



**The City of Lee's Summit**  
**Action Letter**  
**Planning Commission**

Tuesday, March 14, 2017

5:00 PM

City Council Chambers

City Hall

220 SE Green Street

Lee's Summit, MO 64063

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CALL TO ORDER

ROLL CALL

**Present:** 6 - Board Member Jason Norbury  
Board Member Colene Roberts  
Board Member Fred DeMoro  
Board Member Donnie Funk  
Board Member Herman Watson  
Board Member Brandon Rader

**Absent:** 3 - Board Member Fred Delibero  
Board Member Don Gustafson  
Board Member J.Beto Lopez

APPROVAL OF AGENDA

**A motion was made by Board Member DeMoro, seconded by Board Member Roberts, that the agenda be approved. The motion carried unanimously.**

APPROVAL OF CONSENT AGENDA

[2017-1050](#) Appl. #PL2016-102 - FINAL PLAT - Raintree Pointe, Lots 1-7 and Tracts A thru D; Landrock Development, LLC, applicant

**A motion was made by Board Member DeMoro, seconded by Board Member Roberts, that the Final Plat be approved. The motion carried unanimously.**

[2017-1041](#) Appl. #PL2017-032 - SIGN APPLICATION - The Summit Church, 3381 NW Chipman Rd; Star Signs, LLC, applicant

**A motion was made by Board Member DeMoro, seconded by Board Member Roberts, that the Sign Application be approved. The motion carried unanimously.**

[2017-1030](#) Approval of the February 28, 2017 Planning Commission minutes

**A motion was made by Board Member DeMoro, seconded by Board Member Roberts,**

that the minutes be approved. The motion carried unanimously.

## PUBLIC HEARINGS

### [2017-1049](#)

PUBLIC HEARING - Appl. #PL2017-017 - VACATION OF RIGHT-OF-WAY - an approximately 600' section of NW Lowenstein Dr located at the northwest corner of NW Chipman Rd and NW Pryor Rd; Christie Development Association, LLC, applicant (continued to a date certain of April 25, 2017, at the applicant's request)

A motion was made by Board Member DeMoro, seconded by Board Member Funk, that this application was continued to the Planning Commission, due back on 4/25/2017 The motion carried unanimously.

### [2017-1045](#)

PUBLIC HEARING - Appl. #PL2017-036 - PRELIMINARY DEVELOPMENT PLAN - telecommunication tower, 244 NW Executive Way; Selective Site Consultants, Inc., applicant

Chairperson Norbury opened the hearing at 5:04 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Mr. Curtis Holland, attorney of record representing the applicants, gave his address as 6201 College Boulevard in Overland Park, Kansas. EcoSite would be the facility's owner and operator and T-Mobile would be its tenant and carrier. He introduced Mr. Deserel Hager, a radio frequency engineer with T-Mobile who was attending tonight's hearing. Some of the information in tonight's applications came from T-Mobile, especially pertaining to the technology they wanted to install in order to provide coverage and calling capacity to their network. The subsequent application for a Special Use Permit included even more information. Mr. Hager was familiar with all this material and could answer any questions. Mr. Holland emphasized that this development plan was closely tied to the following SUP application. He observed that this matter had first come to the Commission last year; and both applications had been denied by the City Council. An appeal had previously been filed in the US District Court for the Western District of Missouri; and it was still pending. The City and applicants had nevertheless entered into a settlement agreement that had involved some changes and improvements. Mr. Holland illustrated his presentation with PowerPoint.

The first image showed the property outlined in yellow, with yellow markers for the previous year's and new proposed locations of the facility. The new location was about 25 feet southwest of the original, and further from the residential property adjacent to the northwest corner. The UDO required a setback from residential property at least equal to the tower's height. This tower was now shorter and a different "stealth" style. The aerial view showed properties zoned for office or commercial uses to the west, south, east and at the northeast corner. The Overall Site Plan showed the entrance drive off Executive Way. Mr. Holland explained that outlines of buildings were a concept of the kind of development that could occur, according the property's zoning. The plan showed that the tower could be installed on the subject property with plenty of room left for office or commercial uses. The site plan showed a two-story office building.

