

CONDITIONAL USE RESOLUTION NO. CON-2001-00039

WHEREAS, Earl G. Powell (Owner), Brad Murray Rentals, LLC, Cricket Communications, Inc., ITSROE.com Inc., and WichitaUSA.com (applicants); Austin Miller PA c/o Kim Edgington (Agent), pursuant to Section V-D of the Wichita-Sedgwick County Unified Zoning Code (herein referred to as Unified Zoning Code), requested a Conditional Use to allow for a wireless communication facility a 150-foot high monopole tower on 6,400 square feet zoned "LI" Limited Industrial described as:

Part of Lot 8 and the South 25 feet of Lot 7, Sager Addition to Wichita, Sedgwick County, Kansas being more particularly described as follows: Beginning at a point on the North line of the South 25 feet of Lot 7, Sager Addition, said point being 80.27 feet east of the Northwest corner of said South 25 feet of Lot 7; thence east along said North line of South 25 feet of Lot 7, for a distance of 80.00 feet; thence Southwest parallel with East line of said Sager Addition, for a distance of 80.00 feet; thence West parallel with North line of said South 25 feet of Lot 7, for a distance of 80.00 feet; thence Northeast parallel with East line of said Sager Addition, for a distance of 80.00 feet to the Point of Beginning. Generally located south of Pawnee and east of St. Francis.

WHEREAS, proper notice as required by the Unified Zoning Code and by the policy of the Metropolitan Area Planning Commission (hereinafter referred to as MAPC) has been given; and

WHEREAS, the MAPC did, at the meeting of August 9, 2001, consider said application; and

WHEREAS, the MAPC has authority to permit a Conditional Use, subject to any special conditions deemed appropriate in order to assure full compliance with the criteria of the Unified Zoning Code.

NOW, THEREFORE, BE IT RESOLVED by the Metropolitan Area Planning Commission that this application be approved to permit a Conditional Use to allow a wireless communication facility a 150-foot high monopole tower on 6,400 square feet zoned "LI" Limited Industrial described as:

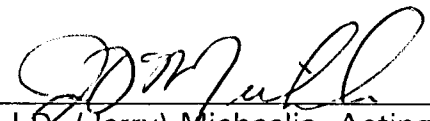
Part of Lot 8 and the South 25 feet of Lot 7, Sager Addition to Wichita, Sedgwick County, Kansas being more particularly described as follows: Beginning at a point on the North line of the South 25 feet of Lot 7, Sager Addition, said point being 80.27 feet east of the Northwest corner of said South 25 feet of Lot 7; thence east along said North line of South 25 feet of Lot 7, for a distance of 80.00 feet; thence Southwest parallel with East line of said Sager Addition, for a distance of 80.00 feet; thence West parallel with North line of said South 25 feet of Lot 7, for a distance of 80.00 feet; thence Northeast parallel with East line of said Sager Addition, for a distance of 80.00 feet to the Point of Beginning. Generally located south of Pawnee and east of St. Francis.

subject to the following conditions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. 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.
- C. 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.
- D. The monopole shall not exceed 150 feet in height and shall be designed and constructed to accommodate communication equipment for at least three wireless service providers.
- E. The monopole and its foundation shall be designed and constructed in such a manner that permits future height extensions of up to 25% of the structure height and future loading expansions to accommodate communication equipment for at least four wireless service providers.
- F. Revised elevation drawings indicating the location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
- G. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- H. 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 MAPD, Office of Central Inspection, and Director of Airports prior to the issuance of a building permit.
- I. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- J. Any violation of the conditions of approval shall render the Conditional Use null and void.

