

PETEFISH

PETEFISH, IMMEL, HEEB & HIRD, LLP
Attorneys at Law
Est. 1915

John J. Immel*
Richard W. Hird**
Thomas H. Johnson**
Cheryl L. Denton**
Terence E. Leibold**

842 Louisiana Street
P.O. Box 485
Lawrence, KS 66044-0485
(785) 843-0450 Tel
(785) 843-0407 Fax
www.petefishlaw.com
r hird@petefishlaw.com

Olin K. Petefish (1912-2001)
Jeffrey O. Heeb (retired)

*Admitted in Kansas
**Admitted in Kansas and Missouri

July 14, 2015

Diane Bucia, City Clerk
Toni Wheeler, City Attorney
City of Lawrence, Kansas
6 E. 6th Street, 3rd Floor
Lawrence, Kansas 66044

Via Email; confirmed by hand delivery

Re: Protest Petition against: SUP-15-00185
Ottawa Cooperative Association
PAMCORP as representative for Verizon wireless, LLC
Special Use Permit for construction of a communication tower
2001 Moodie Road, Lawrence, Kansas

Dear Ms. Bucia and Ms. Wheeler,

I represent JDS Enterprises, LLC and Steve Schwada, as Circulator of a Protest Petition with respect to the above-captioned application for a Special use Permit. It is my understanding that on July 9, 2015, David Guntert of the City of Lawrence Planning and Development Services, submitted a Memorandum to Sandra Day, also with Planning and Development Services, concluding that the Protest Petition filed by my client on July 7, 2015 is not "valid" because it was not filed within fourteen (14) days of the action by the Planning Commission. This is apparently the position that will be taken by Planning and Development Services when this agenda item is considered by the City Commission on Tuesday, July 14, 2015. By this correspondence, I urge the City to reconsider its position and/or re-start the clock for submitting a Protest Petition.

My client requested a list of property owners for the purpose of obtaining signatures for a Protest Petition and on Thursday, July 2, 2015, at 2:23 p.m., Mr. Guntert sent an email to my client (see attached Exhibit A) indicating:

The attached Excel database has the records of all parcels lying within the 200 feet notification boundary (red outlined parcels) shown on the map I forwarded to you earlier today. The "AREA" field in the table was recalculated so it shows the area in each parcel that is within the 200 feet buffer. The total area of the parcels within the 200 feet buffer is 617,659.09 square feet. For a valid protest, it will take the signatures of all property owners of enough parcels to total 123,531.82 square feet. Burroughs Creek trail is a parcel rather than right-of-way so it is included with the other parcels in the table.

A copy of the Excel database referred to in Mr. Guntert's email is attached as Exhibit B. Likewise, the July 9, 2015 Memo from Mr. Guntert to Sandra Day (see attached Exhibit C) confirms that Mr. Guntert included the Burroughs Creek Trail parcel in the calculation of the square footage requirement for the Protest Petition:

There are nineteen (19) parcels within the required 200-foot notification distance (protest district) of the subject property. The total area of all real property represented by those 19 parcels is 617,659.09 square feet (14.18 acres). The protest petition received by the City was signed by owners of 5 parcels – all located within the protest district. The total area within the 200-foot boundary represented by those 5 parcels is 124,435.47 square feet (2.86 acres), or approximately 20.15% of the total area within the protest district.

Unfortunately, the information given to Mr. Schwada with respect to the square footage requirement for a Protest Petition was inaccurate. The Burroughs Creek Trail and Park "parcel" should have been excluded in the calculation of the 20% square footage threshold.

Lawrence City Code 20-1303(h)(1)(ii) provides that a Protest Petition is "valid" if signed by 20% or more of the owners of "the total real property within the area to be notified of the proposed rezoning, **excluding** streets and **public ways.**" (emphasis added)

The term "public way" was defined by the Kansas Supreme Court as far back as 1893 as, "...ways belonging to the public and not owned by private corporations." *McGrew v. Stewart, Ex Rel.*, 51 Kan. 185, 190, 32 P.896, 1893 Kan. LEXIS 32. "Ways" would appear to be more expansive than the term "right of way," but both terms describe the right of passage upon lands of another, either for private or public use. Stated differently, if the public has a right to go upon and use the tract for passage, it is a public way.

