CITY OF WICHITA

Wichita-Sedgwick County Metropolitan Area Planning Department

May 16, 2019

Juan Castellanos
4766 Leonine
Wichita, KS 67217

Ferris Consulting % Greg Ferris
P.O. Box 573
Wichita, KS 67201

APC Telecom Services, LLC % Tami Lewallen
8601 Six Forks Road STE 250
Raleigh, NC 26715

RE: CON2019-00002 - City request to approve a Conditional Use Permit to permit an 80-foot Wireless Communication Facility on property zoned LC Limited Commercial on the north side of West 18th Street North and on the west side of North Woodland Avenue (902 West 18th Street North).

Dear Applicants and Interested Parties:

At its regular meeting on **MAY 14, 2019**, the Wichita City Council considered the above captioned request. The action of the Wichita City Council was to **DENY** the request by a vote of 5 to 2, based upon motion of Councilwoman Claycomb to deny the request based upon the following findings:

The aesthetics or the visual appearance of the tower are at the heart of this issue. While aesthetics considerations may not be a precise as a more technical measure they may still be considered as a basis for zoning rulings if they are shown to be carefully reviewed and not just a vague justification for arbitrary or capricious decisions. So reviewing these aesthetic considerations I evaluated the potential benefit or harm involved to the community at large in reaching my decision, which was based on several factors.

First, the character of the neighborhood; second the zoning and uses of the property nearby; and. third the suitability of the subject property. The area is predominantly residential. If you drive over there and look around it is predominantly residential. While it has some Limited Commercial zoning it is comprised of one-story shops, not large industrial facilities. These shops are squeezed in very close to the residential homes. The idea that poles already exist in this area is not a reasonable comparison. The existing poles are 56 feet tall and are made of wood, not 80-foot galvanized metal poles. The trees in the area generally top out around 35 feet, and are deciduous so they provide no cover in the winter or early spring. The extent of the potential detrimental effect on nearby property including the negative effect on nearby property values. Both sides presented evidence on the effects of cell towers on property values. I considered both sides of the argument, and I find the opponents' arguments more credible because they were more localized, and from experts in the area, including real estate agents, brokers and appraisers. The gain to public health, safety and welfare compared to the hardship imposed on the individual land owner. The concern for individual safety is legitimate. The residential homes are easily within the fall zone for ice and debris. It is frustrating to me that less intrusive technology has not been developed to use in these historic neighborhood sites. While we cannot base our decision solely on neighborhood opposition, we must take into account that there is an 81 percent protest, when only a 20 percent protest is required. I don't recall a protest this large on other zoning cases. Of the hundreds of e-mails and phone calls I have received I have only received four or five that supported the proposal. So, therefore, based upon the preponderance of evidence and this analysis there is a reasonable basis for denial of this application.

If you have any questions concerning this application, please contact Dave Yearout at 268-4421.

Sincerely,

David L. Yearout, AICP
Principal Planner

Copies to: WCC VI, Cindy Claycomb, Mail Stop 1-13
Brandon Findley, CSR VI, Mail Stop 1-135
Paul Hays, OCI, Mailstop 1-72
Jeff Van Zandt, City Law, Mailstop 1-134.
Julianne Kallman, Engineering, Mail Stop 1-71.
Teddi McCullough, 833 Litchfield, Wichita, 67203. teddimccullough@sbcglobal.net
Madeline McCullough. madeline.mccullough@gmail.com
Beth Harshfield, 326 N. Athenian, Wichita, 67203. Beth@exhibitarts.net
Susie Cunningham. susiecunningham1@gmail.com
Claire Willenberg, 1402 N. Garland, Wichita, 67203. c.willenberg@sbcglobal.net
Thomas L. Richardson, 914 W. 18th Street, Wichita, 67203
Alan and Sharon Fearey, 323 N. Market, Wichtia 67202
Kent Williams. kent.t.williams@gmail.com