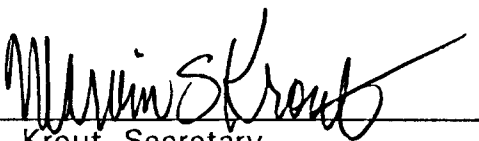
Adopted this 9th day of August, 2001. This resolution shall become effective on the fifteenth day after the date last noted above unless the matter is forwarded to the Governing Body for final action under the provisions of Section V-D.6. When any one or more of the exceptions listed in Section V-D.6 exist, this resolution with its conditions of approval shall be considered a recommendation of the MAPC to the Governing Body which shall then have final authority to approve, approve with conditions or modifications, or deny the Conditional Use application.

METROPOLITAN AREA PLANNING COMMISSION



J.D. (Jerry) Michaelis, Acting Chair MAPC

ATTEST:



Marvin S. Krout, Secretary

CON 2001-00039

SITE PLAN

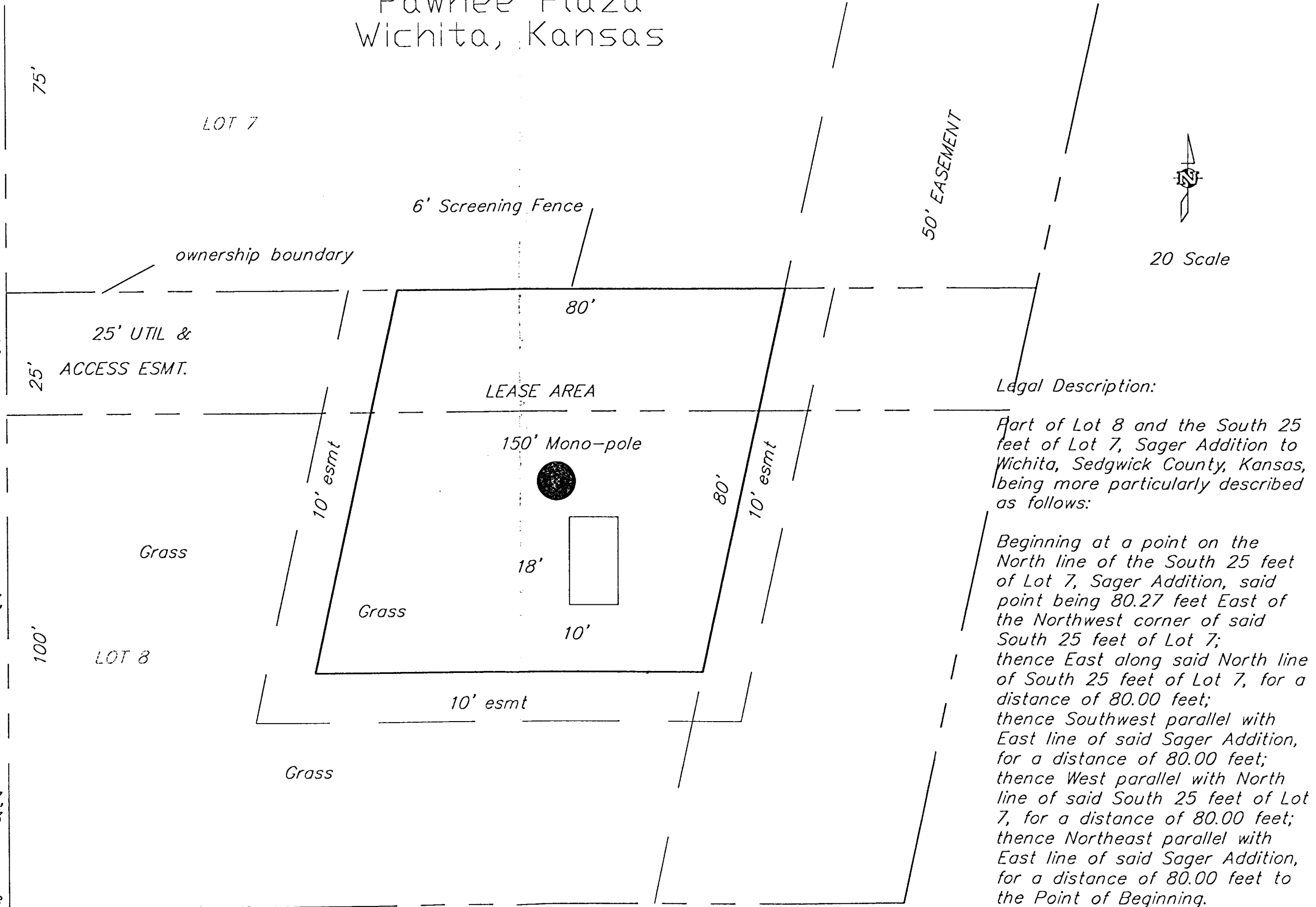
APPROVED 9-17-01 BY SK

SITE PLAN Pawnee Plaza Wichita, Kansas

Access and Utility Easment:

South 25 feet of Lot 7,
Sager Addition to
Wichita, Sedgwick
County, Kansas, being
more particularly
described as follows:

Beginning at the
Northwest corner of
said South 25 feet of
Lot 7;
thence East along
North line of said
South 25 feet of Lot 7,
for a distance of
80.27 feet;
thence Southwest
parallel with East line
of said Sager Addition,
for a distance of
25.60 feet;
thence West parallel
with North line of said
South 25 feet of Lot 7,
for a distance of 74.83
feet;
thence North along
West line of said Sager
Addition, for a distance
of 25.0 to the Point
