

CITY OF LEAVENWORTH PLANNING COMMISSION

COMMISSION CHAMBERS, CITY HALL

100 N 5th Street, Leavenworth, Kansas 66048

REGULAR SESSION

Monday, October 3, 2016

7:00 PM

CALL TO ORDER:

Commissioners Present

Jay Byrne
Claude Wiedower
Mike Burke
John Karrasch
Linda Bohnsack

Commissioners Absent

Pat McGlinn
Frank Wenzel

City Staff Present

Julie Hurley
Michelle Baragary

Chairman Byrne called the meeting to order and noted a quorum was present.

APPROVAL OF MINUTES: September 12, 2016

Mr. Byrne asked for comments or a motion on the minutes presented for approval: September 12, 2016. Mr. Burke moved to accept the minutes as presented, seconded by Mr. Wiedower. The minutes were approved by a unanimous vote of 5-0

OLD BUSINESS:

None.

NEW BUSINESS:

1. 2016-12-SUP – 936 OSAGE STREET – CHILD CARE CENTER

Conduct a public hearing for Case No. 2016-12-SUP, 936 Osage Street. The petitioner, Annie Schmalbeck, is requesting consideration for a Special Use Permit to allow for the operation of a Child Care Center at the subject property.

Chairman Byrne called for the staff report. City Planner Julie Hurley stated the property is currently zoned R1-6 (Higher-Density Single Family Residential). Child Care Centers are allowed in the R1-6 zoning district with issuance of a special use permit. The child care has been in operation for approximately 8 years, and the applicant was unaware until recently of the need to obtain a Special Use Permit. The applicant has indicated she is licensed to care for a maximum of 12 children with 8 currently in her care, and operates between the hours of 7am – 5pm, Monday-Friday. Ms. Hurley also noted the applicant has provided drawings showing utilization of indoor and outdoor space. Included in the packet is a copy of the applicant's license showing specifics regarding number of children and age range, etc.

City Planner Hurley reviewed the Conditions of Determination and read through each condition/comment. She noted that in recommending approval of a special use, the Planning Commission may impose such conditions, safeguards

and restrictions as may be necessary to carry out the general purpose and intent of the ordinance. The Development Regulations stipulate specific conditions as a requirement for the approval of Childcare Centers as follows:

1. Shall not be located along an arterial street as designated on the Major Street Plan Map unless indirect vehicular access to that street, such as with a frontage road is available. The City Planner, with the advice of the DRC, shall determine if the drop off and pick up arrangements of a childcare center or business appear safe. Appeal of any negative decision shall be to the City Commission.

Osage Street is designated on the Major Street Plan Map as a residential street, not an arterial street.

2. Shall provide at least one hundred (100) square feet of open space per child. This open space shall be 100% enclosed by a minimum four (4) foot high fence or wall.

The property includes an approximately 3,000 square foot back yard enclosed by a wooden privacy fence, in excess of the 1,200 square foot minimum space required.

3. Shall provide a loading zone capable of accommodating at least two (2) automobiles for the easy picking up and discharging of passengers.

One off-street parking space is provided in the rear of the home off of an alley. Within the surrounding neighborhood, the majority of the homes do not currently have any type of driveway or off-street parking area in the front of the home. The Development Regulations do not allow for the installation of a parking surface in a front yard that does not lead to a garage or other parking area, and no garage exists on the property. With the relatively low volume of drop-offs and pick-ups occurring at an in-home child care center, and the existing residential nature of the street-traffic, staff feels that the provided on-street parking provides an adequate loading zone for the safe picking up and discharge of passengers.

4. Shall conform to all requirements of the State of Kansas and shall acquire a State of Kansas Childcare Center License.

The applicant has provided a copy of her Group Day Care Home permit from the Kansas Department of Health and Environment.

5. All childcare centers operated in residential zoning districts shall be the only legal residence of the operator.

The applicant currently resides in the home at 936 Osage Street.

6. Childcare centers in residential districts may have one non-illuminated monument sign with no more than 3 square feet per side and a maximum of 2 sides or one non-illuminated sign affixed to the main structure of 3 square feet.

The applicant has not indicated that she intends to display a sign, but any signage displayed at a later date would be required to comply with this provision.

Ms. Hurley went on to review the Commission Findings/comments.

COMMISSION FINDINGS:

The Commission may recommend issuance of a special use permit whenever it finds that:

1. The proposed special use complies with all applicable provisions of this ordinance.

Staff believes that this application complies with all provisions of City of Leavenworth Development Regulations.

2. The proposed special use at the specified location will contribute to and promote the economic development, welfare or convenience of the public.

Childcare Centers are an essential service to working parents in the community, and promote the economic development, welfare and convenience of the public.

3. The special use will not cause substantial injury to the value of other property in the neighborhood in which it is located.

Staff does not feel that the proposed Childcare Center will cause any substantial injury to the value of other property in the neighborhood.

4. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.

No new structures or building modifications are proposed as part of this special use permit. The property would continue to look and function as a residential structure.

Ms. Hurley stated staff recommends approval of the Special Use Permit request based on the analysis and findings included herein, subject to the following conditions:

1. The operation shall be limited to a maximum of 12 children.
2. No additional home occupations may be carried out at the residence.

Failure to maintain compliance with all conditions shall result in revocation of the Special Use Permit.

