



## **Planning and Zoning Commission Meeting**

**July 12, 2022**

**7:00 p.m. – City Hall Council Chambers and Via Videoconference**

Anyone who wishes to view the meeting in real time may do so as it will be streamed live on the city's YouTube page through YouTube Live or may use the Zoom link below to access the meeting.

- 1. Call to Order**
- 2. Approve the June 14, 2022, Planning Commission Minutes**
- 3. Staff Report**
- 4. Conditional Use Permit – Telecommunications Tower at 904 NE 180th St.**  
Continued from 6-14-22 for the purpose of voting on the individual findings of fact.
- 5. Public Hearing**
  - Rezoning 551 S. Commercial - Eagle Ridge B-1P parcel to B-3
- 6. Rezoning 551 S. Commercial (Eagle Ridge B-1P parcel) to B-3**
- 7. Public Hearing**
  - Outdoor Storage Regulations
- 8. Discussion of Outdoor Storage Regulations**
- 9. Adjournment to Executive Session Pursuant to Section 610.021(1)RSMo**

Join Zoom Meeting

<https://us02web.zoom.us/j/82970822493>

Meeting ID: 829 7082 2493

Passcode: 352695



# SMITHVILLE PLANNING COMMISSION

## REGULAR SESSION

June 14, 2022

7:00 P.M.

City Hall Council Chambers and Via Videoconference

### **1. CALL TO ORDER**

Chairman Melissa Wilson called the meeting to order at 6:59 p.m.

A quorum of the Commission was present: Melissa Wilson, Alderman John Chevalier, Mayor Damien Boley, Billy Muessig, Rob Scarborough and Deb Dotson. Dennis Kathcart was present via Zoom (joined at 7:02 pm).

Staff present: Jack Hendrix and Brandi Schuerger.

### **2. MINUTES**

The May 10, 2022, Regular Session Meeting Minutes were moved for approval by MAYOR BOLEY, Seconded by SCARBOROUGH.

Ayes 6, Noes 0, KATHCART was not present at the time of the vote. Motion carried.

### **3. STAFF REPORT**

HENDRIX reported:

Informed that we are at 53 single family residential building permits since January 1, 2022. No new commercial building permits but the 7 from last year are all still under construction.

He anticipates that we will see infrastructure construction work starting and building permits for McBee's Coffee and Carwash soon. They have recently recorded the plat and paid the bonds.

There are 13 buildings with a total of 26 units under construction at Eagle Ridge. The first ones will be ready for final occupancy in about 2 to 3 weeks.

Diamond Creek Subdivision has a little more work to complete before they will be ready for construction of homes. This subdivision is open for any person or builder to buy a lot and build on.

We are still working with Fairview Crossing to get sewer issues resolved and traffic issues resolved with the developer and MODOT. We are making progress.

WILSON asked how close the Shamrock gas station is to opening?

HENDRIX stated that they just got their temporary certificate of occupancy this morning. It's a temporary because they have not gotten grass growing yet. It's also his understanding that this property has also been sold and has a new owner.

#### **4. PUBLIC HEARING: REZONING LOTS 1-6 AND THE NORTH 100.93 FEET OF LOT 7, WAIT ACRES B-3 TO R-1A**

##### **Public Hearing opened**

HENDRIX informed that the packet has the staff report addressing this. This was zoned B-3 decades ago and it was most all of the Wait's property from 169 Hwy to N. Main Street. It was subdivided in 1994 for houses and no one bothered to change the zoning. You are not supposed to build houses in the B-3 district. One of the current property owners was preparing to sell their house and wanted to know what he could do with some of his vacant lots which is how we noticed the B-3 zoning.

**Truman Hiatt---18304 N. Main Street---** Stated that they have lived there for 22 years, and this was a total surprise to us. We dug through our tax paperwork, and it shows that we have paid residential taxes the whole time we have lived there.

**Mark Walsh---304 NE Stanton Lane Lee's Summit, MO 64064---** Stated that him and his wife own property at 18209 N. Main Street. They are across the street from these properties. Of course, we would like to see this corrected for our neighbors. We are in the process of building our own home right across the street from the 5 acres that is undeveloped. We would not like to see a business go in across the street. If you are not familiar with N. Main St., he I would ask that you at least consider driving from 180<sup>th</sup> Street to 188<sup>th</sup> Street to see that it is all single family dwellings

and there is no commercial properties there at all. I appreciate your consideration of approving this application.

**Public Hearing closed**

**5. REZONING LOTS 1-6 AND THE NORTH 100.93 FEET OF LOT 7, WAIT ACRES B-3 TO R-1A**

MAYOR BOLEY motioned to approve rezoning lots 1-6 and the north 100.93 feet of lot 7, Wait Acres b-3 to R-1A. Seconded by MUESSIG.

**DISCUSSION:**

ALDERMAN CHEVALIER asked how these residents are paying residential taxes while their property is currently zoned B-3?

HENDRIX stated that you are taxed on the use of the property and not the zoning. For example, if you own a large farm, the house and one acre are taxed at the residential rate and everything else is taxed at the agricultural rate.

DOTSON stated that we just correcting a mistake made a long time ago.

HENDRIX stated yes. A potentially big mistake. His concerns were the same as what was mentioned during public comment. Someone could have potentially put a business on one of these lots had this not been caught.

**THE VOTE:** MAYOR BOLEY-AYE, KATHCART-AYE, DOTSON-AYE, MUESSIG -AYE, WILSON-AYE, ALDERMAN CHEVALIER-AYE, SCARBOROUGH -AYE.

**AYES-7, NOES-0. MOTION PASSED**

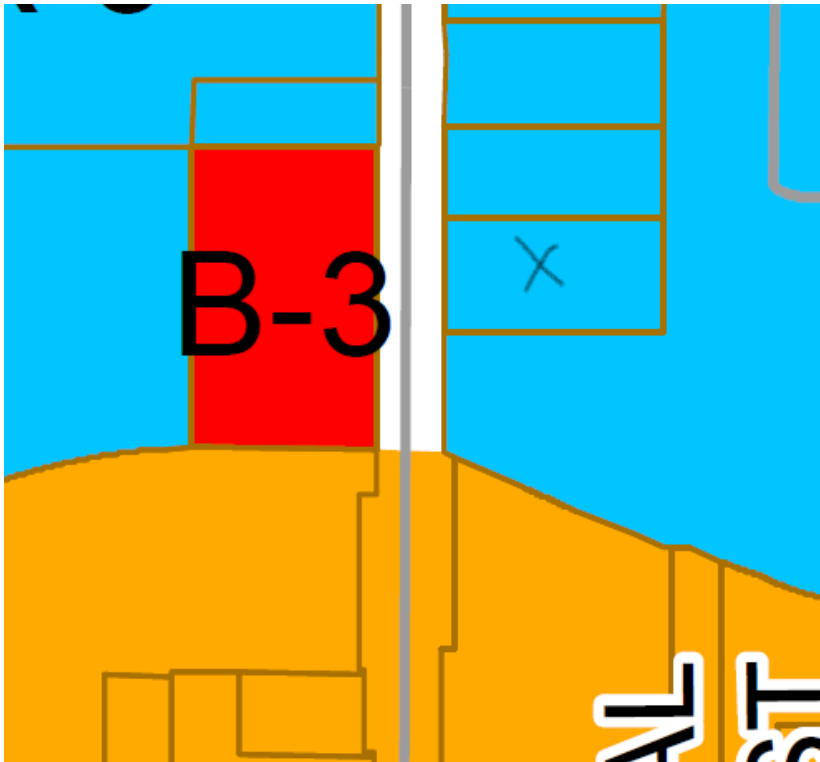
**6. PUBLIC HEARING: REZONING 211 N BRIDGE ST FROM R-3 TO B-4**

**Public Hearing opened**

HENDRIX informed that first house on the north side of the bridge on the east side of the road. They are seeking to have their multi-family zoned property with a single-family home on it rezoned to B-4 which allows for



both residential and commercial. They would like to open a business inside their home that they can't do under the standard home occupation code. This is a transitional area. The street scape is preparing to go north. The Curry property across the road has recently sold. Page 2 of the staff report shows a colorized version of the zoning map. B-4 is all of the orange area on the south side of the river. The blue area is all multi-family. Across the street is a B-3 district which is the Patterson House Museum.



**Public Hearing closed**

## **7. REZONING 211 N BRIDGE ST FROM R-3 TO B-4**

MAYOR BOLEY motioned to approve rezoning 211 N Bridge St from R-3 to B-4. Seconded by DOTSON.

**DISCUSSION:**

SCARBOROUGH asked what kind of business they are looking at opening?

HENDRIX believed it was selling plants. They want to have the ability to have customers come to the house. They can't do that anywhere else. For example, if you go south on the bridge the first house across from the church is now a business because it's in the B-4 district.

**THE VOTE:** MUESSIG-AYE, WILSON-AYE, ALDERMAN CHEVALIER-AYE, MAYOR BOLEY -AYE, KATHCART-AYE, SCARBOROUGH-AYE, DOTSON -AYE.