of Beginning.



Legal Description:

Part of Lot 8 and the South 25
feet of Lot 7, Sager Addition to
Wichita, Sedgwick County, Kansas,
being more particularly described
as follows:

Beginning at a point on the
North line of the South 25 feet
of Lot 7, Sager Addition, said
point being 80.27 feet East of
the Northwest corner of said
South 25 feet of Lot 7;
thence East along said North line
of South 25 feet of Lot 7, for a
distance of 80.00 feet;
thence Southwest parallel with
East line of said Sager Addition,
for a distance of 80.00 feet;
thence West parallel with North
line of said South 25 feet of Lot
7, for a distance of 80.00 feet;
thence Northeast parallel with
East line of said Sager Addition,
for a distance of 80.00 feet to
the Point of Beginning.

(1) UNI-24 ANTENNA
(24"x42")

360° ANTENNA ARRAY
w/ (8) UNI-16s (12"x12")
ON 2x2 ANGLE FRAME
(60" OCTAGON) Ø150'

(1) UNI-24 ANTENNA
(24"x42")

360° ANTENNA ARRAY
w/ (8) UNI-16s (12"x12")
ON 2x2 ANGLE FRAME
(60" OCTAGON) Ø140'

Cricket Antenna Array
Ø 130'

150' Mono-Pole
w/ Galvanized Finish
Capable of accomodating
four carriers.

CON2001-00039

SITE PLAN

APPROVED 9-17-01 BY JK

6' Wood Screening Fence



STAFF REPORT

DAB III, August 7, 2001

MAPC, August 9, 2001

CASE NUMBER: CON2001-00039

APPLICANT/AGENT: Earl G. Powell (Owner); Brad Murray Rentals, LLC, Cricket Communications, Inc., ITSROE.com, Inc., and WichitaUSA.com (Applicants); Austin Miller PA c/o Kim Edgington (Agent)