The Burroughs Creek Trail and Park is a "public way" and should have been excluded from the calculation of the 20% requirement. The Burroughs Creek Trail and Park is a park and trail, listed by the City of Lawrence as a "linear park" that is open to the public specifically for the purpose of traversing its length. The Trail and Park property was formerly railroad right of way, abandoned by the Atchison, Topeka and Santa Fe Railroad and acquired by the City for the purpose of a public trail and park.

Because the City failed to exclude the Burroughs Creek Trail parcel from the calculation, the square footage required to meet the 20% threshold was inflated, which directly led to the delay in submitting the Protest Petition. The difference is significant: the City's calculation of the Total Area of all Parcels within 200' of the Property = 617,659.09 sq. ft. and 20% = 123,531.82 sq. ft. If Burroughs Creek is excluded, the Total Area of all Parcels within 200' of the Property = 489,400.46 sq. ft. and 20% = 97,880.89 sq. ft.

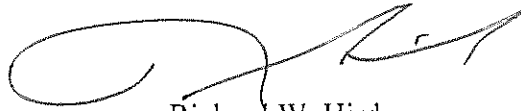
The incorrect information was relied upon by my client. Of the five individual petitions comprising the Protest Petition, three are dated Monday, July 6, 2015 (Stonewall Farms, LLC, 2000 Delaware, LLC and JDS, LLC). Together, the square footage of those three parcels

(119,441.26 sq. ft.) would have satisfied the minimum 20% for a Protest Petition if Burroughs Creek Trail and Park had been excluded from the calculation and the Protest Petition could have been filed that day. However, according to the calculation the City provided, and upon which my client relied, the three parcels did not satisfy the 20% threshold and signatures from the owners of an additional 4,090.56 sq. ft. would be needed. Those signatures were attained on the first day possible, Tuesday, July 7, 2015.

In this case, the Protest Petition process was tainted at the outset by the City providing a calculation of the 20% threshold that was in error. My client relied upon that information, to his detriment and under the circumstances, it would be grossly unfair and legally untenable for the City to deny the validity of the Protest Petition. In the alternative, the time period for submitting a Protest Petition should be re-started.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



Richard W. Hird
Petefish, Immel, Heeb & Hird, LLP

Encl.

cc: Via Email and hand delivery:
Jeremy Farmer, Mayor
Leslie Soden, Commissioner
Mike Amyx, Commissioner
Stuart Boley, Commissioner
Matthew Herbert, Commissioner
Diane Stoddard, City Manager
Scott McCullough, Director of Planning

From: David Guntert dguntert@lawrenceks.org
Subject: RE: protest map
Date: July 2, 2015 at 2:23 PM
To: Steve Schwada steve@venturepropertiesinc.com
Cc: Sandra Day sday@lawrenceks.org



Steve,

The attached Excel database has the records of all parcels lying within the 200 feet notification boundary (red outlined parcels) shown on the map I forwarded to you earlier today. The "AREA" field in the table was recalculated so it shows the area in each parcel that is within the 200 feet buffer. The total area of the parcels within the 200 feet buffer is 617,659.09 square feet. For a valid protest, it will take the signatures of all property owners of enough parcels to total 123,531.82 square feet. Burroughs Creek trail is a parcel rather than right-of-way so it is included with the other parcels in the table.

David R. Guntert, Planner II - dguntert@lawrenceks.org
Planning and Development Services | www.lawrenceks.org
City Hall, 6 E. 6th Street
P.O. Box 708, Lawrence, KS 66044-0708
office (785) 832-3158 | fax (785) 832-3160

"Your opinion counts! Customer feedback helps us serve you better. Please tell us how we're doing by completing this short online Customer Satisfaction Survey: <http://lawrenceks.org/pds/survey/satisfaction>."

