AGENDA
COMMUNITY DEVELOPMENT COMMITTEE
Monday, January 9, 2017

6:00 PM

Public Safety Building
285 North Seven Hills Road

I) Roll Call

II) Approval of Minutes – December 12, 2016

III) Items Requiring Council Action – TUESDAY, January 17, 2017

A. Comprehensive Plan Amendment and Highway 50 & Lawn Avenue – Planned Use & Subdivision (1st Reading)
B. Flying Aces – Planned Use (2nd Reading) – NO CHANGE
C. Lincoln Park Villas – Final Plat (1st Reading)
D. Clearwave ROW Agreement (Resolution)

IV) Other Business – None

NEXT MEETING: January 23, 2016 – 6:00 P.M. – Public Safety Building

General Citizen Comments: The City of O'Fallon welcomes comments from our citizens. The Illinois Open Meetings Act provides an opportunity for citizens to speak at all committee and Board meetings. However, 5 ILCS 120/1 mandates that NO action shall be taken on matters not listed on the agenda. Please submit your name to the chairman and limit your comments so that anyone present has the opportunity to speak.

Community Development Department
255 South Lincoln Avenue O'Fallon, IL 62269 ♦ P: 618.624.4500 x 4 ♦ F:618.624.4534

MINUTES
COMMUNITY DEVELOPMENT COMMITTEE
6:00 PM Monday, December 12, 2016

Minutes of a regular meeting of the Community Development Committee of the City of O'Fallon, held at the Public Safety Building, 285 N. Seven Hills Road, O'Fallon, Illinois.

CALL TO ORDER: 6:20 PM

I) Roll Call – *Committee members:* Gene McCoskey, David Cozad, Harlan Gerrish and Ray Holden. *Other Elected Officials Present:* Herb Roach, Ned Drolet, Kevin Hagerty, Matt Gilreath, Richie Meile, Matt Smallhear, Robert Kueker and Chris Hursey. *Staff:* Walter Denton, Pam Funk, Ted Shekell, Sandy Evans, Mary Jeanne Hutchison, Grant Litteken, James Cavins, and Justin Randall. *Visitors:* Darrell Shelton, Brian Keller, Tom Faulkner, Rich Salcido, Moe Woodrum, Nathan Schmidt, and Vern Malare.

II) Approval of Minutes from Previous Meetings– All ayes. Motion carried.

III) Items Requiring Council Action

A. Flying Aces – Planned Use (1st Reading) – Justin Randall provide a brief review from the committee meeting on November 28th. Randall also indicated to the committee staff had received a response from Scott Air Force Base. The only comment regarding the development would be to ensure no additional noise would be created to affect the residential area to the south. A motion and second was made to recommend approval of the planned use, the motion passed with a 3-1 vote.

B. Four Points Center – Final Plat (2nd Reading) – Justin Randall indicated there were no changes associated with the final plat. The committee discussed the final pat and recommended the final plat with a 4-0 vote.

C. Downtown Plaza Schematic Design Contract (Resolution) – Justin Randall provided the committee with an overview of the proposed contract for professional services with SWT Design. Ted Shekell informed the committee of the past projects of SWT Design and their role in working with Horner & Shifrin on the Green Mount Road project. Randall indicated this would be for the public engagement portion and a final concept design and then a second contract would be brought forward for the final construction plans. The committee discussed the proposed contract. A motion and second was made to recommend approval of the contract for design services of $62,410, the motion passed with a 4-0 vote.

D. Destination O'Fallon – Phase 2 (Resolution) – Walter Denton provided a brief review of Phase 2 of Destination O'Fallon. Denton introduced The Fource Group to discuss their finding from their market research and an initiative for increasing the City's efforts to attract businesses to O'Fallon. The Fource Group (Tom Faulkner and Rich Salcido) provide a detail presentation on their findings of the existing business and presented a business attraction plan that involves the development of a scientific and sophisticated approach to economic development, including targeted strategies to specific businesses and public/private partnerships. The committee discussed the proposed contract. A motion and second was made to recommend approval of the contract for phase one, the motion passed with a 4-0 vote.

IV) Other Business - None

MEETING ADJOURNED: 7:15 PM

NEXT MEETING: January 9, 2017 – Public Safety Building

Prepared by: Justin Randall, Senior City Planner

DRAFT

Draft MINUTES
O'FALLON PLANNING COMMISSION
December 13, 2016

Chairman Larry Sewell called the meeting to order at 6:00 pm in the City Council Chambers and led the Pledge of Allegiance.

ATTENDANCE: Debbie Arell-Martinez, present; Ryan Kemper, present; Patricia Cavins, present; Bob Dunn, present; Al Keeler, present; Rebecca Pickett, present; Joe Rogers, present; Ray Rohr, excused; Larry Sewell, present. A quorum was declared present by Sewell.

MINUTES: Motion was made by Pickett and seconded by Cavins to approve the minutes of the November 22, 2016, meeting. All Ayes. Motion carried.

Sewell welcomed everyone and explained the role of the Planning Commission. The Planning Commission members introduced themselves. Also present were Community Development Director Ted Shekell and Senior City Planner Justin Randall. Present in the audience were aldermen Ned Drolet, Ray Holden, and Herb Roach. Sewell gave an overview of the process that would be followed for the evening.

PUBLIC HEARINGS:

(P2016-15) – Future Land Use Map Amendment subject to the City of O'Fallon 2006 Comprehensive Plan from "Office/Service" to "Neighborhood Residential" and "General Commercial" for approximately 6.49 acres (Parcel IDs #04-30.0-300-026 and #04-30.0-300-027) generally located at 648 West Highway 50 and South Lawn Ave.

- **And -**

(P2016-16 and S16-12) Zoning Amendment Subject to the Planned Development Ordinance from "SR-2" Single Family Residence Dwelling District to "B-1(P)" Planned Community Business District and "MR-1(P)" Planned Two-, Three-, & Four-Family Residence Dwelling District and preliminary plat for "Fifty & Lawn", which is planned for ten attached single-family lots and two commercial lots, including a Planned Use Amendment for Dollar General. The property is generally located at 648 West Highway 50 and South Lawn Avenue. The applicant is Terry Johnson, Triple Net Management, for the property owner, Niteshkumar & Alka Patel.

Due to the nature of the proposed development, the two public hearings were opened concurrently at 6:04 pm. Randall presented an overview of the purpose of the proposed Comprehensive Plan Map Amendment as it related to the proposed development. Randall also gave an overview of the proposed development and presented the Staff Report. Maps of the subject and surrounding properties, their zoning, and

Comprehensive Plan Land Use were shown. Randall highlighted multiple points and issues from Staff's Project Reports dated December 13, 2016:

- 2006 Comprehensive Plan - Future Land Use Map amendment
    - From *Office/Service* to *Neighborhood Residential* and *General Commercial* for the subject two parcels.
    - Would reduce non-residential uses on Lawn by reducing area designated for *Office / Service* from current 565 feet along Highway 50 to the proposed approximately 300 feet of *General Commercial* and the remainder as *Neighborhood Residential*
    - Existing conditions – property is farm ground and is not known to have any other previous use.
    - Explanation of spot zoning and the City's concerns about spot zoning
        - Map amendment with proposed zoning is compatible with present surrounding land uses
    - Roadway classification – West Highway 50 is Minor Arterial
- Fifty & Lawn development
    - Adjoining Countryside Glen subdivision is MR-2 which more typically has high-density apartment buildings, not single-family or duplex homes
    - Overview of Planned Use zoning proposal
        - 2 commercial lots – Dollar General and multi-tenant retail building
        - 10 residential lots – attached single-family homes (up to 20 units total)
    - Proposed phasing – Initial phase
        - Entire site grading for drainage improvements
        - Dollar General
    - Access points
        - Residential development extension of Hillcrest Drive with requested variance to right-of-way width from 54 feet to 50 feet.
        - Residential and commercial developments secondary access points onto Lawn Ave and roadway improvements to Lawn Avenue.
        - Commercial development shared access point onto Highway 50
    - Parking & lighting
    - Drainage includes a large detention pond and stormwater pipe to address standing water on Lawn Avenue and improvements to the ditch on the west property line to enhance drainage of the ditch.
    - Utilities
    - Landscaping and buffers
        - Developer has agreed to place buffer behind both commercial lots in Phase 1 of the development
    - Residential Open Space (park dedication requirement) fulfilled through a fee in lieu of land
    - Building elevations
        - Homes consistent with surrounding residential homes
        - Multi-tenant retail building is consistent with Commercial Design Handbook (CDH)

        - Dollar General elevation does not meet the CDH recommendations. Staff has provided petitioner multiple examples of recommended architectural components that meet, but do not exceed, the CDH.
    - Dollar General
        - Hours of operation of current store are 7:00 AM to 11:00 PM
        - Dumpster would need to be enclosed and constructed of a similar building material of the building.

Public comments were opened at 6:38 pm.