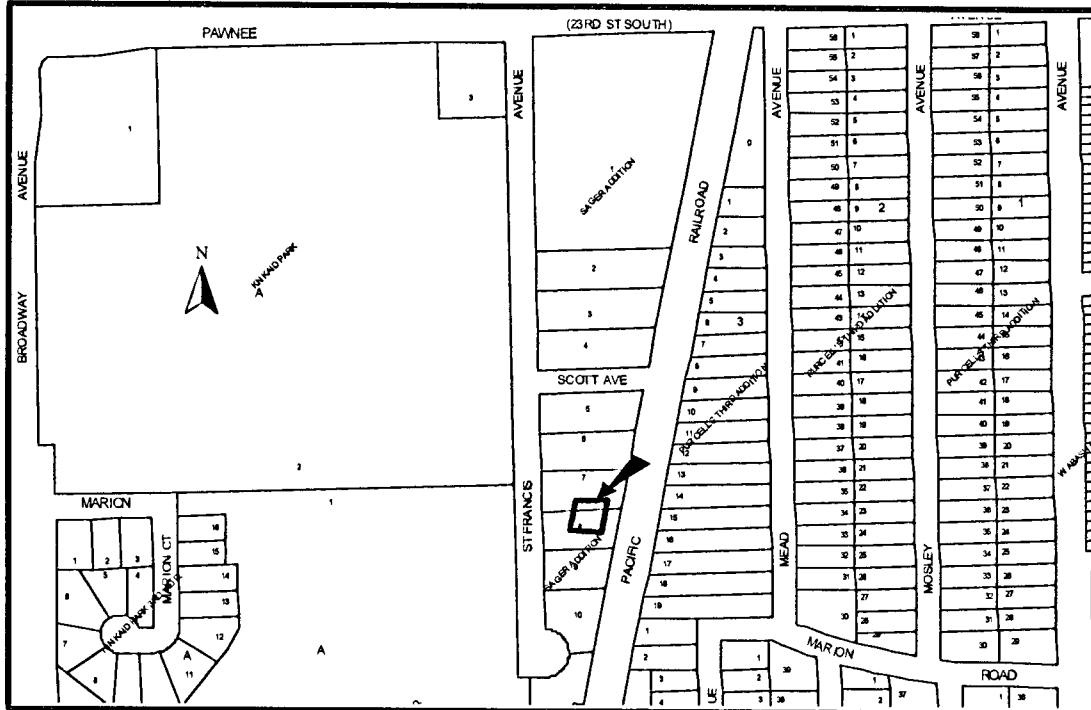
REQUEST: Conditional Use for a wireless communication facility

CURRENT ZONING: "LI" Limited Industrial

SITE SIZE: 6,400 square feet

LOCATION: South of Pawnee and east of St. Francis

PROPOSED USE: 150-foot high monopole tower



FILE COPY

BACKGROUND: The owner is seeking a Conditional Use to permit the construction of a 150-foot high monopole tower (see attached Site Elevation) by Brad Murray Rentals, LLC for use by Cricket Communications, Inc., ITSROE.com, Inc., and WichitaUSA.com. The applicant has provided a list of reasons (see attached letter and photographs) why they feel their request conforms to the Wireless Communication Master Plan.

The proposed site is zoned "LI" Limited Industrial. The Unified Zoning Code permits Wireless Communication Facilities up to 150 feet in height in the "LI" Limited Industrial zoning district with an Administrative Permit; however, planning staff indicated to the applicant that an Administrative Permit would not be approved at this location since a Conditional Use request (CON2001-00013) for a 150-high tower on the abutting property to the north was denied by the City Council on April 17, 2001.

The proposed monopole tower would be sited on an approximately 6,400 square foot area located south of Pawnee and east of St. Francis on vacant industrial land (see attached Site Plan). The site plan shows a compound enclosed with a six-foot high screening fence with the tower located in the center of the compound and the ground-level communication equipment located in the southeastern portion of the compound. The site plan shows that access would be provided to the site through a 25-foot wide access and utility easement to St. Francis, a paved local street. No landscaping is shown on the site plan, but the applicant indicates that there are existing trees along the railroad right-of-way to the east and that the applicant is willing to install additional landscaping if it is determined to be needed.

The character of the surrounding area is that of mixed uses with single-family residences across railroad tracks to the east, vacant industrial land to the south, apartments to the southwest, the Pawnee Plaza shopping center to the west, and industrial uses to the north, including a 110-foot high monopole tower and an 106-foot high temporary "cellular-on-wheels." The properties to the north and south of the site are zoned "LI" Limited Industrial. The properties to the east are zoned "TF-3" Two-Family Residential. The properties to the west are zoned "GC" General Commercial.