**AYES-7, NOES-0. MOTION PASSED**

## **8. PUBLIC HEARING: REZONING LOT 1, ADA'S ESTATES FROM A-1 TO A-R**

### **Public Hearing opened**

HENDRIX informed that this is an application to change the zoning to A-R. It's currently zoned A-1 which has a minimum lot size of 10 acres. A-R district has a minimum lot size of 2 acres with sewer or 3 acres with septic. The purpose of the rezoning is so they can divide this lot into 3 total lots. One of these lots will have the original house on it. Agenda items 10 and 11 are for the subdivision part of this and that is all contingent on this rezoning.

**David Payne---13904 N Virginia Avenue—** Stated that he has lived here for 35 years, and the city has told him that they have a Comprehensive Plan which explains what they want this area to look like in the future. He was told that they want it to be green space with everything to be 10 acres or more. Currently from the bridge on Amory Rd to N Virginia Rd and south the lots are 10 acres or more as far as he knows. I would like to see it left the way it is. He has lived there 35 years and doesn't want to have neighbors behind him. People near him have 40 acres so what are we going to do then? Start dividing them up and have little subdivisions or what? I just don't care to have this happen. Does this property even perk? It's kind of a low area. I would like to see if left the way it is but it's tax dollars and that's all the city is worried about.

### **Public Hearing closed**

## **9. REZONING LOT 1, ADA'S ESTATES FROM A-1 TO A-R**

DOTSON motioned to approve rezoning Lot 1, Ada's Estates from A-1 to A-R. Seconded by KATHCART.

### **DISCUSSION:**

ALDERMAN CHEVALIER asked if what is being proposed meets the Comprehensive Plan?

HENDRIX stated that it meets the most recent Comprehensive Plan and the most immediate one behind it. We have Comprehensive Plans from 2 years ago, one from 2006 and prior to that it was one from 1992. The most recent one shows large lot residential or agricultural. It defines large lot as not less than 3 acres.

SCARBOROUGH stated that if he understands this correctly this could rezone to 2 acres depending on the sewers.

HENDRIX stated yes. If there were sewers available, it could be 2 acres lots but there are no sewers close though. The other thing is that in this area 2 acre lots wouldn't meet the Comprehensive Plan since it calls for 3 acres or more.

MUESSIG asked how many acres you must have for septic?

HENDRIX stated 3 acres. Mr. Payne also asked if the lots would perk. If they can't get a permit from the Clay County Health Department for a septic system, they won't get a building permit from us.

DOTSON asked if most septic systems were engineered?

HENDRIX stated yes. They now do a soil morphology test which is an engineered test conducted by a soils engineer. In the areas where they can't get that to happen there is a new design where they build it on top on the ground and then cover it with proper soil.

MAYOR BOLEY stated that there was also a comment made about tax dollars and he hears this too often. Tax dollars on this property will be about \$300.00 per year. We recently spent about \$200,000 to fix Amery Road.

\$300.00 is not motivation. This is about the property owners' rights to what they want with their property.

MR. PAYNE asked why residents are never notified when the city changes their Comprehensive Plan?

WILSON informed that there were several opportunities for the community to come to a lot of the meetings they had. Notification was on social media, the newspaper, our newsletter.

ALDERMAN CHEVALIER stated that it was a long 18-month process.

**THE VOTE:** ALDERMAN CHEVALIER-AYE, WILSON-AYE, MUESSIG-AYE, SCARBOROUGH-AYE, DOTSON -AYE, KATHCART-AYE, MAYOR BOLEY -AYE.

**AYES-7, NOES-0. MOTION PASSED**

#### **10. PUBLIC HEARING: SINGLE PHASE FINAL PLAT, DIBBENS ESTATES (3) LOTS AT LOT 1, ADA'S ESTATES**

##### **Public Hearing opened**

HENDRIX stated that this is a 3-lot subdivision of roughly 11 ½ acres. The 2 new lots on the back side would be 3.81 acres each and the lot with the existing house would be 3.9 acres. Frontage would be onto Amory Road. This plat will have a condition placed in its dedications that requires the lots to join and specifically not oppose the creation of a district to improve the roads in the future.

**David Payne---13904 N Virginia Avenue—** Stated that he just doesn't what this divided up. He has 10 acres next door and asked if he could divide that up? He stated he has 350 feet of road frontage but that's probably not enough. At one time the city told him that they wouldn't let him do a flagpole lot. He asked the commission to not approve this. If this was next to know you might not want it yourself. If this is approved, he is worried that he will have people trespassing on his property.

HENDRIX stated that for Mr. Payne to divide his property up it would require him to construct some sort of road to get enough frontage. This proposed

subdivision that we are considering tonight has the required frontage on Amory Road. Clay County allows flagpole lots, but we don't.

**Public Hearing closed**

**11. SINGLE PHASE FINAL PLAT, DIBBENS ESTATES (3) LOTS AT LOT 1, ADA'S ESTATES**

SCARBOROUGH motioned to approve the Single-Phase Final Plat, Dibbens Estates (3) lots at lot 1, Ada's Estates. Seconded by MUESSIG.

**DISCUSSION:**

DOTSON wanted to inform Mr. Payne that she understands that change is difficult the loss of his surrounding causes upset and some grief. Not too long-ago Jack and herself attended a seminar on housing and zoning. One of the things they said was to never fall in love with what you don't own. That is harsh but is true. She has been in his position. She owned a beautiful piece of land and the property around it eventually subdivided. The Dibbens have the right to develop their property if it's legal.

**THE VOTE:** MAYOR BOLEY-AYE, KATHCART-AYE, DOTSON-AYE, SCARBOROUGH-AYE, MUESSIG -AYE, WILSON-AYE, ALDERMAN CHEVALIER -AYE.

**AYES-7, NOES-0. MOTION PASSED**

**12. PUBLIC HEARING: CONDITIONAL USE PERMIT—  
TELECOMMUNICATIONS TOWER AT 904 NE 180<sup>TH</sup> ST**

**Public Hearing opened**

HENDRIX stated that we have not had one of these Condition Use Permit requests since 2009 so it look him a little more research to go back through the process to make sure he was following the same procedures that needed to be followed. The notification process of this is the same as a rezoning. The approval process is also the same as a rezoning. It goes through this commission for a recommendation on the findings. Based upon the findings there is an ordinance that will get recorded with the county if it

is approved. The steps of this process if identified in the staff report and there is also a draft of a potential Findings of Fact. Both of these were in the packet. Code specifically says that there is a limitation of 100 feet in height unless there are certain certifications provided. You would then have the discretion to allow it to go to 150 feet in height. You have been provided the colocation certification letter and the fall certification letter. This meets the minimum standards, and it is within this commissions discretionary authority to grant the 150' monopole. The only reason they can get the extra 50 feet is if they allow more than one user on it. In this case it requires at least 2 more users.

**James Allsbury---902 NE 180<sup>th</sup> Street—** Stated that a 150' tower will be able to be seen Greyhawke, Harborview, Rock Point and other adjacent neighborhoods. It is literally in our backyard. The way to get to this tower will be through a driveway shared by themselves, the Beggs and another neighbor. We have concerns about this. Over the years we have all looked out for each other. When we have seen unknown vehicles, we would call each other and make sure someone knew who it was. We did this to make sure everyone was safe. Now we will have no idea who is coming up our driveway day or night, 7 days a week, 24/7. They will now have the right to do that. The driveway itself is gravel and there will be large equipment trucks using it. During heavy rains, the driveway down towards the street already washes out. What will happen when we have heavy equipment using this driveway that we have to use every day? Also concerned about pets or grandchildren getting hurt by one of these trucks using the driveway.

**Rochelle Allsbury---902 NE 180<sup>th</sup> Street—** Stated that she is a real estate agent and on disclosure you have to disclose certain things on your home. Right now, cell phone towers are not one of them. However, you do have to disclose any hazardous conditions and environmental issues. If I have to mark yes, when I go to sell my property will that affect the sell of my land? Health is another issue. My husband has heart issues and spots on his lungs. Is this going to make it worse on him? Will this make it work for all of the out lying areas. There is no evidence because there are no studies, but they have studied in 28 countries that there is cancer related to cell phone towers and cell phones. They say that you are not supposed to live within a quarter of a mile of a cell tower. Our property is 450 feet away. This is concerning to her. He was diagnosed with heart disease at 36 years old and has been in and out of the hospital. She doesn't want to lose him. She lost her mom to cancer at a very young age, and she doesn't want to

do that to her children. Would you all want to look out into your backyard and see this? This is all about the love of what I have, my love for my family and other people. I don't want to see anybody harmed by this. As a city there is monetary value to be gained by having a tower on the land. Why can't the city take that monetary value and put it towards historical preservation, for the schoolhouse, the animal shelter. She can't speak for the other landowner that was notified but couldn't be here tonight. She has been in contact with her, and she was supposed to be sending out her own email in opposition of this.