Petitioner Terry Johnson was sworn in. Johnson stated he has been involved in land development / sales for 30 years in O'Fallon and in every land sale across West Highway 50 from this property. The proposal is a clear layout to match the existing developments and he is aware of drainage issues in this area. He has addressed lighting and traffic and is aware of the concerns with the Dollar General elevations and they will work with and follow the CDH. Phases 2 and 3 (residential and retail center) have not been marketed yet. Johnson testified this area used to be an "A" location when being developed across the street, and now it is a "B" location. Lot 2 strip retail center would have approximately 5-7 small businesses planned, but they would be open to a bank or other single occupant if one should come forward.

Keeler asked what Lot 2 would look like during construction of Lot 1. Johnson explained that the entire site will be graded, including the grass-bottomed detention basin. Trees along Lawn would have to be removed and erosion control measures would be in place. Dollar General would be responsible for construction of entrance onto Highway 50.

Bob Elkan, Westmore Group - Chesterfield Parkway, Chesterfield, MO - was sworn in. Elkan indicated his firm develops a number of Dollar Generals throughout the St. Louis Metro area and will meet with the City within the next 10 days and will ensure the Dollar General building will meet the architectural standards.

Kemper asked if they are aware of the mine subsidence in the area. Elkan said they are aware of the expansive mine area and construction will be designed to approximately 3,000 psi and they do not expect any problems; however, they do have subsidence insurance. Kemper asked if they are aware of the significant litigation just across the street. Johnson said they have looked at the risk, and the value and size of the structures with consideration of the underground mines and stated this may be the safest area if it has already dropped. They are aware that subsidence can occur at any time or not at all.

Justin Hug, engineer for the developer, was sworn in. Detention will be on the southwest corner of the development and it will meet or exceed the City's requirements for stormwater run-off. Shekell asked if the basin will involve the ditch on the other side of Hillcrest and the existing drainage issues. Hug reported it will come out of a centralized location and it will clean up the western edge of the site. Upgrading to an

enlarged 50-year culvert crossing under Hillcrest will help with the problematic drainage culvert north of the stub. Shekell stated there have been complaints for quite a while in that area and asked, in Hug's judgement, if it would show an improvement here. Hug responded that it will not increase the issues and will centralize the flow and will help prevent problems – there will be no more stagnant standing water. A concrete channel grade will help with positive drainage. Johnson added they have met with Ted Morton, owner to the west of the detention basin and the engineer understands they cannot increase drainage. The basin will hold and gradually release stormwater per the City's development codes.

Kemper asked what will happen on Lawn Avenue, Hug stated 90% of the drainage flows from east to west and it will be graded to match the watershed. Kemper wanted to know that before Phase 2 & 3 take place, what would happen to the tree line. Hug reported all the trees would have to be removed in Phase 1 and the grading will be masqueraded for the site and the ditch will remain. In Phase 2 or 3 curb and gutter would be placed along Lawn. Dunn asked if there would be tree replacement and Randall pointed out the tree placement along the buffer between the commercial and residential lots, between the existing single-family home and the proposed residential development, along Highway 50 and along Lawn Avenue. Shekell stated City codes require ground cover such as winter wheat to re-establish the soil until next phases start.

Pickett mentioned drainage maintenance of the entire development and Shekell's understanding was there would be covenants to manage the drainage infrastructure.

Michael Pierce, owner of property on south side of West Highway 50, was sworn in. His concern is if they would be tapping onto the sewer system on the south side of 50 as they have many issues and the sewer is jetted every 3 weeks resulting in sewer gas smells in his buildings. Randall stated they are not tapping into that sewer line, indicating the plan proposes extending the sewer line from the Hillcrest Drive extension.

Valerie Piekutowski, 118 S Lawn Ave, was sworn in. V. Piekutowski presented a binder to Sewell and highlighted her concerns against the zoning and land use map changes, but stated she is not against development under the current zoning and Land Use Map. Piekutowski testified and provided in the binder:

- 4 pages of signed petitions;
- Drainage and mine subsidence emails and a map from the City citing permanent fix necessary of an easement on the subject property;
- Pictures of flooded streets and pictures of home razed in 2015;
- Information on current status and recommendation from the Illinois Department of Natural Resources which conflict with the drainage report from the developer;
- Evidence that Dollar General conflicts with the spirit of "Destination O'Fallon";
- Dollar General on main thoroughfare in O'Fallon would be an embarrassment to O'Fallon as generally their stores are unkempt, have merchandise out on the front of stores, open dumpsters and racks behind the stores, over 240 OSHA violations since 2006;

- Rebuttal to inaccuracies in Johnson's information provided to residents;
- Rebuttal to Randall's Staff report; conflicts with current Comprehensive Plan

Sewell asked Piekutowski to leave conjecture out of her testimony as it cannot be substantiated until her research has been reviewed. Piekutowski stated she is generally against the development because of Dollar General's reputation, the mine subsidence on the property, drainage problems that have not been fixed, and the easement that is required per emails from the City. Piekutowski contended her comments are facts and are documented and substantiated in the binder contents.

Earnestine Gilbert, 111 Hillcrest Drive was sworn in. Gilbert testified that extending Hillcrest Drive will double traffic by people cutting through to avoid Highway 50 and Green Mount Road. With the lack of stop signs on Center Grove Drive, Hillcrest Drive, or Countryside Lane, this area will become a rush hour thoroughfare like it did when the State Street roundabout was being built with car exceeding 45 mph and driving around school buses. Lawn is not designed for two-way traffic and presently does not have sidewalks which is a safety concern for children. Gilbert read an excerpt from City Code of Ordinances Chapter 158 Zoning, Article 1, Section 158.004 stating it supports their opposition and discourages through traffic. Gilbert concluded the lots should stay the way they are and be developed as single-family or duplexes. For over three decades the neighborhood has been safe and quiet for street gatherings and block parties.

Shekell stated if vehicles were going to cut through between State Street and Highway 50 they would use Lawn Avenue and Douglas Avenue and people will continue to do that which is no fault of the developer. Shekell pointed out that Hillcrest Drive was stubbed out when developed to build out to Lawn to provide interconnectivity and this is continuing that premise.

Pickett asked if there was any way to pro-actively find solutions to prevent the cut-throughs from happening. Shekell conjectured that cutting-through was likely not the biggest issue as historically, once a stub is extended, residents in that area find it a more advantageous exit from their neighborhood and they, too, will start using the new road. Based on practical experience, if staff thought it would become a high-traffic cut-through, they would likely have recommended the extension become a cul-de-sac.

Bevan Gibson, 102 Center Grove Drive was sworn in. She stated to Shekell there are already two ways out of their neighborhood and people already cut through Center Grove Drive from North Green Mount Road when it backs up. It will worsen if Hillcrest Drive is extended to Lawn Avenue.

Carolyn Jones, 104A Sunnyside Lane was sworn in. Her property backs up to the house property and testified that water already goes half-way up her back yard. She wanted to know who to contact when the flooding gets worse with this development. Jones disputed that there is a 10-foot incline – it is much more than that on the other side.

Shekell stated the City requirement to be met by the developer is a 100-year storm detention. They cannot make the situation worse and cannot release additional storm water into the system. Farm fields typically provide the worst drainage problems. Shekell referenced the farm fields south of Dartmouth with extreme flooding. A 15-acre detention pond was built and has resolved the issues. The ditch on the west side of the subject parcel has water issues and the developer will be trying to clean this area up. Shekell entertained the possibility that the culvert under Hillcrest could be causing some of the drainage concerns that Jones has. Jones stated the ditch needs to be widened and it is only dirt but needs to have a culvert or gravel to control erosion.

Sewell emphasized that there will be more thorough studies regarding the drainage for this site prior to the final approval stage.

Leslie Blair, 104 Center Grove Drive was sworn in. Blair provided Sewell with a map showing how drainage currently flows towards the ditch behind Sunnyside. Blair testified that removing all the trees, which act as a buffer, and installing culverts will not address the erosion issues they currently have without additional water. They can't stand any more e-mail promises from the City or additional water. She has witnessed water flowing over State Street. Drainage is insufficient and asked where the water from under the buildings and parking lots will go.

Blair stated the Comprehensive Plan will not be followed if the residential development is permitted as the ratio of homes to duplexes will increase from present 2:1 up to 3:2. This project will have significant changes to the nature of their older subdivision. Blair questioned that the developer intends to build only duplexes and observed that duplexes alone will more than double the number of driveways from 16 to 36 on Hillcrest Drive. Blair refuted the City's recommendation to approve the development by reading excerpts from the Staff's reports which she implied contradicted the rezoning recommendation. Blair testified the neighborhood does not want any commercialization around their homes stating problems with excessive traffic, trash, and unprofessional uses. The City wants more upscale development and we already have that with the Southview development and we need to preserve integrity. Blair stated we can use professional buildings not more commercial on this side of the street.

Burt Gedney, 104 Center Grove Drive was sworn in. Gedney refuted what he called an incomplete staff report and that it should be edited and resubmitted. He highlighted the following:

1. No reference to traffic impact to the residential area and a traffic report is necessary if the City is wanting to drain Highway 50 into their homes. Connection of Hillcrest Drive to Lawn Avenue is not necessary. Stub street being built in 1981 is irrelevant to now.
2. No mention of water handling downstream of this project. The size of the project is almost as large as their subdivision and they are already drowning. There was only mention about the collection of water, nothing about the disposal of the water.