The design and look of the tower itself had been changed. The first had been a 95-foot tower with a standard top platform with attached antennas. The City had wanted a cleaner look, and the new tower would have "stealth" canister antennas that were located inside the pole. One photo simulation showed a distant view of the pole, whose height had been lowered to 75 feet; and another showed the same view of the previously proposed tower. The net effect of all these changes was that the tower was

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less visually noticeable. Mr. Holland stated that he agreed with the recommendations in staff's letter.

Following Mr. Holland's presentation, Chairperson Norbury asked for staff comments.

Mr. McKay entered Exhibit (A), list of exhibits 1-14 into the record. He confirmed that applications for a telecommunications tower at this location had been submitted and denied in July of 2016. The applicants had filed legal action in Federal court challenging the denial. The City and applicants had subsequently negotiated a settlement which changed the conditions in respect to location, height and appearance that Mr. Holland had described.

Mr. McKay then displayed a somewhat larger version of the aerial view showing the tower's proposed old and new locations. The new location would be 120 feet from the north property line and 75 feet from the west and south property lines. The 40- by 50-foot vinyl fence enclosing the tower would be 8 feet high and would have a double staggered row of white pines for landscape screening on both the northeast and south sides. Existing tree lines to the west along O'Brien would provide natural screening on that side.

Staff's recommendation for approval included four Recommendation Items. Approval was for the tower site and its layout only; so a separate preliminary development plan would have to be submitted for any other development (Item 1). Before a building permit could be issued the applicants would have to get an access easement recorded with the Jackson County Recorder's office (Item 2) and approval of the PDP was contingent on approval of the Special Use Permit (Item 3). The development was required to be in accordance with the PDP dated February 21, 2017 (Item 4).

Following Mr. McKay's comments, Chairperson Norbury asked if there was anyone present wishing to give testimony, either in support for or opposition to the application. Seeing none, he then opened the hearing for Commissioners' questions for the applicant or staff. There were none. Chairperson Norbury then closed the public hearing at 5:20 p.m. and asked for discussion among the Commission members, or for a motion.

Mr. DeMoro made a motion to recommend approval of Application PL2017-036, Preliminary Development Plan: telecommunication tower, 244 NW Executive Way; Selective Site Consultants, Inc., applicant; subject to staff's letter of March 10, 2017, specifically Recommendation Items 1 through 4. Mr. Funk seconded.

Chairperson Norbury asked if there was any discussion of the motion. Hearing none, he called for a vote.

A motion was made by Board Member DeMoro, seconded by Board Member Rader, that this preliminary development plan was recommended for approval to the City Council - Regular Session, due back on 4/6/2017 The motion carried unanimously.

[2017-1046](#)

PUBLIC HEARING - Appl. #PL2017-037 - SPECIAL USE PERMIT for a telecommunication tower, 244 NW Executive Way; Selective Site Consultants, Inc., applicant

Chairperson Norbury opened the hearing at 5:21 p.m. and asked those wishing to speak, or provide testimony, to stand and be sworn in.

Mr. Curtis Holland, attorney of record representing the applicants, gave his address as 6201 College Boulevard in Overland Park, Kansas. He asked that his testimony from the

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previous PDP application be incorporated into his testimony for this application. What was specific and important to the SUP application was the City's ordinances and their impact on the application. Specifically, the UDO required a 1:1 ratio for the tower's height and the distance from the property line. The plan did meet this requirement; however, another part of the ordinance required this kind of facility to be located at a distance of four times its height away from any residential zoned properties. In this case, one adjacent property did have R-1 zoning and a residence. This requirement was quite difficult to meet in Lee's Summit due to the common pattern of narrow commercial corridors close to residential neighborhoods; and this project did not meet it. At the same time, the facility needed to be located where coverage was needed to avoid a gap in the wireless service network, including in an area without large swaths of commercial ground. The shift in the tower's location added to the separation, but not enough to meet the 4:1 requirement; although the distance had been further enhanced by the tower's redesign.