WICHITA–SEDGWICK COUNTY
METROPOLITAN AREA PLANNING

AGENDA ITEM NO. 4

STAFF REPORT

MAPC – Reconsideration April 18, 2019
DAB IV – March 4, 2019
MAPC – March 7, 2019 (First Hearing)

CASE NUMBER: CON2019-00002

APPLICANT/AGENT: Juan Castellanos (Owner); Ferris Consulting – Greg Ferris (Agent); APC Telecom Services, LLC – Tami Lewallen (Tower Owner)

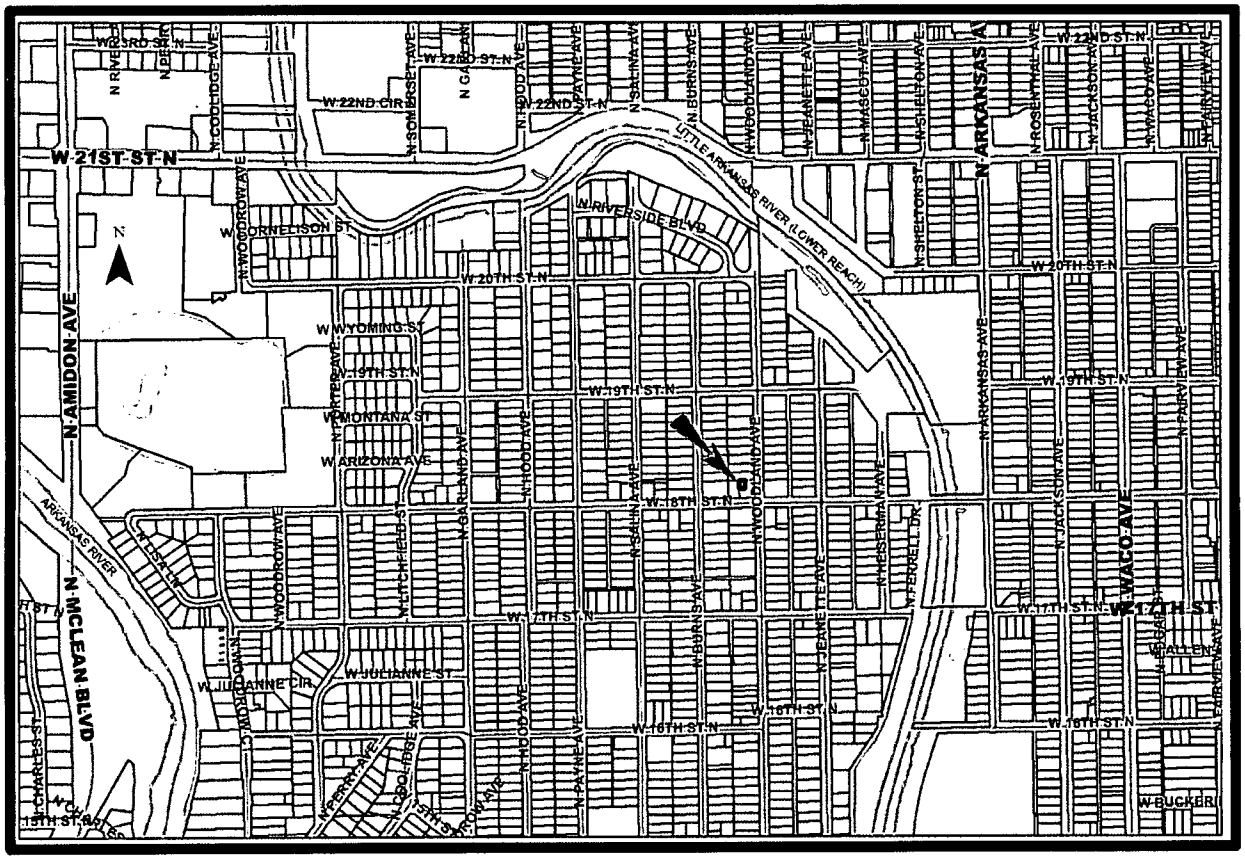
REQUEST: Conditional Use for a Wireless Communication Facility (T-Mobile)