The application indicates that the proposed tower is needed for part of a planned initial build-out of a wireless phone system by Cricket Communications, Inc. (see attached RF Engineering Evaluation and propagation plots). The justification for the request indicates that the existing monopole tower located approximately 500 feet to the north does not provide sufficient height. The justification also indicates that reconstructing the existing monopole would cost more than constructing a new tower (see attached letters).

Another applicant submitted a Conditional Use request (CON2001-00041) for a 130-foot high monopole tower to be located approximately 1/3 mile to the northwest near Pawnee and Broadway for the purpose of supporting a planned initial build-out of a wireless phone system by Cricket Communications, Inc.; therefore, planning staff contacted both applicants and requested documentation from Cricket that they would

be locating on the respective towers. The applicant in this case provided a letter (attached) from an attorney indicating that the applicant has a Communications Equipment Site Agreement with Cricket. Planning staff contacted Cricket to confirm this since a copy of the agreement was not provided, and Cricket indicated that the agreement is for the site on the abutting property to the north where the request for a tower was denied and not the site currently requested. Cricket further added that they intend to locate on the tower near Pawnee and Broadway rather than this site and would attend the public hearings to state their position on this issue.

The application also indicates that the proposed tower is needed by ITSROE.com, Inc. to provide wireless broadband data transfer service to the area. The justification (see attached letter and diagrams) indicates that a minimum antenna height of approximately 120 feet is needed to provide wireless broadband service to the area; however, the attached Site Elevation shows the antennas for ITSROE.com, Inc. to be located at the 150-foot level.

The application also indicates the proposed tower is needed by WichitaUSA.com to provide wireless broadband data transfer service to the area (see attached letter). The application does not provide any narrative that documents the need for WichitaUSA.com to locate on the proposed tower, which is required by Section VI.E.3 of the Wireless Communication Master Plan. Additionally, the attached Site Elevation does not illustrate the location or type of antennas to be used by WichitaUSA.com, which is required by Section VI.E.2.b. of the Wireless Communication Master Plan.

CASE HISTORY: The site is platted as part of the Sager Addition, which was recorded on July 15, 1953.

ADJACENT ZONING AND LAND USE:

NORTH:	"LI"	Industrial uses, including 110-foot high monopole tower
SOUTH:	"LI"	Undeveloped
EAST:	"TF-3"	Single-family residences
WEST:	"GC"	Shopping center & apartments

PUBLIC SERVICES: No municipally-supplied utility services are required. Access to the site is proposed through an access easement to St. Francis, a paved local street.

CONFORMANCE TO PLANS/POLICIES: The Wireless Communication Master Plan is an element of the Comprehensive Plan that outlines the guidelines for locating wireless communication facilities. The Location Guidelines of the Wireless Communication Master Plan indicate that new facilities should be located: 1) on multi-story buildings or other structures; 2) on existing poles in street rights-of-way, parking lots, or athletic fields; 3) on existing towers for personal wireless services, AM/FM radio, television, school district microwave antennas, and private dispatch systems; 4) in wooded areas; 5) on identified city and county properties; or 6) on highway light standards, sign

structures, and electrical support structures. The Design Guidelines of the Wireless Communication Master Plan indicate that new facilities should: 1) preserve the pre-existing character of the area; 2) minimize the height, mass, or proportion; 3) minimize the silhouette; 4) use colors, textures, and materials that blend in with the existing environment; 5) be concealed or disguised as a flagpole, clock tower, or church steeple; 6) be placed in areas where trees and/or buildings obscure some or all of the facility; 7) be placed on walls or roofs of buildings; 8) be screened through landscaping, walls, and/or fencing; and 9) not use strobe lighting. The Unified Zoning Code requires wireless communication facilities to comply with a compatibility height standard of one foot of setback for each foot of structure height from adjoining properties zoned "TF-3" or more restrictive. This compatibility height standard can be reduced or waived through a Conditional Use or a Zoning Adjustment.