3. In 2008, an attempt to rezone along Lawn Ave, staff report at that time stated exteriors should be similar to the existing homes with specific uses, and retail was to be avoided. This is spot zoning. Existing zoning is sufficient for development without amending the Comprehensive Plan.
4. In quoting an excerpt from the Comprehensive Plan Amendment Project Report, Gedney saw no worthwhile reason to amend the Comprehensive Plan and found it was, "injurious to us, placed an undue burden upon us as a group, and is potentially legally actionable."
5. The different phases of the project are not committed to and provides no guarantee of a buffer. It should not be allowed to be piecemealed.

Gedney proposed an alternative plan in that the City refuse the project and the amendment to the Comprehensive Plan. Instead, develop homes on the property or classify it as Office / Service which would minimize the impact on the homes and provide a reasonable compromise.

Mark Piekutowski, 118 S Lawn was sworn in. While he is not opposed to all development, he conveyed that Section 2.1 of the Comprehensive Plan states O'Fallon desires to remain a predominantly single-family residential community and conversion of residential property into multi-family or business related uses should only occur if a clear hardship could be proven. There is no hardship and there is already a Dollar General in O'Fallon and another Dollar General doesn't meet a community need. Piekutowki concluded there are plenty of other places that Dollar General can go, such as in the downtown area, and the Comprehensive Plan wouldn't have to be amended, and a Dollar General store didn't have to go near his house.

Sewell reminded everyone that emotional comments and personal opinions should not be part of the discussion.

Desarie Holmes, 110A Sunnyside Ln, was sworn in. Holmes requested where to get the information presented to understand the project and process. Shekell explained where to find all the information on the City's website and she was provided a copy of the staff report.

Johnson acknowledge that while this is an emotional process for the residents, any development, even an office park, would still have drainage concerns. Many of the existing drainage issues could be addressed by the residents and is possibly not the City's responsibility to correct. The duplexes can be considered a buffer between the residences and the commercial development. While the MR-1 zoning can allow 3- or 4-family homes, they are not proposing anything more than duplexes. Shekell added that this area could be developed as small single-family lots similar to North Parc Grove, and the City would prefer not to see 3- or 4-family home. Johnson concluded that the building on Lot 1 will look nice on the outside and will look as nice as the Walgreens. What merchandise pricing is inside the building should not be a determining factor of what the outside of the building looks like. Cavins stated it would have been ideal to have seen what the building is really going to look like. Johnson stated they will follow

staff recommendation and follow the CDH. There is a used car lot and a carwash across Highway 50 and this building will look better than those developments. The bank and credit union on the north side of Highway 50 can be considered retail operations and added that banks have drive-thrus which operate throughout the night and car lights are shining off the lots.

Shekell addressed the land use stating a bank with a drive-thru could potentially be set back further on the lot resulting in an office development being closer to the existing residences. With the land use change, if the developer was able to get retail on the front of the lot, the City wanted to see residential on the back as a buffer to make it as consistent with the neighborhood as possible.

V. Piekutowski stated Walgreens is 150 feet further away than where this proposed retail is going to be.

Gedney asked if any of the Commissioners would consider taking the Dollar General that is currently in Southview Plaza and place it next to their home.

Shekell reported the back of the Dollar General store would be about a football field length, or 300 feet, from the rear property line. It would be closer to the duplex units at the end of the stub.

Public comments for both hearings were closed at 7:56 pm and emphasized the Commission's vote was only a recommendation to the City, and there were more opportunities for the public to vocalize their concerns to the aldermen.

Staff Recommendation:

Randall read over the Staff Recommendations as follows:

P2016-15 - Comprehensive Plan Amendment:
Staff recommends amending the 2006 O'Fallon Comprehensive Plan and the Future Land Use Map from *Office / Service* to *General Commercial* and *Neighborhood Residential* for the 6.44 acres of land along Highway 50 (Parcel ID Nos. 03-30.0-300-026, 03-30.0-300-027).

P2016-16 & S16-12 - Planned Use and Preliminary Plat:
Staff recommends approval of the Planned Use and the "Fifty and Lawn" preliminary plat with the following conditions, which includes the addition of conditions #9 & #10:

1. A variance to reduce the required right-of-way on Hillcrest Drive from 54 feet to 50 feet.
2. The proposed building elevations for Dollar General will need to be revised to incorporate the recommendations of the Commercial Design Handbook.
3. Improvement plans for all the common improvements and a final plat is required.
4. An IDOT permit is required for the work done in IDOT right-of-way.
5. The commercial lots will be subject to final development plans.

6. The improvements proposed along the entire length of Lawn Avenue fronting this development will be triggered by any phase of development that has access to Lawn Avenue.
7. If home ownership is proposed, the lots will need to meet all federal, state and local laws.
8. The park dedication requirement is 0.24 acres with the requirement being fulfilled through a fee in lieu of land in the amount of $12,241, $612.00 per unit ($1,224 / lot).
9. The required buffer behind the Dollar General store be continued all the way through Lot 2 of the development at the time the Dollar General store is constructed.
10. The residential development is restricted to single-family and two-family homes.

Motion was made by Keeler and seconded by Arell-Martinez to approve the Staff's Recommendations with the two additional conditions of the Planned Use petition.

Dunn proposed adding an 11th condition to the Planned Use to restrict through traffic on the Hillcrest extension by cul-de-sac, ordinance, or signage – anything that would restrict traffic by physical barrier or legal barrier. Rogers stated a cul-de-sac would affect or eliminate the last lots on the east side. Dunn observed Lots 4, 5, 6, and 7 would be part of a cul-de-sac. Sewell stated it would be up to City Council to consider all points and devise a solution.

Motion was made by Dunn and seconded by Keeler to amend the Staff's Recommendation on the Planned Use and add Condition #11 - "To restrict through traffic on the Hillcrest extension via a physical barrier or enforceable signage ordinance."

ROLL CALL: Arell-Martinez, aye; Cavins, aye; Dunn, aye; Keeler, aye; Kemper, aye; Pickett, aye; Rogers, nay; Sewell, aye. Ayes – 7; Nays - 1. Motion to amend Staff Recommendation with Condition #11 passed.

Kemper was concerned that the merits of amending the Comprehensive Plan were not discussed independently of the project with an objective to protect the residents.

Motion was made by Rogers and seconded by Dunn to approve the Staff's Recommendations of the Comprehensive Plan Map Amendment as written.

ROLL CALL: Arell-Martinez, aye; Cavins, aye; Dunn, aye; Keeler, aye; Kemper, nay; Pickett, aye; Rogers, aye; Sewell, aye. Ayes – 7; Nays - 1. Motion to amend Staff Recommendation passed.

The Comprehensive Plan Map Amendment public hearing was closed at 8:18 pm.

Randall re-read the Staff Recommendations for the Planned Use Amendment with the addition of condition #9, #10 and #11.

ROLL CALL (to approve the amended Staff Recommendation): Arell-Martinez, aye; Cavins, nay; Dunn, aye; Keeler, aye; Kemper, nay; Pickett, nay; Rogers, aye; Sewell, aye. Ayes – 5; Nays - 3. Motion to approve amended Staff recommendation passed.

The Planned Use public hearing was closed at 8:23 pm.

Both projects and the Commission's recommendations move to Community Development on January 9, 2017, at 6:00 pm. Sewell invited and encouraged the citizens to contact all the City's aldermen to continue to express and discuss their current drainage concerns/conditions and the proposed development.

UNFINISHED BUSINESS: None.

REPORTS OF STANDING AND SPECIAL COMMITTEES: None.

REPORTS AND COMMUNICATION:
Randall announced there are no meetings scheduled for December 27th or January 10th.

ADJOURNMENT:
Motion was made by Pickett and seconded by Keeler to adjourn. All ayes. Motion carried. The meeting was adjourned at 8:25 pm.

Respectfully submitted,

_____
Vicki Evans, Transcriptionist

_____
Minutes approved by Planning Commission

MEMORANDUM

TO: Community Development Committee

FROM: Justin Randall, Senior City Planner

THROUGH: Ted Shekell, Community Development Director

DATE: January 9, 2017

SUBJECT: P2016 – 15: Evaluation of an amendment to the 2006 O'Fallon Comprehensive Plan Future Land Use Map (1st Reading)

Plan Commission Recommendation

The Planning Commission held a public hearing on the above referenced application at their December 13, 2016 meeting. The Commission voted 7-ayes and 1-nay to approve the Future Land Use Map Amendment from *Office / Service* to *General Commerical* (2.57 acres on Highway 50) and *Neighborhood Residential* (3.87 acres along Lawn Avenue).

Project Background and Summary

The evaluation of the Future Land Use Map for this area is a result of a proposed commercial and duplex development at the northwest corner of Highway 50 & Lawn Avenue, which has been proposed by Terry Johnson of Triple Net Management. The proposed project of is currently inconsistent with the 2006 O'Fallon Comprehensive Plan – Future Land Use Map and would require the map to be amended from *Office / Service* to *Neighborhood Residential* and *General Commercial.* The area staff has evaluated consists of approximately 6.44 acres of land north of Highway 50 and west of Lawn Avenue and includes Parcel ID Nos. 03-30.0-300-026, 03-30.0-300-027.

