

AGENDA

RILEY COUNTY PLANNING BOARD/ BOARD OF ZONING APPEALS

Monday, April 12, 2010
7:30 p.m.

Commission Meeting Room
Courthouse Plaza East

I. OPEN PUBLIC COMMENTS

II. CONSENT AGENDA

1. Consider the minutes of the March 8, 2010 meeting.
2. Consider the Report of Fees for the month of March 2010.

III. GENERAL AGENDA- RILEY COUNTY PLANNING BOARD

1. Public Hearing at the request of Billy Gray, petitioner, and Billy and Angelia Gray, owners, to **rezone** a tract of land from "G-1" (General Agricultural) to "A-5" (Single Family Residential). **ACTION NEEDED: Recommend approval/denial to the Board of County Commissioners**
2. Public Hearing at the request of Billy Gray, petitioner, and Billy and Angelia Gray, owners, to **plat** a tract of land in Center Township, Section 35, Township 6 South, Range 5 East, in Riley County, Kansas, into one (1) residential lot. **ACTION NEEDED: approve/deny Final Plat.**
3. Review of Riley County, Kansas Land Development Regulation Project Diagnosis and Annotated Outline by Clarion Associates.
4. Quarterly Analysis of the LESA System.
5. Discussion of the proposed Resolution Establishing an Attendance Policy.

RILEY COUNTY PLANNING BOARD/
BOARD OF ZONING APPEALS
AGENDA
APRIL 12, 2010

IV. GENERAL AGENDA- RILEY COUNTY BOARD OF ZONING APPEALS

1. Review and adopt by-laws.
2. Consider the request of NexGen Energy Partners, petitioner, and Riley County USD 378, owner, for a **variance** authorization to increase the maximum total height of a non-commercial wind energy conversion system tower from 150 feet to 160 feet (6.67%).
3. Consider the request of Fred Willich, petitioner, and Frederick W. Willich Living Trust, owner, for a **variance** authorization to reduce the front yard (north property line) and rear yard (south property line) requirements from 25 feet to 15 feet.



PLANNING & DEVELOPMENT

STAFF REPORT

Platting and Rezoning

PETITION: (#10-05) Rezone from "G-1" (General Agricultural) to "A-5" (Single Family Residential)
(#10-06) Plat

APPLICANT: Billy Gray
122 Webb Ln
Crab Orchard, TN 37723

PROPERTY OWNERS: Billy and Angelia Gray
122 Webb Ln
Crab Orchard, TN 37723

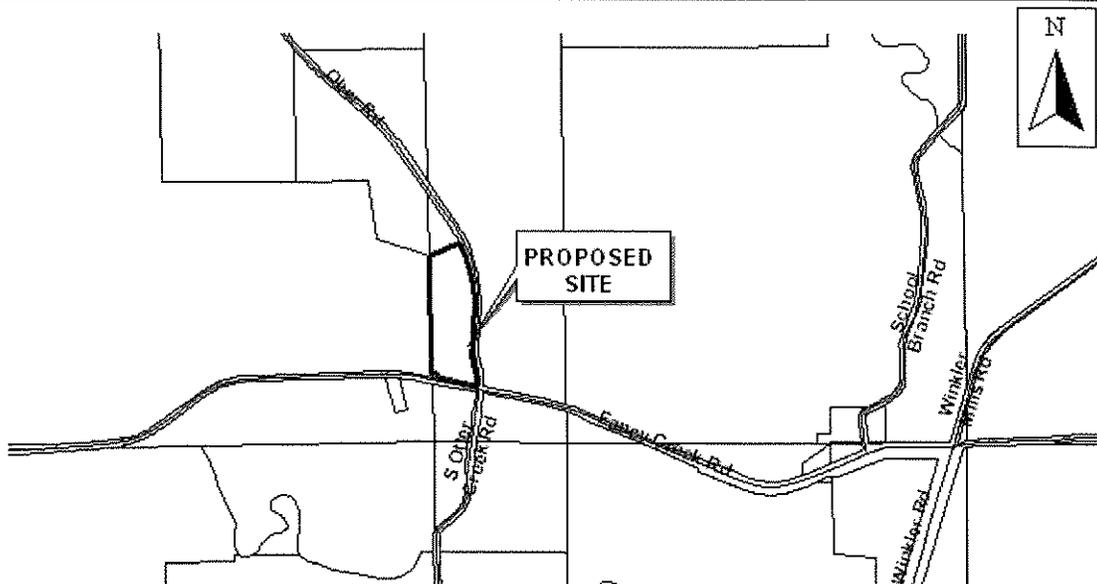
REPRESENTATIVE: Tim Sloan, SMH Consultants
4201 Anderson Ave B Ste 2
Manhattan, KS 66503

TYPE OF REQUEST: Request to rezone a tract of land from "G-1" (General Agricultural) to "A-5" (Single Family Residential) and plat said tract into one (1) lot.

SIZE OF TRACT: The subject site is approximately 12.38 acres.

LOCATION: Generally located at the northwest corner of the intersection of Fancy Creek Road and Ober Road; Section 35, Township 6 South, Range 5 East, Center Township.

JURISDICTION: This application is subject to the requirements of the Riley County Subdivision Regulations.



BACKGROUND: The subject property is an approximately 12.3-acre portion of a larger 144-acre tract. Ober Road transects the parent tract, creating the appearance of two separate parcels. The subject property has been developed several years with a limestone home, likely incidental to a farming operation. Although the Applicant was not interested in obtaining the home, the seller of the property insisted that the home be included with the sale of the parent tract. The Applicant has received several offers on the homesite for residential use. The Applicant wishes to sell the subject property under the auspices of an extraneous farmstead. The home and a few outbuildings will remain on the proposed lot, while the remainder of the parent tract will stay in agricultural production and open space.

DESCRIPTION:

Physical site characteristics: An un-named tributary (dry creek) runs along the west side of the north half of the subject property. The tributary is bounded by several mature trees and flows from north to south and feeds Fancy Creek. The majority of southern portion of the tract is cropped and consists of prime agricultural soils. The existing home is currently within the designated 100-year (1% annual chance) floodplain. Only a small portion of the proposed lot lies within said floodplain.

General character of the area: The area is a mix of farms (crops and livestock) and unfarmed open space not utilized for agricultural purposes.

SUITABILITY OF ZONING:

Current zoning: The subject site is currently zoned “G-1” (General Agricultural) and has been zoned as such since at least 1974.

Proposed zoning: The Applicant is proposing to rezone the property from “G-1” (General Agricultural) to “A-5” (Single Family Residential). The Riley County Subdivision Regulations require that any division of land into parcels less than 20 acres must be platted. Furthermore, the Riley County Zoning Regulations require tracts less than 20 acres be rezoned to something other than “G-1” General Agricultural, unless it is determined that the property is eligible for agricultural exemption. Thus, since each of the proposed lot will be less than 20 acres and intended for residential development, the logical zoning district classification is “A-5” Single Family Residential.

| SURROUNDING ZONING/LAND USE | | |
|-----------------------------|------------------------------|-------------------------|
| | ADJACENT ZONING | LAND USE |
| NORTH | “G-1” (General Agricultural) | Open space/pasture |
| SOUTH | “G-1” (General Agricultural) | Livestock/crops/pasture |
| EAST | “G-1” (General Agricultural) | Pasture/open space |
| WEST | “G-1” (General Agricultural) | Crops |

POTENTIAL IMPACT:**Public facilities and services:**

Streets and bridges: The subject property has direct access to Ober Road, a gravel, two-lane county road.

Water and sewer: Proposed Lot 1 is served by an on-site septic system and water well.

Fire: Riley County Fire District #1 will serve the site. The nearest County Fire Station is located at 17925 May Day Road. The subject site is located within five road miles of a fire station.

Effect on public facilities and services: It is not anticipated that the proposed development will have an adverse impact on public facilities and/or services.

CONFORMANCE TO THE LAND USE PLAN:

The request was reviewed with the 2009 Vision 2025 Riley County Comprehensive Plan, specifically the Development Guidance System (Chapter 12). The analysis is as follows:

Conformance to the Goals, Objectives and Policies

Goal for residential:

To allow for the development of a diversity of housing types, sizes and price levels to meet the changing needs of all county residents.

Objective R4: Allow for adequate amounts of single family housing in suitable locations throughout the county.

Policies:

R4.2 Roads serving residential developments should safely accommodate anticipated traffic.

Future Land Use Map

According to the Future Land Use Map North (Figure 11.2) found in the Plan, the subject property is not located within a designated growth area.

The Land Evaluation/Site Assessment (LESA) Score

According to the final score of the LESA analysis, the subject property achieved 1689 points (Strong for Preservation). The site scored 500 points for conforming to rural guidelines. No bonus points were factored into the analysis.

Hardship on the landowner

Currently, the Applicant is not claiming a hardship.

Staff analysis: Although nearly half of the subject property consists of prime agricultural soils, the subject property has been developed for several years. Rather than abandon the house and outbuildings and allow them to go into disrepair, the Applicant wishes to divide the property so that the extraneous home site and surrounding cropland can both remain in use. Due to the character of the existing development, it is not anticipated that rezoning the property to a

residential zoning district will cause conflicts. Furthermore, the proposed acreage (and proposed zoning designation) will provide sufficient land to adequately accommodate horses. Therefore, the platting and rezoning proposed by the Applicant is consistent with the Plan.

COMMENTS AND CONCERNS:

HEALTH DEPARTMENT: The Riley County-Manhattan Health Department staff has reviewed this plat and found it in compliance with the Riley County Sanitary Code.

RILEY COUNTY CONSERVATION DISTRICT: The Riley County Conservation District staff has reviewed the request. Although there were no objections, they pointed out that the current structure (house) is in the floodplain.

COUNTY ENGINEER: The County Engineer has reviewed the request and had no objections.

FORT RILEY: The Director of Public Works on Fort Riley has reviewed the request and stated that the property is located in an area where noise generated by Fort Riley's military activities, while often perceptible to persons at that location, is generally considered compatible with the proposed use of the land. However, during periods of increased military operations on Fort Riley, it can be expected that some individuals at that location may be annoyed by the noise generated by the operations.