Chairman Byrne called for questions and comments from board members. Mr. Byrne requested clarification that since the majority of unloading and loading of children will occur on Osage Street that this meets the requirements of the Development Regulations. Ms. Hurley state staff is comfortable with the loading/unloading of children on Osage Street as this is a low traffic volume street. She further stated there is one off-street parking space in the rear of the home off the alley that can be utilized.

With no further questions, the Chairman opened the public hearing.

With no further comments, the chairman closed the public hearing. He called for any further comments or discussion among board members. Ms. Bohnsack asked if the parking space in the rear of the home is available during the day because the apartment complex across the street may use a lot of the off-street parking. The applicant, Annie Schmalbeck, stated the daycare van is parked on the street in front of the house and that two vehicles can park in the parking space in the rear of the home. Ms. Bohnsack stated the applicant has a well thought-out plan of action for her daycare center.

With no further discussion, Chairman Byrne called for a motion. Mr. Karrasch moved to recommend for approval the request for a Special Use Permit to allow for the operation of a home childcare center at 936 Osage Street with the following staff recommended conditions: 1) the operation shall be limited to a maximum of 12 children, and 2) no additional home occupations may be carried out at the residence. The motion was seconded by Ms. Bohnsack and passed by a unanimous vote of 5-0.

2. 2016-13-SUP – OLIVE STREET – CELLULAR COMMUNICATION TOWER

Conduct a public hearing for Case No. 2016-13-SUP, Olive Street north of Spruce Street and east of Railroad Avenue. The petitioner, EcoSite, Inc., is requesting consideration for a Special Use Permit to allow for the construction of a 100' monopole type communication tower and related ground equipment.

Chairman Byrne called for the staff report. City Planner Julie Hurley stated the subject property is zoned GBD, General Business District and is currently vacant. The proposed 100' tower is commissioned by T-Mobile to serve customers in the Leavenworth area, with space available for 3 additional carriers to co-locate. The maximum height of a tower and antenna when two or more antennas are co-located by two or more companies on a single tower is 170'. The proposal includes a 65' x 65' fenced area to enclose the tower and related ground equipment. Access will be provided by a paved 12' wide access drive off the existing alley to the south.

The Development Regulations require that for each foot of tower height there shall be a minimum of 1.05 foot of setback from any property line. This would require a minimum of 105' setback from all property lines for the proposed tower. The location of the proposed tower provides a 64' setback to the north, a 96' setback to the east, a 76' setback to the south, and a 106' setback to the west. The Development Regulations allow the Planning Commission to consider an exception to the setback requirement for properties zoned GBD, provided the evidence supports the following conclusions:

- a. The exception will not cause any injury to surrounding property and/or values or adversely affect the rights of adjoining property owners;
- b. The exception will help reduce the structure's domination of the immediate neighborhood and may result in improved safety, order or convenience for the general public;
- c. The exception will accommodate a more desirable development pattern for the immediate neighborhood and/or will enhance development of drainage, public utility or other facilities necessary for future development;
- d. The exception will not oppose the general spirit or intent of the Development Regulations. The exception and its justification shall be submitted as part of the application for the Special Use Permit and shall be valid when incorporated into the language of the ordinance granting the Special Use Permit adopted by the City Commission.

Ms. Hurley went on to review the Commission Findings/comments.

COMMISSION FINDINGS

The Commission may recommend issuance of a special use permit whenever it finds that:

1. The proposed special use complies with all applicable provisions of this ordinance.

Staff believes that this application complies with all provisions of City of Leavenworth Development Regulations.

2. The proposed special use at the specified location will contribute to and promote the economic development, welfare or convenience of the public.

A communication tower will provide numerous benefits to the economic development, welfare and convenience of the public through improved cellular communication capabilities.

3. The special use will not cause substantial injury to the value of other property in the neighborhood in which it is located.

Staff does not believe that the proposed communication tower will cause substantial injury to the value of other property in the neighborhood. The Development Regulations require a 1.05 foot setback for each foot of tower height, which the applicant is requesting an exception to. If the exception is granted, there are no other structures within 105 feet of the base of the tower (the "fall zone") which would be impacted in the event of a collapse of the tower. The location of the tower on this parcel will generate a minimal amount of traffic, with no negative impact to the surrounding properties.

Staff has received comments from the owner of the property located at 784 Spruce Street regarding concerns that the existing alley to be used for access to the subject site appears to cross the corner of their property.

4. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.

The location and size of the proposed communication tower are such that it will not dominate the neighborhood and prevent development and use of neighboring property. The subject property has no street access; it is only accessible by alleys, thus making it unsuitable for commercial or residential development. A communication tower, generating minimal traffic, is an appropriate use for this otherwise undevelopable parcel.

Ms. Hurley stated staff recommends approval of the Special Use Permit request based on the analysis and findings included herein.

Mr. Byrne called for questions and comments from board members.

Mr. Karrasch asked if any other sites were proposed. Ms. Hurley stated the Olive Street property is the only property the applicant proposed to the city; however, the applicant did do reconnaissance within the city but she does not know the extent of it.

Ms. Bohnsack asked if the maximum height for a cellular tower within the city limits is 100'. Ms. Hurley stated the maximum height is 170' if there will be more than one antenna. The proposed tower provides space for four (4) antennas, so the proposed tower is well under the maximum height.