Please see the attached Plan Commission Project Report for more detailed information on the proposed amendment.

Staff Recommendation

Due to the subject property's frontage to Highway 50 and the existing development that has occurred around the area, staff recommends amending the 2006 O'Fallon Comprehensive Plan and the Future Land Use Map from *Office / Service* to *General Commercial* and *Neighborhood Residential* for the 6.44 acres of land along Highway 50 (Parcel ID Nos. 03-30.0-300-026, 03-30.0-300-027).

Attachment:

Report to Plan Commission

PROJECT REPORT

TO: Planning Commission

FROM: Justin Randall, Senior City Planner

THRU: Ted Shekell, Community Development Director

DATE: December 13, 2016

PROJECT: P2016 – 15:
Evaluation of an amendment to the 2006 O'Fallon Comprehensive Plan Future Land Use Map

Summary

This public hearing involves an evaluation of an amendment to the 2006 O'Fallon Comprehensive Plan - Future Land Use Map due to a proposed commercial and duplex development at the northwest corner of Highway 50 & Lawn Avenue, which has been proposed by Terry Johnson of Triple Net Management. The proposed project of is currently inconsistent with the 2006 O'Fallon Comprehensive Plan – Future Land Use Map and would require the map to be amended from *Office / Service* to *Neighborhood Residential* and *General Commercial.* The area staff has evaluated consists of approximately 6.44 acres of land north of Highway 50 and west of Lawn Avenue and includes Parcel ID Nos. 03-30.0-300-026, 03-30.0-300-027.

Future Land Use Map

Surrounding Proposed Land Uses:

North: Neighborhood Residential (orange)
East: General Commercial (red)
South: General Commercial (red)
West: Office / Service (purple)

Applicable Ordinances, Documents and Reports

Public Notice: Public Notice of this project has been fulfilled in accordance with Section 158.255 and158.256 of the City of O'Fallon Zoning Regulations. More specifically, the applicant has notified property owners within 250 feet of the subject property via certified mail of the filing of the zoning amendment. Additionally, the City has notified property owners within 250 feet of the subject parcel of the public hearing at least 15 days prior to the hearing and published notice of the public hearing in a local newspaper at least 15 days in advance. Proof of notification is on file with the City's Community Development Department.

Discussion Points/Issues

Existing Conditions

The subject property of the proposed project by Triple Net Management is classified under the 2006 O'Fallon Comprehensive Plan and Future Land Use Map as *Office / Service* and consists of 6.44 acres. In the 2006 O'Fallon Comprehensive Plan and Future Land Use Map, the *Office / Service* land use category is the least intense non-

residential district, with planned office development recommended when the development adjoins residential areas. General uses under the *Office / Service* land use category include general office activities, financial institutions, business services and ancillary light retails, with a corresponding zoning district of O-1 – Office District.

The surrounding area is primarily non-residential in nature with uses including retail and service uses along Highway 50 to the east, west and south. Highway 50 to the east is designated as *General Commercial* land use category under the 2006 O'Fallon Comprehensive Plan and Future Land Use Map and B-2 – General Business District zoning. In addition to the commercial uses fronting on Highway 50, the *General Commercial* land use designation extends over 700 feet north along Lawn Avenue for potential redevelopment on Highway 50. Across Highway 50, to the south, is also designated as *General Commercial* land use category, with a mixture of B-2 – General Business District and B-1 – Community Business District zoning. Walgreens, a multi-tenant development known as O'Fallon Centre, Easy Street Auto Wash and a used car lot are all located directly across Highway 50 from the property development property. The northern portion of the Highway 50 corridor, west of the development parcel, is designated as *Office / Service.* Redevelopment of the existing single-family residences along Highway 50 has been limited, however the property adjacent was approved for a planned office development in 2005 (not constructed), Scott Credit Union and a residential conversion to a real estate office (2016) have developed. The south portion of the Highway 50 corridor west of the development area is designated as *General Commercial* land use category, with B-1 – Community Business District zoning, including two multi-tenant retail centers, Denny's, Sonic and CVS.

There are residential land uses to the north of the development parcel, designated as *Neighborhood Residential* in the city's Comprehensive Plan. The *Neighborhood Residential* designation provides for a density of residential uses up to 7 detached single-family units per acre, and would include zoning districts of SR-1, SR-2, and SR-3, and under certain circumstances may include attached villas through the Planned Use process, with homeownership being encouraged as a part of that land use designation. Single-family residences are located along north along Lawn Avenue and single-family and two-family residences are located in the Countryside Glen Subdivision to the northwest.

History

The area, particularly the properties north of the project area to State Street and west of Lawn Avenue, was previously evaluated for an amendment to the 2006 O'Fallon Comprehensive Plan and Future Land Use Map as a result of a proposed development in 2008. The development was requesting 4.63 acres of land on State Street be rezoned from "SR-1", Single-Family Residence Dwelling District, to "O-1(P)", Planned Office District for the proposed use of a real estate office. The change in zoning was going to require the subject property to be reclassified as *Office / Service* from *Neighborhood Residential* future land use category.

At the time, staff envisioned that this general area would continue to transform from residential uses to office / business services. During the analysis of the proposed amendment, staff noted the *Office / Service* land use and density would need to be sensitive to the surrounding residential uses, suggesting the character, scale and density of any future office development should be compatible with the nearby residential uses. The recommendations included building architecture similar to houses, such as gables roofs, architectural shingles, maximum two stories, specific uses should be limited to professional offices with hours of operation between 8am and 6pm and retail uses should be avoided. There was opposition by some of the residences near the development and ultimately the petitioner withdrew the request.

Proposed Amendment

The proposed amendment to the 2006 O'Fallon Comprehensive Plan and Future Land Use Map is from the existing *Office / Service* district for the entire 6.44 acres to *General Commercial* for 2.57 acres and *Neighborhood Residential* for the remaining 3.87 acres. The evaluation of the Future Land Use Map for this area is a result of an application submitted by Terry Johnson of Triple Net Management to development the property with a 10,640 square foot Dollar General, 12,150 square foot multi-tenant retail building and 10 – two-family dwelling units. The commercial buildings would front along Highway 50 and the two-family dwelling units would front along an extended Hillcrest Drive. The

parcels would need to be rezoned from SR-3 – Single-family Residence Dwelling District to B-1(P) – Planned Community Business District and MR-1(P) Planned Two-, Three-, and Four-Family Residence Dwelling District.

General Commercial Designation

Staff evaluated the potential to amend the Future Land Use Map from *Office / Service* to *General Commercial* for the southern 2.57 acres the property located at 648 West Highway 50, which has an associated zoning designation of B-1 – Community Business and B-2 – General Business District. The *General Commercial* designation recommends projects that have a scale and character compatible with the surrounding area, with particular attention paid to the projects architectural / urban design and landscaping features. Additionally, when developments are proposed near a residential area, planned commercial development are necessary to control access, provide additional landscaping and buffering.

Neighborhood Residential Designation

Additionally, staff evaluated the potential to amend the Future Land Use Map from *Office / Service* to *Neighborhood Residential* for the northern 3.87 acres the property located at 648 West Highway 50, which has an associated zoning designation of SR-2 and SR-3 – Single-family Residential Dwelling Districts. The *Neighborhood Residential* designation recommends no more than 7 dwelling units per acre on smaller lots and under certain circumstances may include attached villas through the Planned Use process, with homeownership being encouraged as a part of that land use designation.

Evaluation of Proposed Amendment

One of the major factors in reviewing a zoning amendment is whether the request would result in "spot zoning" as defined in *Griswold v. City of Homer* (10/25/96), 925 P 2d 10115, which defines it as "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners." Illinois courts have found that not every rezoning is ipso facto void as spot zoning, but there every case must be evaluated with a comprehensive review of existing uses established in the area and the relationship with the comprehensive plan of the city. Rezoning a property to a zone district that is out of character with surround zoning, land uses and the comprehensive plans can result in the courts determining the rezoning was in fact spot zoning and deem the change in zoning illegal. The City of O'Fallon and the Community Development Department has made an assertive effort not to spot zone a property, especially when the proposed use and zoning is inconsistent with the 2006 O'Fallon Comprehensive Plan and Future Land Use Map. Therefore, staff must evaluate a change in the 2006 O'Fallon Comprehensive Plan and Future Land Use Map on the subject property from *Office / Service* to *General Commercial* and *Neighborhood Residential*.

The comprehensive plan amendment looked at the 6.44-acre project area. Staff determined the B-1 - Community Business District would be the most appropriate zone district for the commercial development and MR-1 - Two-, Three-, and Four-Family Residence Dwelling District would be most appropriate zone district for the two-family development. Thus, staff's analysis is focused on whether the Future Land Use Map should be amended from *Office / Service* to *General Commercial* and *Neighborhood Residential*.