-----Original Message-----

From: Steve Schwada [mailto:steve@venturepropertiesinc.com]
Sent: Thursday, July 02, 2015 11:43 AM
To: David Guntert
Cc: Steve Schwada
Subject: Re: protest map

David, did you calculate square feet the different red boxes. And is the rails to trails area included, I see the Moodie Rd is not. And how many feet would it take to make 20%

Thank Steve

On Jul 2, 2015, at 11:29 AM, David Guntert <dguntert@lawrenceks.org> wrote:

Steve,

The attached map will show the extent of the 200 feet property notification for the proposed new cell tower on the property at 2001 Moodie Road. Only the areas in the parcels that are outlined in red will be calculated in a protest petition if one is filed in a timely manner. The pink color parcel is the lease parcel where the proposed new cell tower is to be erected. If you have other questions, please do not hesitate to contact me.

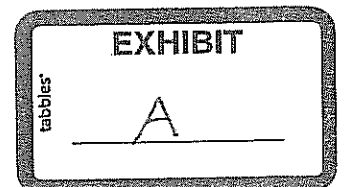
David R. Guntert, Planner II - dguntert@lawrenceks.org Planning and Development Services | www.lawrenceks.org City Hall, 6 E. 6th Street P.O. Box 708, Lawrence, KS 66044-0708 office (785) 832-3158 | fax (785) 832-3160

"Your opinion counts! Customer feedback helps us serve you better. Please tell us how we're doing by completing this short online Customer Satisfaction Survey: <http://lawrenceks.org/pds/survey/satisfaction>."

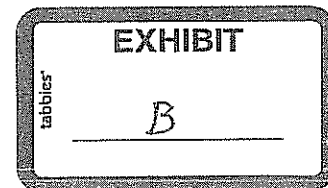
-----Original Message-----

From: Steve Schwada [mailto:steve@venturepropertiesinc.com]
Sent: Thursday, July 02, 2015 11:24 AM
To: David Guntert
Cc: Steve Schwada
Subject: protest map

<200-feet-protest-boundary-properties.pdf>



FID	JOINPIN	owner1	owner2	owner3	owner address	city	state
0	103-06-0-40-01-001.00-0	CITY OF LAWRENCE			PO BOX 708	LAWRENCE	KS
1	103-06-0-40-05-001.00-0	SOUTHWESTERN BELL TELEPHONE CO			909 CHESTNUT ST RM 36Q1	SAINT LOUIS	MO
2	103-06-0-40-04-001.00-0	SILVERBACK ENTERPRISES LLC			1515 UNIVERSITY DR	LAWRENCE	KS
3	103-06-0-40-04-002.00-0	JDS ENTERPRISES LLC			2601 DOVER SQ	LAWRENCE	KS
4	103-06-0-40-04-003.01-0	BCHHSY			2930 SW WOODSIDE DR	TOPEKA	KS
5	103-06-0-40-05-003.01-0	2KD LC			1441 WAKARUSA DR STE 200	LAWRENCE	KS
6	103-06-0-40-02-001.00-0	INDEPENDENCE INC			2001 HASKELL AVE	LAWRENCE	KS
7	103-06-0-40-05-003.07-0	2000 DELAWARE LLC			5605 BEVERLY AVE	MISSION	KS
8	103-06-0-40-02-003.00-0	HARMON WILLIAM L SR TRUSTEE	HARMON MARY B TRUSTEE		924 E 21ST ST	LAWRENCE	KS
9	103-06-0-40-02-002.00-0	GIBSON WALTER E	GIBSON SALLY J		910 E 21ST ST	LAWRENCE	KS
10	103-06-0-40-03-006.00-0	SCHONBACHLER DANIEL P			921 E 21ST ST	LAWRENCE	KS
11	103-06-0-40-03-007.00-0	SMITH ROBERT D	SMITH NANCY A		911 E 21ST ST	LAWRENCE	KS
12	103-06-0-40-05-003.04-0	STONEWALL FARMS LLC	INDUSTRIAL SQUARE CORP	C/O SCHWADA STEVEN B	PO BOX 68	LAWRENCE	KS
13	103-06-0-40-03-009.00-0	KILLOUGH ROBERT B			393 E 1400 RD	BALDWIN CITI	KS
14	103-06-0-40-03-008.00-0	JOHNSON RANDY			910 E 21ST TER	LAWRENCE	KS
15	103-06-0-40-05-003.05-0	G E B PROPERTIES LC			2116 DELAWARE ST	LAWRENCE	KS
16	103-06-0-40-10-005.01-0	POLK & POLK LC			PO BOX 34	LAWRENCE	KS
17	103-06-0-40-10-010.01-0	GROUP 4 LLC			PO BOX 1734	LAWRENCE	KS
18	103-06-0-40-04-004.00-0	CITY OF LAWRENCE			PO BOX 708	LAWRENCE	KS