Mr. Byrne inquired about the setbacks and the possibility of the tower hitting the parking lot to the west in the event it ever collapsed. Ms. Hurley responded saying the setback to the west, which is 106', is the only side which meets the setback requirements. Mr. Byrne asked that if sometime in the future this land is developed

have we now made the first 64' to the north undevelopable because it is within the 100' setback requirement. Ms. Hurley stated that would be the case; however, any property that is developed does have frontage requirements for street access and the portion of land directly north of the cell tower site is an extension of the residence on Broadway. Therefore, if it was ever to be parceled off, there would need to be right-of-way dedicated through there; Olive Street would have to be dedicated as the right-of-way. Ms. Hurley further stated she does not see this as a likely scenario; however, if this did occur, then the cell tower fall zone would need to be considered. Mr. Byrne asked if the adjacent property owners have voiced concern with the city about the setbacks. Ms. Hurley stated that none of the correspondence received was in relation to the setbacks.

Mr. Wiedower asked how often the special use permit is revisited. Ms. Hurley responded saying special use permits are renewable annually through the City Clerk's Office and every year the city will verify the regulations are still being met. If the regulations were not being met or there was a development plan then the special use permit would be revisited at that time, since it is renewed annually.

Mr. Byrne asked what restrictions the city has on cell towers. Ms. Hurley stated just this year the State Legislator passed new regulations on what restrictions cities have with cell towers. Cities cannot prohibit cell towers from co-locating; however, cities can make sure it's a good fit and not fall onto adjacent structures. Other than that, the city is limited on its regulations over cell towers.

With no other questions or comments, Chairman Byrne opened the public hearing.

Scott Goble is the applicant. He represents the property owner, Ron Trexler, and also represents T-Mobile and Eco-Site, Inc. Mr. Goble stated he has been in the business for over 16-years and is very familiar with mobile phone company processes and is familiar with the various tower companies. T-Mobile's reasoning for the cell tower in the City of Leavenworth is 1) trying to get ahead of the new 5G technology and 2) to correct the significant loss of service coverage in the Leavenworth area. Mr. Goble clarified T-Mobile is his first client over EcoSite. He stated that if a co-locatable structure currently exists which is tall enough above ground that a T-Mobile antenna can be added then EcoSite would remove their self from the equation as their services would not be needed. Since no structure was suitable for a T-Mobile antenna in the designated search area of Lawrence Avenue and Spruce Street, a ground search began to locate property to build a cell tower. Another area that was looked at were two towers south about 1-1/2 miles away at Tower Hill but there was too much dense residential in that area. The proposed property on Olive Street was the most suitable because it is approximately 20' higher in ground elevation than Westar and the ground to the West and North does fall away at an elevation above sea level.

Mr. Wiedower asked about environmental safety, compliance and inspections for building and maintaining cell towers. Mr. Goble responded by saying there are no regulatory entities that require an annual inspection; however, their towers are inspected regularly. He further stated they operate within FCC regulations. If another carrier wants to add their antenna to the tower, EcoSite requires the carrier to run a full structural analysis, which is completed by a Kansas licensed engineer.

Mr. Claude asked Mr. Goble, since he has been doing this for 16 years, does he have confirmation there is no negative health impact. Mr. Goble stated there are always two concerns with cell towers: 1) health concerns and 2) property value concerns. Regarding health concerns, all carriers Mr. Goble has dealt with work with the constraints of FCC licensing. The FCC monitors health studies on a regular basis and has set exposure levels for radiation. The carriers work well within the limits required by the FCC; in most cases the exposure is one-tenth of what is allowed by the FCC. Mr. Goble recommends the board members visit the following websites for additional health information: FCC, World Health Organization and OSHA.

Mr. Goble went on to discuss the affects to property values. He stated he believes one of the most important requirements for people looking at purchasing a home is if they will have good cellular coverage at that address. Therefore, he does not believe a cell tower would negatively affect property values.

Mr. Byrne asked what the level of improvement would be for T-Mobile customers. Although no numbers are available to provide to the board, Mr. Goble responded by saying the level of improvement within a two mile radius of the proposed location would be significantly increased.

Mr. Burke asked how long would construction last and what type of disruption are the citizens in that area expected to endure during construction. Mr. Goble stated construction from start to finish is typically less than three weeks. A crane would be setup on the property and equipment would be brought in by a semi-truck. There will definitely be activity during construction but they will work closely with property owners and the city to keep everyone in the loop.

Mr. Goble also mentioned it is his understanding there is concern about possible damage occurring to the alley. He recommends making it a condition to the special use permit that any damage due to construction activities be repaired.

Mr. Karrasch asked if the tower could be extended or if a new tower would have to be installed if added height is needed. Mr. Goble responded that the tower could be extended.

Mr. Byrne asked if anyone else wanted to speak for or against the proposed special use permit.

Mr. Bernie Bristow approached the podium to speak in opposition of the proposed special use permit. Mr. Bristow is co-owner of MBAR LLC, located at 784 Spruce Street. Mr. Bristow provided the board members and the City Planner an informational packet on FCC regulations pertaining to cell towers. His discussion is attached as Exhibit A.

Mr. Byrne asked for questions.