CURRENT ZONING: LC Limited Commercial

SITE SIZE: Less than 1 acre

LOCATION: North side of 18th Street North and west side of Woodland Avenue. (902 West 18th Street North)

PROPOSED USE: 80-foot tall wireless communication facility



BASIS OF RETURN TO MAPC: This case was presented to the Wichita City County for consideration of the original Metropolitan Area Planning Commission recommendation of approval, subject to the conditions enumerated below, on April 9, 2019. Following additional materials being submitted from neighbors and their legal representatives, the Wichita City Council voted 7 to 0 to return this case to the MAPC for reconsideration of the recommendation by taking into account the new material submitted. That information is attached.

The question before the MAPC is whether the original recommendation to approve the wireless communication facility (tower) as proposed should be resubmitted, or whether the recommendation should be changed based on the new information.

BACKGROUND: The applicant is requesting a Conditional Use to allow the placement of an 80-foot tall cell tower for T-Mobile on property located on the north side of West 18th Street North and on the west side of North Woodland Avenue. The subject property is zoned LC Limited Commercial (LC). This location is outside the area authorized for administrative approval of wireless communication facilities; therefore, the Unified Zoning Code requires a Conditional Use for a wireless communication in the LC District at the proposed location. The following information is provided with a clear understanding that recent state and Federal laws have been enacted that limits and restricts the factors and issues that can be evaluated regarding placement of new wireless communication facilities.

The parcel for this tower is a leased portion of the 8,750 square foot lot owned by the applicant, which is a commercial building that has been used for auto repair use. The leased area for the wireless communication tower is approximately 45-feet by 35-feet in size and located on the north side of the existing building at the western edge of the property, as shown on the attached site plan drawing. Access to the tower site will be via a leased access drive entering from Woodland Avenue.

The applicant indicates this will be a monopole structure of a neutral color, much like other towers within the community. The compound area surrounding the tower will be enclosed with an 8-foot, solid fence. Because the entire lot is zoned LC, no landscaping is proposed.

According to the applicant, other potential sites for a tower in the neighborhood were evaluated, but the owners were not willing to lease the properties. T-Mobile is presently located on the existing tower at the Twin Lakes Shopping Center to the west of the subject property and this tower location is designed to provide relief from capacity issues at that tower.

The character of the surrounding area is mixed with commercial uses dominating the intersection of 18th Street North and Woodland Avenue. The property immediately to the north is zoned LC Limited Commercial and is occupied by a commercial building immediately to the north of the proposed wireless communication facility (tower) site; and it also has a residence on the property that is used as a rental. The property to the east, south and southeast are all zoned LC Limited Commercial. The property to the east and south are occupied by commercial buildings and uses. The property to the southeast is occupied by a residence.

Residential uses exist further to the north and southeast and are occupied by residences. According to the City's Historic Preservation Planner, there are three homes within the immediate area which are potentially eligible to be listed on the National Register of Historic Places. The Environmental Review process required as part of the FCC certification will address this matter. It is not a factor that can be addressed as part of the zoning decision.

CASE HISTORY: The property is in Ford's 2nd Addition to the City of Wichita, which was recorded with the Sedgwick County Register of Deeds on March 22, 1886. There are no other zoning actions on record for this property.

ADJACENT ZONING AND LAND USE:

NORTH:	LC	Commercial/Warehouse
SOUTH:	LC	Commercial Office
EAST:	LC	Commercial
WEST:	LC	Commercial

PUBLIC SERVICES: The proposed wireless communication facility will not require any municipal services; however, all municipal utilities are available to the property. The intersection of 18th Street North and Woodland Avenue are fully developed local streets with curbs and gutters.

CONFORMANCE TO PLANS/POLICIES: The "Community Investments Plan 2015-2035" depicts this location as being generally "residential". This particular use would not be out of character with the spirit and intent of the plan's acceptable uses for this location given that the subject property is commercially used and adjacent to other established commercial uses.