Staff believes that non-residential uses associated with the *General Commercial land* use category should generally be located near major access routes and interchanges. Roadway classifications are an important determination on the type of land uses that should be located throughout the road corridor. The Federal Highway Administration (FHWA) classifies roads from Interstate down to Local type roads. The East-West Gateway Council of Governments has classified Highway 50 as a Minor Arterial, the 4th highest road classification under the definitions of the FHWA. The FHWA characterizes Minor Arterials as an "interconnector to higher-level Arterials" (in the case of Highway 50, it connects Interstate 64 to U.S. Highway 50 on the east end of town), "distributes traffic to smaller geographic areas" and "provides more land access than Principal Arterials without penetrating identifiable neighborhoods" Sound planning principles would direct commercial uses to be located along commercial corridors thus, it would be pertinent to focus commercial uses on the Minor Arterial of Highway 50. The City of O'Fallon has acknowledged the Highway 50 corridor

from Spur to Walnut Street for non-residential uses as the entire corridor has been identified as *General Commercial* and *Office / Service* in the 2006 O'Fallon Comprehensive Plan and Future Land Use Map.

Additionally, the 2006 O'Fallon Comprehensive Plan specifically discusses the area between the Spur and Walnut Street along Highway 50 in the Sub-Area and Corridor Plans (Chapter 8). The plan states "traffic has steadily increased during the past twenty years, and a traffic study was completed with a recommendation for Highway 50, which is an IDOT roadway, to be widened to five lanes". The plan indicates the area has seen increased traffic and significant changes in the overall development patterns due to the Interstate interchange at Green Mount Road. The plan continues and directly address the development property, stating "the vacant site on the north side of Highway 50 across from Walgreen's lies between two residential areas. In order to maintain the area's predominantly residential character, future land use should be primarily single-family residential, with the area fronting West Highway 50 considered for office and business services. Given the nature of the area, this residential section on the north side of West Highway 50 between Lawn and Green Mount would be most suitable for office and business services rather than high impact general or regional commercial or retail use." However, the plan does indicate that the area should be redeveloped in accordance with Section 8.3, which further outlines the conversion of these residential areas into non-residential areas. The plan indicates the City should not "piecemeal development of individual parcels, as it will produce poorly planned development than can only negatively impact the adjacent residential neighborhood".

In considering the impetuous for a comprehensive plan change, typically the area proposed for the change would have experienced notable changes, or at least pressure to change, in the development pattern for the area. In this particular area along Highway 50, the City has seen increased pressure for commercial and office redevelopment of the corridor. Additionally, the plan as proposed by Triple Net Management on the 6.44-acre site situates the higher intensity commercial land use along the frontage of Highway 50 and uses a two-family residential development to help buffer some of the single-family homes along Lawn.

The area around 648 Highway 50 is located along Highway 50 and staff is apprehensive of allowing non-residential uses to leak too far north along Lawn Avenue, where existing uses are primarily residential. The proposed amendment to the Future Land Use Map would achieve limiting non-residential uses to within 300 feet of Highway 50, instead of the 565 feet currently designated on the development property and the over 700 feet of *General Commercial* along the east side of Lawn Avenue. Additionally, the project allows for the two-family development to provide a buffer and transition to the single-family homes along Lawn Avenue. Therefore, while the plan calls for limiting retail uses in the area, the project area would be an appropriate location for non-residential land uses associated with the *General Business* land use category.

Staff believes a change of the project area from 6.44 acres of *Office / Service* land use designation to 2.57 acres of *General Commercial* land use designation fronting on Highway 50 and 3.87 acres to be scaled back to a *Neighborhood Residential* land use designation would provide a buffer between the single-family residential land uses to the north along Lawn Avenue and the commercial and office uses to the south along Highway 50. Provided through the Planned Use process there are buffers (fencing and landscaping) required that can reduce concerns of trash, lighting and noise and incorporate the principles of development outlined in Section 8.3 of the 2006 O'Fallon Comprehensive Plan.

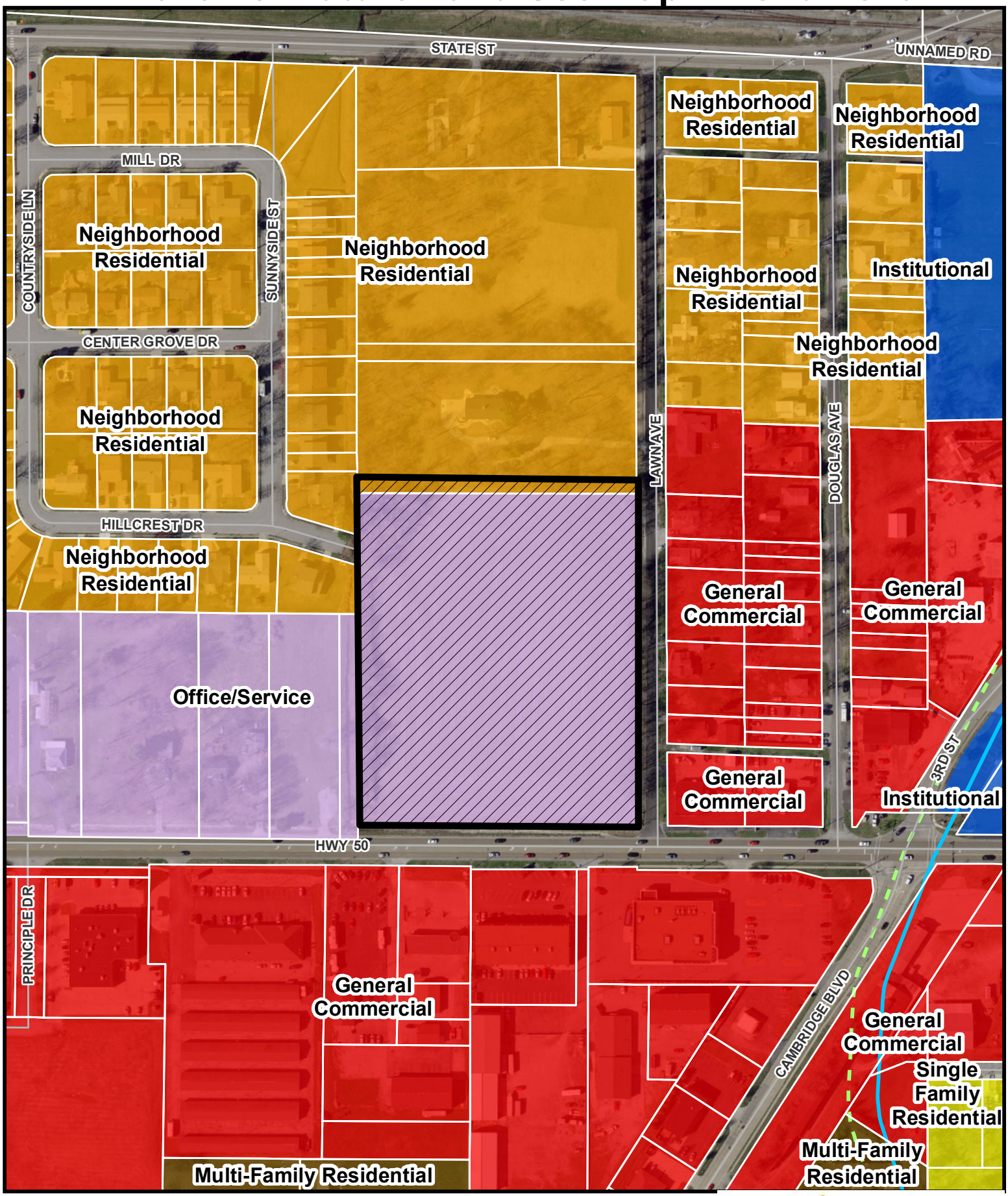
Staff Recommendation

Due to the subject property's frontage to Highway 50 and the existing development that has occurred around the area, staff recommends amending the 2006 O'Fallon Comprehensive Plan and the Future Land Use Map from *Office / Service* to *General Commercial* and *Neighborhood Residential* for the 6.44 acres of land along Highway 50 (Parcel ID Nos. 03-30.0-300-026, 03-30.0-300-027).

Attachments

2006 O'Fallon Future Land Use Map of the Evaluation Area

P2016-15: Future Land Use Map Amendment



Subject Property

0 62.5 125 250 375 500 Feet

N W E S

O'Fallon ILLINOIS

MEMORANDUM

TO: Community Development Committee

FROM: Justin Randall, Senior City Planner

THROUGH: Ted Shekell, Community Development Director

DATE: January 9, 2017

SUBJECT: S16-12 & P2016-16: Highway 50 and Lawn Avenue – Preliminary Plat and Planned Use (1st Reading)

Project Update

The Planning Commission held a public hearing on the above referenced application at their December 13, 2016 meeting. The Commission heard a number of concerns from surrounding residents, including drainage, cut-through traffic, the retail land use and building façade. The Commission voted 5-ayes and 3-nay to approve the requested preliminary plat and planned use for the Highway 50 and Lawn development, subject to staff's recommended conditions and added conditions:

1. The required buffer behind the Dollar General store be continued all the way through Lot 2 of the development at the time the Dollar General store is constructed.
2. The residential development is restricted to single-family and two-family homes.
3. To restrict through traffic on the Hillcrest extension via a physical barrier or enforceable signage ordinance.