Mr. Karrasch asked Mr. Bristow if he knew of any environmental issues within the neighborhood, endangered species, or any other historic sites besides the property to the north. Mr. Bristow responded by saying he knew of no other historic sites and is not aware of any endangered species in the area.

Mr. Wiedower asked Mr. Bristow if EcoSite used a different access point other than the alley, if Mr. Bristow would then be acceptable to installation of the tower. Mr. Bristow responding by saying he is not in favor of the tower; however, if the tower did get approved, he would prefer the point of entry to be north on Railroad Avenue and then east behind A-One Auto Repair located at 815 Railroad Avenue.

Ms. Bohnsack commented that she understands Mr. Bristow's concerns about the use of the alley; however, cell towers receive infrequent general maintenance and the tower is only 100 feet, which is of minimal size for a communication tower. She further stated there will be an impact to the properties surrounding the cell tower but not nearly the negative impact that the auto repair shop has; and the communication tower does provide a positive impact on the community. Ms. Bohnsack also does not believe the historic properties on South Broadway will be negatively impacted.

Mr. Karrasch asked Mr. Bristow if he has had a chance to look at the site plans and if he was aware of the eight foot tall, 65' x 65' privacy fence that will be installed around the tower. Mr. Bristow responded that he did

look at the site plans. Mr. Karrasch stated he believes the enclosure should cover most of the safety issues that Mr. Bristow mentioned.

Mr. Byrne thanked Mr. Bristow and asked if there was anyone else who wished to speak for or against the proposed cell tower.

Mr. Pernell Peters, owns property at 722 S Broadway Street, approached the podium. He stated he purchased the home in May 2015 and he never would have considered purchasing this property if he knew a cell tower was going to be installed behind his property. He stated he paid a premium for this property and does not want the property value damaged.

Mr. Byrne asked if the board had any questions for Mr. Peters.

With no questions from the board members, Mr. Byrne asked if anyone else would like to speak in favor or opposition of the proposed tower.

William R. Allen Sr. M.D., owns the property at 714 S Broadway St, approached the podium. Dr. Allen stated his property was placed on the National Register of Historic Places in 1977. Dr. Allen's concern is that the assessment required by Section 106 of the National Historic Preservation Act (NHPA) was not completed. He further stated it is his belief that all the properties in that area will be negatively impacted.

Mr. Byrne requested Mr. Goble approach the podium to clarify questions the board members may have.

Mr. Byrne asked if a distributed antenna system (DAS) or other small-cell system was considered when meeting the requirements. Mr. Goble responded by saying a DAS system is a specific application and for it to work in a dense residential neighborhood there would need to be an antenna on every utility pole within that area. DAS systems are designed for urban environments.

Mr. Byrne asked about the NHPA and how it pertained to Dr. Allen's property. Mr. Goble stated wireless entities are one of the most highly regulated entities in the United States. Because it is a federally licensed entity there are litany of regulatory steps that are required. One of these steps is approval by the Kansas State Historic Preservation Office (SHPO). Mr. Goble stated he does not believe they are that far along in the process yet but approval is required prior to commencing construction. Mr. Goble stated the SHPO has criteria they take into account, such as, line of sight and screening. Mr. Goble believes the natural screening by the mature trees will hide the tower from the majority of surrounding properties. Using his photo simulations, Mr. Goble discussed the surroundings and various street views of the proposed property.

Referring back to Mr. Bristow's discussion about EcoSite's corporate policy about meeting with neighbors, Mr. Byrne asked Mr. Goble if any of the neighbors were contacted. Mr. Goble responded saying they only meet with neighbors when the jurisdiction makes that request or when EcoSite believes that a tower will cause a big impact. Mr. Goble did not feel this specific tower would cause a significant negative impact.

Mr. Byrne asked about the backup power for the tower and the impact it will have on neighboring properties. Mr. Goble stated T-Mobile's first backup is a battery and then propane. Some carriers, such as Verizon, use diesel; however, natural gas can also be used. Mr. Goble stated the generator will only be used in the case of a power outage, which would normally not last a significant length of time.

Mr. Goble proceeded to discuss the noise levels of the generators. The propane and gas generators are virtually silent and diesel generators are very quiet. Mr. Goble stated he could get specifications on the decibel levels for the generators. Mr. Byrne stated the specifications need to be supplied to staff.

Mr. Byrne then asked about lighting around the tower. Mr. Goble stated more than likely there will be lighting inside the compound, similar to a porch light.

Mr. Byrne asked if it was feasible to change the route of construction access. Mr. Goble stated he would need to meet with his team to see if changing the route of construction access is even a possibility. He further stated it is his understanding that Mr. Trexler has the legal right to use the alley to access his property; therefore, any of Trexler's lessees should also have access to use the alley as well. Mr. Goble said they would replace any damage that was caused by construction.

During his discussions, Mr. Bristow provided information indicating harmful effects to property values of properties near cell towers or antennas. Mr. Byrne asked Mr. Goble if he had any data on the impact on property values. Mr. Goble responded by saying he has seen articles showing positive impact on property values and has seen articles showing negative impact on property values.

Mr. Wiedower asked how many miles of improved coverage will be afforded to T-Mobile customers if the cell tower is approved. Mr. Goble stated the most improved coverage would be approximately a two mile radius.