zip	plate	legal	PID	status	AREA	PERIMETER	strnbr
66044	U11950A01	BOWLING SQUARE BLK 1 LTS 1 THRU 18 INCL	023-103-06-0-40-01-001.00-0	1941 HASKELL AVE	47347.81	981.02	1941
63101	U11088A	EVERGREEN ADD TR A BEG AT NE COR TR A T	023-103-06-0-40-05-001.00-0	547 E 19TH ST	27986.93	783.92	547
66044	U11791	INDUSTRIAL SQUARE LT 2	023-103-06-0-40-04-001.00-0	701 E 19TH ST	3655.09	673.67	701
66049	U11790	INDUSTRIAL SQUARE LT 1	023-103-06-0-40-04-002.00-0	1927 MOODIE RD	63879.76	1055.53	1927
66614	U11771A02	FARMERS COOP SUB NO 2 LT 4A (U11771A01	023-103-06-0-40-04-003.01-0	2121 MOODIE RD	52443.74	949.43	2121
66049	U11106D	INDUSTRIAL SQUARE ONE NINE NO 2 REPLAT	023-103-06-0-40-05-003.01-0	1920 DELAWARE ST	29842.77	786.29	1920
66046	U11773	INDEPENDENCE ADD LT 1	023-103-06-0-40-02-001.00-0	2001 HASKELL AVE	37888.68	822.07	2001
66202	U11106D01	INDUSTRIAL SQUARE ONE NINE NO 2 REPLAT	023-103-06-0-40-05-003.07-0	2000 DELAWARE ST	39564.60	979.29	2000
66046	U11770L	EAST VIEW SUB NO 3 BLK 2 LT 6	023-103-06-0-40-02-003.00-0	916 E 21ST ST	7514.77	402.18	916
66046	U11770M	EAST VIEW SUB NO 3 BLK 2 LT 7	023-103-06-0-40-02-002.00-0	910 E 21ST ST	13631.80	482.96	910
66046	U11770E	EAST VIEW SUB NO 3 BLK 1 LT 5	023-103-06-0-40-03-006.00-0	921 E 21ST ST	5984.31	339.57	921
66046	U11770F	EAST VIEW SUB NO 3 BLK 1 LT 6	023-103-06-0-40-03-007.00-0	911 E 21ST ST	10798.82	420.00	911
66044	U11106DA	INDUSTRIAL SQUARE ONE NINE NO 2 REPLAT	023-103-06-0-40-05-003.04-0	2110 DELAWARE ST	15996.90	525.41	2110
66006	U11766	EAST VIEW SUB LT 11	023-103-06-0-40-03-009.00-0	920 E 21ST TER	4331.09	306.55	920
66046	U11765	EAST VIEW SUB LT 10	023-103-06-0-40-03-008.00-0	910 E 21ST TER	10798.83	420.00	910
66046	U11106DB	INDUSTRIAL SQUARE ONE NINE NO 3 REPLAT	023-103-06-0-40-05-003.05-0	2116 DELAWARE ST	1339.11	176.37	2116
66044	U11764	EAST VIEW SUB LT 9	023-103-06-0-40-10-005.01-0	911 E 21ST TER	121.86	59.04	911
66044	U11777	DAVOL NO 2 LT 1, LESS .049A TR9 TO KDOT D	023-103-06-0-40-10-010.01-0	2151 HASKELL AVE 1	116273.58	1686.83	2151
66044	U11778-4A32	6-13-20 ATSF RR R/W ABANDONMENT D 104	023-103-06-0-40-04-004.00-0		128258.63	2886.72	

Memorandum

City of Lawrence

Planning & Development Services

TO: Sandra Day
FROM: David Guntert
CC: Scott McCullough; Randy Larkin; Sheila Stogsdill; Amy Miller
Date: July 9, 2015
RE: SUP-15-00185 Protest Petition, filed July 7, 2015