**Gabe Grider---808 NE 180<sup>th</sup> Street—** The property in question is directly behind his. In the zoning code under telecommunications, it lists out 5 criteria that need to be met. The first criteria is to encourage the location of towers in nonresidential areas and minimize the total number of towers throughout the community. He would like to point out that there are 6 towers within 5 miles. The closest one being 1.1 miles away and the next one being 2.3 miles away. The second criteria is to strongly encourage the joint use of new and existing towers and sites. There is a water tower a mile away that the city could rent out for this same purpose. There are already antennas and radios on 2 of the water towers in Smithville. The third criteria is encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal. There are currently 9 properties contiguous to this to this property with another one being planned. Not to mention Greyhawke and Harborview being able to see this. The fourth criteria is encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas. If the tower goes to the whole 150 feet in height this will be maybe 90 feet above the tree line and will be seen from everywhere. The neighbors that just spoke also received a letter to have a tower put on their property and they denied because they value their neighbors. My property is a watershed which goes onto Terry Evans property. I take great care to make sure I am not putting down chemicals on my property which goes down into his pond. He asked that the commission not recommend this for approval and stop it right here and not send it on to the Board of Alderman.

**Patrick Erwin---Applicant—** Tillman Infrastructure is proposing this structure in order to facilitate AT&T's First Net system. This is a nationwide broadband network dedicated to public safety for use by first responders and public safety agencies. This proposed tower will provide a much needed service for the First Net subscribers. Many of the AT&T users of the network

have complained over the years that service in this area is extremely lacking so this is the whole purpose of our application here today. Stated that he would like to address a few concerns from the neighbors. The issue with the workers that will be onsite. Once this tower is complete workers would only be accessing this site on about a monthly basis in a pickup size truck. All of the trucks would be marked with AT&T or First Net decals. As far as reduction in home values, we have done appraisal studies over the years and have never seen one that an actual quantifiable reduction in home values. I would be happy to provide one of that he did recently in the last 18 months. The health effects, we all know that this is something we can't address legally by Federal law and Missouri State law.

**Public Hearing closed**

### **13. CONDITIONAL USE PERMIT—TELECOMMUNICATIONS TOWER AT 904 NE 180<sup>TH</sup> ST**

MAYOR BOLEY motioned to approve the Conditional Use Permit—Telecommunications tower at 904 NE 180<sup>th</sup> Street. Seconded by KATHCART.

#### **DISCUSSION:**

ALDERMAN CHEVALIER stated that he is going to recuse himself as he works for the Telecom industry. (Alderman Chevalier left the building.)

SCARBOROUGH asked Mr. Hendrix if he could address Mr. Grider's concerns about this not meeting our code.

HENDRIX stated that Mr. Grider wasn't saying that it didn't meet the code he was asking that the commission consider that it didn't meet the code. Our staff report and the applicant's application address all of the items that are in the code. I believe Mr. Grider is just asking you to consider those. From my perspective you have 8 items to consider in the staff report and the proposed Findings of Fact. Those are the facts you have to make. There has been a motion to accept those Findings of Facts. If you have a concern with any of those 8 items now would be the time to address them.

MAYOR BOLEY stated that one of the things he sees in the picture from the packet and the pictures passed around is that the property owner has an existing tower there already. Is that correct?



HENDRIX stated yes, there is a ham radio tower.

WILSON asked if it is known if any of our first responders use this First Net system?

HENDRIX stated that his guess is no since we don't have any towers that have it.

MAYOR BOLEY stated that we have discussed it before. We have some alternatives, but they are not great. The applicant also mentioned that a lot of these are also driven by the people complaining about the lack of service in the area. He did speak with some of the folks that live up there and they don't have good cell service. Our Police department also uses cell phones so that is a concern as well.

SCARBOROUGH asked if this would only be an AT&T tower?

HENDRIX stated no. It's an AT&T tower but there is a specific requirement that they have to allow others to put their equipment up there to get the 150 foot height approved.

DOTSON asked if our Police Department can benefit from this?

MAYOR BOLEY stated that this would be a question for Chief Lockridge. We just replaced radios so we know they can at least talk through their radio.

MUESSIG asked if they selected this property by sending out letters?

HENDRIX stated that he can't answer how they specifically selected this property. Usually, it involves elevation so you can get the biggest coverage. This is not the first company to look in this area. One of the public commenters mentioned a water tower south of here. We have had numerous people inquire about that over the years but to date no one has installed on it. He thinks that it's because it would have great coverage on the lake but lacks when you head north and east.

MR. ERWIN stated that he could speak about how they selected this property if the commission would like. WILSON said that would be great.

MR. ERWIN stated that before they start out looking for locations the engineers give them a latitude and longitude and in this case they give us a

radius. In this case it's very small and needed to be in a confined area so they way this proposed structure would work with other adjacent towers and neighboring jurisdictions. The first thing we do is look for colocations. We want to find an existing tower or a water tower that might work. In this case the water tower that the neighbor mentioned was just too far away. A mile away was just too far. We needed to be between 1200 feet of the coordinates that we have. This area meets all of our needs.

WILSON stated that there is still a lot of agricultural land north of town and wondered if that was looked at as possible sites.

MR. ERWIN stated that this property is as far north as we can go. Any parcels north of this will not work for them. We don't want to upset neighbors, but they really feel the way this parcel is set back from the road with tree cover around it that this was ideal.

SCARBOROUGH asked if all of the neighbors on this shared drive responsible for maintaining it. It's not a county or city road?

HENDRIX stated that it is private.

MUESSIG stated that maybe there should be something entered into this that they will need to address some of the issues if they are going to be utilizing that driveway. Putting a culvert in or something. Since it's a shared driveway they need to share the responsibility in that too.

HENDRIX stated that it would be an issue between the property owners. Mr. Beggs has a potential lessee on it so it would be his responsibility to maintain any damage done by the tenants. He is unaware of any private agreements on it.

WILSON asked if there was any agricultural land on the west side of 169 Hwy that would work?

MR. Erwin stated that he would have to look again at our search area, but he doesn't have that with him.

**THE VOTE:** MAYOR BOLEY-AYE, KATHCART-AYE, DOTSON-AYE, SCARBOROUGH-NO, MUESSIG -NO, WILSON-NO.

**AYES-3, NOES-3. NO RECOMMENDATION.**

#### **14. ADJOURN**

MAYOR BOLEY made a motion to adjourn. DOTSON seconded the motion.

VOICE VOTE: UNANIMOUS

WILSON declared the session adjourned at 8:01 p.m.

<b>Date:</b>	July 7, 2022
<b>Prepared By:</b>	Jack Hendrix
<b>Subject:</b>	CUP Required findings

In the zoning code, §400.570, it states that “a conditional use permit shall not be granted unless specific written findings of fact directly upon the particular evidence presented support the following conclusions:”

*These apply to ALL potential CUP's, so portions may not be specifically implicated.*

1. The proposed conditional use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.
2. The proposed conditional use at the specified location will contribute to and promote the welfare or convenience of the public.
3. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.
4. The location and size of the conditional 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 conditional 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. In determining whether the conditional use will so dominate the immediate neighborhood, consideration shall be given to:
  - a. The location, nature and height of buildings, structures, walls and fences on the site; and
  - b. The nature and extent of landscaping and screening on the site.
5. Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.
6. Adequate utility, drainage and other such necessary facilities have been or will be provided.
7. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.

And for telecommunication towers only:

8. Towers permitted by conditional use permit shall not exceed a maximum height of one hundred (100) feet. Fifty (50) additional feet may be added, at the discretion of the Planning and Zoning Commission and Board of Aldermen, to accommodate co-location if the applicant submits information certifying the capacity of the tower for two (2) additional providers and a letter of intent from the applicant indicating their intent to share space.

Staff has again provided the proposed draft findings of fact. Please use the above standards as your guide. The proposed findings are simply a tool to allow you to make your determinations on each of the 8 items required to have specific findings. You shall be limited to the testimony and evidence provided at the Public Hearing and in any responses to questions during your discussion at that meeting.

Procedurally, it is suggested that you take each item listed above and discuss among the Commission. Upon completion of the discussion, the proposed finding should be individually voted upon. A majority vote of aye's means that the item is the finding. A tie, or a majority vote of Nays means that the specific finding is NOT met, and a negative finding will be included in the findings. ALL seven of the first items must be voted upon in this manner. The eighth item is simply a vote to approve or disapprove the additional fifty (50) feet of height.



## STAFF REPORT

July 6, 2017

Conditional Use Permit for Parcel Id # 05-904-00-02-011.00

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### Application for a Conditional Use Permit

#### Code Sections:

400.570 Conditional Use Permits

#### Property Information:

Address: 904 NE 180<sup>th</sup> St.  
Owner: Tillman Infrastructure LLC (Agent)  
Current Zoning: A-1

#### Public Notice Dates:

1<sup>st</sup> Publication in Newspaper: May 26, 2022  
Letters to Property Owners w/in 200': May 26, 2022

### GENERAL DESCRIPTION:

The property owners (Gary & Melody Beggs) executed an agency agreement that allows Tillman Infrastructure to seek approval for this CUP. The proposal is to install a monopole (no guy wires needed) 150' telecommunications tower near the center of their 24.5 acre property. The parcel itself is zoned A-1, and all adjoining land is also A-1 except 5 residentially zoned lots that adjoin or partially adjoin the parcel.