Mr. Karrasch asked the City Planner if the National Historic Preservation Act applied to the property or to the home and property. Ms. Hurley stated she would need to pull the register nomination, which would contain a legal description. However, according to the GIS mapping system, it is just for the parcel with the house on it; not the rear parcel behind it. Mr. Goble also stated the SHPO will identify properties on the historic preservation list.

Mr. Wiedower asked if there was a secondary site such would achieve T-Mobile's objective. Mr. Goble stated he did research numerous other sites but for one reason or another (e.g. elevation too low, access issues, etc.) the other sites would not work.

Mr. Goble proceeded to address the ice issue which was mentioned earlier by stating he has never seen an issue with ice causing damage. He stated any ice which may form on the tower typically melts off as water.

Deanne Montgomery approached the podium to ask about the landlord/tenant relationship. Mr. Goble responded by saying EcoSite will be the tenant to the property owner, Ron Trexler. The lease agreement between EcoSite and Mr. Trexler allows EcoSite to sublease to future co-location tenants.

Mr. Byrne asked if there were any other questions. With no one else wishing to speak, Mr. Byrne closed the public hearing.

Chairman Byrne stated the board has three options available to them: 1) motion, based upon findings as stated to recommend approval to the City Commission, 2) motion, to recommend denial to the City Commission, and 3) table the issue for additional information/consideration. Mr. Karrasch moves to approve the Special Use Permit for the cell tower with the condition the developer agrees to repair any damage imposed to the street or alley from the equipment needed to construct the facility. Ms. Hurley suggested the condition be reworded to damage to any public or private property that occurs during construction. The motion was seconded by Mr. Wiedower and passed by a unanimous vote 5-0.

3. 2016-14-SUB – LEAVENWORTH BUSINESS & TECHNOLOGY PARK PRELIMINARY PLAT

Consider a request for a preliminary plat for the Leavenworth Business & Technology Park, located at Eisenhower Road and 14th Street.

Chairman Byrne called for the staff report.

City Planner Julie Hurley requested agenda items 3 and 4 be heard together as they pertain to the same property. She stated the subject property is owned by JMK Partners, LLC, plat prepared by Napier Engineering. The applicant is requesting approval of a one lot preliminary plat for the Leavenworth Business & Technology Park. The property is currently vacant, and is zoned R1-6, High Density Single Family Residential, and R-MF, Multiply Family Residential.

The subject property is 81.91 acres in size, and is currently undeveloped. The site lies directly to the west of the Gary Carlson Business Park and the Storage Box self-storage center. The plat consists of one lot and associated utility easements, as well as right-of-way for the new 14th Street to be constructed. The property is being platted as one lot at this time to allow for construction of site improvements while providing maximum flexibility for future tenants in terms of lot size and configuration to meet specific needs. It is anticipated that the property will be replaced accordingly as tenants are identified.

The Development Review Committee reviewed the plat at their September 15, 2016 meeting. Items noted at that time included specific requirements regarding the construction of utilities and easements. No concerns were identified with the plat.

Ms. Hurley stated staff recommends approval of the Leavenworth Business & Technology Park Preliminary Plat.

4. 2016-15-SUB – LEAVENWORTH BUSINESS & TECHNOLOGY PARK FINAL PLAT

Consider a request for a final plat for the Leavenworth Business & Technology Park, located at Eisenhower Road and 14th Street.

Chairman Byrne called for the staff report. City Planner Julie Hurley stated the subject property is owned by JMK Partners, LLC, plat prepared by Napier Engineering. The applicant is requesting approval of a one lot final plat for the Leavenworth Business & Technology Park. The property is currently vacant, and is zoned R1-6, High Density Single Family Residential, and R-MF, Multiple Family Residential.

The subject property is 81.91 acres in size, and is currently undeveloped. The site lies directly to the west of the Gary Carlson Business Park and the Storage Box self-storage center. The plat consists of one lot and associated utility easements, as well as right-of-way for the new 14th Street to be constructed. The property is being platted as one lot at this time to allow for construction of site improvements while providing maximum flexibility for future tenants in terms of lot size and configuration to meet specific needs. It is anticipated that the property will be replatted accordingly as tenants are identified.

The Development Review Committee reviewed the plat at their September 15, 2016 meeting. Items noted at that time included specific requirements regarding the construction of utilities and easements. No concerns

were identified with the plat. There is also a rezoning application for this property that will be heard at the Planning Commission's next meeting November 7, 2016.

Ms. Hurley stated staff recommends approval of the Leavenworth Business & Technology Park Final Plat to be heard before the City Commission.

Mr. Byrne called for questions and comments from board members.

Ms. Bohnsack asked if the rezoning should be heard first. Ms. Hurley stated the rezoning application does not have to precede the plat; however, if the board chooses they can table this until the next meeting.

Ms. Bohnsack has concern about the length of the cul-de-sac and why it is not connecting to the north at the property lines so that it can be connected with other properties and facilitates future development. Ms. Hurley responded saying the Carlson Business Center had originally been platted with the right-of-way connecting to the north. There is currently a cul-de-sac that has been constructed in the Carlson Business Park. The right-of-way is still there and the properties to the north have been purchased with the intention of the current property owners that a portion of the right-of-way would be vacated so that the lots could wrap around to maximize the development of that area. Ms. Bohnsack asked about the previous discussions of extending Muncie Road to the west to 20th Street. Ms. Hurley stated she does not believe that is currently on the table with the City Commission primarily due to funding.