The Wireless Communication Master Plan outlines the guidelines for locating Wireless Communication Facilities. The proposed cell tower meets the general intent of the plan and the Conditional Use as recommended meets the spirit and intent of supporting expansion of coverage for this industry within the community.

The combined conclusion for conformance to the Plans and Policies is this request complies with the overall spirit and intent to accommodate both the expansion of wireless communication capabilities within the City, while honoring the introduction of this type of use at this location by requiring the conditional use approval process and applying all the supplementary regulations to the property to mitigate the impacts associated with the new development.

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to the following conditions:

A. The applicant shall obtain all permits necessary to construct the Wireless Communication Facility, and the Wireless Communication Facility shall be erected within one year of approval of the Conditional Use by the MAPC or Governing Body, as applicable.
B. The support structure shall be a" monopole" design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
C. The support structure shall be no taller than 80 feet in height, plus an additional five (5) feet for lightning suppression equipment.
D. The equipment compound shall be screened with an eight (8) foot tall solid screening fence.
E. A site plan and elevation drawing indicating the approved design of the Wireless Communication Facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use and prior to the issuance of the Conditional Use Resolution.
F. The site shall be developed in general conformance with the approved site plans. All improvements shall be completed before the facility becomes operational.
G. The applicant shall obtain FAA approval regarding "objects affecting navigable airspace" and "impacts to terminal instrument procedures" for the proposed wireless communication facility and

shall comply with all conditions of FAA approval. The applicant shall submit a copy of FAA approval to the Metropolitan Area Building and Construction Department prior to the issuance of a building permit.

H. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.

I. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is mixed with commercial uses dominating the intersection of 18th Street North and Woodland Avenue. The property immediately to the north is zoned LC Limited Commercial and is occupied by a commercial building immediately to the north of the proposed wireless communication facility (tower) site; and it also has a residence on the property that is used as a rental. The property to the east, south and southeast are all zoned LC Limited Commercial. The property to the east and south are occupied by commercial buildings and uses. The property to the southeast is occupied by a residence.

   Residential uses exist further to the north and southeast and are occupied by residences. According to the City's Historic Preservation Planner, there are three homes within the immediate area which are potentially eligible to be listed on the National Register of Historic Places. The Environmental Review process required as part of the FCC certification will address this matter. It is not a factor that can be addressed as part of the zoning decision.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC Limited Commercial and is occupied by an existing commercial business. The proposed wireless communication facility will not impact the continued use of the property.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The testimony and materials presented by the neighbors at both the public hearing and at the City Council meeting indicate the proposed wireless communication facility (tower) will detrimentally affect nearby property and harm property values. However, it is staff's opinion the information provided by the neighbors has been refuted by the testimony and materials presented by the applicant and agent. The finding clearly shows there are differing opinions of the effect on nearby property, but no definitive finding of harm can be made. The proposed location complies with all Compatibility Standards of the Unified Zoning Code of the City of Wichita and the Wireless Master Plan, which are specifically designed to mitigate all impacts on nearby properties.

4. Length of time the property has been vacant as currently zoned: The property has been used as a commercial business for many years. The addition of the Conditional Use Permit for the wireless communication facility (tower), will have no harm to the subject property.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The "Community Investments Plan 2015-2035" depicts this location as being generally "residential". This particular use would not be out of character with the spirit and intent of the plan's acceptable

uses for this location given that the subject property is commercially used and adjacent to other established commercial uses.

The Wireless Communication Master Plan outlines the guidelines for locating Wireless Communication Facilities. The proposed cell tower meets the general intent of the plan and the Conditional Use as recommended meets the spirit and intent of supporting expansion of coverage for this industry within the community.

The combined conclusion for conformance to the Plans and Policies is this request complies with the overall spirit and intent to accommodate both the expansion of wireless communication capabilities within the City, while honoring the introduction of this type of use at this location by requiring the conditional use approval process and applying all the supplementary regulations to the property to mitigate the impacts associated with the new development.