**Minimum Requirements. A conditional use permit shall not be granted unless specific written findings of fact directly upon the particular evidence presented support the following conclusions:**

- 1. The proposed conditional use complies with all applicable provisions of these regulations, including intensity of use regulations, yard regulations and use limitations.** The use is specifically authorized upon approval of a Conditional Use Permit.
- 2. The proposed conditional use at the specified location will contribute to and promote the welfare or convenience of the public.** The tower's primary purpose is for operation of the FirstNet first responders system but will also improve

cellular service in the northeast portion of the city, as well as the Smithville Lake area itself.

**3. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.** The general location of the tower within the applicant's property is surrounded by older developments with a substantial number of mature trees for visual obstruction, as well as no risk of falling in a manner to leave the applicant's property so no injury to property values is expected.

**4. The location and size of the conditional 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 conditional 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. In determining whether the conditional use will so dominate the immediate neighborhood, consideration shall be given to:**

**a. The location, nature and height of buildings, structures, walls and fences on the site; and** The location of the tower base is just west of an existing outbuilding that sits between the residentially zoned adjacent parcels and has a 6' tall sight obscuring fence around the perimeter.

**b. The nature and extent of landscaping and screening on the site.** The lay of the land is such that most of the area around the property has limited visibility of the tower base area, and numerous mature trees around the property substantially obscure its' visibility.

**5. Off-street parking and loading areas will be provided in accordance with the standards set forth in these regulations and such areas will be screened from adjoining residential uses and located so as to protect such residential uses from any injurious effect.** There will be one parking space inside the leased area for maintenance vehicles and limited use of that space is anticipated.

**6. Adequate utility, drainage and other such necessary facilities have been or will be provided.** No significant impermeable surfaces will be created so no drainage issues are anticipated, and the applicant will supply all other needed utilities (underground) for the tower.

**7. Adequate access roads or entrance and exit drives will be provided and shall be so designed to prevent traffic hazards and to minimize traffic congestion in public streets and alleys.** The use will not generate traffic, but the existing drives will accommodate maintenance vehicles.

#### **D.6 Additional Requirements for Telecommunications towers**

**(5) Height and Setback Limitations.**

- (a) **Towers permitted by conditional use permit shall not exceed a maximum height of one hundred (100) feet. Fifty (50) additional feet may be added, at the discretion of the Planning and Zoning Commission and Board of Aldermen, to accommodate co-location if the applicant submits information certifying the capacity of the tower for two (2) additional providers and a letter of intent from the applicant indicating their intent to share space. A lightning rod not to exceed ten (10) feet shall not be included within the height limitations.** The applicant seeks a 150' monopole tower and has submitted certifications of the capacity of the tower, as well as the intent to share additional space at reasonable rates.
- (b) **Setbacks shall be equal to one and one-half (1 1/2) the antenna height unless an engineer certifies the fall zone will be within the setback area proposed. Guy wires and other support devices shall be no closer than twenty (20) feet from any lot line.** An engineer has certifies the fall zone is within the setback area proposed.
- (c) **Setbacks for towers on a roof/structure may be as high as the distance to edge of the roof/structure; or the height of an equivalent ground-mounted tower may be used for a roof/structure-mounted tower if the setbacks for a ground tower are satisfied.** N/A

STAFF RECOMMENDATION:

Staff recommends Approval CONTINGENT on the Commission specifically authorizing the additional 50' of tower height as called for in Section 400.570.D.6.e(5)(a) above.



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## PROJECT SUMMARY

SITE ADDRESS:	904 NE 180TH ST. SMITHVILLE, MO 64089
LATITUDE (NAD 83):	39.422011° N (39° 25' 19.24" N)
LONGITUDE (NAD 83):	-094.567567° W (-94° 34' 03.24" W)
GROUND ELEVATION:	954.00' NAVD '88
JURISDICTION:	CITY
JURISDICTION CONTACT:	JIM WADDLE 107 WEST MAIN ST SMITHVILLE, MO 64089 (816) 532-3897
ZONING:	A1
PARCEL/TAX ID NUMBER:	05303000100500
PARCEL OWNER:	GARY E. & MELODY L BEGGS 904 NE 180TH ST. SMITHVILLE, MO 64089
TOWER OWNER:	TILLMAN INFRASTRUCTURE
STRUCTURE TYPE:	MONOPOLE
STRUCTURE HEIGHT:	150.0'-0" (AGL)

## PROJECT DIRECTORY

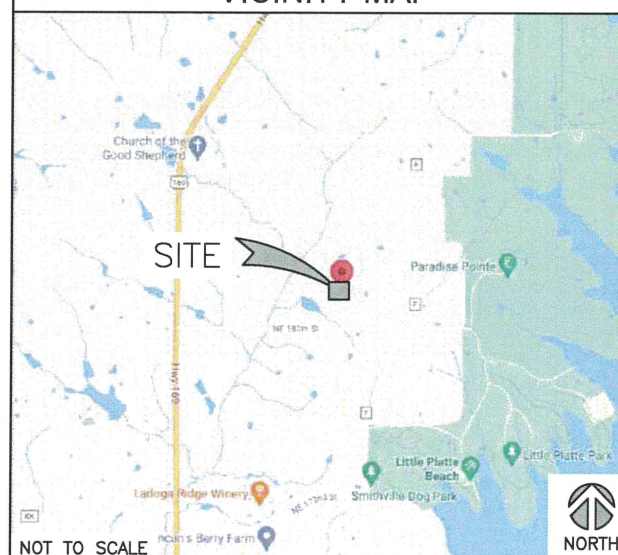
TOWER OWNER:	TILLMAN INFRASTRUCTURE 1955 LAKEWAY DR. SUITE 265B LEWISVILLE, TX 75057 CHARLIE BOOTHE CBOOTHE@TILLMANINFRASTRUCTURE.COM PHONE: (314) 513-0151
APPLICANT:	SKYWARD LAND SERVICES 7381 WEST 133RD ST., SUITE 403 OVERLAND PARK, KS 66213 PATRICK ERWIN PHONE: (913) 626-4440 EMAIL: ERWIN@SKYWARDSITE.COM
CONSTRUCTION:	TILLMAN INFRASTRUCTURE 1955 LAKEWAY DR. SUITE 265B LEWISVILLE, TX 75057 CHARLIE BOOTHE CBOOTHE@TILLMANINFRASTRUCTURE.COM PHONE: (314) 513-0151
A+E FIRM	ASSOCIATED ENGINEERING, INC. 2705 NORTH MAIN STREET ELKHORN, NE 68022 TOM MEDHI PHONE: (402) 289-5040 TMEDHI@AE-PC.COM



**AT&T** **TILLMAN**  
**INFRASTRUCTURE**

**FA NUMBER: 12878700 / SITE ID: TI-OPP-19189-A**  
**SITE NAME: SMITHVILLE LAKE MO**  
**ADDRESS: 904 NE 180TH ST.**  
**SMITHVILLE, MO 64089**  
**CLAY COUNTY**

## VICINITY MAP



## LOCATION MAP



### DIRECTIONS

DIRECTIONS FROM KANSAS CITY INTERNATIONAL AIRPORT  
(1 INTERNATIONAL SQUARE, KANSAS CITY, MO 64153):

GET ON I-435 E IN MAY TOWNSHIP FROM NW 120TH ST AND NW MID  
CONTINENT TRAFFICWAY (2.1 MI), FOLLOW I-435 E AND US-169 N TO  
NE 180 ST/NE 180TH ST IN SMITHVILLE (12.4 MI), TURN RIGHT ON NE  
180 ST/NE 180TH ST (0.9 MI), TURN LEFT ON BEGGS RD AND DRIVE  
ABOUT 0.2 MILES. THE DESTINATION WILL BE ON YOUR LEFT.



Know what's **below**.  
Call before you dig.

TO OBTAIN LOCATION OF PARTICIPANTS' UNDERGROUND  
FACILITIES BEFORE YOU DIG IN MISSOURI  
MISSOURI STATE LAW REQUIRES MIN. 3 WORKING DAYS NOTICE BEFORE  
YOU EXCAVATE.

CALL 811 OR 1-800-344-7483  
www.missouri1call.com



## AT&T SIGNATURES

## INDEX OF DRAWINGS

[illegible]

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SERVICE NOTE

## RFDS GENERAL INFORMATION

RFDS NAME:	TBD
RFDS REVISION:	TBD
RFDS DATE:	TBD
RFDS ID:	TBD
RF MANAGER:	TBD
CARRIER:	TBD

## DO NOT SCALE DRAWINGS

THESE DOCUMENTS ARE DRAWN TO SCALE FOR 22X34 SIZE SHEET. DOCUMENTS PRINTED IN 11X17 SIZE SHEET ARE REDUCED TO HALF THE ORIGINAL SCALE. SUBCONTRACTOR SHALL VERIFY ALL PLANS & EXISTING DIMENSIONS & CONDITIONS ON THE JOB SITE & SHALL IMMEDIATELY NOTIFY THE ENGINEER IN WRITING OF ANY DISCREPANCIES BEFORE PROCEEDING WITH THE WORK OR BE RESPONSIBLE FOR SAME. THESE SITE PLANS SHALL ADHERE TO ALL OF THE REQUIREMENTS CALLED OUT IN THE JURISDICTION PLANNING AND ZONING. FOR ANTENNAS AND SUPPORT STRUCTURES, WHERE SITE IS LOCATED.