A section in the code did allow the City to waive this requirement if the applicant could show that wireless service would be, in effect, prohibited by not granting the waiver. Consequently, this application included a request for a waiver, included an affidavit prepared by T-Mobile's RF engineers explaining the service gap in this part of Lee's Summit. Mr. Holland displayed an aerial view that was part of the request, with yellow markers representing properties that T-Mobile had considered as possibilities. They had narrowed it down to the only possible property in the search area. Mr. Holland stated that the applicants agreed with staff's three Recommendation Items.

Following Mr. Holland's presentation, Chairperson Norbury asked for staff comments.

Mr. McKay entered Exhibit (A), list of exhibits 1-19 into the record. Chairperson Norbury announced that the testimony for the preliminary development plan Application PL2017-036 was incorporated into this application's record. Mr. McKay clarified that the settlement agreement had included reducing the tower's height to 75 feet and the tower being located further away from the residential property to the north. He again displayed the aerial view showing the new separation distances to the north, south and west. Recommendation Item 1 granted a modification to the 4:1 distance requirement, allowing a 120-foot separation in lieu of the required 300 feet. Staff recommended an additional modification to the requirement to paint the tower so that it could be galvanized (Recommendation Item 2). Recommendation Item 3 specified that approval of the SUP be contingent on the approval of the preliminary development plan. Mr. McKay remarked that staff had been requesting modifications to the paint requirement for some time. Requests that towers be painted were common when towers first went in; but it had turned out that paint would start to peel and become an eyesore. A galvanized tower blended in much more effectively than a painted one.

Following Mr. McKay's comments, Chairperson Norbury asked if there was anyone present wishing to give testimony, either in support for or opposition to the application. Seeing none, he then asked if the Commissioners had questions for the applicant or staff.

Mr. Funk asked if a T-Mobile phone would fail to work at the intersection of O'Brien and Executive Way. He also wanted to know if the tower would serve only T-Mobile.

Mr. Deserel Hager gave his address as 12980 Foster Street in Overland Park, Kansas. He replied that the phone would not stop working; however, but there would be some weakness in the connection, and have issues with uses such as texting or data streaming. It could also cause sound to 'break up' while talking. The increased load would also cause congestion problems with the other two towers nearby that faced north and south, as they would have enough traffic to become congested.

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Mr. Holland stated that T-Mobile would be the primary tenant but the tower would be available for other carriers to use and they were encouraged to do so; although there was no other carrier planned at this point.

Ms. Roberts stated that she was a T-Mobile customer and in fact her house was shown on the location map. Her primary concern last year had been that this was an area the City had specifically targeted for redevelopment and infill development and the tower would further restrict redevelopment on this lot. The previous PDP had shown office development on the lot, which might or might not happen; and she had the same concerns about this application. She added that the redesign of the tower was a major improvement. Mr. Holland assured that the facility would not impact office development on the property, as this kind of development near tower facilities was now common. Ms. Roberts remarked that if an office building was built on this lot, it would have to be a small one, although she did consider tonight's application an improvement.

Chairperson Norbury asked what the expected life span for a tower of this design would be. Mr. Holland replied that he had never been asked this question; however, he believed it could be a matter of decades. Chairperson Norbury then asked what the standard for inspections was, and Mr. Holland answered that technicians, as well as the tower's owner would visit the site several times a year. Chairperson Norbury remarked that the discussion was about allowing construction which State statute dictated that the City had no authority over, regardless of where the service providers wanted to build it. Further, the City was being told to grant a variance to the ordinance intended to keep towers away from residential property and the City presumably did not adopt that ordinance without reason. If the Commission was granting these waivers he wanted to be sure the interests of the residents; and the Commission was charged with protecting residents' interests, not the interests of cell phone providers' deals. He asked if it was correct that the facility would be visited several times a year by professionals who would be able to spot and correct problems; and Mr. Holland answered that it was. It was in their best interest to maintain the structures. Mr. McKay added that the UDO required a structural analysis at least once every three years.