Staff and the developer have discussed the concerns raised at the Planning Commission meeting. The developer has provided a revised building elevation for the Dollar General building that incorporates the design principles outlined in the Commercial Design Handbook. Additionally, the developer is willing to address the cut-through traffic with the placement of signs or a physical barrier per the direction of the City Council.

Project Background and Summary

The applicant, Terry Johnson of Triple Net Management has filed an application requesting approval of a preliminary plat and planned use for parcels of land generally located at 648 West Highway 50, currently zoned SR-2 – Single-family Residence Dwelling District to be rezoned to B-1(P) – Planned Community Business District and MR-1(P) – Planned Two-, Three- and Four-Family Residence District and a Planned Use. The proposed development includes a 10,640 square foot Dollar General, 12,150 square foot multi-tenant retail building and 10 – attached single-family dwelling units (20 total dwelling units). The commercial lots would front on Highway 50, with a shared access point and an access to Lawn Avenue. The residential lots would be served by an extension of Hillcrest Drive from the Countryside Glen subdivision, which was stubbed to the project parcel, to Lawn Avenue.

Please see the attached Plan Commission Project Report for more detailed information on the proposal.

Staff Recommendation

Staff recommends approval of the project with the following conditions:

1. A variance to reduce the required right-of-way on Hillcrest Drive from 54 feet to 50 feet.

2. The proposed building elevations for Dollar General will need to be revised to incorporate the recommendations of the Commercial Design Handbook.
3. Improvement plans for all the common improvements and a final plat is required.
4. An IDOT permit is required for the work done in IDOT right-of-way.
5. The commercial lots will be subject to final development plans.
6. The improvements proposed along the entire length of Lawn Avenue will be triggered by any phase of development that has access to Lawn Avenue.
7. If home ownership is proposed, the lots will need to meet all federal, state and local laws.
8. The park dedication requirement is 0.24 acres with the requirement being fulfilled through a fee in lieu of land in the amount of $12,241, $612.00 per unit ($1,224 / lot).
9. The required buffer behind the Dollar General store be continued all the way through Lot 2 of the development at the time the Dollar General store is constructed.
10. The residential development is restricted to single-family and two-family homes.
11. To restrict through traffic on the Hillcrest extension via a physical barrier or enforceable signage ordinance.

Attachment:
Report to Plan Commission
Revised Dollar General Building Elevations

PROJECT REPORT

TO:	Planning Commission
FROM:	Justin Randall, Senior City Planner
	Ted Shekell, Community Development Director
DATE:	December 13, 2016
PROJECT:	S16-12 & P2016-16: Highway 50 and Lawn Avenue – Preliminary Plat and Planned Use

Location:	Northwest corner of Highway 50 and Lawn Avenue (648 West Highway 50)
Ward:	6
Applicant:	Terry Johnson of Triple Net Management
Owner:	Niteshkumar and Alka Patel
Submitted:	November 7, 2016

Project Summary

The applicant, Terry Johnson of Triple Net Management has filed an application requesting approval of a preliminary plat and planned use for parcels of land generally located at 648 West Highway 50, currently zoned SR-2 – Single-family Residence Dwelling District to be rezoned to B-1(P) – Planned Community Business District and MR-1(P) – Planned Two-, Three- and Four-Family Residence District and a Planned Use. The proposed development includes a 10,640 square foot Dollar General, 12,150 square foot multi-tenant retail building and 10 – attached single-family dwelling units (20 total dwelling units). The commercial lots would front on Highway 50, with a shared access point and an access to Lawn Avenue. The residential lots would be served by an extension of Hillcrest Drive from the Countryside Glen subdivision, which was stubbed to the project parcel, to Lawn Avenue.

Existing Conditions

Subject Property

The subject property for the proposed Highway 50 and Lawn Avenue development is an approximate 6.44 multi-parcel property. The property is located on the northwest corner of intersection of Highway 50 and Lawn Avenue.

The property is currently used for agricultural proposes. The site generally slopes from a high point (elevation 558) along Lawn Avenue on the east side of the property down to a drainage ditch (elevation 544) on the west side of the property. According to the Illinois State Geological Survey, the proposed site is undermined by the St. Ellen Mine, which is located at a depth of approximately 210 feet. The subject property is located outside of any floodplain.

Surrounding Properties

The property surrounding the proposed Highway 50 and Lawn Avenue development is a mixture of non-residential and residential uses, including retail, office, restaurants and single and attached single-family residences. The following is detailed information on the surrounding zoning and land uses.

Surrounding Zoning:	*Surrounding Land Use:*
North: SR-2, SR-3 and MR-2	North: Single-family residences along Lawn Avenue and single-family and attached single-family homes in the Countryside Glen subdivision.
East: SR-3 and B-2	East: Single-family residences along Lawn Avenue. Clete's Automotive Repair and Towing, O'Fallon Glass and Mirror and BC Signs are located on Highway 50.
South: B-1, B-2 and B-2(P)	South: Across Highway 50 is Walgreens, a multi-tenant retail development known as O'Fallon Centre, Easy Street Auto Wash and a used car lot.
West: B-1, B-1(P), SR-2 and O-1(P)	West: The north side of Highway 50 has a mixture uses, including single-family residences, Scott Credit Union and a residence converted to a real estate office. South of Highway 50 includes two multi-tenant retail centers, Denny's, Sonic and CVS.

Applicable Ordinances, Documents and Reports

O'Fallon Comprehensive Plan: The 2006 O'Fallon Comprehensive Plan Future Land Use Map depicts the entire 6.44-acre subject property as *Office / Service*. The proposed project would more appropriately fit within two separate land use designations. The commercial development along Highway 50 would be better classified as a *General Business* land use designation, while the attached single-family development would be better classified as a *Neighborhood Residential* land use category. Therefore, the proposed project is currently inconsistent with the Comprehensive Plan, however a proposed Comprehensive Plan Amendment that allows a mixed use development of commercial and attached single-family residences is proposed. A detailed report on a proposed change to the Future Land Use Map has been issued under file P2016-15.

Code of Ordinances: The proposed mixed use development that includes a 10,640 square foot Dollar General, 12,150 square foot multi-tenant retail building and 10 – attached single-family dwelling units (20 total dwelling units) is subject to Chapter 154 (Subdivision), Chapter 155 (Development Manual, and Chapter 158 (Zoning) and the Commercial Design Handbook. The development requires a preliminary plat and development plan. Additionally, the property is subject to the B-1 – Community Business District and MR-1 – Two-, Three- and Four-Family Residence District, including the area-bulk requirements.

Public Notice: Public Notice of this project has been fulfilled in accordance with Section 158.255 and158.256 of the City of O'Fallon Zoning Regulations. More specifically, the applicant has notified property owners within 250 feet of the subject property via certified mail of the filing of the zoning amendment. Additionally, the City has notified property owners within 250 feet of the subject parcel of the public hearing at least 15 days prior to the hearing and published notice of the public hearing in a local newspaper at least 15 days in advance. Proof of notification is on file with the City's Community Development Department.

Discussion Points/Issues

General Summary

The overall development of Highway 50 and Lawn Avenue is a 12 lot subdivision, with a common area for detention. The plan proposes two commercial lots along the frontage of Highway 50 as Lot 1 (1.08 acres) and Lot 2 (1.49 acres). Lot 1 is proposed for a 10,640 square foot Dollar General and Lot 2 includes a 12,150 square foot multi-tenant retail building. Additionally, the rear portion of the property is proposed for ten residential lots with attached single-family homes proposed, totaling 20 residences. The residential lots would be served by an extension of Hillcrest Drive from the Countryside Glen subdivision, which was stubbed to the subject property for the continuation of Hillcrest Drive to Lawn Avenue when the Countryside Glen subdivision was built. The residential component of the development would have a density of 6.75 units per acre, consistent with the *Neighborhood Residential* land use category of the Comprehensive Plan. The residential development of attached single-family homes could be developed under one ownership or as individual ownership, with a

demising wall to allow different ownership of each unit. The overall development is proposed in three phases and when completely constructed, with the entire site graded for drainage purposes and Lot 1 (Dollar General) developed initially. The developer is seeking buyers for the development of the attached single-family development and retail center development portion of the project.

Traffic Circulation/Parking

Existing Infrastructure:

The development parcel is a located at the northwest corner of Highway 50 and Lawn Avenue. Highway 50 is the primary road which delivers traffic to the site. The East-West Gateway Council of Governments has classified Highway 50 as a Minor Arterial. Highway 50 is a major east-west corridor through O'Fallon, serving a variety of land uses. At the location of the proposed development, Highway 50 is a two-lane state-maintained roadway with a middle bi-directional turn lane.

Lawn Avenue is classified as a Local street and serves as a connector between Highway 50 and State Street (both Minor Arterial streets) and serves a few single-family residences. Lawn Avenue is a residential street, with pavement widths varying between 18-20 feet. The intersection of Highway 50 and Lawn Avenue is approximately 400 feet west of the signalized intersection of Highway 50 and Cambridge Boulevard / 3rd Street.