SITE OWNER



APPLICANT

SITE ACQUISITION  
/ENGINEERING

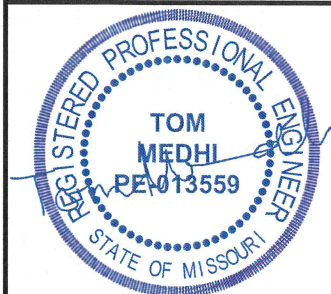
### ADDITIONAL INFORMATION

SMITHVILLE LAKE  
TI-OPP-19189 A/FA# 12878700  
PACE# TBD  
PT# TBD  
904 NE 180TH ST.  
SMITHVILLE, MO 64089

DESIGN RECORD

3	03/29/22	FINAL ZD DRAWINGS	JM
2	03/22/22	FINAL ZD DRAWINGS	JM
1	03/18/22	CLIENT REVISION	M
0	02/11/22	ZD DRAWINGS	JM
B	02/10/22	ZD DRAWINGS	JM
A	02/07/22	ZD DRAWINGS	M
REV	DATE	DESCRIPTION	B

PROFESSIONAL STAMP



ENGINEER

Tom Medhi 03-29-2022  
Tom Medhi Date  
MY LICENSE RENEWAL DATE IS 12/31/2023  
I HEREBY CERTIFY THAT THIS ENGINEERING DOCUMENT WAS PREPARED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MISSOURI

SHEET TITLE

# TITLE SHEET

SHEET NUMBER

# T-1



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LANDLORD: GARY E. & MELODY L BEGGS  
ADDRESS: 904 NE 180TH STREET  
SMITHVILLE, MO 64089  
PARCEL NO: 05303000100500  
CANDIDATE: A  
LATITUDE (NAD 83): N 39.422011° (N 39° 25' 19.24")  
LONGITUDE (NAD 83): W 94.567567° (W 94° 34' 03.24")  
GROUND ELEVATION: 954.00' NAVD '88  
TOWER HEIGHT: 150'-0" AGL  
OVERALL TOWER HEIGHT: 156'-0" AGL  
ZONING: A1

**PRE-CONSTRUCTION ONLY**  
THIS DRAWING IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED AS A CONSTRUCTION DOCUMENT.

NOTE:  
SITE MAY NEED LEVELING & GRADING AFTER FINAL LOCATION.

- |     |   |       |                        |
|-----|---|-------|------------------------|
| (M) | MEASURED DISTANCE                           | ☆     | LIGHT POST             |
| (P) | PLATTED DISTANCE                            | ○     | HYDRANT                |
| (R) | RECORDED DISTANCE                           | Ⓜ     | WATER METER            |
| (D) | DEEDED DISTANCE                             | —○—○— | FENCE — CHAIN LINK     |
| ●   | FOUND CORNER                                | —x—x— | FENCE — BARBED WIRE    |
| ○   | SET CORNER                                  | —FO—  | FIBER OPTIC LINE       |
| ⊕   | BENCH MARK                                  | —OHP— | OVERHEAD POWER LINE    |
| ⊙   | SECTION CORNER                              | — — — | CENTER LINE            |
| Ⓜ   | FOUND ALUM. CAP WITH ROW SIGN (OR AS SHOWN) | — — — | APPARENT PROPERTY LINE |
| ⊕   | POWER POLE                                  | — — — | ROW LINE               |
| ⊕   | ELECTRIC METER                              | — — — | LEASE LINE             |
| ⊕   | GAS METER                                   | — — — | EASEMENT LINE          |
| Ⓜ   | TELEPHONE BOX                               | — — — | SECTION LINE           |

APPROXIMATE  
PROPERTY LINE (TYP)

CENTER OF PROPOSED 150'-0" TALL MONOPOLE  
LAT.: N 39° 25' 19.24" (N 39.422011°) NAD '88  
LONG.: W 94° 34' 03.24" (W 94.567567°) NAD '88  
ELEV.: 954.00', NAVD '88

EXISTING  
GUY TOWER

EXISTING BARN

PROPOSED 60' X  
60' LEASE AREA  
PROPOSED 50' X  
50' FENCED AREA

℄ PROPOSED GRAVEL  
ACCESS ROAD APPROX.  
LENGTH = ±270'

PROPOSED DOUBLE GATE

PROPOSED FENCE (TYP.)

PROPOSED 435' SQ FT.  
AT&T LEASE AREA  
PROPOSED H-FRAME

EXISTING POWER

APPROXIMATE  
PROPERTY LINE

±603'-3"

CENTER OF TOWER TO PROPERTY CORNER

℄ OF TOWER

PROPOSED 30'-0" WIDE ACCESS  
AND UTILITY EASEMENT.

EXISTING GRAVEL  
ACCESS ROAD APPROX.  
LENGTH = ±887.0'

APPROXIMATE  
R.O.W. LOCATION

NE 180TH STREET

SOUTH LINE OF THE NE 1/4

EAST LINE OF THE NE 1/4

SE CORNER NE 1/4  
SECTION 11

SITE OWNER



APPLICANT



SITE ACQUISITION  
/ENGINEERING



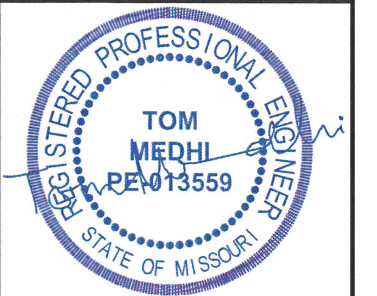
SITE INFORMATION

SMITHVILLE LAKE  
TI-OPP-19189 A/FA# 12878700  
PACE# TBD  
PT# TBD  
904 NE 180TH ST.  
SMITHVILLE, MO 64089

DESIGN RECORD

REV	DATE	DESCRIPTION	BY
3	03/29/22	FINAL ZD DRAWINGS	JMV
2	03/22/22	FINAL ZD DRAWINGS	JMV
1	03/18/22	CLIENT REVISION	MS
0	02/11/22	ZD DRAWINGS	JMV
B	02/10/22	ZD DRAWINGS	JMV
A	02/07/22	ZD DRAWINGS	MS

PROFESSIONAL STAMP



ENGINEER

Tom Medhi 03-29-2022  
Date  
MY LICENSE RENEWAL DATE IS 12/31/2023  
I HEREBY CERTIFY THAT THIS ENGINEERING DOCUMENT WAS PREPARED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MISSOURI

SHEET TITLE

OVERALL SITE PLAN

SHEET NUMBER

ZD-1

OVERALL SITE VIEW

100' 0 50' 100'

SCALE: 1"=100'-0" (22x34)  
(OR) 1/2"=100'-0" (11x17)