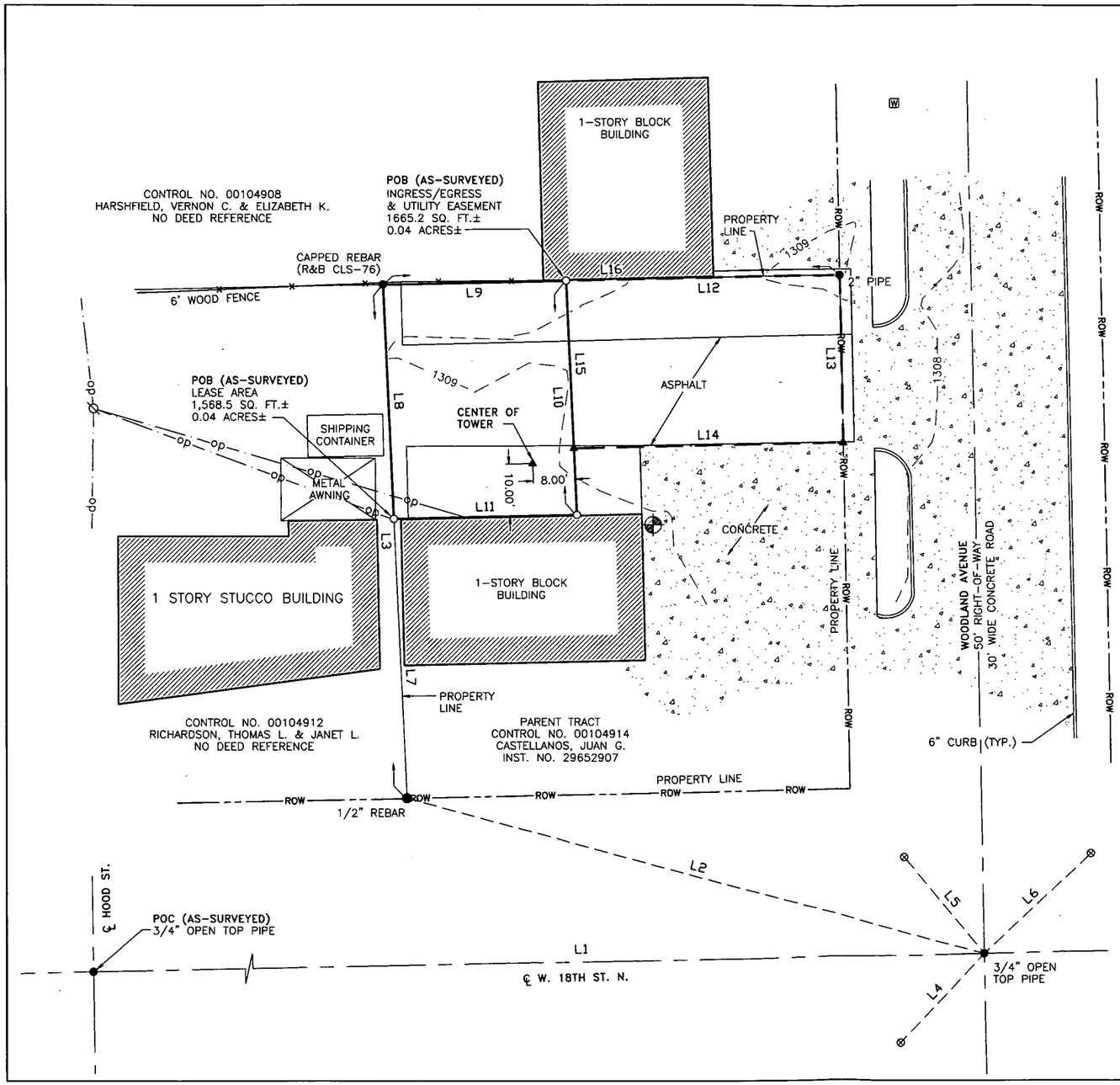
6. Relative gain to the public health, safety, and welfare by the destruction of the value of plaintiff's property as compared to the hardship imposed upon the individual landowner: As stated by the Kansas Supreme Court in *Taco Bell v City of Mission*, 234 Kan. 879, 678 P.2d 133; "When analyzing the gain to the public it must be remembered who constitutes the "public". This court has previously held: "Zoning is not to be based upon a plebiscite of the neighbors, and although their wishes are to be considered, the final ruling is to be governed by consideration of the benefit or harm involved to the community at large." *Waterstradt v. Board of Commissioners,* 203 Kan. 317, Syl. ¶ 3, 454 P.2d 445 (1969). Thus, while residents neighboring the proposed Taco Bell site have protested its development, the benefit to the community as a whole must be considered. The neighbors argue there would be traffic, noise, light and odor problems. These have already been addressed and the evidence shows they can be alleviated by screening. The benefit to the public in not developing seems to be minimal. The benefit to the public in developing is great in the way of jobs, taxes, and use of previously unproductive property. The hardship to the owner of not allowing the zoning change is also great. As previously explained, development as an office would be highly unlikely. The lot would thus remain unused and unprofitable to the owner." Applying these criteria to the case at hand, it is staff's opinion, based upon all the information provided by all parties, the cited need for additional capacity for the wireless communication facility by the applicant would be a gain to the overall public health, safety and welfare based upon the growing demands and needs for adequate coverage for the rapidly growing wireless communication system from society ("public") and, as noted in other findings, complies with the local, state and federal objectives of accommodating the demands for that growing need. It is further staff's opinion, after full review of all materials submitted by both sides in this case, that the hardship imposed upon the applicant by the denial of this application is greater than any perceived impacts to surrounding properties.