LAW ENFORCEMENT CENTER: The Assistant Director of the Law Enforcement Center has reviewed the request and had no objections.

EMERGENCY MANAGEMENT: The Director of Riley County Emergency Management has reviewed the request and reported that the site is less than five (5) miles from May Day fire station so it would be considered an ISO 9 rating. He also stated that there is no municipal water available within 15 miles of the site.

STAFF RECOMMENDATIONS: Staff recommends that the Planning Board forward a recommendation of approval of the request to rezone the proposed property based on the following:

- Existing residential development for several years;
- The site has existing ingress/egress onto a county road, with no additional impact to existing traffic patterns;
- Generally conforms to the objective of the "extraneous farmstead" language found in Chapter 14: Action Plan (6), of the Vision 2025 Comprehensive Plan, which strongly encourages the continued use of these sites by developing regulations that facilitate the process as much as possible;
- Continued use of an existing residential structure will sustain the tax value of the property;
- Platting and rezoning the property will allow the farmstead (home, barn, outbuildings) to continue to be used for residential purposes, while allowing the surrounding cropland/pastures to stay in agricultural production.

Staff also recommends approval of the request to plat the proposed property, as it has been determined that all requirements of the Riley County Subdivision Regulations, Zoning Regulations and Sanitary Code have been met.

POSSIBLE MOTION(S)

ACTION NEEDED FOR REZONING:

- A. Move to approve the request to rezone the subject property from “G-1” (General Agricultural) to “A-5” (Single Family Residential) for the following reasons:
- The rezoning is compatible with the character of the neighborhood.
 - The rezoning is compatible with the zoning and uses of properties nearby.
 - The subject property is not suitable for the uses allowed by the current zoning.
 - Removal of the current restrictions by rezoning will not detrimentally affect nearby property.
 - The subject property has remained vacant as zoned for a substantial time period.
 - The gain to the public health, safety and welfare by denying rezoning is not as great as the hardship imposed upon the individual landowner.
 - The rezoning is consistent with the recommendations of permanent or professional staff.
 - The rezoning conforms to the adopted comprehensive plan.
 - The rezoning will not detrimentally affect the conservation of the natural resources of the County.
 - The rezoning will result in the efficient expenditure of public funds.
 - The rezoning will promote the health, safety, convenience, prosperity and general welfare of the inhabitants of the County.

Or

- B. Move to deny the request to rezone the subject property for the following reasons:
- The rezoning is incompatible with the character of the neighborhood.
 - The rezoning is incompatible with the zoning and uses of properties nearby.
 - The subject property is not suitable for the uses allowed by the proposed zoning.
 - Removal of the current restrictions by rezoning will detrimentally affect nearby property.
 - The subject property is developed or utilized as zoned for a substantial time period.
 - The gain to the public health, safety and welfare by denying rezoning is greater than the hardship imposed upon the individual landowner.
 - The rezoning is inconsistent with the recommendations of permanent or professional staff.
 - The rezoning does not conform to the adopted comprehensive plan.
 - The rezoning may detrimentally affect the conservation of the natural resources of the County.
 - The rezoning will result in the inefficient expenditure of public funds.
 - The rezoning will diminish the health, safety, convenience, prosperity and general welfare of the inhabitants of the County.

ACTION NEEDED FOR PLAT:

A. Move to approve the request to plat the subject property into one (1) lot, as it has been determined that it meets the requirements of the Riley County Subdivision Regulations.

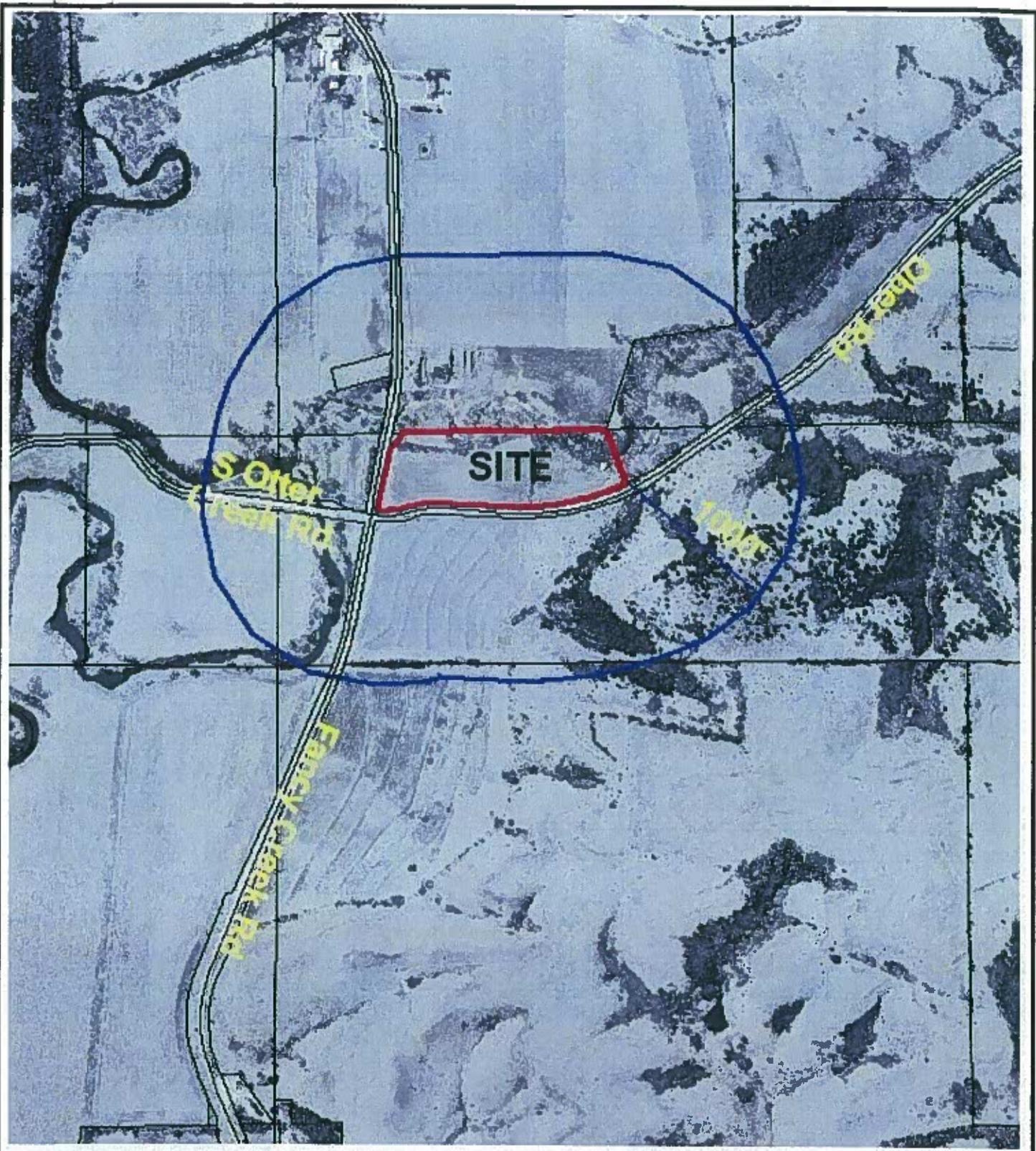
Or

B. Motion to deny the request to plat the subject property into one (1) lot, as it has been determined that it does not meet the requirements of the Riley County Subdivision Regulations.

ATTACHMENTS:

- Vicinity/site map
- Surrounding zoning map
- Soils map
- Final Plat map

Prepared by: Bob Isaac, Planner
April 1, 2010



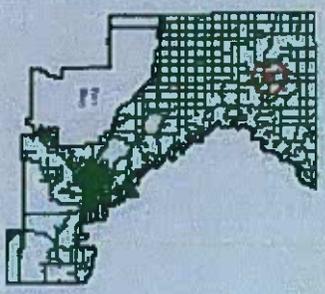
VICINITY & SITE

Gray

Petition #10-06
Rezone G-1 to .5

Petition #10-05
Plat - Gray's Addn

35-6-5





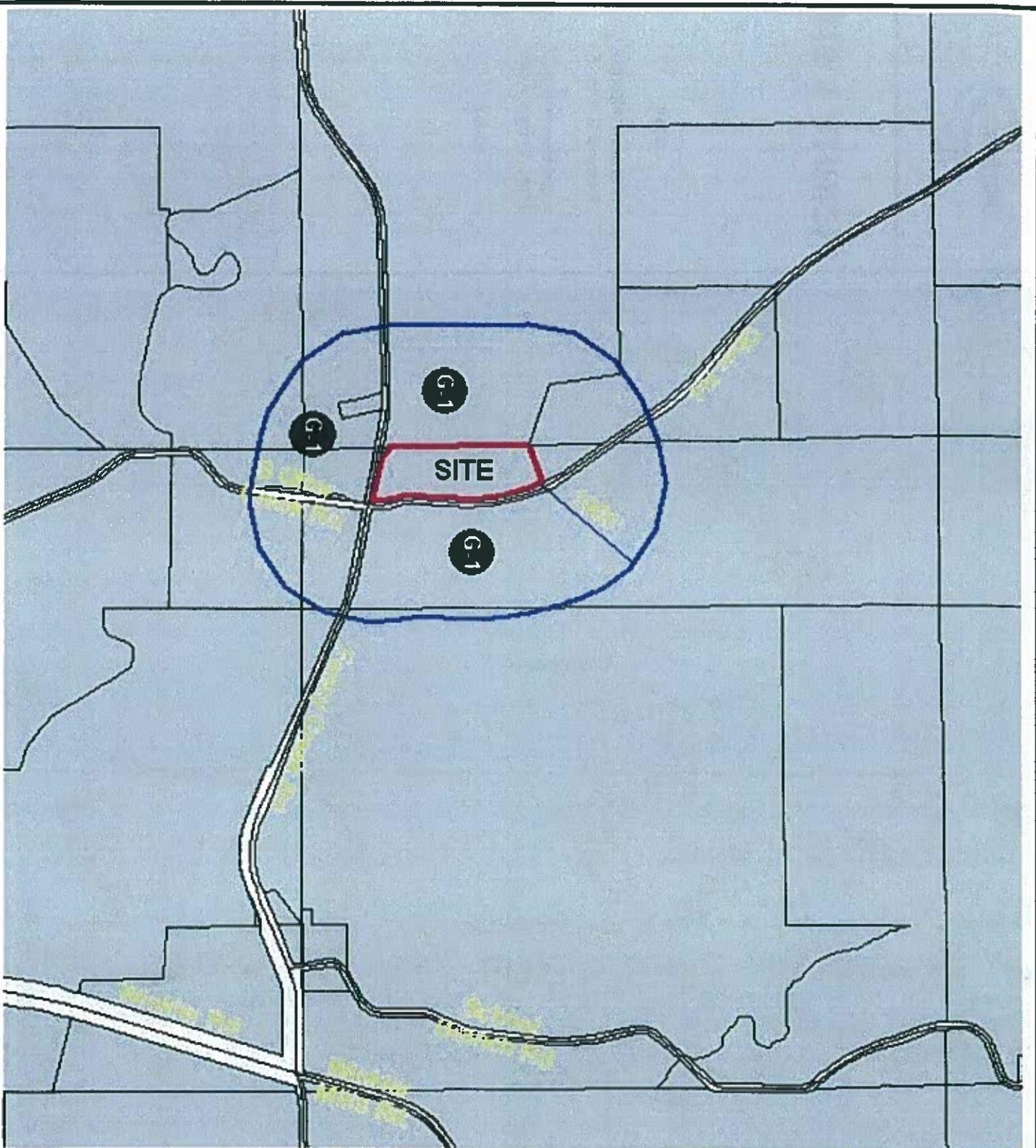
SURROUNDING ZONING

Gray

Petition #10-06
 Rezone G-1 to -5

Petition #10-06
 Plat - Gray's Addn

35-6-5



- County Zoning
- AA- Active Family
 - A-2 Single Family
 - A-3 Single Family
 - A-4 Single Family
 - A-5 Single Family
 - B-1 Farm Family
 - B-2 Medium Density
 - B-3 Medium Density Park
 - C-1 Residential Core
 - C-2 Shopping Core
 - C-3 General Business
 - C-4 Highway/Industrial
 - D-1 Institutional Park
 - D-2 Light Industrial
 - D-3 Heavy Industrial
 - D-4 State/Local Park
 - D-5 Center of Art
 - M-1 Major Retail
 - M-2 Mixed-Use/Office
 - U University



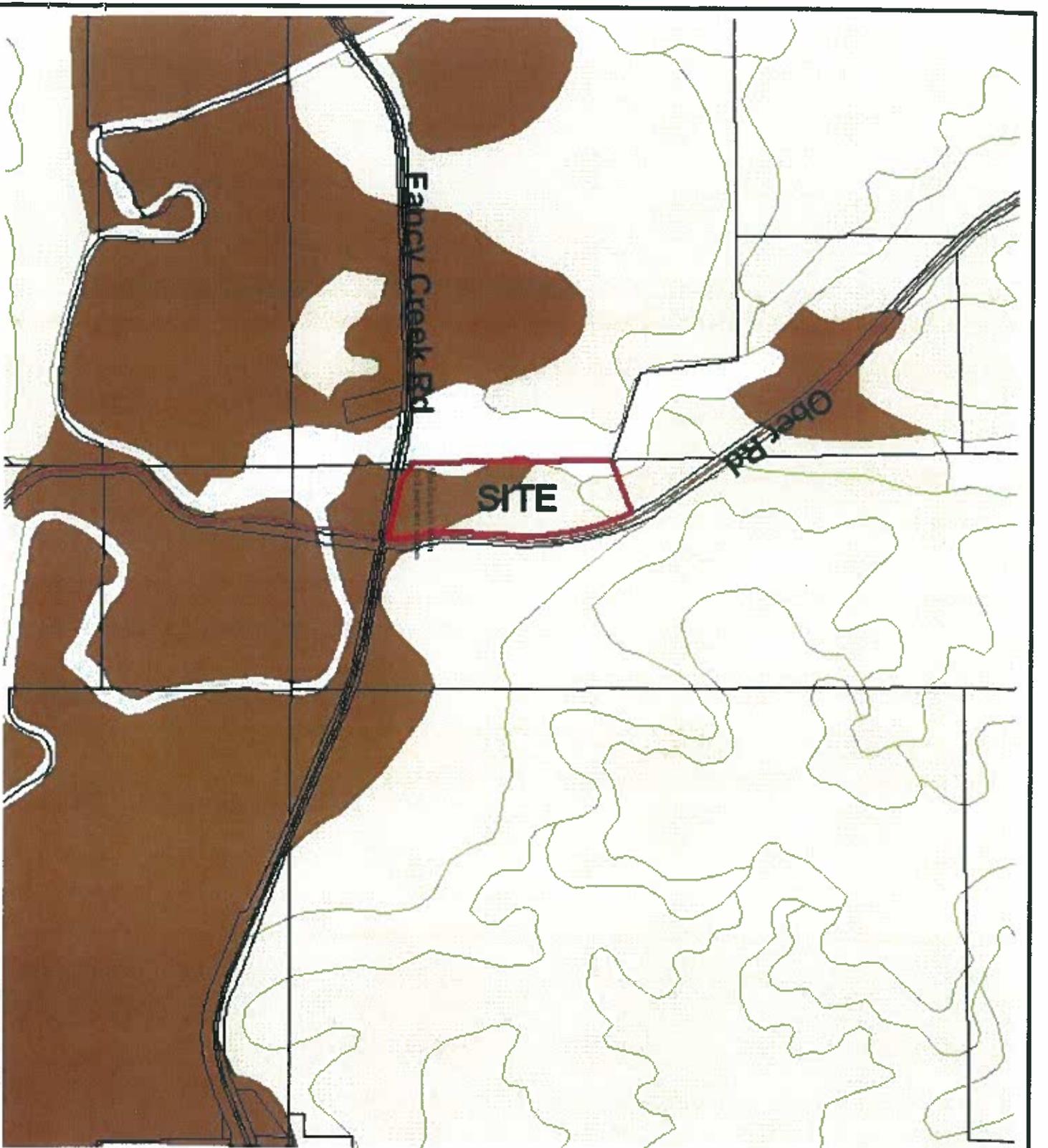
SOILS

Gray

Petition #10-05
Rezone G-1 to -5

Petition #10-06
Plat - Gray's Addn

35-6-5



- SOIL TYPES**
- Prime Soils (NRCS)
 - Statewide Importance (NRCS)
 - Other Soils

DESCRIPTION:

A tract of land in the Southwest Quarter of Section 35, Township 8 South, Range 5 East of the Sixth Principal Meridian, Riley County, Kansas described as follows:

Beginning at a point that is S 01°30'47" W 718.98 feet from the Northwest Corner of the Southwest Quarter of said Section 35, said point of beginning being on the West Line of the Southwest Quarter of said Section 35 and Corner 1, marked by a 1/2" rebar; thence N 69°25'11" E 302.31 feet to the centerline of Ober Road and Corner 2, marked by a 1/2" rebar; thence along the center line of said Ober Road the following 5 courses:
 Course 1: On a curve to the right with a radius of 1500.00 feet on arc distance of 755.22 feet, chord being S 09°34'01" E 747.27 feet to Corner 3, marked by a 1/2" rebar.
 Course 2: S 04°51'24" W 403.94 feet to Corner 4, marked by a 1/2" rebar.
 Course 3: S 17°35'46" E 110.87 feet to Corner 5, marked by a stainless steel survey marker.
 Course 4: On a curve to the right with a radius of 785.02 feet, on arc distance of 140.81 feet chord being S 08°27'27" E 140.83 feet to Corner 6, marked by a stainless steel survey marker.
 Course 5: S 03°19'08" E 52.93 feet to the Northerly right of way line of Fancy Creek Road and Corner 7, marked by a stainless steel survey marker; thence along the Northerly right of way line of said Fancy Creek Road the following 3 courses
 Course 1: N 78°08'32" W 382.71 feet to Corner 8, marked by a 1/2" rebar.
 Course 2: N 48°30'04" W 76.32 feet to Corner 9, marked by a 1/2" rebar.
 Course 3: N 78°08'31" W 45.05 feet to the West Line of the Southwest Quarter of said Section 35 and Corner 10, marked by a 1/2" rebar; thence N 01°30'47" E 1108.47 feet to the point of beginning, containing 12.38 acres.
 Subject to easements and restrictions of record.

OWNER'S CERTIFICATE

STATE OF KANSAS)
 COUNTY OF RILEY) SS

This is to certify that the undersigned is/are the owner(s) of the land hereon described on this plat, and that said owner(s) has/have caused the same to be surveyed and subdivided as indicated thereon, for the uses and purposes herein set forth, and does hereby acknowledge and adopt the same under style and title indicated.

All street rights-of-way as shown on this plat are hereby dedicated to the public. Any easements or licenses as shown on this plat, to locate, construct and maintain or authorize the location, construction and maintenance of poles, wires, conduits, water, gas and sewer pipes or required drainage channels or structures upon the area marked for easements on this plat, are hereby granted to the public.

Given under my hand at _____ Kansas this _____ day of _____, 2010.

Billy R. Gray _____
 Angella P. Gray _____

NOTARY PUBLIC

STATE OF KANSAS)
 COUNTY OF RILEY) SS

BE IT REMEMBERED, that on this _____ day of _____, A.D. 2010, before me, the undersigned, a notary public in and for the County and State aforesaid, came

Billy R. Gray and Angella P. Gray, husband and wife

personally known to me to be the same persons who executed the foregoing Owner's Certificate, and duly acknowledged their execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

Notary Public _____

My appointment expires: _____

CERTIFICATE OF THE COUNTY COMMISSION

STATE OF KANSAS)
 COUNTY OF RILEY) SS

Approved this _____ day of _____, 2010,
 Board of Commissioners, Riley County, Kansas.

