rights-of-way. Billboard signs visible from US-69 and erected with the purpose of their message being read from US-69 shall be prohibited since US-69 is a scenic byway. All provisions of the Kansas Highway Advertising and Control Act must be met for any sign located within 660 feet of the rights-of-way of the above listed state and federal highways. (Res. R15-11-033 (Exh. A))

**18-5.02 Location:**

1. Billboard signs shall not be located within 300 feet of any property zoned Planned Development, Rural Residential, Countryside, or Agricultural.
2. Billboard signs shall not be located within 50 feet **change to 15 feet** of any state or federal highway, to be measured from the edge of the right-of-way.

*JUSTIFICATION FOR CHANGE: most landowners prefer a billboard sign on their property to be as close to KDOT right of way as possible so the remainder of their property can be developed with buildings, roads, etc. Note- no part of the billboard sign would be in the KDOT right of way.*

3. Billboard signs shall not be attached to the roof or wall of any building.
4. Billboard signs shall not be located within a stream or drainage channel. (Res. R15-11-033 (Exh. A))

**18-5.03 Maximum Height:** The top edge of any one (1) billboard sign shall not exceed 50 feet above average grade **of highway**. (Res. R15-11-033 (Exh. A))

*JUSTIFICATION FOR CHANGE: This allows for signs to be seen from the traveling public. By measuring based on the highway grade, this allows for sign uniformity and for the sign to be seen from the traveling public.*

Below is an example of a billboard that is 50 feet tall.



**18-5.04 Maximum Sign Area:**

1. The maximum sign area of any billboard sign face shall not exceed a total of 378 square feet. The maximum number of faces per billboard sign is 4 faces. The maximum number of faces per side is two.

*JUSTIFICATION FOR CHANGE: This request would actually make the face size smaller, but would allow for double-stacked billboard. Economically speaking, a double-stacked billboards (like the two on US 169 which were built in 2018) is the only way for billboard companies to profitably build billboards in areas outside of major cities. In addition, the total number of structures will likely be less as each sign has more faces.*

Below is a double stacked sign approved by the Miami County Zoning Department in 2018:



2. The maximum height or vertical dimension shall not exceed 11 (proposed to be 4 feet smaller). The maximum width or horizontal dimension of any one (1) billboard sign face shall not exceed 36 (14 feet shorter).
3. For purposes of this subsection, each face of a billboard sign, whether double-faced, V-shaped, or some other configuration, shall be considered a separate sign. (Res. R15-11-033 (Exh. A))

**18-5.05 Lighting:** Billboard signs may be indirectly illuminated, but shall not cast glare upon any adjacent highway so as to pose a hazard to vehicular traffic. Electronic (LED) signs must display a static image for a minimum of eight (8) seconds, and have an interval change time of two (2) seconds or less. Only sign structures that are classified legal conforming may be modified to LED signs. (Res. R15-11-033 (Exh. A))

**18-5.06** Minimum Spacing Requirements: No billboard sign hereafter erected shall be less than 1,000 feet **Change to 500 feet** from any other existing billboard sign or allowed configuration of signs on the same side of the street.

*JUSTIFICATION FOR CHANGE: Spacing would allow for the billboards to be built in clusters and would keep them in a tighter geographic area. The distance required between signs was shortened for the two billboards we built in 2018 by the Miami County Board of Zoning appeals and had the support of the Miami County Planning Department.*

Such minimum spacing distance shall be measured along the center line of the frontage street, trafficway or interstate highway from a point opposite any edge of a billboard sign and perpendicular to the center line of each street, trafficway or interstate highway. (Res. R15-11-033 (Exh. A))

**18-5.07** Distance from Intersection: No sign shall be located adjacent to or within 500 feet of an interchange, intersection at grade or a safety rest area, with such distance measured along the freeway or interstate highway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the freeway or interstate highway. (Res. R15-11-033 (Exh. A))

	Permitted	Max area/size	Setback	height	Spacing	lighting	Special Requirements
Miami Co	64 SF - 750 SF in the C-2, I-1 and I-2 District within 660 feet of ROW of I-35, K-68 and US-169.	750 SF (each face of a billboard sign, whether double-faced, V-shaped, or other configuration shall be considered a separate sign) max height - 15' max width - 50'	50 feet from state of federal highway ROW All signs must be outside of Ultimate ROW	Max 50-feet above average grade	1,000 feet from any other billboard of allowed configuration of signs on the same side of the street. 500 feet from interchange, intersection or safety rest area.	Indirectly illuminated, Electronic (LED) signs.	Not within 300-feet of any property zoned Planned Development, Rural Residential, Countryside, or Agriculture.
	Less than 64 SF In I-1 and I-2.	64 SF per sign face May be double-face or V-shaped but no more than two faces	Outside Ultimate ROW	Max 15-feet from grade	300 feet from any other existing sign or allowed configuration of signs on the same property.		One per property
State of Kansas	Commercial or Industrial	900 SF per facing max height - 30' max width - 60'	None	Max 50' as measured vertically from the adjacent edge of the road grade of the main traveled way	300 feet along highways without fully controlled access. 500 feet along interstate highway or freeway with fully controlled access. Does not prevent the erection of double-faced, back-to-back or V-style signs with a maximum of two sign displays per sign facing.	Lighting must be shielded, Automatic changeable facing signs (under certain conditions)	exempts official and on-premise signs from spacing requirements
Douglas Co	Not allowed in "A" Agricultural District except as mentioned	300 SF	25 Feet from ROW. 100 feet to any road, highway or street intersection.	Max 30-feet height. 12 feet between ground and bottom of sign.	1500 feet in all directions		Single Pole Required. Underground electric.
Franklin Co	C-2, I-1 and I-2	1,200 SF (each face whether back-to-back, V-shaped shall be considered a separate sign) max height - 20' max width - 60'	50 feet from state or federal highway ROW	Top edge of any one billboard sign shall not exceed 50' above the average grade measured from the base of the sign	1000 feet on same side of road	Indirectly illuminated	Not within 300-feet of residential district or structure occupied as a residential, institutional or other non-commercial or non-industrial use, except AG
Johnson Co		650 SF max height - 15' max width - 50' each face, whether back-to-back, v-shaped or "tri-vision" shall be considered a separate sign for purpose of sign area	50 feet from any ROW	Max 30-feet above adjacent ground level	1,200 feet to any existing sign structure on the same side of the street Does not prohibit double-faced signs with back-to-back or V-shaped signs.	Indirectly illuminated	Not within 500-feet of residential or Planned Residential District or any structure occupied by a residential or institutional use
Leavenworth Co	Oversized wall signs, large video signs and scorboards allowed only at fairgrounds and sports fields. "Additional billboards shall not be allowed within the County Limits."						
Jefferson Co	On approved development plan with a CUP (40 acre minimum), or CP-1, CP-2, CP-3, IP-1 or IP-2	One advertising face per direction. <b>Signs visible from Highways:</b> 800 SF max height - 20' max width - 60' <b>Signs visible from collector:</b> 160 SF max height - 10' max width - 20'	may not encroach upon or over public ROW	Max 35-feet Collector: Max 25'	1,320 feet along paved roads on the County Highway System	Must be shielded	75' from residential structure
Linn Co	Commercial, agricultural and industrial zones	max two faces max sign area - 100 SF max total area - 200 SF V-signs allowed if widest point of "V" is less than 15'	15 feet from ROW 10 feet from nearest side property line	Must be at least 15-feet above ground level to bottom of sign	300 feet of another billboard nor more than 4 billboards within the space of one mile on both sides of the roadway.		100' from any residential zone