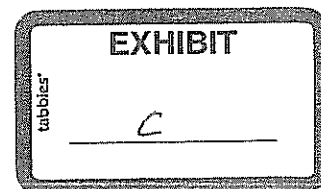
Under City of Lawrence, Kan., Code § 20-1306(g) (Jan. 1, 2015), to file a valid protest petition challenging a recommendation relating to an application for a special use permit, a person must obtain the signatures of owners of at least 20% of the real property within the protest district and must file the protest petition with the City Clerk within fourteen days of the conclusion of the Planning Commission's public hearing. At its June 22, 2015, public meeting, the Planning Commission voted unanimously to recommend that the City Commission approve Application for Special Use Permit No. SUP-15-00185, seeking a permit to construct a 120-foot monopole tower on that real property commonly known as 2001 Moodie Road, Lawrence, Douglas County, Kansas ("the subject property"). On July 7, 2015, petitioners filed a protest petition challenging the Planning Commission's recommendation. Based on the City's review of it, the protest petition only meets one of the City Code's two criteria to be considered a valid protest petition and is, therefore, under the City Code, not a valid protest petition.

The protest petition must first contain the signatures of at least 20% of owners within the protest district. City of Lawrence, Kan., Code § 20-1306(g) (Jan. 1, 2015). The July 7, 2015, protest petition meets that requirement. There are nineteen (19) parcels within the required 200-foot notification distance (protest district) of the subject property. The total area of all real property represented by those 19 parcels is 617,659.09 square feet (14.18 acres). The protest petition received by the City was signed by owners of 5 parcels – all located within the protest district. The total area within the 200-foot boundary represented by those 5 parcels is 124,435.47 square feet (2.86 acres), or approximately 20.15% of the total area within the protest district. As such, the protest petition meets the requirements of the City Code relating to the number of signatures.

For further illustration, the attached map shows the properties within the protest area with owners who are protesting the application for a special use permit.

The calculations for determining the sufficiency of the signatures is as follows:

Total Area of all 19 Parcels w/in 200' of the Property in the Special Use Permit Request	617,659.09 sq. ft.; 14.18 acres
Total Area of Parcels inside the Buffer Whose Owners are Protesting the Special Use Permit Request (5 Parcels)	124,435.47 sq. ft.; 2.86 acres



However, in addition to having signatures of 20% of owners within the protest district, the protest petition must also be filed with the City Clerk within fourteen (14) days of the conclusion of the Planning Commission's public hearing. City of Lawrence, Kan., Code § 20-1306(g) (Jan. 1, 2015). When computing time when an action must be completed, the City excludes the first day and includes the last day and counts all intervening days including weekends and legal holidays. *See* City of Lawrence, Kan., Code § 1-102(B) (Jan. 1, 2015). Here, the Planning Commission concluded the public hearing on the application for a special use permit on Monday, June 22, 2015. Excluding that day (which is the first day) and beginning the count on June 23, 2015, as the first day, the fourteenth day was Monday July 6, 2015. Accordingly, the City Code required that the protest petition be filed with the City Clerk before the close of business on Monday, July 6, 2015. The present protest petition was filed on Tuesday, July 7, 2015, or one day outside the fourteen-day period. Because it was not filed within fourteen days of the Planning Commission's public hearing, the present protest petition does not meet the requirements of the City Code and is not a valid protest petition.

In sum, because the July 7, 2015, protest petition was filed outside the fourteen-day period prescribed by Section 20-1306 of the City Code, it is not, under the City Code, a valid protest petition.



Brook Creek Neighborhood Association

Rena Figures, President

1502 Harper St., Lawrence KS 66044

Telephone: 785-766-7571

e-mail: brookcreekna@gmail.com; thegreensoaper@yahoo.com

Lawrence City Commission
6 East 6th Street
Lawrence KS 66044

July 8, 2015

re: SUP-15-00185, Verizon Moodie Rd. Tower

Mayor Farmer and Commission:

We first want to thank the Commission for your interest in protecting our east side neighborhoods during Verizon's first application on Bullene Ave., and this current application on Moodie Rd. The Commission took the proper steps in meeting Verizon's lawsuit with a strong defense. This was evidenced by Verizon's acknowledgment that the Moodie Rd. site is far more appropriate, as all the neighbors made clear last year.