Chairperson Norbury asked what the City's recourse could be in a situation where a structural analysis indicated that the tower was deficient, or if it became technologically obsolete in a decade or so. Mr. McKay stated that in the event of such an analysis, they would send out a request that the structure be either repaired or removed. He did not recall any safety or neglect issues with the towers currently in Lee's Summit.

Chairperson Norbury asked what the legal basis was for T-Mobile's earlier lawsuit. Mr. Holland summarized that it was based on two or three claims related to the setback and to Missouri law, as well as denial of the waiver that T-Mobile had wanted. They had claimed violation of Missouri State law as well as the Telecommunications Act, which had placed imitations on cities in prohibiting wireless service or taking actions that might have that effect.

Chairperson Norbury asked if there were further questions for the applicant or staff. Hearing none, he closed the public hearing at 5:45 p.m. and asked for discussion among the Commission members.

Chairperson Norbury first stated that he was, and would continue to be, a vocal critic of Missouri Revised Statute 67.5094, "Prohibited Acts By Authority For Approval Or Disapproval of Cell Phone Towers." He encouraged anyone watching this meeting to call their Representative, specifically Representative Cierpiot, who had sponsored the bill and explain that it might not be appropriate for a city to be forbidden to limit the length of Special Use Permits for cell phone towers. These might have a long term of use, but they were finite; and Lee's Summit had generally done a good job of approving and allowing

cell phone communication facilities; and the State was now assuming that it was onerous to expect the owners of these facilities to inspect and maintain them at least every decade.

This statute was, at best, a giveaway to the cell phone industry and at worst an act of pandering to special interests. As an attorney he knew he was obligated to follow the law. However, he stated for the benefit of future applicants with new or renewal cell phone tower applications that they would need to be better prepared than Mr. Holland had been; specifically concerning public safety and structural integrity. The City had gone to great lengths to work with the applicant and the Commission had approved the earlier application. He intended to vote to approve this one; however, future applicants needed to be well prepared with this information or he would vote to deny on the ground of public safety.

Hearing no further discussion, Chairperson Norbury called for a motion.

Mr. DeMoro made a motion to recommend approval of Application PL2017-037, Special Use Permit for a telecommunication tower, 244 NW Executive Way; Selective Site Consultants, Inc., applicant; subject to staff's letter of March 10, 2017, specifically Recommendation Items 1 through 3. Mr. Funk seconded.

Chairperson Norbury asked if there was any discussion of the motion. Hearing none, he called for a vote.

A motion was made by Board Member DeMoro, seconded by Board Member Rader, that this special use permit was recommended for approval to the City Council - Regular Session, due back on 4/6/2017 The motion carried unanimously.

## ITEMS FOR DISCUSSION

### [2017-1039](#)

Discussion - Planned Mixed Use (PMIX) Zoning District - Purpose and Intended Use

Mr. McKay remarked that this kind of discussion provided some insight as to what the Commission's concerns were, and gave staff an opportunity to explain their procedures and goals. The subject tonight was why the City used PMIX so often and where it should be used. Historically the Planned Mixed Use district had come about as a result of the initial applications for the New Longview development, a fairly large area with a mixture of housing types. When he had attended the charette, Mr. McKay met a number of people who had dealt with traditional neighborhood development before; and it eventually became a question of what kind of zoning district could be used for the kind of development proposed for Longview. The existing zoning designations did not fit. For example, RP-4 was primarily for multi-family housing; and CP-2 could not be used if residential was mixed in. City staff accordingly went to work on a new zoning district for a mixture of uses.