7. Impact of the proposed development on community facilities: As noted above, the proposed establishment of the wireless communication facility (tower) will make no demands on public utilities or services. All public and private improvements and utilities are available to serve the property.

Attachments:

Site Plan
All Supporting Documents from Applicant and Neighbors

CONV19-02 D.Y.



0 20' 40'

SCALE: 1" = 20'

LINE	BEARING	DISTANCE
L1	N 88°50'53" E	349.12'
L2	N 74°55'08" W	114.17'
L3	N 02°30'47" W	98.30'
L4	S 43°25'50" W	23.39'
L5	N 39°33'26" W	23.91'
L6	N 46°54'41" E	27.97'
L7	N 02°30'47" W	53.48'
L8	N 02°30'47" W	44.82'
L9	N 88°46'45" E	35.00'
L10	S 02°30'47" E	44.82'
L11	S 88°46'45" W	35.00'
L12	N 88°46'45" E	52.44'
L13	S 00°58'12" E	32.02'
L14	S 88°46'45" W	51.58'
L15	N 02°30'47" W	32.03'
L16	N 88°46'45" E	87.44'

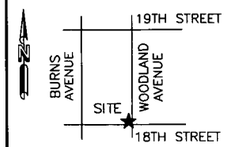
TOWER INFO

CENTER OF TOWER:

LATITUDE: 37°43'02.411" NORTH
LONGITUDE: 97°20'58.651" WEST
(NAD 83)
GROUND ELEVATION: 1309.2'
ABOVE MEAN SEA LEVEL (NAVD88)

SITE ADDRESS:
902 W. 18TH ST. N.
WICHITA, KS. 67203

VICINITY MAP



NOT TO SCALE

KANSAS SOUTH

GRID NORTH

GRID TO TRUE NORTH CONVERGENCE
0°42'24.85739"

TRUE NORTH TO MAGNETIC DECLINATION
3°30'36" E

COMBINED SCALE FACTOR
0.999941998

LEGEND

- ○ = 60D NAIL SET
- □ = PK NAIL SET
- ⊗ = "X" IN CURB FOUND
- ● = FOUND PROPERTY MARKER
- POB = POINT OF BEGINNING
- POC = POINT OF COMMENCEMENT
- POE = POINT OF ENDING
- ▲ = CALCULATED POINT
- ⊘ = POWER POLE
- Ⓦ = WATER METER
- ROW = RIGHT-OF-WAY
- op = OVERHEAD POWER

FLOOD NOTE

By graphic plotting only, the subject property appears to lie in Zone "X" of the Flood Insurance Rate Map Community Panel No. 20173C0353G, which bears an effective date of December 22, 2016 and IS NOT in a special flood hazard area.
Zone "X": Areas determined to be outside the 0.2% annual chance floodplain. Area with reduced risk due to Levee.