Street Improvements:

During the development of the Countryside Glen subdivision, Hillcrest Drive was stubbed to the property line for future connection to the subject property and Lawn Avenue. The plan proposes extending Hillcrest Drive, from the stubbed location at the property line and the Countryside Glen subdivision to Lawn Avenue. The proposed extension would include a 36-foot wide street (back of curb to back of curb) within a 50-foot right-of-way, which is equivalent to the existing Hillcrest Drive to the west. The City's current codes regarding a residential minor and local streets is a 30-foot back of curb to back of curb road way within a 54-foot right-of-way. The applicant is requesting a variance to continue the Hillcrest Drive right-of-way at the existing 50 feet instead of 54 feet. The Public Works Department has reviewed the request and has found the sidewalks can still be located within the right-of-way and all of the public utility extensions are located within 15-foot utility easements.

Additionally, the proposal will provide improvements along the west side of Lawn Avenue. The proposed improvements include providing an additional 5 feet of right-of-way to the existing 50-foot right-of-way and increasing the pavement width from 18 feet to 24 feet and providing a curb. The improvements along Lawn Avenue are proposed from the northern property line of the subject parcel south to Highway 50. The improvements proposed along the entire length of Lawn Avenue will be triggered by any phase of development that has access to Lawn Avenue. Although, a portion of Lawn Avenue will be improved truck deliveries to the commercial sites, shall only access the commercial buildings from the Highway 50 access.

Ingress and Egress:

Access of the commercial sites will be by means of two points of access, the primary one on Highway 50 and a secondary access point on Lawn Avenue. The single point of access on Highway 50 will be a shared entrance for the Dollar General site and multi-tenant retail building. The entrance is proposed at 36 feet wide with an inbound lane and a right-turn lane and left-turn lane. The preliminary plat is showing an ingress/egress easement for the shared access point. The proposed access point on Highway 50 is 220 feet west of Lawn Avenue and is nearly centered between the shared access point of Walgreens and O'Fallon Centre and the shared drive for the car wash and used car lot. This access point should be the only access point used by trucks delivering goods to the commercial buildings. Since Highway 50 is a state-maintained road, an IDOT entrance permit will be required.

The access to Lawn Avenue for the commercial portion of the development is proposed at 26 feet wide, which would accommodate one inbound lane and one outbound lane. The access point is located approximately 260 feet from the intersection of Lawn Avenue and Highway 50.

On-site circulation:

On-site circulation has been reviewed by staff. It is staff's opinion that the layout depicted on the site plan will effectively address internal, as well as external traffic control. Typically, a cross access easement to the property to the west would be

required, however the western property line is the lowest point of the property which is where stormwater detention is most suitable. In order to accommodate the entire development parcel, the proposed detention area is quite large and prohibits cross access to the property to the west. Additionally, there is a large drainage ditch that runs between the two properties which severely limits cross access as well. The development does propose to extend Hillcrest Drive, which was stubbed to the property line to provide access to the homes in the Countryside Glen subdivision to Lawn Avenue and ultimately Highway 50.

Parking:
Retail sales type land uses are required to provide 4 parking spaces per 1,000 square feet of gross floor area. The 10,640 square foot Dollar General would require 43 parking spaces. The development has proposed 43 spaces with 2 accessible spaces, meeting the requirements of the City's parking regulations. The 12,150 square foot multi-tenant retail building would require 49 parking spaces. The site plan for Lot 2 is proposing 51 spaces, including 2 handicap spaces. While the total number of parking spaces meets the City's codes, when a site provides 51 – 75 parking spaces three accessible spaces are required.

Parking space size:
Code requires 10' x 19' parking spaces with 24' aisles (62' modules). The proposed development provides a note that all parking spaces will meet the required 10' x 19' size requirements. Additionally, a note is included that all accessible spaces will be 8' wide with an 8' wide accessible path for each space in accordance with the Illinois Accessibility Code.

Parking lot lighting:
The plan indicates all lighting fixtures will be full cut-off, with poles located in landscape islands. A full photometric plan will be provided to ensure the lighting of the parking lots will meet the minimum lighting standards for the parking lot and lighting spill over is minimized to the adjacent properties in accordance with city codes. Additional details on the lighting standards will need to be provided to ensure lighting is directed toward the ground to reduce glare as required in Section 158.143.

<u>Utilities and Drainage</u>
Public Utilities:
There are multiple water mains adjacent to the site including a 12" water main along the north side of Highway 50, a 6" water main on the east side of Lawn Avenue and a 6" water main west of the drainage ditch that runs adjacent to the western property line. The proposed water service for the commercial developments will come off the 12" water line located on the north side of Highway 50. The residential component of the project would be served by extending the 6" water main from the Countryside Glen Subdivision and looping into the 6" water line along the east side of Lawn Avenue. The water line extension is proposed on the south side of the Hillcrest Drive extension.

Sewer service will also be provided to the development via City infrastructure. There is an existing 8" sewer line that runs along the west side of Lawn Avenue that terminates approximately 250 feet north of Highway 50, plus an 8" sewer line that runs on the south side of Highway 50. However, due to grades the site would be served with a sewer line extension of the 8" sewer line from the Countryside Glen subdivision. The extension would run on the north side of the proposed Hillcrest Drive extension and include an 8" sewer line along the rear of the commercial development to serve the two proposed commercial buildings.

Drainage:
The site topography shows one major drainage basin area for the property. Generally, the site drains from a high point (elevation 558) along Lawn Avenue on the east side of the property down to a drainage ditch (elevation 544) on the west side of the property. There is a small portion of the site in the northeast corner that drains toward Lawn Avenue. The site is proposing one detention basin for the entire site on the western side of the property. The site is proposing to collect stormwater in inlets along the proposed Hillcrest Drive extension and piping the stormwater to the detention pond. The plan is proposing an inlet in the northeastern corner of the property along Lawn Avenue to assist in draining a ditch along Lawn Avenue into the detention pond as well. The commercial portion of the site will be collected throughout the parking lot areas and directed to the detention basin. The detention basin's outfall is proposed in the ditch on the western property line. The developer is working with the property owner of the ditch to construct a concrete swale in the ditch bottom to assist in the

ditch draining instead of holding water. Actual detention pond sizes, grading, pipe sizes, and inlets will be engineered for the final plat phase. All drainage plans must be reviewed and approved by Public Works Department.

Building and Site Improvements

The proposed commercial developments will have will have four-side visibility, thus the commercial building elevations will need to be designed with facades that meet the recommendations of the Commercial Design Handbook.

Dollar General building:

The Dollar General building elevations show a fully brick façade on all four sides of the building, however does little to provide varying building materials, nor does the building incorporate architectural components such as awnings and varying roof lines. By providing a building with an exterior that mixes building materials (creating a base, middle and top) and breaking up the façade with windows, awnings and varying building roof lines, parapets or cornices would provide a much nicer design, consistent with the new commercial buildings located in O'Fallon. Staff has provided a number of examples (Attachment 6) of Dollar Generals constructed that provides a number of architectural components recommended in the Commercial Design Handbook.

Multi-tenant retail building:

The proposed multi-tenant retail building does have many of the recommendation of the Commercial Design Handbook integrated into the design of the building, including brick and stone building materials and incorporating gabled and hipped roofs to break up the façade. The plan indicates the dumpsters for the commercial building would be located within an enclosure that is constructed of similar building materials of the buildings. Additionally, all mechanical units will need to be screened.

Attached single-family residences:

While the attached single-family homes are not governed by the Commercial Design Handbook, the elevations proposed include brick facades on the front, with varying roof lines, consistent with surrounding residential homes.

Signage

The planned use submittal does not include a sign package for the commercial buildings, other than the location of the freestanding monument signs for each property. The freestanding signs are located approximately 25 feet back from the right-of-way of Highway 50. Therefore, the size of the freestanding and wall signs will be required to meet the requirements of Article 9 of Chapter 158 of the Code of Ordinances.

Coal Mine

The proposed development site is located in an area the Illinois State Geological Survey has depicted as being undermined by the St. Ellen's Mine. The area has seen mine subsidence in the past and most recently in 2014. The city does not require any additional requirements for properties that are located over an underground mine. The developer must manage the risks associated with developing an area that has been undermined.

Sidewalk

Per City requirements, a sidewalk is to be installed in front of all new developments. The plan is proposing a sidewalk along Highway 50, Lawn Avenue and both sides of the proposed Hillcrest Drive extension. The expectation is each lot would construct the sidewalk when the lot was developed.

Landscaping and Buffer Requirements

A preliminary landscaping plan has been completed and submitted for the site. The landscape plan addresses parking lot landscaping, street trees and buffering for the entire site.

Parking Lot Landscaping:

The site plan meets the required 7-foot buffer around the perimeter of the parking lots, provides a tree and shrub in each of the single landscape islands and provides a street trees along the frontage of Highway 50 and Lawn Avenue.

Buffers:
Should the property be rezoned to B-1(P) and MR-1(P), additional landscape buffers are required between the proposed uses and adjoining properties. The landscaping code requires when a B-1 zone district adjoins O-1 zoning and MR zoning districts and when MR zoning districts adjoins SR zoning districts a structural buffer is required. According to the preliminary landscaping plan, the site will provide a structural buffer that includes a 6-foot high fence and a combination of one evergreen shrub planted every ten feet, an evergreen tree planted every 25 feet and one deciduous tree planted every 50 feet. The preliminary landscape plan provides for a landscape buffer between the two commercial sites and the proposed attached single-family development and the Dollar General site and the property to the west. Additionally, a landscape buffer is proposed between the attached single-family development and the single-family residence to the north.