RECOMMENDATION: Planning staff finds that the proposed wireless communication facility does not conform to the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. There is an existing tower located approximately 500 feet north of the proposed tower that could be rebuilt. While the application indicates that the construction and demolition costs of a rebuilt tower are more costly than constructing a new tower, the applicant has not provided any cost information pertaining to the ground lease and antenna space lease so that the entire cost of the two alternatives can be compared. Second, the proposed 150-foot high tower does not minimize the height of the facility. Cricket Communications, Inc. and ITSROE.com, Inc. have indicated that the minimum height required for their antennas are 130 feet and 120 feet. WichitaUSA.com has indicated that a height of 150 feet is needed; however, the documentation required by the Wireless Communication Master Plan to support the height indicated was not submitted with the application. Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request be DENIED; however, if the MAPC finds the request appropriate, planning staff recommends that the MAPC make appropriate findings and that approval be subject to the following conditions:

- A. All requirements of Section III.D.6.g. of the Unified Zoning Code shall be met.
- B. 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.
- C. 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.
- D. The monopole shall not exceed 130 feet in height and shall be designed and constructed to accommodate communication equipment for at least three wireless service providers.
- E. The monopole and its foundation shall be designed and constructed in such a manner that permits future height extensions of up to 25% of the structure height

and future loading expansions to accommodate communication equipment for at least four wireless service providers.

- F. Revised elevation drawings indicating the location and design of the wireless communication facility shall be submitted for approval by the Planning Director within 60 days of approval of the Conditional Use by the MAPC or governing body, as applicable.
- G. The site shall be developed in general conformance with the approved site plans and elevation drawings. All improvements shall be completed before the facility becomes operational.
- H. 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 MAPD, Office of Central Inspection, and Director of Airports prior to the issuance of a building permit.
- I. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
- J. Any violation of the conditions of approval shall render the Conditional Use 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 that of mixed uses with single-family residences across railroad tracks to the east, vacant industrial land to the south, apartments to the southwest, the Pawnee Plaza shopping center to the west, and industrial uses to the north, including a 110-foot high monopole tower. The properties to the north and south of the site are zoned "LI" Limited Industrial. The properties to the east are zoned "TF-3" Two-Family Residential. The properties to the west are zoned "GC" General Commercial.
- 2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LI" Limited Industrial and could be developed with an industrial use. Wireless communication facilities up to 150 feet in height in the "LI" district may be permitted with an Administrative Permit, but must conform to the guidelines of the Wireless Communication Master Plan. A Conditional Use may be granted to permit a wireless communication facility in the "LI" district that does not conform to the guidelines of the Wireless Communication Plan; however, the facility should conform to the guidelines as much as possible.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: Existing landscaping surrounding the site would only partially obscure the view of the proposed tower, which would lead to a negative visual impact from the tower on nearby residential properties. Locating a second tower within

only 500 feet of an existing tower would lead to a "tower farm" effect, that would increase the negative visual impact on nearby residential properties.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed wireless communication facility does not conform to the guidelines of the Wireless Communication Master Plan. First, the proposed facility does not utilize existing towers in the area. There is an existing tower located approximately 500 feet north of the proposed tower that could be rebuilt. While the applicant has indicated that the construction and demolition costs of a rebuilt tower are more costly than constructing a new tower, the applicant has not provided any cost information pertaining to the ground lease and antenna space lease so that the entire cost of the two alternatives can be compared. Second, the proposed 150-foot high tower does not minimize the height of the facility. Cricket Communications, Inc. and ITSROE.com, Inc. have indicated that the minimum height required for their antennas are 130 feet and 120 feet. WichitaUSA.com has indicated that a height of 150 feet is needed; however, the documentation required by the Wireless Communication Master Plan to support the height indicated was not submitted with the application.
5. Impact of the proposed development on community facilities: Access to the site is proposed to be from St. Francis, a paved local street, so no negative impacts on community facilities are anticipated.