NO.	REVISION	DATE	BY
1	UPDATED LEASE AREA & EASEMENT	01/09/19	PWK
2	MOVED TOWER FOR ZONING	03/05/19	CS

PROJECT NO.
18-2706

DRAWN BY: CS
CHECKED BY: PWK
FIELD WORK BY: AS
APPROVED BY: MD
DATE: 11/15/18
SCALE: 1" = 20'
SHEET 1 OF 2

RAWLAND TOWER SURVEY

FOR:
APC TOWERS
3000 AERIAL CENTER PARKWAY SUITE 110
MORRISVILLE, NC 27560

SMW Engineering Group, Inc.
158 Business Center Drive
Birmingham, Alabama 35244
Ph: 205-252-6885
www.smweng.com

SMW ENGINEERING GROUP, INC.

SNYDER
KS-1519
NW 1/4, SEC. 08, T-27-S, R-01-E
SEDGWICK COUNTY, KANSAS

Conl9-02 D.Y.

PARENT TRACT (INSTRUMENT NO. 29652907)

The East 87.5 feet of Lot 24, on Burns Avenue, Ford's 2nd Addition to the City of Wichita, Sedgwick County, Kansas.

LEASE AREA (AS-SURVEYED)

Being a portion of Lot 24 of the Ford's Addition to the City of Wichita and that certain tract of land as recorded in Instrument No. 29652907 in the Office of the Register of Deeds, Sedgwick County, Kansas, lying in the Northwest 1/4, Section 8, Township 27 South, Range 1 East, said Sedgwick County and being more particularly described as follows:

Commencing at a 3/4" open top pipe found at the centerline intersection of W. 18th Street N. and Hood Street; thence run N 88°50'53" E along said centerline of W. 18th Street N. a distance of 349.12 feet to a 3/4" open top pipe found at the centerline intersection of said W. 18th Street N. and Woodland Avenue; thence N 74°55'08" W a distance of 114.17 feet to a 1/2" rebar found at the southwest corner of above said certain tract of land; thence N 02°30'47" W a distance of 53.48 feet to the Point of Beginning; thence continue N 02°30'47" W a distance of 44.82 feet to a capped rebar found (R&B CLS-76) at the northwest corner of said certain tract of land; thence N 88°46'45" E along the north property line of said certain tract of land a distance of 35.00 feet to a point; thence S 02°30'47" E leaving said north property line a distance of 44.82 feet to a point; thence S 88°46'45" W a distance of 35.00 feet to the Point of Beginning. Said above described Lease Area contains 1568.5 square feet or 0.04 acres, more or less.

INGRESS/EGRESS & UTILITY EASEMENT (AS-SURVEYED)

Being a portion of Lot 24 of the Ford's Addition to the City of Wichita and that certain tract of land as recorded in Instrument No. 29652907 in the Office of the Register of Deeds, Sedgwick County, Kansas, lying in the Northwest 1/4, Section 8, Township 27 South, Range 1 East, said Sedgwick County and being more particularly described as follows:

Commencing at a 3/4" open top pipe found at the centerline intersection of W. 18th Street N. and Hood Street; thence run N 88°50'53" E along said centerline of W. 18th Street N. a distance of 349.12 feet to a 3/4" open top pipe found at the centerline intersection of said W. 18th Street N. and Woodland Avenue; thence N 74°55'08" W a distance of 114.17 feet to a 1/2" rebar found at the southwest corner of above said certain tract of land; thence N 02°30'47" W a distance of 98.30 feet to a capped rebar found (R&B CLS-76) at the northwest corner of said certain tract of land; thence thence N 88°46'45" E a distance of 35.00 feet to the Point of Beginning; thence continue N 88°46'45" E a distance of 52.44 feet to a 2" pipe found on the west right-of-way line of Woodland Avenue at the northeast corner of said certain tract of land; thence S 00°58'12" E along said right-of-way line a distance of 32.02 feet to a point; thence S 88°46'45" W leaving said right-of-way line a distance of 51.58 feet to a point; thence N 02°30'47" W a distance of 32.03 feet to the Point of Beginning. Said above described Easement contains 1665.2 square feet or 0.04 acres, more or less.