Chairperson _____ Commissioner _____

Commissioner _____ Attest: County Clerk _____

CERTIFICATE OF THE REGISTER OF DEEDS

STATE OF KANSAS)
 COUNTY OF RILEY) SS

This instrument was filed for record on the _____ day of _____, A.D. 2010, at _____ o'clock _____ M. and duly recorded in Book _____ on Page _____

Register of Deeds _____

Deputy _____

APPROVAL OF COUNTY OFFICERS

STATE OF KANSAS)
 COUNTY OF RILEY) SS

County Engineer _____

County Counselor _____

County Health Officer _____

RILEY COUNTY PLANNING BOARD CERTIFICATE

STATE OF KANSAS)
 COUNTY OF RILEY) SS

Approved this _____ day of _____, A.D. 2010.

Riley County Planning Board.

Chairperson _____ Member _____

Member _____ Member _____

Member _____

RILEY COUNTY PLAT REVIEW SURVEYOR SIGNATURE BLOCK

This plat has been reviewed and approved for filing pursuant to K.S.A. 58-2000 and with the requirements of Riley County Resolution No. _____ No other warranties are extended or implied.

Approved: _____

License Number: _____ Date: _____

SURVEYOR'S CERTIFICATE

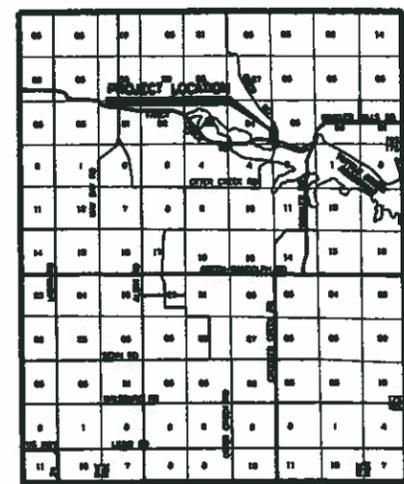
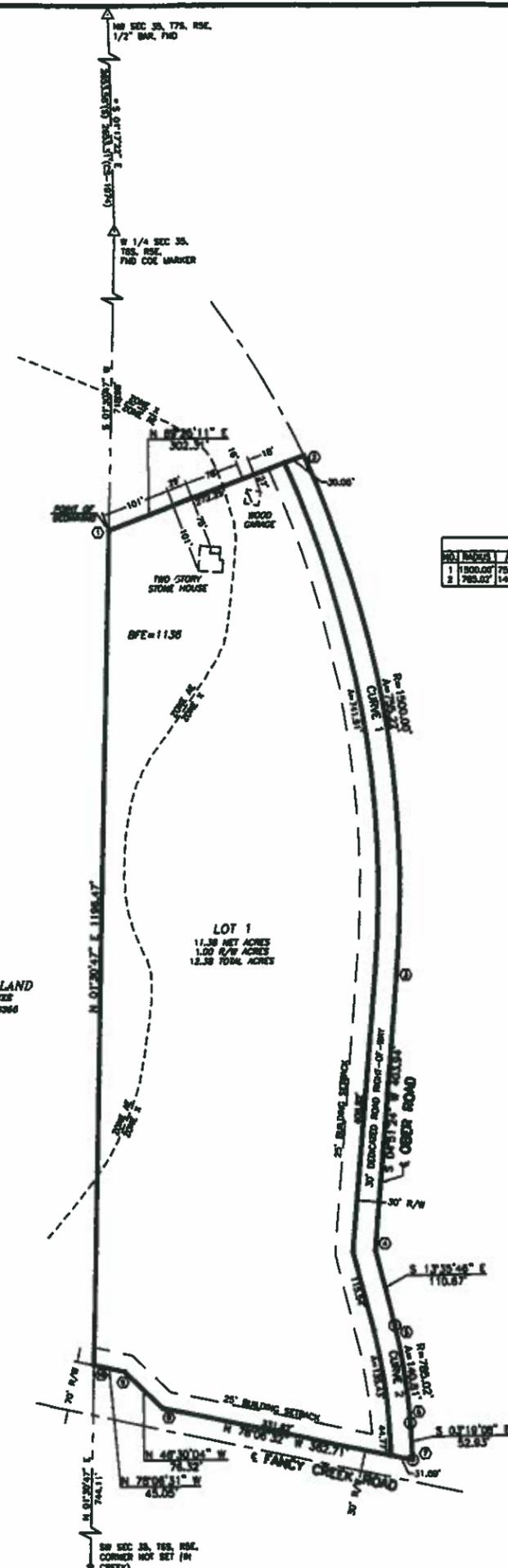
STATE OF KANSAS)
 COUNTY OF RILEY) SS

I, the undersigned, do hereby certify that I am a Registered Land Surveyor in the State of Kansas, with experience and proficiency in land surveying; and that the heretofore described property was surveyed and subdivided by me, or under my supervision, that all subdivision regulations of Riley County, Kansas, have been complied with in the preparation of this plat, and that all the monuments shown herein actually exist and their positions are correctly shown to the best of my knowledge and belief.

Given under my hand and seal of Manhattan, Kansas this _____ day of _____, A.D., 2010.

SMH Consultants
 By: Tim Sloan
 REGISTERED LAND SURVEYOR
 LS-783
 Tim Sloan, R.L.S. #10885
 President

UN-PLATTED LAND
 S.W. 1/4 SEC. 35,
 T8S, R5E, RILEY COUNTY, KANSAS
 ZONING: G-1



VICINITY MAP (NOT TO SCALE)

LEGEND

- △ Section Corner
- 1/2" x 24" Rebar or CLS8 Cop Set
- ⊙ Stainless Steel Survey Marker Set
- ⊛ Corner Nail Set
- Corner Number
- (S) Surveyed Distance
- CS-18741 Surveyed Distance from Survey of Tuttle Creek Lake dated July, 1974
- Matched Bearing from Survey of Tuttle Creek Lake dated July, 1974

NOTE:
 If an entrance pipe is required, the minimum size shall be consistent in accordance with the Riley County Standards and Specifications. In no case shall the diameter of the pipe be less than 18 inches.

FLOOD INFORMATION NOTE:
 Flood Insurance Rate Map, Map Number 20161C0150C, identifies this property as situated in Zone X, and Zone AE. Zone X is stated as "Areas determined to be outside the 0.25 percent chance floodplain". Zone AE is stated as "Special Flood Hazard Areas subject to inundation by the 1% Annual Chance Flood, with Base Flood Elevations determined. The SFE for the subject property is 1135."

NOTE:
 Right of way shown on this survey were taken from County Assessor-Map No. 047 dated Jan. 1, 1998 and from plans for Phase I, Tuttle Creek Reservoir, Riley County Road Reconnection, Rehabilitation No. A, dated Dec. 1981.

No gas or overlap exist.

Bearings used for this survey were based on the east line of the Northwest Quarter of Section 35, T8S, R5E, being described as S 01°17'22" E as shown on the Boundary Survey for Tuttle Creek Lake dated July, 1974.

There are no lines of possession that affect this survey.

Parent Tract is recorded in Book 833, Page 8171, Register of Deeds Office, Riley County, Kansas.

There are no existing buildings on subject property except as shown.

Final Plat
GRAY'S ADDITION
 in the Southwest Quarter of Section 35,
 T8S, R5E, Riley County, Kansas



4201B Anderson Avenue, Suite 2 • Manhattan, Kansas 66503
 (785) 776-0541 • FAX 776-9780 • Email: tim@smhconsultants.com
 Project #100119MS DD #83

FEBRUARY 2010



PLANNING & DEVELOPMENT

STAFF REPORT

Variance

PETITION: # 10-07 Variance

APPLICANT: NexGen Energy Partners
1881 9th St, Ste 120
Boulder, CO 80302

PROPERTY OWNER: Riley County USD 378
204 W Kansas, P O Box 326
Riley, KS 66531

TYPE OF REQUEST: To increase the maximum total height of a non-commercial wind energy conversion system tower from 150 feet to 160 feet (6.67%).

SIZE OF TRACT: The subject site is approximately 10.14 acres.

LOCATION: Generally located approximately 1400 feet south of Fairview Church Road, on the west side of Falcon Road; Section 26, Township 8 South, Range 5 East; Madison Township.



BACKGROUND: Encouraged to seek renewable energy sources, USD #378 entered into an agreement with NexGen Energy Partners, LLC, in October 2009, in order to install and operate two (2) 100kW horizontal axis wind energy generators on the Riley County High School campus. The purpose was to reduce energy costs to the school by 10-15% per year. Unfortunately, due to the inability to secure a state grant, the Applicant was forced to reduce the number of turbines to one (1) 156-foot (total height) turbine (funded by USDA). NexGen Energy Partners, LLC will own the tower and will be responsible for the installation, operation, maintenance, insurance and decommissioning of the tower. The school district will be responsible for hosting the turbine on their property.

DESCRIPTION:

Physical site characteristics: The site is developed as the Riley County High School campus, including the football field/outdoor track complex and a two-cell wastewater lagoon system.

General character of the area: The subject site is predominantly rural, with a mix of large-lot suburban residential development.

ZONING:

Zoning History: The site has been zoned "G-1" (General Agricultural) since 1974. There are no existing conditional uses or variances associated with the property.

STAFF EVALUATION OF VARIANCE CRITERIA:

- a. The variance request arises from conditions which are unique to the property in question and which are not ordinarily found in the same zone or district and that such conditions are not created by an action of the owner or applicant.**

In order for wind energy conversion systems to function properly, turbines must be located in such a way that they receive unobstructed airflow. This objective is achieved by siting towers an appropriate distance from obstructions, such as hills, trees, buildings, and other towers; and/or by increasing the height of the towers. The specific topographical conditions are unique for each individual tower. In this case, minimizing or preventing negative impacts on the school or surrounding properties, while maintaining the economical viability of the project, greatly depends on the specific placement and height of the tower. These conditions that necessitate the granting of a variance were not created by an action of the owner or Applicant.