1

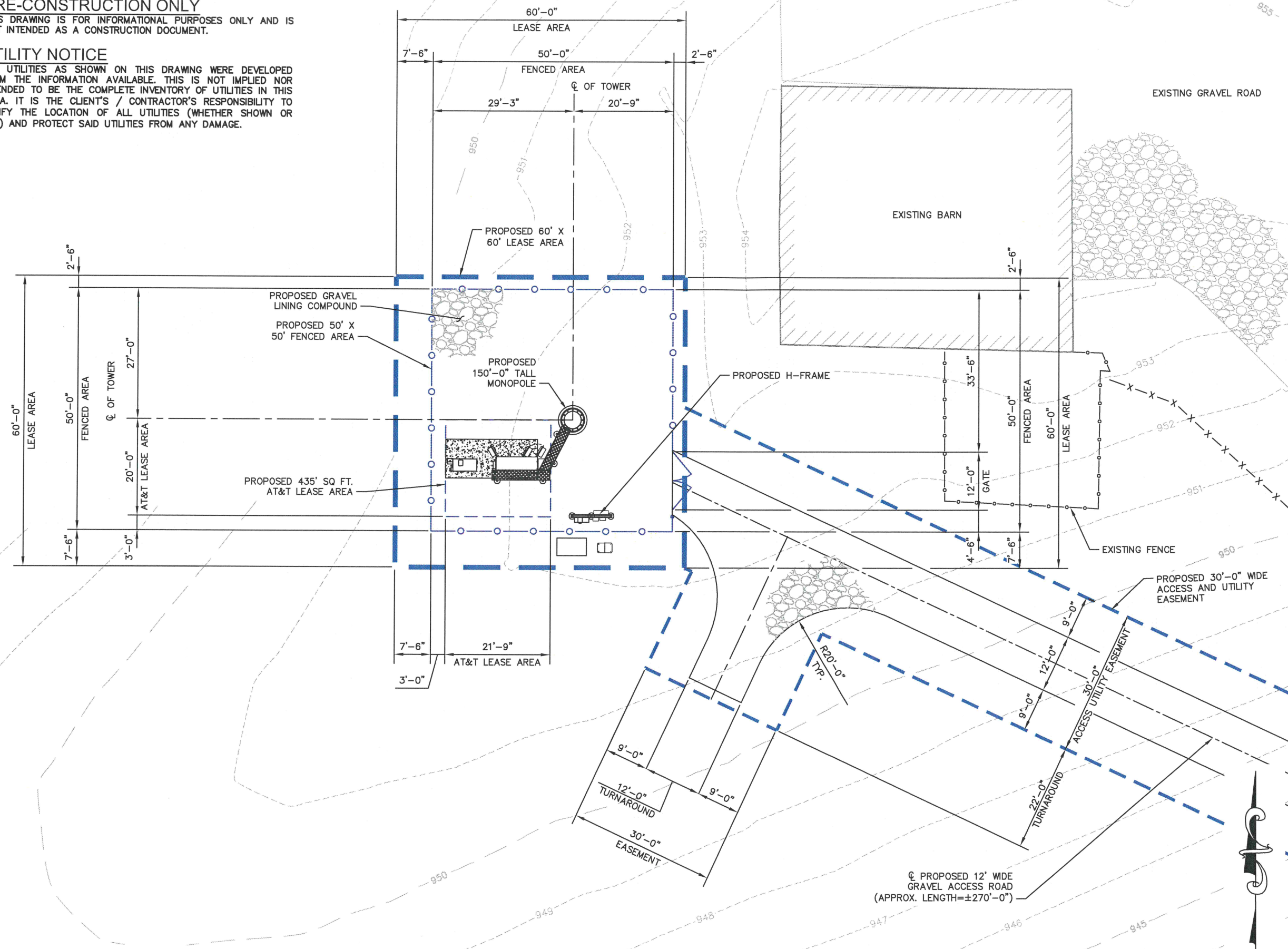


**ZD-2**



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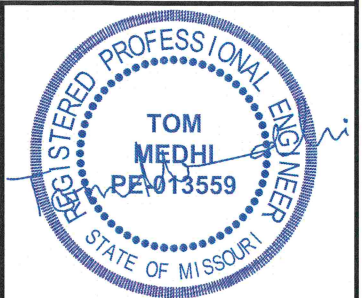
### ENLARGED LEASE AREA DETAIL

SHEET NUMBER	SHEET TITLE	ENGINEER	PROFESSIONAL STAMP	DESIGN RECORD	SITE INFORMATION	SITE ACQUISITION /ENGINEERING	APPLICANT	SITE OWNER
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SMITHVILLE LAKE  
TI-OPP-19189 A/FA# 12878700  
PACE# TBD  
PT# TBD  
904 NE 180TH ST.  
SMITHVILLE, MO 64089

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B	02/10/22	ZD DRAWINGS	JMV
A	02/07/22	ZD DRAWINGS	MS
REV	DATE	DESCRIPTION	BY

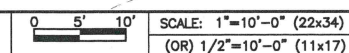


Tom Medhi 03-29-2022  
Tom Medhi Date  
MY LICENSE RENEWAL DATE IS 12/31/2023

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ENLARGED SITE PLAN

## ZD-3



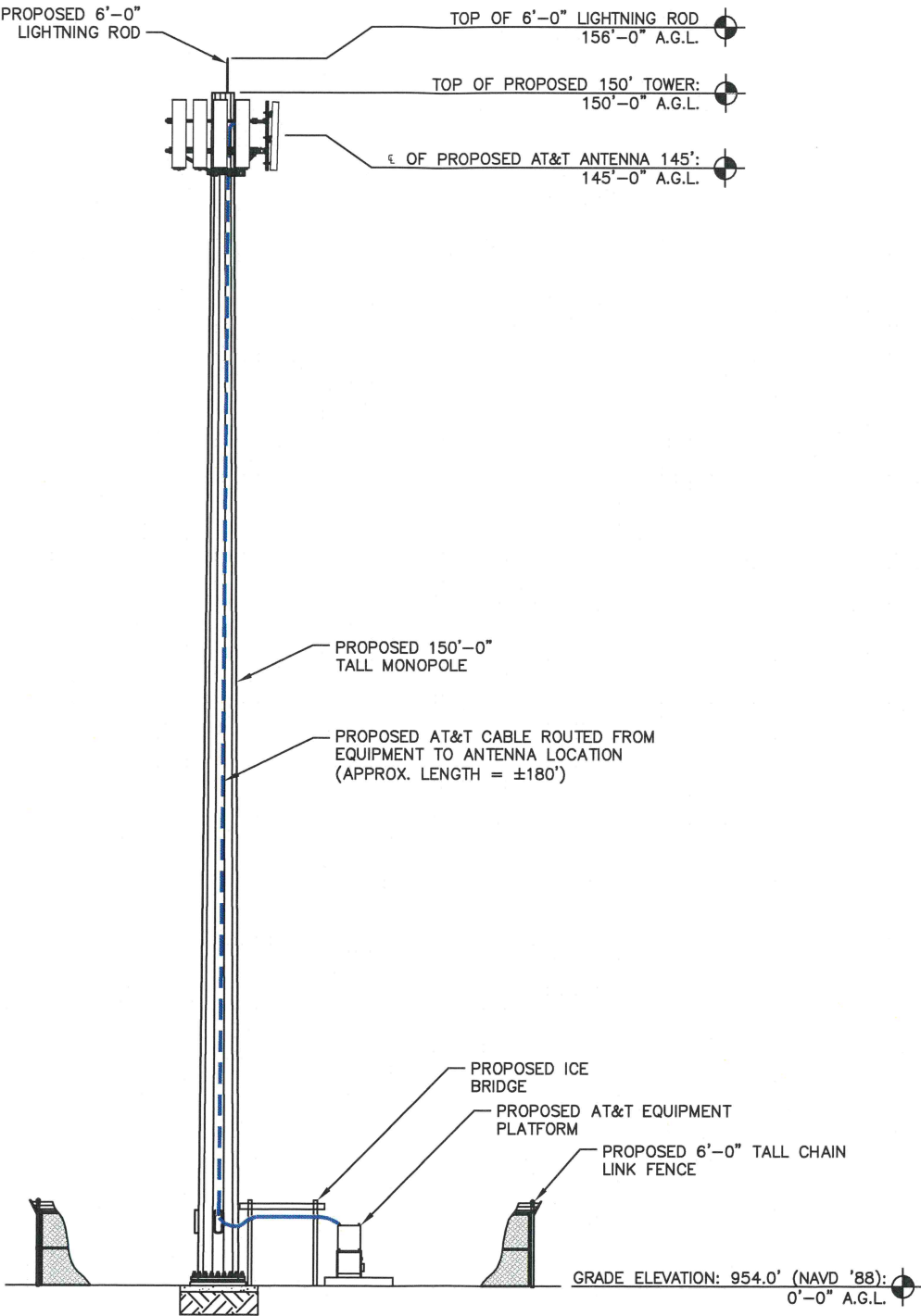
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UTILITY NOTICE

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PRE-CONSTRUCTION ONLY

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SITE OWNER

APPLICANT

SITE ACQUISITION /ENGINEERING

SITE INFORMATION

DESIGN RECORD

PROFESSIONAL STAMP

ENGINEER

SHEET TITLE

SHEET NUMBER

AE INC. Project #5958

SMITHVILLE LAKE  
TI-OPP-19189 A/FA# 12878700  
PACE# TBD  
PT# TBD  
904 NE 180TH ST.  
SMITHVILLE, MO 64089

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A	02/07/22	ZD DRAWINGS	MS

Tom Medhi  
Date: 03-29-2022  
MY LICENSE RENEWAL DATE IS 12/31/2023  
I HEREBY CERTIFY THAT THIS ENGINEERING DOCUMENT WAS PREPARED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MISSOURI

TOWER ELEVATION

ZD-4



June 13, 2022

Mr. Joe Pisano  
Tillman Infrastructure  
152 57<sup>th</sup> Street  
New York, NY 10019

RE: Proposed 150' Monopole for TI-OPP-19189, MO (Sabre Quote #22-5989-TJH-R1)

Dear Mr. Pisano,

Upon receipt of order, we propose to design and supply the above-referenced monopole for an Ultimate Wind Speed of 110 mph without ice and 40 mph with 1.5" ice, Structure Classification II, Exposure Category C, and Topographic Category 1, in accordance with the Telecommunications Industry Association Standard ANSI/TIA-222-H, "Structural Standard for Antenna-Supporting Structures and Antennas and Small Wind Turbine Support Structures". The monopole will be designed to support three (3) carriers.

When designed according to this standard, the wind pressures and steel strength capacities include several safety factors. Therefore, it is highly unlikely that the monopole will fail structurally in a wind event where the design wind speed is exceeded within the range of the built-in safety factors.

Should the wind speed increase beyond the capacity of the built-in safety factors, to the point of failure of one or more structural elements, the most likely location of the failure would be within the monopole shaft, above the base plate. Assuming that the wind pressure profile is similar to that used to design the monopole, the monopole will buckle at the location of the highest combined stress ratio within the monopole shaft. This is likely to result in the portion of the monopole above leaning over and remaining in a permanently deformed condition. *Please note that this letter only applies to the above-referenced monopole designed and manufactured by Sabre Industries.* This would effectively result in a fall radius less than or equal to 198'.