Brook Creek Neighborhood Association tentatively supports this new application for a Special Use Permit on property owned by the Ottawa Cooperative Association. The long-standing industrial use of the subject property is consistent with it's industrial zoning, and therefore not in conflict with the Burroughs Creek Corridor Plan goals, as was the 2014 Bullene Ave. site. Unlike the very close proximity of the Bullene Ave. site to two areas of residential zoning and use, and to two areas of residence/office zoning, the Moodie Rd. site is reasonably distant from the three nearby residential areas. And the the tower location on the eastern edge of the subject property places it fairly distant from the Burroughs Creek Trail.

However, our Neighborhood Association considers the minimal landscaping recommendation to be inadequate. Staff simply calls for five trees on the east property line to buffer the residences to the south. We would like this SUP condition to be strengthened with clearly stated stipulations.

We recommend that the Commission add wording to this first condition to comply with the [Community Design Manual](#), Industrial Landscaping Standards, wording that says:

- Utilization of a variety of deciduous and non-deciduous plantings shall be used
- Provide buffers between different land uses or site areas
- Buffer the line of site for taller structures
- Landscaping should be in scale with adjacent buildings and of an appropriate size at maturity to accomplish its intended purpose

The Verizon tower (and the grain elevators) are uncharacteristically tall for Lawrence, not the typical business park or 35 foot building. The tower is on high land elevation and very exposed, so it should be buffered from the two other residential areas along 19th Street as well, to the N.E. and N.W. 4 deciduous trees and 3 Norway Spruce should be required along the north line of the subject property. 6 deciduous trees and 5 Norway Spruce should be required along the north 500 feet of the east property line. The trees should be a 3" caliper at planting, and species that will be at least 80 feet at maturity. With the SUP condition so worded, we can support this SUP.

Sincerely,

Rena Figures



Sunflower Rail-Trails Conservancy, Inc.
 PO Box 44-2014
 Lawrence, Kansas 66044
 www.sunflowertrails.org

RECEIVED
 JUN 16 2015
 City County Planning Office
 Lawrence, Kansas

June 15, 2015

Lawrence Douglas County
 Planning Commission
 c/o Planning and Development
 City Hall, 6 East Sixth St.
 Lawrence, KS 66044

Dear Commissioner:

Since Verizon apparently misled the planning commission (by testifying that their engineers asserted that no other site would work) and immediately filed suit against the City without trying to compromise first, they should be required to perform some mitigation.

They could be required to put a berm topped with a belt of a mix of evergreen trees (firs, spruce, etc.) along the whole western boundary of the grain elevator property to help screen these eyesores from trail users on the Burroughs Creek Trail. As a precedence, the developers of the Oread Hotel put in fir trees in front of the city water tower on Jayhawk Blvd.

Thank you for paying attention to my comments.

Clark Coan
 Corporate Secretary
 Public Information Specialist

BOARD OF DIRECTORS

President: Larry Ross, Wichita; Vice-president: Richard Stein, Dodge City; Secretary: Clark Coan, Lawrence;
 Treasurer: Carol O'Neal, Marysville

From: [Clark Coan](#)
To: [Sandra Day](#)
Subject: Verizon Cell Phone Tower
Date: Thursday, May 07, 2015 5:16:22 PM

Sandra,

Since Verizon apparently misled the planning commission (by saying their engineers claimed that no other site would work) and immediately filed suit against the City without trying to compromise first, they should be required to do some mitigation.

They could be required to put a belt of evergreen trees (firs, spruce) along the western boundary of the grain elevator property to help screen these eyesores from trail users on the Burroughs Creek Trail. As a precedence, the developers of the Oread Hotel put in fir trees in front of the city water tower on Jayhawk Blvd.

Thank you for paying attention to my comments.

Clark Coan
Corporate Secretary
Public Information Specialist
Sunflower Rail-Trails Conservancy

P.S. I see where the contractors for Menards have started earth work in preparation of laying concrete for the Naismith Trail extension.