- b. The granting of the variance will not adversely affect the rights of adjacent property owners or residents.**

The proposed turbine is a Northwind 100kW rated machine. These are direct drive (meaning there is no gear box), thus reducing mechanical noise. The machine is rated to withstand winds of 133 mph. with a maximum rotation speed of 59 rpm.

The tower is a monopole design which consists of tubular steel construction. Access to the nacelle is from inside the tower with an internal ladder system. Hub height is 121 feet

with a rotor diameter of 69 feet. Total height to the top of the rotor (in the vertical position) from the base is 156 feet.

The turbine is rated for sound at 55 dB at 40 meters (131 ft.) from the base (according to the specifications and as tested according to the standard). Decibel levels decrease by 6dB with each doubling of distance. For example, at 80m (262 ft.) the level will be 49 dB(A). A normal refrigerator is around 40 dB(A).

Strategic placement of the proposed tower should eliminate concerns of shadow cast or shadow flicker. No shadow from the turbine will be cast on an occupied dwelling or on the football field/track.

Thus, the granting of the variance will not adversely affect the rights of adjacent property owners or residents.

- c. The strict application of the provisions of the zoning regulations from which the variance is requested will constitute unnecessary hardship upon the property owner or applicant.**

Originally, the project included the installation of two towers, dependent upon the awarding of two separate grants. The Applicant was unable to secure grant funding for two towers and was forced to reduce the number of towers to one. Installation of a shorter tower would result in approximately 12% less production and would make the project economically disadvantaged.

- d. The variance requested will not adversely affect the public health, safety and welfare.**

It is not anticipated that the request will adversely affect the public health, safety or welfare. Conversely, the proposed wind energy conversion system will save on overall energy costs for the Riley County High School, which translates into savings of taxpayer dollars. In addition to the positive economic benefits, renewable energy technology has several environmental benefits and plays a tangible role in the educational process. New net metering rules that apply to Westar (service provider for the school district) allow net metering of up to 200 kW of production. This insures that the energy produced by the turbine will be credited to the district during nights and weekends when the buildings are not in use.

- e. The granting of the variance will not be opposed to the general spirit and intent of the regulations.**

It is not anticipated that the request will be opposed to the general spirit and intent of the regulations.

COMMENTS AND CONCERNS:

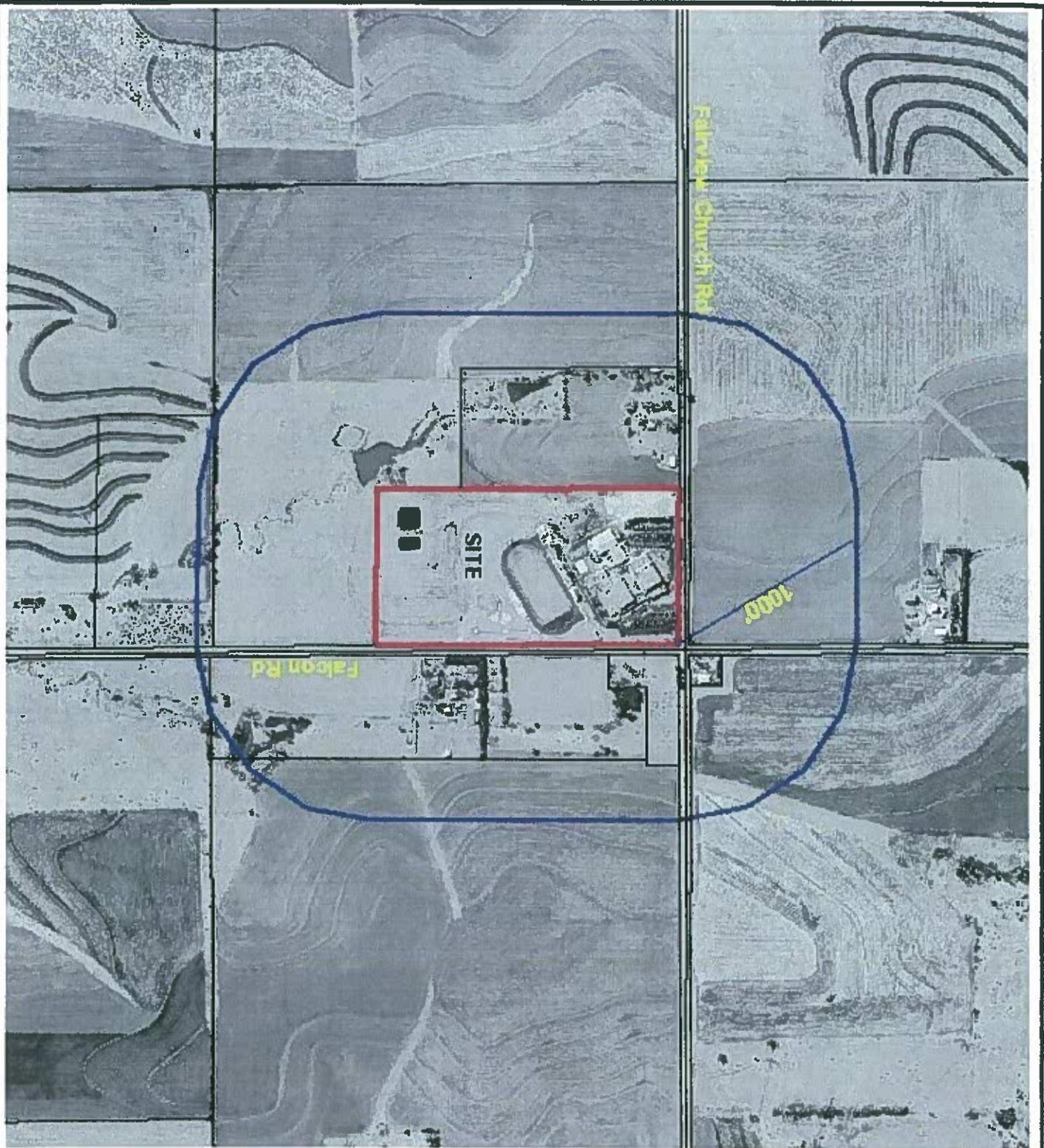
FORT RILEY: The request was review by officials on Fort Riley. Herb Abel, Chief of Ft. Riley's Environmental Division, has conferred with other installation personnel and concluded that the impact of the construction and operation of the proposed single turbine would, by itself, cause little adverse impact to Fort Riley's operations and regional aviation operations. He stated that Fort Riley has no objections to construction and operation of that particular tower alone; however, they are very concerned about the potential cumulative adverse effects if additional similar towers were to be constructed and operated in Riley County. He explained that while each may, individually, have little adverse effect, their net cumulative effect could be significantly adverse to military interests, regional aviation interests and other regional interests.

STAFF RECOMMENDATIONS: Staff recommends that the requested variance be approved.

ATTACHMENTS:

- Vicinity/site map
- Surrounding zoning map
- Memo from Fort Riley

Prepared by: Bob Isaac, Planner
April 5, 2010

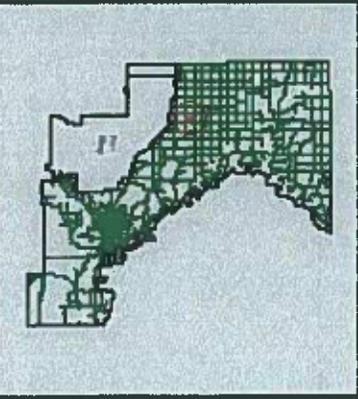


VICINITY & SITE

NextGen Energy
Partners

Petition #10-07
Variance

26-8-5



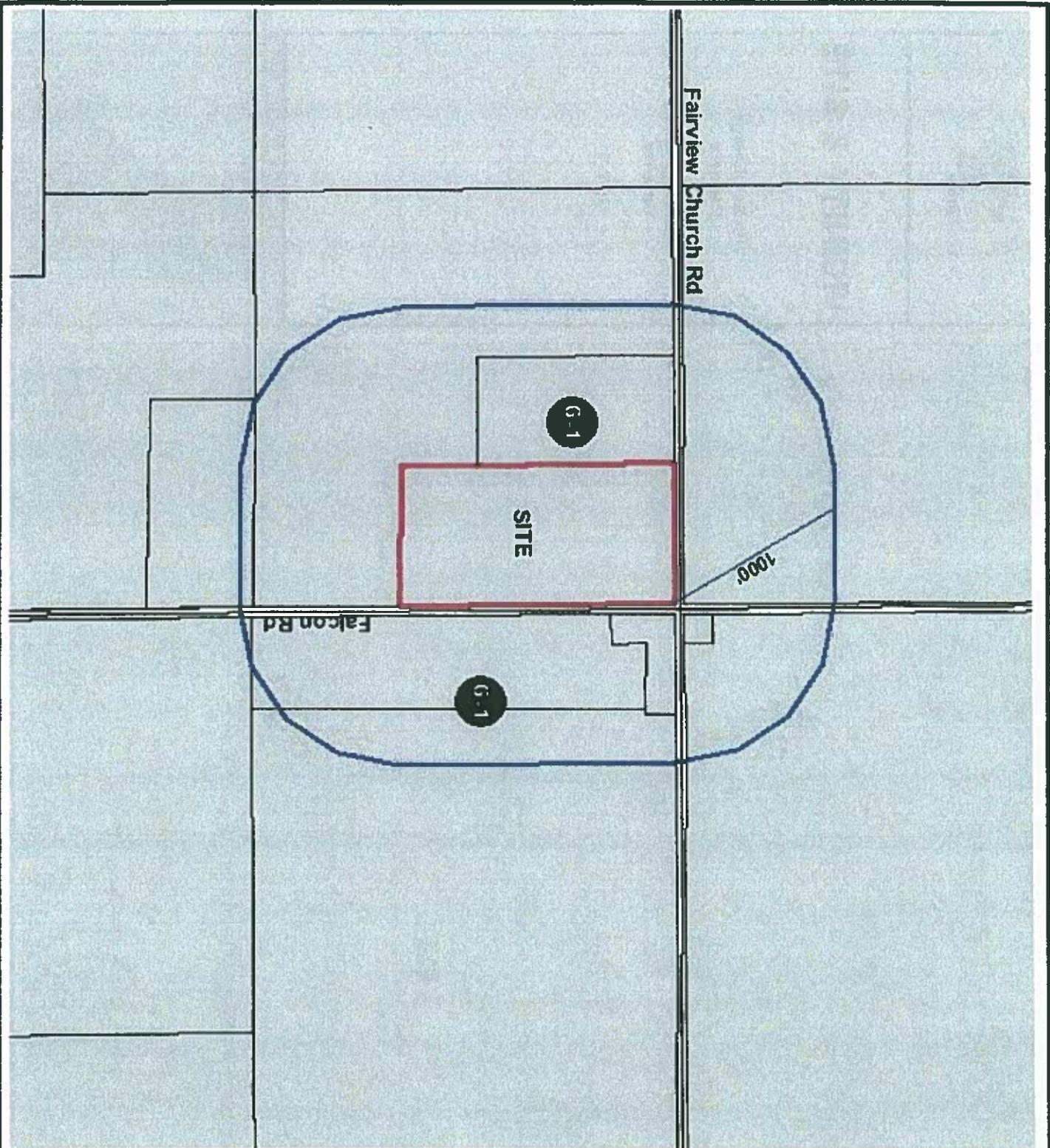


SURROUNDING ZONING

NexGen Energy
Partners

Petition #10-07
Variance

26-8-6



Color Key

| | |
|---------|--------------------------|
| [Color] | A-1 Single Family |
| [Color] | A-2 Single Family |
| [Color] | A-3 Single Family |
| [Color] | A-4 Single Family |
| [Color] | A-5 Single Family |
| [Color] | B-1 Medium Density |
| [Color] | B-2 Medium Density |
| [Color] | B-3 Medium Density |
| [Color] | C-1 Residential Use |
| [Color] | C-2 Shopping/Office |
| [Color] | C-3 General Business |
| [Color] | C-4 Professional/Service |
| [Color] | D-1 Industrial/Heavy |
| [Color] | D-2 Light Industrial |
| [Color] | D-3 Heavy Industrial |
| [Color] | D-4 Warehouse/Truck |
| [Color] | E-1 General Use |
| [Color] | E-2 Heavy Industrial |
| [Color] | E-3 Airport/Utility |
| [Color] | E-4 University |

Review by Fort Riley

The following form was submitted via your website: Planning & Development - Bob Isaac

Name: Herb Abel

Address: Bldg 404

City: Fort Riley

State: KS

Zip: 66442

Home Phone Number:

Daytime Phone Number: 785 239 2284

Email Address: herbert.abel@us.army.mil

Please specify your general inquiry, request for service, or complaint:

Good morning Bob. Thank you for soliciting Fort Riley's concerns about the wind turbine proposed for construction near the Riley County High School. I've conferred with other installation personnel and we've concluded that impact of the construction and operation of that particular single turbine would by itself cause little adverse impact to Fort Riley's operations and regional aviation ops. Therefore, we have no objections to construction and operation of that particular tower alone. However, we are very concerned about potential cumulative adverse effects if additional similar towers were to be constructed and operated in Riley County. While each may, individually, have little adverse effect, their net cumulative effect could be significantly adverse to military interests, regional aviation interests and other regional interests. Fort Riley would like to confer with the Riley County Planning Office concerning this potential adverse impact to the region at a time that is both convenient for the Riley County Planning Office and not too distant in the future. Again, thank you for the opportunity to review and comment upon this proposal and I look forward to discussing with you the potential effects of possible additional wind turbines in Riley County.

Herb



PLANNING & DEVELOPMENT

STAFF REPORT

Variance

PETITION: # 10-08 Variance

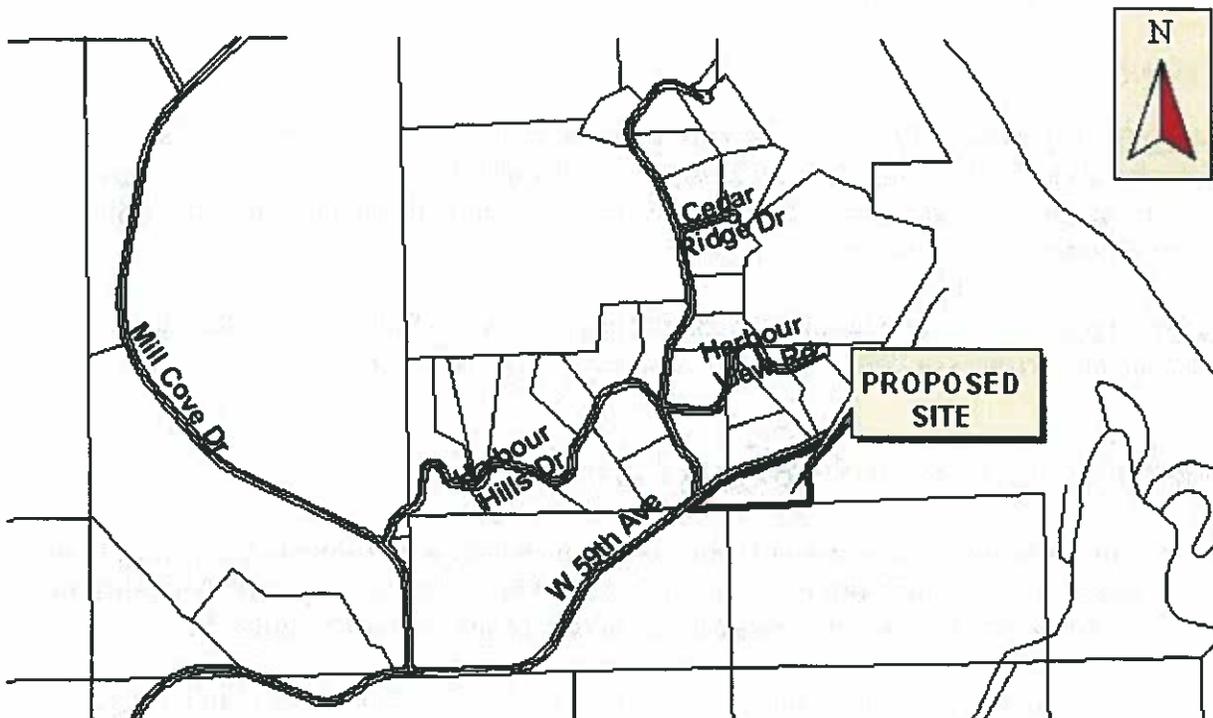
APPLICANT: Fred Willich
7260 W 59th Ave
Manhattan, KS 66503

PROPERTY OWNER: Frederick W. Willich Living Trust
7260 W 59th Ave
Manhattan, KS 66503

TYPE OF REQUEST: Reduce the front yard (north property line) and rear yard (south property line) requirements from 25 feet to 15 feet.

SIZE OF TRACT: The subject site is approximately 7.5 acres.

LOCATION: Generally located at the intersection of West 59th Avenue and Harbour Hills Drive, on the south side of West 59th Avenue; Sections 10 and 9, Township 9 South, Range 7 East; Grant Township.



BACKGROUND: In January 1983, the subject property was rezoned from "A-5" (Single Family Residential) to "A-4" (Single Family Residential) (Pet #83-03) in order to build a house. According to the minutes of the March 28, 1983, Riley County Planning Board meeting, the tract was practically unbuildable due to the 1140 elevation line and the front and rear yard (building setback) requirements of the "A-5" (Single Family Residential) zoning district (50 feet respectfully). Thus, the tract was rezoned to "A-4" (Single Family Residential), which had smaller front and rear yard (building setback) requirements (25 feet respectfully), allowing the property owner to build. However, it is assumed that the distance from the south right-of-way line of W. 59th Avenue was measured incorrectly, resulting in the home being placed within the required front yard (setback). It is also assumed that the rear yard may have been mistaken for the side yard, which in the "A-4" (Single Family Residential) zoning district is 10 feet. The minimum rear yard requirement for the "A-4" (Single Family Residential) zoning district has always been 25 feet.

Nonetheless, the intent of the variance request is to bring the home into compliance with the Riley County Zoning Regulations and correct a longstanding zoning violation. Currently, the homeowner would not be allowed to expand, build on or, if a disaster were to occur, rebuild the home. The Applicant also wishes to eventually build a garage onto the existing home.

DESCRIPTION:

Physical site characteristics: Although the subject property is 7.5 acres in size, only the western tip of the tract is developed (house). The majority of the property is at or below the 1140 ft. elevation line or the U.S. Corps of Engineers easement line for Tuttle Creek Reservoir. The tract generally slopes to the east/southeast.

General character of the area: The surrounding area is a mix of large lot (4-5 acres) low-density suburban residential development.

ZONING:

Zoning History: In May 1981, the subject property was rezoned from "G-1" (General Agricultural) to "A-5" (Single Family Residential) (Pet #81-12). January 1983, the subject property was subsequently rezoned from "A-5" (Single Family Residential) to "A-4" (Single Family Residential) (Pet #83-03).

Current zoning: The subject property is currently zoned "A-4" (Single Family Residential). There are no variances or conditional uses associated with the property.

STAFF EVALUATION OF VARIANCE CRITERIA:

- a. **The variance request arises from conditions which are unique to the property in question and which are not ordinarily found in the same zone or district and that such conditions are not created by an action of the owner or applicant.**

As mentioned previously, the majority of the tract is at or below the 1140 ft. elevation line or the U.S. Corps of Engineers easement line for Tuttle Creek Reservoir, severely limiting the buildable area on the subject tract. This condition is unique to the property

and not ordinarily found in the same zoning district. Moreover, this condition was not created by an action by the property owner or applicant.

- b. The granting of the variance will not adversely affect the rights of adjacent property owners or residents.**

The house has existed at the same location for over 27 years without adversely affecting the rights of adjacent property owners or residents. It is unlikely that the granting of the request will create a negative impact on the rights of neighboring residents.