Sincerely,

Amy R. Herbst, P.E.  
Senior Design Engineer



6/13/22

## **FINDING OF FACTS AND CONCLUSIONS OF LAW**

Applicant: Tillman Infrastructure, LLC

Land Use Proposed: Telecommunications Tower

Zoning: A-1

Property Location: 904 NE 180<sup>th</sup> St.

Pursuant to the provisions of Section 400.570 concerning the minimum requirements for the issuance of a special use permit and based on the testimony and evidence presented in a public hearing of the Planning and Zoning Commission held on June 14, 2022 the Planning Commission of the City of Smithville, Missouri hereby makes the following *Finding of Facts and Conclusions of Law*.

### Finding of Facts

1. The proposed special use complies with all applicable provisions of the zoning regulation including intensity of use regulations, yard regulations and use regulations.
2. It is found that the proposed special use at the specified location will contribute to and promote the welfare and convenience of the public in that it will be consistent with the nature of the neighborhood and will provide a service enhancement to spotty cellular service.
3. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is to be located. The monopole has limited visual impact to any adjacent property.
4. The location and size of the conditional use will not dominate the immediate neighborhood to prevent development. The existing mature trees surrounding the property, as well as the distance from any property boundary limit any impact on the adjacent property.
5. There is sufficient parking for the anticipated maintenance vehicles.
6. No utility, drainage or other such facilities are needed as a result of the application.

7. Adequate access roads and entrances are provided.
8. The applicant has certified the capacity of the tower to accommodate two additional providers and a letter of intent to lease space so an additional 50 feet in height (maximum 150') may be added to accommodate co-location.
9. That in rendering this Finding of Fact, testimony at the public hearing on June 14, 2022 has been taken into consideration.

#### Conclusions of Law

Based on the foregoing findings of fact, we conclude that:

- A. This application and the granting of a Conditional Use permit is governed by Section 400.570 of the zoning ordinance of Smithville, Missouri.
- B. The proposed use complies with minimum standards required for the issuance of a conditional use permit as set out in Section 400.570 of the zoning ordinance.
- C. A conditional use permit should be granted to allow the installation of a single 150' tall monopole telecommunications tower on the property at 904 NE 180<sup>th</sup> St.

Planning Commission



**BILL NO. XXXX-22**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE CITY OF SMITHVILLE, MISSOURI BY AND GRANTING A CONDITIONAL USE PERMIT TO TILLMAN INFRASTRUCTURE, LLC FOR A TELECOMMUNICATIONS TOWER AT 904 NE 180<sup>TH</sup> STREET.**

**WHEREAS**, On June 14, 2022, the Planning Commission of Smithville, Missouri held a public hearing relative to a request for a conditional use permit; and

**WHEREAS**, the Planning Commission forwarded consideration of said request to the Board of Aldermen with a recommendation of granting said request; and

**WHEREAS**, the Board of Aldermen, based on substantial evidence provided by the applicant, staff, and members of the public found that applicant's proposed telecommunications tower would not seriously injure the public or the appropriate use of neighboring property and that said use would conform to the general intent and purpose of the zoning ordinance; and

**NOW THEREFORE BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI AS FOLLOWS:**

Section 1. Ordinance Number 711 and the Zoning Map which is made a part thereof, is amended by granting a Conditional use permit for the installation of an telecommunications tower at 90-4 NE 180<sup>th</sup> St. and more particularly described as follows:

Parcel 1:

A tract of land in the East One-Half (E 1/2) of the Northeast Quarter (NE 1/4) of Section Eleven (11), Township Fifty-three (53) North, Range Thirty-Three (33) West, Smithville, Clay County, Missouri, more particularly described as follows: Beginning at a Found D.N.R. Monument at the Southeast Corner of the Northeast Quarter of said Section Eleven (11); Thence N 0° 10' 02" E, 30.0 feet along the East line of said Northeast Quarter to the North Right of Way line of 180th Street and the TRUE POINT OF BEGINNING; Thence S 89° 54' 39" W, along the North Right of Way line of 180th Street, 697.76 feet to a point on the East line of a Tract as conveyed in Book 1112, Page 952, as Document No. C-78569; Thence N 0° 20' 19" E, along the East line of said tract, 453.11 feet; Thence N 89° 54' 39" E, 696.41 feet to a point on the East line of said Northeast Quarter; thence S 0° 10' 02" W, 453.10 feet to the TRUE POINT OF BEGINNING.

Parcel 2:

A Tract of Land in the East One-Half (E 1/2) of the Northeast Quarter (NE 1/4) of Section Eleven (11), Township Fifty-three (53) North, Range Thirty-three (33)

West, Smithville, Clay County, Missouri, more particularly described as follows: Beginning at a Found D.N.R. Monument at the Southeast Corner of the Northeast Quarter of said Section Eleven (11); Thence N 0° 10' 02" E, 483.10 feet, along the East Line of said Northeast Quarter to the TRUE POINT OF BEGINNING; Thence S 89° 54' 39" W, parallel to the South Line of said Northeast Quarter (NE 1/4), 696.41 feet to the East Line of a tract as conveyed in Book 1112, Page 952 as Document No. C-78569; Thence N 0° 20' 19" E, along the East Line of said tract, 289.38 feet; Thence S 89° 54' 39" W, along the North Line of said conveyed tract, 620.27 feet to the West Line of the East One-Half (E 1/2) of the said Northeast Quarter (NE 1/4); Thence N 0° 20' 19" E, along said West Line, 885.00 feet to the South Line of the North 30 acres of the East One-Half (E 1/2) of said Northeast Quarter; Thence N 89° 43' 19" E, along said South Line of the North 30 acres, 1313.19 feet to a point on the East Line of the said Northeast Quarter (NE 1/4); Thence S 0° 10' 02" W, along the East Line of said Northeast Quarter (NE 1/4), 1178.70 feet to the TRUE POINT OF BEGINNING.

LESS AND EXCEPT that portion of property conveyed to Raymond George Stubler and Betty May Stubler from Gary E. Beggs and Melody L. Beggs by Warranty Deed dated April 17, 1992 and recorded April 17, 1992 in Deed Book 2111, Page 601.

LESS AND EXCEPT that portion of property conveyed to Frank Martinez and Debra A. Martinez from Gary E. Beggs and Melody L. Beggs by Warranty Deed dated April 17, 1992 and recorded April 27, 1992 in Deed Book 2113, Page 890.

LESS AND EXCEPT that portion of property conveyed to Jack L. Pope and Gladys M. Pope from Gary E. Beggs and Melody L. Beggs by Warranty Deed dated December 4, 1992 and recorded December 8, 1992 in Deed Book 2182, Page 593.

LESS AND EXCEPT that portion of property conveyed to Raymond G. Stubler & Betty M. Stubler from Gary E. Beggs & Melody L. Beggs by Warranty Deed dated July 23, 1993 and recorded July 26, 1993 in Deed Book 2251, Page 581.

Section 2. This ordinance shall take effect and be in full force from and after its passage according to law.

PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2009.

ATTEST: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

1<sup>st</sup> Reading: \_\_\_\_/\_\_\_\_/\_\_\_\_

2<sup>nd</sup> Reading \_\_\_\_/\_\_\_\_/\_\_\_\_



STAFF REPORT  
June 9, 2022

Rezoning of Parcel Id's# 05-905-00-10-001.00  
Application for Rezoning District Classification Amendment

Code Sections:

400.560.C Zoning District Classification Amendments

Property Information:

Address: 561 S. Commercial St.  
Owner: ER Development LLC  
Current Zoning: B-1P  
Proposed Zoning: B-3

Public Notice Dates:

1<sup>st</sup> Publication in Newspaper: June 23, 2022  
Letters to Property Owners: June 23, 2022

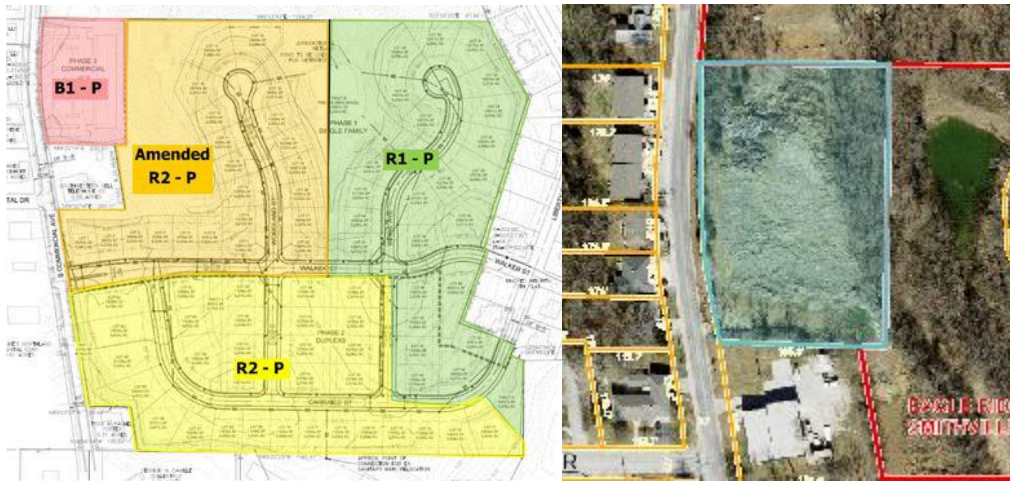
GENERAL DESCRIPTION



The applicant seeks to rezone the subject property to B-3 from B-1P. The property is currently a vacant parcel of ground. The applicant seeks to change the zoning to B-3, which would allow the use of the property for an office building for its construction and development companies, including an area for equipment and vehicles to be securely parked.