Approval would be a negotiation with the Commission and the Council about aspects such as setbacks, types of uses, height of buildings. There had been a lot of discussion about 'vertical mixed use', but Lee's Summit had not actually seen much of it, although Downtown did have some residential uses above retail uses on a ground floor. Staff still considered this a relevant feature for Lee's Summit in certain locations, though it was more commonly used in more densely populated area such as in Kansas City. The Pryor Lakes application had been called planned mixed use and it would have both senior living and conventional apartments, a grocery store, two restaurants and an office. The project had met the requirements but not with the urban approach to mixed use the City wanted to see. The PMIX designation allowed for a number of different types of uses to be placed in the same area with the same zoning. It also provided the City with much more control than a planned district would, as the latter had specific standards a project

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had to meet and this made an application difficult to turn down if there were other reasons. A PMIX zoning enabled the City to set the type of uses desired. At present, a new interchange was coming in at US 50 and M-291, and there were uses the City would want there but others it definitely would not want. Some types of uses were prohibited and others allowed accordingly.

Mr. McKay referred the Commissioners to the intent and purpose set out: to “allow greater flexibility in development standards” in order to develop a site in harmony with its unique conditions; to allow a mixture of uses, which would amount to “a more comprehensive response to market demand” and to “obtain greater economic vitality, higher standards of site and building design, a high level of environmental sensitivity and more satisfying living and working environments.” A PMIX zoning fit well for New Longview. It was not considered for a project like Summit Woods, which was in a CP-2 district; but it was used on the nearby Summit Tech Campus as well as multiple uses allowed for Summit Fair, which had developed a very attractive ambiance. The zoning had been used recently with some apartment complexes due to the density issues. This was not a matter of the City wanting PMIX just in order to get more density; it was because in these cases the development could not occur without higher density due to the apartment market.

The M-150 Corridor overlay was also designed with this economic situation in mind. The City tried to get up to 20 units an acre but had to reduce that to about 12, due to neighborhood concerns. It would not be possible to build today's type of apartments with that density. In these cases, a PMIX district would be possible, but the decisions were made by the Planning Commission and the City Council, with the Council having the final say.

Mr. McKay stated that he had not found a disadvantage of the mixed use designation. This was due to the Planning Commission and City Council to turn down what they did not want. What staff did was take the applications as they came in, work with the developer, and provide the best information they could. There were many applications the Commission did not see because their sponsors had been warned by staff that they could not recommend approval; but many were worth bringing forward. He asked to hear from the Commissioners what questions they had about planned mixed use.

Ms. Roberts acknowledged a difference between PMIX zoning and the kind of mixture of uses included in 'vertical' mixed use, in an environment that was compact and walkable. PMIX did not require that but was rather only a zoning classification. She was not sure how to get to actual mixed use other than keep denying various applications that did not include it; and this would not be a constructive approach to take. The City needed to find a way to encourage that type of true mixed use development. One of the objections to Pryor Lakes, for example was that it was not very walkable and all the various uses were separated.

Mr. McKay felt that a great part of that was just being persistent in making it clear that the City wanted to see that kind of plan. It was similar to attracting certain restaurants and stores to Lee's Summit years ago when people had been asking when Lee's Summit would have them. He'd had to approach these businesses several times before they were ready to open stores in town. Similarly, any time someone came in who was considering redevelopment in particular, the subject of vertical mixed use would be brought up by staff. They could not require mixed use from an applicant. However, EnvisionLS required 3- to 5-story buildings in one particular area; and it was clear that the City was looking at vertical mixed use and more than single-story buildings.

Ms. Roberts noted that a property's surroundings could influence whether mixed use was desirable. It would be a very good fit in property near a school, for example. She asked if

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there was a way the City could identify and target properties whose locations made mixed use a good choice. Mr. McKay replied that this approach had actually started with EnvisionLS. With the Pryor Village conceptual plan, the idea was for the City to initiate rezoning and establish PMIX, following that up with design standards. That was the point where the City could make clear what types of businesses it wanted to accept and what the conditions were. Applicants could know from the beginning what the requirements were. They were not able to do that with Pryor Lakes because when the City issued the RFP for the development of the City-owned land at I-470 and Pryor, they had intended to sell and have someone come in to develop; and the first two applications were rejected by the Council, for good reason. The Council had then directed staff to develop a conceptual development plan. Staff had put in what they would like to see in theory, which the Council found too expensive. After that, another party had purchased the ground with another plan and staff had to put all these ideas together. They eventually rezoned just the 39.5 acres on the original site; and staff was then directed to bring back a revised conceptual plan. This plan would have the design standards attached. Again, getting to the kinds of mixed uses they wanted might take time and would definitely take persistence.