- c. The strict application of the provisions of the zoning regulations from which the variance is requested will constitute unnecessary hardship upon the property owner or applicant.**

As mentioned previously, the homeowner would not be allowed to expand, build on or, if a disaster were to occur, rebuild the home. Denying the request would keep the structure in non-compliance with the zoning regulations, making it difficult to expand, rebuild or sell. Recognizing the length of time the house has existed at that location without incident, there's the potential that by denying the request for the opportunity to bring the home into compliance could create and perpetuate an unnecessary hardship upon the property owner.

- d. The variance requested will not adversely affect the public health, safety and welfare.**

It is not anticipated that the granting of the request will adversely affect the public health, safety or welfare.

- e. The granting of the variance will not be opposed to the general spirit and intent of the regulations.**

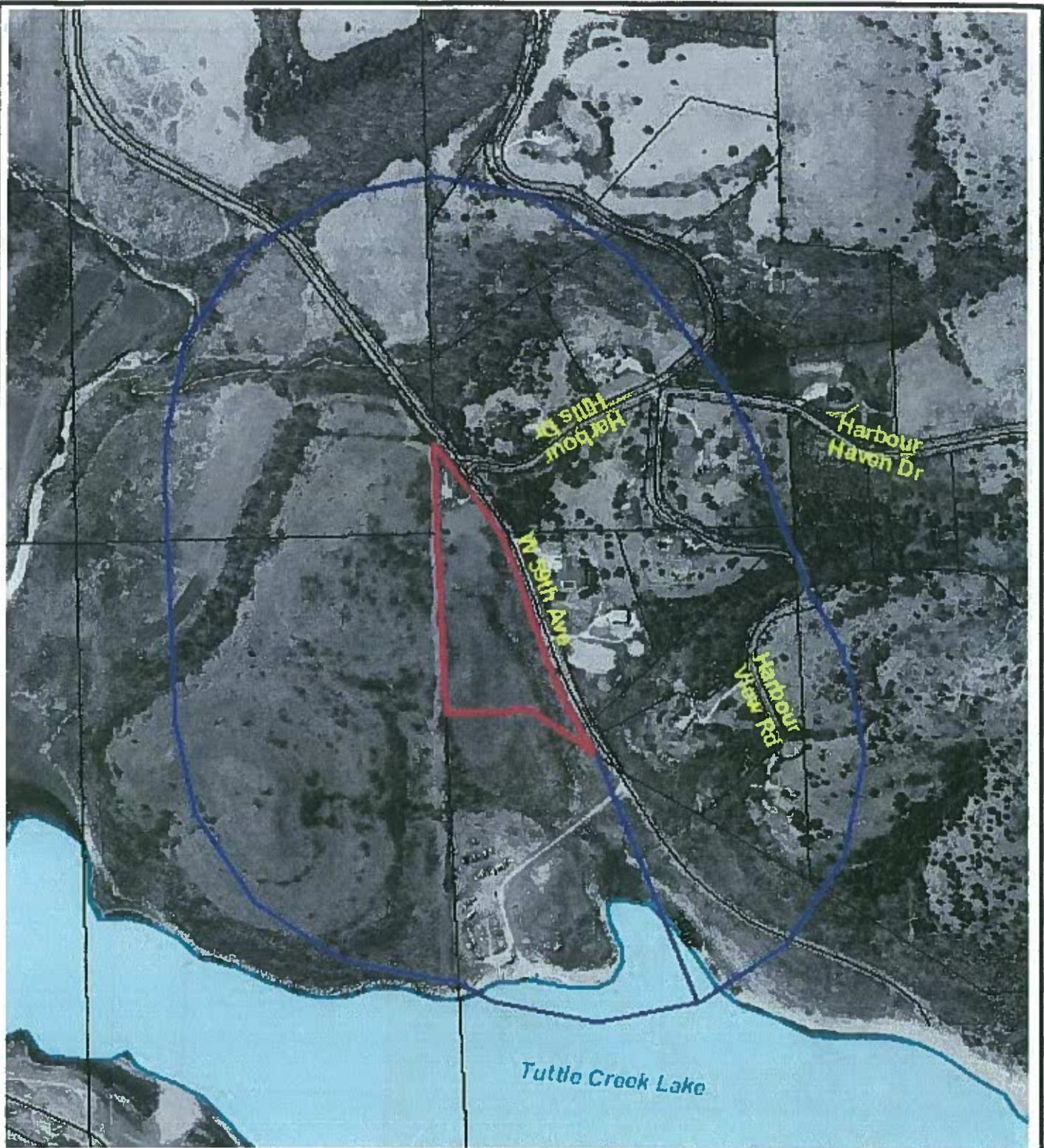
According to the criteria for variance approval set forth in the Riley County Zoning Regulations, Section 20 (4), the granting of the request will not violate the general spirit and intent of the regulations.

STAFF COMMENTS AND RECOMMENDATIONS: Staff recommends that the requested variance to reduce the front yard (north property line) and rear yard (south property line) requirements from 25 feet to 15 feet be approved.

ATTACHMENTS:

- Vicinity/site map
- Surrounding zoning map
- Certificate of Survey

Prepared by: Bob Isaac, Planner
April 1, 2010



VICINITY & SITE

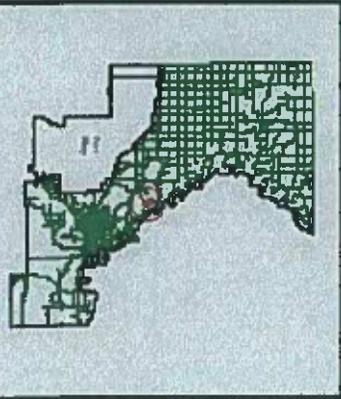
Willich

Petition #10-08

Variance

Reduce front/rear yard setbacks from 25' to 15'

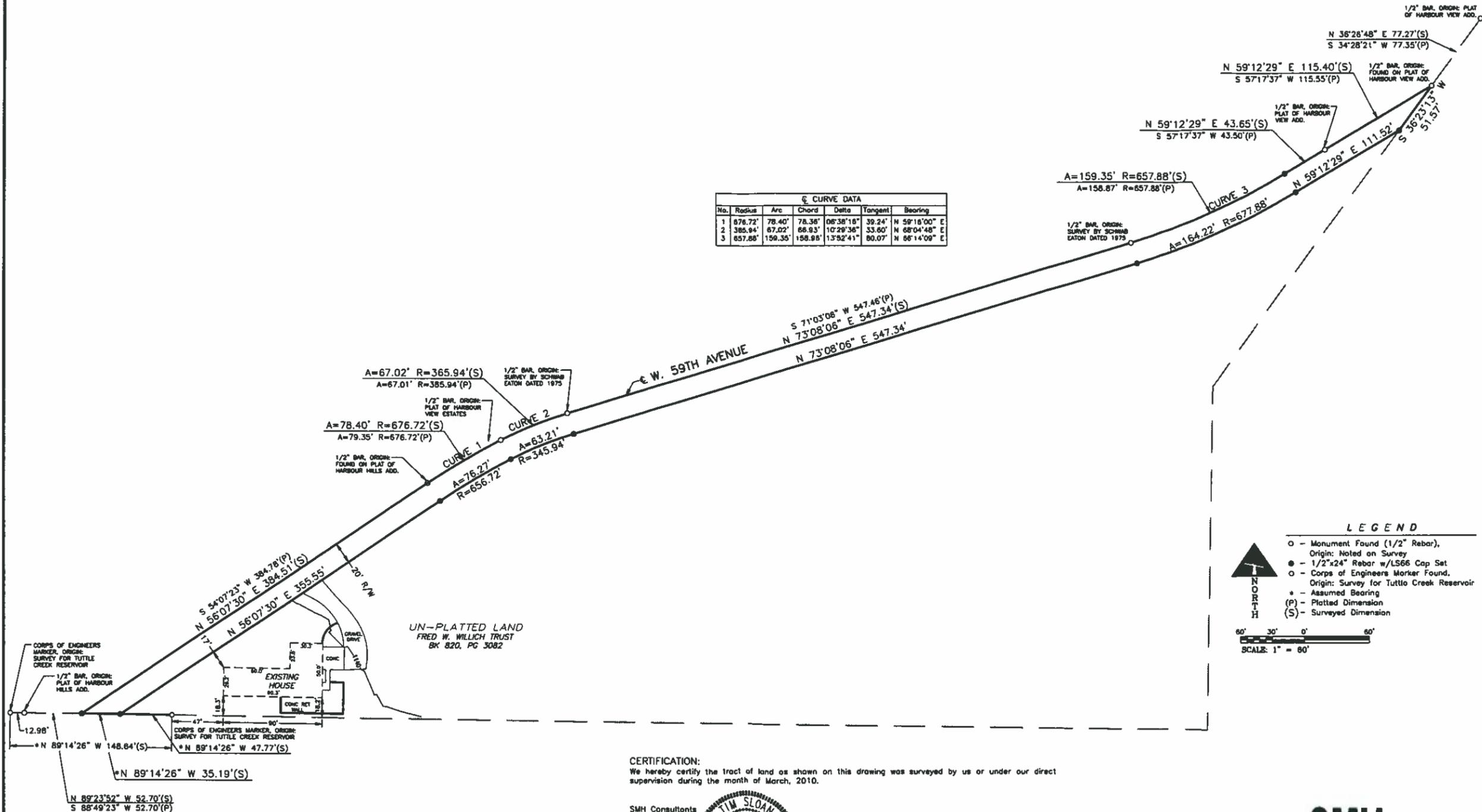
9 & 10-9-7



RIGHT OF WAY SURVEY

The South Right-of-Way Line of West 59th Avenue
in the SW Quarter of Section 10, T9S, R7E, Riley County, Kansas

| CURVE DATA | | | | | | |
|------------|---------|---------|---------|-----------|---------|---------------|
| No. | Radius | Arc | Chord | Delta | Tangent | Bearing |
| 1 | 876.72' | 78.40' | 78.36' | 06°38'18" | 39.24' | N 59°18'00" E |
| 2 | 385.94' | 67.02' | 66.93' | 10°29'36" | 33.60' | N 68°04'48" E |
| 3 | 657.88' | 159.35' | 158.95' | 13°52'41" | 80.07' | N 66°14'09" E |



LEGEND

- - Monument Found (1/2" Rebar), Origin: Noted on Survey
- - 1/2"x24" Rebar w/LS66 Cap Set
- - Corps of Engineers Marker Found, Origin: Survey for Tuttle Creek Reservoir
- - Assumed Bearing
- (P) - Plotted Dimension
- (S) - Surveyed Dimension

RIGHT OF WAY

SCALE: 1" = 60'

CERTIFICATION:
We hereby certify the tract of land as shown on this drawing was surveyed by us or under our direct supervision during the month of March, 2010.