Mr. Byrne asked if there were any questions for the applicant, Mike Reilly.

Mr. Karrasch asked for the history of the parcel and how they came up with the layout. Mr. Reilly stated almost two and a half years ago this property was identified by Leavenworth County Port Authority as a potential new business industrial park. This site was identified for a number of reasons, such as, it's in a growth area of Leavenworth, it is adjacent to another industrial park, has access to good roads and utilities, etc. The site plan is about 80 acres. It originally started with a street running up the middle from the south property line to the north property line. The current plan has a dogleg road that bends to the west then straightens out. They followed the contour of the ground so that the lots on the west side are roughly 350' deep, which is good for the smaller uses but also allows them to attract larger users for the other lots.

Mr. Karrasch asked why the easement on the existing industrial park that comes west and dead ends is not continued across to make the connection. Mr. Reilly stated that was vacated several years ago for Cereal Ingredients. Mr. Karrasch asked if there was any thought about making the connection at New Lawrence Rd. Mr. Reilly responded saying not for the Business Technology Park.

Ms. Bohnsack asked about industrial properties being allowed to be split by lots several times. Ms. Hurley stated it can be split twice without being replatted; however, if any easements are dedicated, a final plat would need to be submitted.

Mr. Byrne asked if anyone else would like to speak about the plat.

Mr. Randy Goetz and his wife Angela own the property at 15583 Eisenhower Road. Mr. Goetz voiced his concern about the intersection being in front of his home and the industrial park negatively impacting his property value. Mr. Byrne asked if the industrial park got approved where is Mr. Goetz's suggested entrance to it. Mr. Goetz mentioned using 155th Street. Mr. Reilly stated that is not a possibility due to the Magellan pipeline and unfortunately there is no other option for the entrance other than across (staggered slightly) from

Mr. Goetz's driveway. Ms. Hurley also stated that if streets do not exactly lineup, the development regulations require a minimum offset in order not to confuse traffic.

Ms. Bohnsack asked if all the right-of-way has been acquired for the widening of Eisenhower Road and the plat reflects that. Mr. Reilly stated they have allowed for the right-of-way on the plat but it has not been acquired yet.

Deanne Montgomery owns the property at 15765 Eisenhower Road. She stated years ago the transfer station was denied at the proposed property because the plan was to develop a residential area. Further concerns are property values, the constant humming noise and smell from the cereal plant, and construction trucks.

Ms. Bohnsack asked the City Planner what the comprehensive plans say about this area. Ms. Hurley responded by saying the comprehensive plans does not show it as industrial but rather as low density residential. The future land use plan shows currently zoned industrial properties as appropriate for industrial.

Kathryn Goetz located at 15583 Eisenhower Road approached the podium to speak. Ms. Goetz concerns included nice houses on the south side of Eisenhower Road and the building of an industrial park would negatively impact the property value of those homes. Eisenhower Road is a very narrow street but an industrial park would significantly increase traffic in that area.

Mr. Byrne stated the first issue to decide on is if we continue to go forward with our discussions or do we want to wait until the board hears the rezoning case and then come back to review/take action on the plats.

Ms. Hurley suggested the plats be tabled and discussed with the rezoning since most comments regard the use of the property.

Chairman Byrne asked if there was a motion to table the preliminary and final plats until the next meeting. Mr. Burke moved to recommended tabling the discussion until next month's meeting; seconded by Mr. Wiedower and approved by a unanimous vote 5-0.

OTHER:

Mr. Byrne asked Ms. Hurley if the sign sub-committee has had an opportunity to meet. Ms. Hurley stated they met last week and reviewed the Sign Chapter of the Development Regulations. An update will be added as an agenda item for the next meeting.

With no further business, the meeting was adjourned at 9:33 pm.

JH:mb

Exhibit A

Good evening,

I'm Bernie Bristow, co-owner of MBAR LLC. MBAR owns the property at 784 Spruce St. which is presently for sale. I'm here to speak in **opposition** to the petition for the cell tower Special Use Permit. I have signatures of five (5) owners of property located in the proposed site area also opposing the petition. Some property owners effected are here tonight, as well.

The Federal Communications Commission's (FCC) states in their **TOWER AND ANTENNA SITING** rules that, "Building a new tower or collocating an antenna on an existing structure requires compliance with the Commission's rules for **environmental review**. These rules ensure that licensees and registrants take appropriate measures to protect environmental and historic resources,... **A new tower construction requires:**

- **Approval from the state or local governing authority for the proposed site;**
- **Compliance with FCC rules implementing the National Environmental Policy Act (NEPA), which includes separate procedures for**
 - **Endangered Species Act (ESA); and,**
 - **National Historic Preservation Act (NHPA)**

Beginning with **Approval by State and Local Authorities;**

Section 332(c)(7) of the Communications Act preserves state and local authority over zoning and land use decisions for personal wireless service facilities, but sets forth specific limitations on that authority. Specifically, a state or local government may not unreasonably discriminate among providers of functionally equivalent services, may not regulate in a manner that prohibits or has the effect of prohibiting the provision of personal wireless services, must act on applications within a reasonable period of time, and must make any denial of an application in writing supported by substantial evidence in a written record. The statute also preempts local decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, assuming that the provider is in compliance with the Commission's RF rules.