Mr. Funk recalled that much of what they had talked about with Pryor Lakes amounted to putting apartments in next to Summit Fair and Summit Woods. Mr. McKay answered that this conceptual plan had not been approved. Only the four properties along Pryor Road had been rezoned; and the City was still working with the developer to bring back something that a consensus would find acceptable.

Ms. Roberts acknowledged that a huge amount of staff time went into projects like EnvisionLS. She asked if this had held staff back. Mr. McKay replied that Lee's Summit had been growing so fast over the past few decades, and the City's reorganization did give a little more time for long-range planning. M-150 was the first project, where lessons were learned; and the City was actually going to remove some properties because the overlay area had been far too large. The idea now was to concentrate on the intersections of major roadways and on the east side of M-291. He hoped that the design standards staff was working on now would be folded back into the M-150 district. All this took time since staff needed to meet with the people in the area, which was also at the Council's specific direction since there had been so much opposition to the senior living apartments among others. Public input was essential and staff valued it, although they did not always like what they heard or tell the public what they would like to hear. It was part of the City's function to listen to citizens and act accordingly. Mr. McKay noted that the US 50 corridor ran through town and would have plenty of redevelopment possibilities; and 900 acres to the east that were annexed in connection with the Blackwell interchange. Over the next few years staff would very likely be making recommendations for more City-initiated rezoning. This was a good route to take, as property owners knew from the start what the goals were and they had some input. An owner wanting to develop would need to submit a preliminary development plan, but the rezoning would already be done by the City.

Mr. DeMoro asked about a situation when someone brought in a PMIX plan and did not know what they were looking for. He had noticed a provision that if development standards were "not specifically proposed by the applicant or specific standards are not established by the Governing Body" the zoning district applicable to the proposed use would apply. Mr. McKay answered that hopefully after going through other applications, a common baseline set of design standards could be developed. Staff wanted to have a kind of template to offer. In the past, they had relied on asking for elevations, materials and other essentials and this information was incorporated into a preliminary development plan. It was a case-by-case basis. Development standards, on the other hand, needed to be more comprehensive.



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Chairperson Norbury noted that some of the concerns the Commission had raised over time was that the larger picture could be obscured by a spotty assortment of developments. That larger picture included ensuring that the development was consistent with the Comprehensive Plan. While higher density for apartments was necessary, for example, the City would need to guard against this kind of housing being overbuilt. He wanted to make it a practice to make it clear how a specific PMIX related to the Comprehensive Plan, as well as long-range trends and shifts in demand.

Regarding housing, Mr. McKay related that staff had an RP out for housing assessment, in order to get a clear picture of what Lee's Summit already had, what it needed and what might have a surplus in terms of various housing types. They had asked for a quick turnaround. He added that Mr. Heiping Zhan had a 'special development district' classification in the Comprehensive Plan. It might be a good idea to convert some of this classification to PMIX overall. It would be easier to get design standards that the City wanted when it was presented up front in the Comprehensive Plan. There was also the phenomenon of the "Yes In My Back Yard" movement, where people organized against limitations on aspects like density and did not like communities to essentially send out messages that the only residents they wanted were in single-family homes and neighborhoods.

Concerning the housing assessment, Ms. Roberts noted that many studies like this were printed out and put into binders and that was as far as they got. She wanted to know what was planned to actually do with this information when it came back. Mr. McKay answered that staff would work out the direction with the City Council. The idea was to get a view of where the City currently was with housing.

Chairperson Norbury thanked Mr. McKay for the discussion.

PUBLIC COMMENTS

ROUNDTABLE

ADJOURNMENT

For your convenience, Planning Commission agendas, as well as videos of Planning Commission meetings, may be viewed on the City's Internet site at "[www.cityofls.net](http://www.cityofls.net)".