SMH Consultants
By: Tim Sloan

Tim Sloan, R.L.S.
President

SMH CONSULTANTS

4201B Anderson Avenue, Suite 2 • Manhattan, Kansas 66503
(785) 776-0541 • FAX 776-9760 • Email: tim@sloanandmeier.com
Project #100301AS DD #41

MARCH 2010



110 Courthouse Plaza
Manhattan, Kansas 66502
Phone: 785-537-6330
Fax: 785-537-6331

March 1, 2010

Fred Willich
7260 W 59th Avenue
Manhattan, Kansas 66502

Dear Fred:

We have reviewed the records regarding the width of the right-of-way on West 59th Avenue adjacent to your property and have concluded the following:

The original road was established with a 40 foot right-of-way in 1871 as shown in Road Record Book A. In June of 1973, the Harbour Hills Addition was platted and in May of 2000, Harbour View Estates was platted both being on the northerly side of West 59th Avenue.

Both of these plats dedicated an additional 10 foot of right-of-way to the existing road. Consequently, this resulted in unequal amounts of right-of-way on either side of the original centerline with 30 feet on the northerly side and 20 feet on the southerly side.

A legal survey will be required to determine the exact location of the south right-of-way line. I trust this answers your question, but if you require additional information, please call me.

Respectfully

A handwritten signature in blue ink that reads "Leon Hobson".

Leon Hobson, P.E.
Director of Public Works

File: Survey file 10-9-7
Grant Township



Paper is made from 100% postconsumer fiber and is processed chlorine free

MINUTES OF THE RILEY COUNTY PLANNING BOARD

March 28, 1983
7:30 P.M.

District Courtroom
County Courthouse

Members Present: Ken Parker, Chairman
R. Stanley Parsons
Henry Beichter
G. A. van der Hoeven
J. Wendell Eggerman

Members Absent: None

Other Present: Ken Lamb, Jim Soupene, Richard L. Miller, Dorsey G. Barker, Terry Arthur, Herbert E. Lind, T. W. Knight, Mitch Knight, Melvin E. Dodd, Mr. & Mrs. John J. Berger, Dale Apel, Dan Harden, County Engineer, Lanette Windemaker, County Planner, Sandra Weeks, Deputy II.

The meeting was called to order by Chairman Parker. The minutes of the February 28, 1983 meeting were approved. The Planning Director's Report of Fees for February, 1983 were approved for audit as printed. This concluded the old business and the meeting was opened to the scheduled public hearings.

FAITH ENTERPRISES, INC. REZONING A-5 TO A-4

Chairman Parker opened the hearing at the request of Richard L. Miller, petitioner, Allan W. and Maxine M. Summers, husband and wife, owners, and Elizabeth Ann Davis, sister, owner, to rezone a tract of land in Section 9 and 10, Township 9 South, Range 7 East of the 6th P.M. in Riley County, Kansas, tabled at the February 28, 1983 meeting. The rezoning request is from zone "A-5" (Single Family Residential District) to zone "A-4" (Single Family Residential District).

Lanette Windemaker, County Planner, gave the staff report. She said the parcel is currently unbuildable because of the 1140 foot contour elevation and the setback requirements of the A-5 zoning. The setback requirements of the A-4 zoning are not as stringent and conforms with the zoning of the adjacent Harbour Hills Subdivision. She recommended approval.

Richard L. Miller, representing Faith Enterprises, Inc., presented a drawing to the Board members showing the location of the 1140 foot contour elevation, a 40 foot access easement (an abandoned highway opened to the public) and where the house was being built. He indicated that the water well is to the west of the house and above the 1140 line and the lateral fields are to the east 320 feet and approximately 5 vertical feet below the high water mark. He said that the State Health Department

requirements allow lateral fields up to 30 feet below the high water line. Mr. Miller gave each of the Board members a copy of the approved Preliminary Sewage Disposal System and said the County Health Department required two 600 square feet lateral fields with a switching valve and that the septic tank openings to be above the 1140 line.

The hearing was closed. Stanley Parsons moved to approve the request and Gus van der Hoeven seconded it. The request was unanimously approved.

WESTERN SHORE DEVELOPING COMPANY-BERNICE MARTIN SHORT FORM PLAT

Chairman Parker opened the hearing at the request of Western Shore Developing Company, Inc. represented by Terry Arthur to plat a certain tract of land in Section 18, Township 8 South, Range 7 East of the 6th P.M. in Riley County, Kansas.

Lanette Windemaker stated that the parcel was originally platted into several lots as part of the Western Shore Acre Subdivision. This acreage was vacated several years ago and is now being platted into one lot. She said the parcel is heavily wooded, the majority of it is a drainage channel and none of the roads are upgraded to County standards. She also said that a portion of the parcel is below the 1140 foot contour elevation and must be marked before a building permit will be issued.

Terry Arthur, Attorney, representing Western Shore Developing Company, Inc., Bernice Martin, stated that the reason for the platting of the land was because of the contour and size of the parcel and to make it easier to sell. He said that the parcel is currently zoned A-3 (Single Family Residential District).

Discussion on the potential development of the property followed, the audience concerned by the request viewed the proposed plat and then the hearing was closed. Gus van der Hoeven moved to approve the request. Henry Beichter seconded it. The request was approved 5-0.

LAMB/BERGER/SOUPENE REZONING G-1 TO A-1

Chairman Parker opened the hearing at the request of Ken E. and Mary Jane Lamb, husband and wife, owners; and John J. and Doris D. Berger, husband and wife, owners; and Thomas A. and Rose Soupene, husband and wife, owners to rezone their tracts of land from "G-1" (General Agricultural District) to zone "A-1" (Single Family Residential District) in Section 21, Township 10 South, Range 9 East of the 6th P.M. in Riley County, Kansas.

AAG127

RESOLUTION AMENDING PLANNING AND ZONING ORDER IN
GRANT TOWNSHIP

WHEREAS, pursuant to the provisions of Section 22 of the Zoning and Subdivision Regulations of Riley County, Kansas, Faith Enterprises, Inc. represented by Richard L. Miller, petitioner, Allan W. and Maxine M. Sumners, husband and wife, owners, and Elizabeth Ann Davis, sister, owner, has made application that the zoning classification of certain real estate described in the application, located in Riley County, Kansas, be changed from Zone "A-5" (Single Family Residential District) to Zone "A-4" (Single Family Residential District), and

WHEREAS, the Riley County Planning Board, after duly publishing notice of public hearing on said application, did on March 28, 1983, conduct a public hearing on said application, and

WHEREAS, the Riley County Planning Board has submitted its recommendation and report to the Board of County Commissioners recommending ADOPTION of the application, and

WHEREAS, more than 14 days have elapsed since the conclusion of the public hearing on the application, and no valid protest against the proposal duly signed and acknowledged by owners of 20% or more of the property proposed to be rezoned or 20% of the total area, excepting public streets and ways, which is located within 1,000 feet of the boundaries of the property proposed to be rezoned has been filed with the County Clerk of Riley County, Kansas.

WHEREAS, all information presented has been carefully considered and the facts set forth in the Zoning Officer's Report and the recommendation of the Riley County Planning Board attached hereto and marked Exhibit "A" are hereby adopted by the Board of County Commissioners and determined to be the controlling facts concerning the application.

NOW THEREFORE BE IT RESOLVED by the Board of Commissioners of Riley County, Kansas, that the recommendation of the Riley County Planning Board be adopted and that the zoning classification of the following

described real estate in Riley County, Kansas, to-wit:

A tract of land in the Northeast Quarter of the Southeast Quarter of Section 9 and the Northwest Quarter of the Southwest Quarter of Section 10, Township 9 South, Range 7 East of the Sixth Principal Meridian in Riley County, Kansas, described as follows: Beginning at the southeast corner of said Northeast Quarter of the Southeast Quarter; thence S. 88°49' W. 380 feet, more or less, along the U.S. Government Fee Line to the centerline of a Township road; thence along the centerline of said Township road the following 6 courses: N. 54°07' E. 385 feet, more or less, on a curve to the right having a radius of 676.7 feet, an arc distance of 78.3 feet the chord being N. 57°26' E. 78.3 feet, on a curve to the right having a radius of 365.9 feet, an arc distance of 65.9 feet, the chord being N. 66°00' E. 65.8 feet, N. 71°10' E. 547.4 feet, on a curve to the left having a radius of 657.9 feet, an arc distance of 159.2 feet, the chord being N. 64°15' E. 158.8 feet, N. 57°18' E. 159.1 feet to the U.S. Government Fee Line; thence continuing along said U.S. Government Fee Line the following 3 courses: S. 34°30' W. 347.4 feet, S. 0°27' E. 330.0 feet, S. 89°47' W. 660.0 feet to the point of beginning, containing 7.5 acres.

be and the same is hereby changed from "A-5" (Single Family Residential District) to Zone "A-4" (Single Family Residential District) for the following reasons:

1. Concurrence with the Riley County Planning Board's recommendation, and
2. Concurrence with the Planning & Zoning Director's report.

in which the Board of County Commissioners concurs and hereby adopts.

It is hereby ordered that the Riley County official zoning maps be changed to reflect the amendment and that the original resolution incorporating the said official maps by reference be amended and that said official maps be re-incorporated by reference as amended.

ADOPTED THIS 18 DAY OF April, 1983.

BOARD OF COMMISSIONERS
of Riley County, Kansas

Wm. J. W. W. W.
Chairman

Robert D. D. D.
Member

A. A. A. A.
Member

Attest:

Hanna P. ...
Riley County Clerk
83-03
90972
GR00239 & GR00243A1
A-5 to A-4