FCC-14-153 Report and Order adopted on Oct. 17, 2014 entitled:
Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, et al

is a 155 page FCC document intended to boost wireless broadband by easing infrastructure burdens. These new rules continue to protect the environment and historic properties, safeguard Tribal, State, and local priorities.

Section I. INTRODUCTION of the document contains 17 articles. Parts of Articles 1, 3, and 5 are pertinent to this petition.

1. We take important steps in this Report and Order to promote the deployment of wireless infrastructure ... **Our actions will expedite the deployment of equipment that does not harm the environment or historic properties**, as well as recognize the limits on Federal, State, Tribal, and municipal resources available to review those cases that may adversely affect the environment or historic properties.
3. **Our actions recognize that a technological revolution has changed the wireless network landscape. The Commission’s current rules for deploying infrastructure were drafted at a time when antennas were huge and bolted to the top of enormous towers. While that kind of macrocell deployment still exists and will continue to exist, there are now a variety of complementary and alternative technologies that are far less obtrusive. Distributed antenna system (DAS) networks and other small-cell systems use components that are a fraction of the size of macrocell deployments, and can be installed— with little or no impact—on utility poles, buildings, and other existing structures. We are revising our rules to reflect this technological progress. At the same time, however, we recognize that State, local and Tribal governments play important roles in this process, including with respect to their own land use regulation and as part of our historic preservation review process. ...In particular, the rules we adopt today will allow local jurisdictions to retain their ability to protect aesthetic and safety interests. Accordingly, our actions are intended to encourage deployments on existing towers and structures—rather than entirely new towers—in recognition that collocations almost always result in less impact or no impact at all**
5. The rules we adopt today should help spur wireless broadband deployment, in part, by facilitating the sharing of infrastructure that supports wireless communications. We create strong incentives for wireless providers to collocate on structures that already support wireless deployments...Promoting shared use in this manner advances several important policy goals while creating little or no potential for competitive harm and, indeed, promoting opportunities for increased competition. First, a “shared use” approach leverages existing resources and thus facilitates provider efforts to expand both coverage and capacity more quickly. Second, sharing wireless infrastructure—whether towers, other support structures, or transmission equipment—reduces costs and promotes access to such infrastructure, and thus may reduce a notable barrier to deployment. Finally, **sharing resources—rather than relying on new builds—safeguards environmental, aesthetic, historic, and local land-use values.**

Statements from some of the FCC Commissioners are included in the document. The Statement of FCC Chairman Tom Wheeler in part states;

The Order also implements federal statutory directives that are intended to make State and local review more efficient for wireless deployments and modifications.

At the same time, the Order preserves our commitment to safeguard the essential roles that State, local, and Tribal governments play in this process.

For instance, the Order preserves local governments' authority to adopt and apply the zoning, safety, and concealment requirements that are appropriate for their communities.

It may appear I'm belaboring the point that the FCC has preserved local government authority in cell tower siting with restrictions. Friday's article in the E-Edition of the Leavenworth Times entitled "Commissioners unable to block cellphone tower" might lead this Board to think you have no control. County Counselor David Van Parys told the County Commissioners, "Quite frankly, the federal government has tied your hands on this issue." Mr. Van Parys' statement may be accurate for the tower discussed in the newspaper article. **It is not accurate for all situations**, as evidenced by the rules and guidance just presented concerning **Section 332(c)(7) of the Communications Act**, and **FCC Document 14-153**, which give you authority.

Now to address the **National Historic Preservation Act (NHPA)** requirement; The National Historic Preservation Act (NHPA) of 1966 is implemented through the FCC's environmental rules. **Section 106 of the NHPA requires federal agencies to consider the effects of federal undertakings on historic properties.** Commission licensees and applicants are delegated the responsibility for initiating the Section 106 review process for proposed facilities, identifying and evaluating historic properties, and assessing effects. This process includes consultation with the relevant State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO) to determine whether the proposed facility may have an adverse effect on sites that are listed in or eligible for listing in the National Register of Historic Places (NRHP).

William R. Allen Sr. M.D.'s home at 714 South Broadway was placed on the National Register of Historic Places on November 17, 1977. Dr. Allen's property borders the proposed tower site. Was the assessment required by Section 106 of the NHPA completed?

I'll begin the local discussion of the petition at hand with a direct quote from the Eco-Site web site:

“WE’RE BUILDING MORE THAN NETWORKS

We don't develop our sites in a vacuum—at Eco-Site, we make a point of being invested in our surrounding communities. Establishing relationships with our neighbors is vital to understanding the best ways we contribute as a business presence. It's our job to find smart solutions for wireless densification, but we also hope to make a positive impact along the way.

As we develop, we consider how the changes will affect people's lives. We do our homework, forging the way for networks to integrate smoothly into existing communities. Our team members attend local government and community meetings, gathering input from real people with real concerns. We know the woman across the street and the shop owner next door, and they know us. We wouldn't want it any other way.”

In talking with adjacent property owners (some not all), no one indicated they have been contacted in any manner by the co-petitioners, or any representative of Eco-Site!

I ask that you keep Eco-Site's own statement in mind as we continue.