PLOTTABLE EXCEPTIONS

Old Republic National Title Insurance Company
Commitment for Title Insurance Commitment No. 01-18056052-01T
Dated September 28, 2018 @ 7:00 am
Schedule B, Section II

Exception No.	Instrument	Comment
1-8		Standard exceptions. Contain no survey matters.

SURVEYOR'S NOTES

1. This is a Rawland Tower Survey, made on the ground under the supervision of a Kansas Registered Land Surveyor. Date of field survey is November 7, 2018.
2. The following surveying instruments were used at time of field visit: Nikon NPL-352, Total Station, Reflectorless and Hiper + Legacy E RTK, GD 1HZ.
3. Bearings are based on Kansas South State Plane Coordinates NAD 83 by GPS observation.
4. No underground utilities, underground encroachments or building foundations were measured or located as a part of this survey, unless otherwise shown. Trees and shrubs not located, unless otherwise shown.
5. Benchmark used is a GPS Continuously Operating Reference Station, PID HF0486. Onsite benchmark is as shown hereon. Elevations shown are in feet and refer to NAVD 88.
6. This survey was conducted for the purpose of a Rawland Tower Survey only, and is not intended to delineate the regulatory jurisdiction of any federal, state, regional or local agency, board, commission or other similar entity.
7. Attention is directed to the fact that this survey may have been reduced or enlarged in size due to reproduction. This should be taken into consideration when obtaining scaled data.
8. This Survey was conducted in reference to a Commitment for Title Insurance prepared by Old Republic National Title Insurance Company, Commitment No. 01-18056052-01T, with an effective date of September 28, 2018 at 7:00 a.m.
9. Surveyor hereby states the Geodetic Coordinates and the elevation shown for the proposed centerline of the tower are accurate to within +/- 20 feet horizontally and to within +/- 3 feet vertically (FAA Accuracy Code 1A).
10. Survey shown hereon conforms to the Minimum Requirements as set forth by the State Board for a Class "C" Survey.
11. Field data upon which this map or plat is based has a closure precision of not less than one-foot in 15,000 feet (1':15,000') and an angular error that does not exceed 10 seconds times the square root of the number of angles turned. Field traverse was not adjusted.
12. This survey is not valid without the original signature and the original seal of a state licensed surveyor and mapper.
13. This survey does not constitute a boundary survey of the Parent Tract. Any parent tract property lines shown hereon are from supplied information and may not be field verified.

SURVEYOR'S CERTIFICATION

I certify that all parts of this survey and drawing have been completed in accordance with the current requirements of the Standards of Practice for Surveying in the State of Kansas to the best of my knowledge, information, and belief.

_____

SNYDER
KS-1519
NW 1/4, SEC. 08, T-27-S, R-01-E
SEDGWICK COUNTY, KANSAS

NO.	REVISION	DATE	BY
1	UPDATED LEASE AREA & EASEMENT	01/09/19	PWK
2	MOVED TOWER FOR ZONING	03/05/19	CS

PROJECT NO. 18-2706

DRAWN BY: CS
CHECKED BY: PWK
FIELD CREW: DO
APPROVED BY: MJD
DATE: 11/15/18
SCALE: N.T.S.
SHEET 2 OF 2

RAWLAND TOWER SURVEY

FOR:

APC TOWERS
3000 AERIAL CENTER PARKWAY SUITE 110
MORRISVILLE, NC 27560

SMW Engineering Group, Inc.
158 Business Center Drive
Birmingham, Alabama 35244
Ph: 205-252-8855
www.smweng.com

SMW ENGINEERING GROUP, INC.