#### EXISTING ZONING:

The existing zoning is B-1P.



#### CHARACTER OF THE NEIGHBORHOOD *400.560.C.1*

The property is located near the B-3 zoned St. Luke's Hospital complex. The properties to the east and west are zoned for multifamily (R-2 and R-3 Districts) with the ATT switching station building immediately to the south. The property to the north is a single-family home on 12.23 acres of mostly wooded land.

#### CONSISTENCY WITH COMPREHENSIVE PLAN AND ORDINANCES *400.560.C.2*

The new Comprehensive Plan was approved on November 10<sup>th</sup>, 2020, and formally adopted as the policy of the City on November 17<sup>th</sup>, 2020. That plan calls for retaining the natural vegetative buffers surrounding the specific parcel, with no specific anticipated changes to the uses in the next 10 years.

#### ADEQUACY OF PUBLIC UTILITIES OR OTHER PUBLIC SERVICES *400.560.C.3*

The property is currently served with water along the property's boundary with Commercial St., and sewers are accessible to the south. All other utilities are available.

SUITABILITY OF THE USES TO WHICH THE PROPERTY HAS BEEN RESTRICTED  
UNDER ITS EXISTING ZONING *400.560.C.4.*

The current use is contained in the B-1P district. This district allows offices, including ones for contractors or developers but makes no allowances for storage of equipment and materials for those underlying office uses.

TIME THE PROPERTY HAS REMAINED VACANT AS ZONED *400.560.C.5*

The property was zoned to the existing district classification in 2018, and was zoned A-1 prior.

COMPATIBILITY OF PROPOSED DISTRICT WITH NEARBY LAND *400.560.C.6*

The property is adjacent to two+ family zoning on the east, west and south, with the ATT switching station located immediately to the south. The southwest corner of Hospital Dr. and Commercial St. is the B-3 zoned Hospital complex, and just west of the R-3 properties along Commercial is more B-3 zoned property. With screening and landscape buffering imposed using the site plan review process, any potential negative impacts on the single family land to the north would be eliminated.

EXTENT WHICH THE AMENDMENT MAY DETRIMENTALLY AFFECT NEARBY  
PROPERTY *400.560.C.7*

No detrimental effects are anticipated to the adjacent property values.

WHETHER THE PROPOSAL HAS A DISPROPORTIONATE GREAT LOSS TO  
ADJOINING PROPERTY OWNERS RELATIVE TO THE PUBLIC GAIN *400.560.C.8*

No detrimental effects are anticipated to adjacent properties.

STAFF RECOMMENDATION:

Staff recommends that the rezoning to B-3 be approved.

Respectfully Submitted,

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Zoning Administrator

## **FINDING OF FACTS AND CONCLUSIONS OF LAW**

Applicant: ER Development, LLC

Land Use Proposed: B-3

Zoning: B-1P

Property Location: 561 S. Commercial St.

Pursuant to the provisions of Section 400.560(C) of the Smithville Code, the Planning Commission does hereby make the following findings of fact based upon the testimony and evidence presented in a public hearing of the Planning and Zoning Commission of the City of Smithville, held on July 12, 2022, and presents these findings to the Board of Aldermen, with its' recommendations on the application.

### Finding of Facts

1. *Character of the neighborhood.*  
The surrounding area is a transitional area with mix of various Multi-family districts to the east, west and south, with the ATT switching station also to the south, as well as B-3 uses further to the west and south. Commercial St. is the most significant north-south arterial street that serves from downtown to 169 near McDonalds.
2. *Consistency with the City's Comprehensive Plan and ordinances.*  
The new Comprehensive Plan was approved on November 10th, 2020, and formally adopted as the policy of the City on November 17th, 2020. That plan calls for maintaining the existing buffer vegetation in the area, with no significant changes to the existing uses.
3. *Adequacy of public utilities and other needed public services.*  
  
The property is currently accessible to all utilities.
4. *Suitability of the uses to which the property has been restricted under its existing zoning.*  
The property is vacant, undeveloped land. Given the grade differential to Commercial, most development has been unaffordable. The area is within 500 yards of the Eagle Ridge two family townhomes to the south and east, as well as the Mixed use zoned property to the north west that stretches from 169 to Commercial.
5. *Length of time the property has remained vacant as zoned.*

The property was zoned to the existing district classification in 2018, and was A-1 for its' entire time in the city limits.

6. *Compatibility of the proposed district classification with nearby properties.*

The property is adjacent to a higher density residential areas to the south, east and west, with B-3 zoned land within 200 feet. With the current transition of downtown including significant investment and revitalization, this district is compatible with adjacent districts.

7. *The extent to which the zoning amendment may detrimentally affect nearby property.*

With proper buffering in the site plan review process, the only property that would be able to see the developable land is the single family property to the north on the 12.23 acre parcel. No detrimental effects are anticipated to the adjacent property values.

8. *Whether the proposed amendment provides a disproportionately great loss to the individual landowners nearby relative to the public gain.*

No detrimental effects are anticipated to adjacent properties.

9. That in rendering this Finding of Fact, testimony at the public hearing on July 12, 2022, has been taken into consideration as well as the documents provided.

Recommendation of the Planning Commission

Based on the foregoing findings of fact, we conclude that:

- A. This application and the Rezoning of this property from B-1P to B-3 is governed by Section 400.620 of the zoning ordinance of Smithville, Missouri.
- B. The proposed zoning is compatible with the factors set out in Section 400.560(C) of the zoning ordinance.
- C. The Planning and Zoning Commission of the City of Smithville, Missouri recommends approval of rezoning the property to B-3.



<b>Date:</b>	July 8, 2022
<b>Prepared By:</b>	Jack Hendrix
<b>Subject:</b>	Outdoor Storage

One of the most common complaints over the last few years has been the outdoor storage in commercial and residential zoning districts. The current structure of our code is as follows:

The term Outdoor Storage is defined as "The keeping of goods, equipment, property, etc., business related or otherwise, not completely enclosed in a building." Our districts have specifically identified permitted uses, one of which is "Accessory uses customarily incidental to permitted uses and otherwise conforming to the provisions contained in Section 400.370." Accessory uses have a list of potential uses that are either Permitted or Prohibited. Outdoor storage is listed as follows in the prohibited section:

Prohibited Accessory Uses. None of the following shall be permitted as an accessory use:

1. Outdoor storage or overnight parking in a residential district of trucks or buses having a hauling capacity of more than one (1) ton excluding pickup trucks and recreational vehicles as defined in Section 400.360.
2. Outdoor storage, except *as specifically permitted in the district regulations*.

Only in the I-1 (*and by incorporation I-2*) district does the district regulations permit Outdoor storage as follows:

". . . and the outdoor storage of manufactured materials or products provided all outside storage is **screened** from any public right-of-way."

Screening is also defined in the code as "A solid or semisolid fence or wall or trees or shrubs at least six (6) feet but not more than eight (8) feet high (maximum height excluded for trees and shrubs) and having a density of not less than eighty percent (80%) per square foot."

Prior to the revamp of the code in 2013, all business districts included the same or similar language in the permitted uses provision. To reduce or eliminate the unsightly look, as well as enforcement problems associated with the maintenance of outdoor storage screening, it was decided to remove the outdoor storage provisions completely, and effectively require indoor storage.

During the timing of this review, there was not a significant issue associated with outdoor storage from the standpoint of the number of cases, but the cases that were in existence were the focus of the changes. The occurrences of outdoor storage were

limited, most likely from the general slowdown in the economy at the time. This most likely made the changes appear to only impact limited areas or citizens that had consistently generated complaints. Ultimately, the economy came out of the lingering effects of the recession and businesses began to expand and thrive in Smithville. Since 2018, commercial growth has simply exploded. Expanding businesses and new businesses to town have started needing more space for storage, and land and building costs are pushing businesses to outdoor storage.

Prior to any stepped-up enforcement of these codes, staff seeks the Planning Commission to weigh in on this issue. Our primary focus would be on commercial/industrial zones, but it may be worthwhile to look at residential storage as well. Per State law, this matter has been advertised for a public hearing, but it is not anticipated to have much public input at the meeting. As a result, staff suggests discussion at the meeting, followed by directions on any changes to the structure of the storage provisions for staff to specifically draft. This would then allow the proposed specific provisions to be better disseminated to the public and, hopefully, see more public input at following meeting(s).