If the tower were to be approved, what safety concerns exist,? (FCC rules **allow local jurisdictions to retain their ability to protect aesthetic and safety interests**) **Ice formation on the tower.** Thawing ice, particularly in windy conditions, will create potential for personal or property damage as it crashes to the ground. Any property damage to adjacent residences, or personal injury to residents, visitors, or passers-by would be covered by their own insurance company, with the injured subject to their own deductibles. **Noise.** Elderly residents live in this area. The noise resulting from ice crashing may unnerve them. As well, considerable noise will be created in the construction process. Presumably a backup generator will provide power during electrical outages. Will it be diesel powered, and will the initial generator supply all present and future expansion needs? How will the noise of the generator(s) be abated, and will it comply with City noise standards? Any or all of the noise created may be a sleep nuisance for the elderly, for night shift workers who sleep during the day, for children napping, or any other area residents. **Fuel exhaust.** How will exhaust (particularly diesel

exhaust) created by power generation be vented? Prevailing northerly winter winds will push the exhaust directly toward the homes across the alley and Spruce Street. Anyone with compromised respiratory systems will be at risk for exacerbation of their health conditions. **Lighting.** Will the tower be lighted? Will there be any high-intensity white light, or any light of any intensity that could be considered a nuisance? **These are all real health and safety concerns to be considered.**

SITE PLAN

Considering the site plan itself, the alleys between the site and the properties fronting Spruce Street, and/or some of the properties fronting Columbia Avenue are the intended access for the construction, and the permanent access for operation of the tower. These alleys are the only access to the parking areas behind many of the homes on these properties. Some area residents use the alleys to walk with their children, walk their dogs, or walk to the stores in the area. Increased vehicle traffic in the alley is expected during construction and maintenance of the tower. Blocking of the alleys by construction and maintenance vehicles will impede use and access to the adjacent properties.

I would ask the petitioners to put "more skin in the game". The alley access indicated is not the only solution for access to the site. It may be the easiest, or least costly for them, but it's not the only way to access the site. It is my understanding alley right-of-way already exists on the West side of the proposed site between the site and the petitioners business. That right-of-way has not been vacated. The alley could be reconstructed and would give direct access to the site. Granted it would require grade work to repair the excavation that occurred in the past to the alley right-of-way. However, that alley did exist in the past, and the right-of-way continues to exist. The excavation that occurred was man made. It can be reversed! Or better yet, the site can be accessed along the North side of the petitioners property located at 815 Railroad Avenue where excavation did not occur. Less site preparation would be needed because there is a natural gradual elevation increase there, and, as well, the access would be from a dedicated street rather than an alley. **Increased load on the commonly used existing alley behind residences should not be the first choice for access to the tower site.**

My final points are directed to the **benefits or harm** to: the petitioners, Eco-Site, the adjacent property owners, Leavenworth residents and the City of Leavenworth.

- * I'm told the **City's** financial gain will be minimal.
- * **Leavenworth residents** may benefit from better cell phone reception, if they currently have poor service.
- * The **petitioners** will have financial gain from their lease agreement with Eco-Site.

- * **Eco-Site** will of course generate income from the companies that lease space on their tower. The State of Kansas treats cell towers as Personal Property. They fall under Business Machinery and Equipment, and in Kansas any new Business Machinery or Equipment installed after June 30, 2006 is exempted almost entirely from Property tax. Property Tax avoidance will be a great financial benefit to Eco-Site.
- * **Property owners** in the area receive **no financial benefits**. However, an article in RealtorMag, Official Magazine of the National Association of Realtors, entitled “Cell Towers, Antennas Problematic for Buyers”, dated July 25, 2014 **does indicate probable harm**. The article states that **“An overwhelming 94 percent of home buyers and renters surveyed by the National Institute for Science, Law & Public Policy (NISLAPP) say they are less interested and would pay less for a property located near a cell tower or antenna.**
What’s more, of the 1,000 survey respondents, 79 percent said that under no circumstances would they ever purchase or rent a property within a few blocks of a cell tower or antennas, and almost 90 percent said they were concerned about the increasing number of cell towers and antennas in their residential neighborhood.”

In summation, the FCC rules;

- do **allow local jurisdictions to retain their ability to protect aesthetic and safety interests.**
- do require “environmental reviews” according to Section 106 to consider the effects of federal undertakings on historic properties.
- do intend to encourage deployments on existing towers and structures **-rather than entirely new towers-**in recognition that collocations almost always **result in less impact or no impact at all, and**
- do promote resource sharing-**rather than relying on new builds-**to safeguard environmental, aesthetic, **historic and local land-use value.**

Therefore, in the interest of safety, preservation of historic property, and maintenance of local land-use value, I respectfully ask that you deny the petition before you.

Thank you

Tower and Antenna Siting

www.fcc.gov/general/tower-and-antenna-siting

Acceleration of Broadband Deployment by Improving Wireless Facilities Siting Policies, et al - EDOCS Oct 21, 2014 - R&O

www.fcc.gov/search/#q=FCC-14-153

“Commissioners unable to block cellphone tower”

The Leavenworth Times E-Edition

Friday

Posted Sep 30, 2016 at 8:55 AM

The National Historic Preservation Act

www.fcc.gov/general/tower-and-antenna-siting

www.eco-site.com

“Cell Towers, Antennas Problematic for Buyers”

realtormag.realtor.org/daily-news/2014/07/25/cell-towers-antennas-problematic-for-buyers

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