Street Trees:
The preliminary landscape plan provides for a street trees along Highway 50 and Lawn, as well as Hillcrest Drive. Due to the size of the right-of-way proposed, the trees will need to be placed on the outside of the sidewalk and behind any utility easements.

Open Space:
As detailed in Article 4 of Chapter 155 (Subdivisions), park lands are required to be constructed, or a fee in-lieu-of paid, whenever new residential subdivisions are constructed. Based on the average density of 1.97 persons per attached single-family unit/duplexes, the subdivision's 20 dwelling units requires a total of 0.24 acres of Park Lands dedication. This is based on the 6 acres of park space per 1,000 people and the estimated subdivision population of 40 people (20 x 1.97). A fee of $12,241 will be necessary for the balance of 0.24 acres of park space if so required, equaling $612 per unit ($1,224 per lot).

Variances
Right-of-Way Width:
The development is requesting to extend Hillcrest Drive, in a manner that is consistent with the existing Hillcrest Drive. The existing Hillcrest Drive was platted with a 50-foot right-of-way and constructed with a 36-foot wide street (back of curb to back of curb). The city's current codes for residential minor and local streets is a 30-foot wide roadway (back of curb to back of curb) within a 54-foot right-of-way. The Public Works Department has reviewed the request and has found the sidewalks can still be located within the right-of-way and all of the public utility extensions are located within 15-foot utility easements. Therefore, staff recommends the reduction of the right-of-way on Hillcrest Drive from 54 feet to 50 feet.

Review and Approval Criteria

Section 158.119 of Article 6 "Planned Uses" lists several criteria for evaluating planned uses. Evaluation of the project based on these factors is included under each criterion.

1. The criteria governing the rezoning of the property and approval of site plans, as set forth in the standards and requirements found elsewhere in the zoning code or in other applicable law,

   The project meets all applicable zoning standards except for the variance to the right-of-way width along the proposed extension of Hillcrest Drive.

2. The physical design of the proposed plan and the manner in which said design makes adequate provisions for public services, provides adequate control over vehicular traffic, provides for and protects designated common open space and park dedication, and furthers the amenities of light, air, recreation and visual enjoyment.

   The proposed development provides adequate provisions for public services, provides the necessary improvements to the control the potential increased traffic. The development of the project will improve the western half of Lawn Avenue near Highway 50, including widening the street to 24 feet. The east side of Lawn Avenue would be required to be improved, if the properties are ever redeveloped and additional right-of-way can be acquired for those improvements. Additionally, the project will utilize the existing stubbed Hillcrest Drive to provide additional connectivity for the Countryside Glen subdivision. The project greatly enhances pedestrian traffic opportunities on Highway 50 and Lawn Avenue with the construction of a 5-foot sidewalk. While this development is certainly going to change the current nature of the property from an agricultural farm field to a commercial and residential development, the project

would not significantly impact the Highway 50 corridor and the proposed improvements to Lawn Avenue should help address some of the impacts to Lawn Avenue.

3. The relationship and compatibility of the proposed plan to adjacent properties and the surrounding neighborhood.

   The portion of the Highway 50 corridor in the area of the proposed project is a commercial corridor with a variety of retail, office, service and restaurant businesses. The proposal has limited the commercial development to the Highway 50 frontage and proposed attached single-family homes further back along Lawn Avenue. The proposed commercial development provides a buffer that includes a fence and landscaping to the proposed residential development and a similar buffer for the proposed attached single-family homes to the single-family residence to the north. The location of the commercial uses and the buffers should limit some of the concerns with trash, lighting and noise for the residents along Lawn Avenue. The residential development, which is consistent with the homes along Hillcrest Drive and Sunnyside Street in the Countryside Glen subdivision will also provide an additional buffer from the existing residences in the area.

4. The conformity with the standards and principles of the Comprehensive Plan and all other adopted regulations, including the Commercial Design Handbook dated July 6, 2009 and on file with the City Clerk. *(Ord 3665; passed 5-3-10)*

   The change from an agricultural land use, designated on the Future Land Use Map as Office / Service use would not be consistent with the present Comprehensive Plan. However, staff has provided a proposed amendment to the Comprehensive Plan detailed in a separate staff report. If the City Council were to amend the Comprehensive Plan to Neighborhood Residential and General Commercial, the site would then be consistent. Additionally, the Commercial Design Handbook outlines a number of recommendations for building design. The proposed Dollar General building is proposed with 4 sides brick, however the building lacks a number of the recommended design principles. As currently proposed the building is inconsistent with the Commercial Design Handbook and should be designed in a way that create a building façade that provides a "base, middle and top" and breaks up the building facades with windows, awnings and varying the roof lines. Staff has provided a number of examples (Attachment 6) of Dollar Generals constructed that provides a number of architectural components recommended in the Commercial Design Handbook. The multi-tenant retail building does provide a building elevation that would be much more consistent with the Commercial Design Handbook design principles.

5. The use(s) are designed, located and proposed to be operated so that the public health, safety and welfare will be protected.

   The proposed development is designed to be operated to protect the public health, safety and welfare.

6. An identified community need exists for the proposed use.

   Yes, a community need exists for the proposed use. The current location of the Dollar General store is in an outdate shopping center, Southview Plaza. Southview Plaza has been in the process of vacating the businesses located in the plaza for the potential redevelopment of the site.

7. The proposed use(s) will not impede the normal and orderly development and improvement of the surrounding property, nor impair the use, enjoyment, or value of neighboring properties.

   The development will not impede the normal and orderly development and use of the surrounding property, nor will it impair the use, enjoyment, or value of neighboring properties.

8. The degree of harmony between the architectural quality of the proposed building and the surrounding neighborhood.

   The proposed Dollar General building lacks a number of architectural features and materials that make it aesthetically appealing and all four facades will need to be improved to ensure the building conforms to the recommendations of the Commercial Design Handbook. The multi-tenant retail building does provide a number of the recommendations of the Commercial Design Handbook and would enhance the architectural quality of the surrounding neighborhood. Additionally, the proposed attached single-family elevations are consistent with new homes constructed throughout the community, with varying building materials and roof lines and would be compatible with surrounding homes.

9. The appropriateness of the minimum dimensions and areas of lots and yards set forth in the applicable zoning district regulations.

The proposed development will be required to meet the area-bulk requirements set forth in the B-1 Community Business District and the MR-1 – Two-, Three- and Four-Family Residence District.

Staff Recommendation

Staff recommends approval of the project with the following conditions:

1. A variance to reduce the required right-of-way on Hillcrest Drive from 54 feet to 50 feet.
2. The proposed building elevations for Dollar General will need to be revised to incorporate the recommendations of the Commercial Design Handbook.
3. Improvement plans for all the common improvements and a final plat is required.
4. An IDOT permit is required for the work done in IDOT right-of-way.
5. The commercial lots will be subject to final development plans.
6. The improvements proposed along the entire length of Lawn Avenue will be triggered by any phase of development that has access to Lawn Avenue.
7. If home ownership is proposed, the lots will need to meet all federal, state and local laws.
8. The park dedication requirement is 0.24 acres with the requirement being fulfilled through a fee in lieu of land in the amount of $12,241, $612.00 per unit ($1,224 / lot).

Attachments

Attachment 1 – Project Application
Attachment 2 – Zoning Map
Attachment 3 – Surrounding Land Use Map
Attachment 4 – Current Future Land Use Map Designation
Attachment 4 – Site Plan
Attachment 5 – Building Elevations
Attachment 6 – Example Dollar General Elevations

S16-12

RECEIVED NOV - 7 2016

$270

CITY OF O'FALLON, ILLINOIS

APPLICATION FOR APPROVAL OF PRELIMINARY SUBDIVISION PLAT

(To be submitted with Filing Fee ($150.00 plus $10.00 per lot) payable to "City of O'Fallon" and a separate check for Engineering Plan Review Fee payable to "Rhutasel and Associates, Inc.")

Date: 10-27-16

Name of Subdivision: Fifty + Lawn

Name, Address, and Phone Number of Subdivider: Terry Johnson 907 Fan Oaks, Caseyville, IL

Name, Address, and Phone Number of Engineer: Dave Dillow Woolpert, 343 Fountains Pkwy, FH

Section: 30 Township: 2 Range: 7

Area of Tract: 6 ac Number of Proposed Lots: 12 Zoning: ~~SR-1~~ SR-2 ce

Property interest of applicant: ( ) Owner ( ) Contract Purchaser ( ) Other Consultant

APPLICANT'S CHECKLIST

REQUIREMENTS FOR SUBMITTAL	(YES or NO)
X PAYMENT OF FILING FEE $270	
X PAYMENT OF ENGINEERING PLAN REVIEW FEE $1,864 (incl. planned use)	
6 PRINTS OF SUBDIVISION PLAT & ONE (1) 11" x 17" COPY	yes
VARIANCES – (IF APPLICABLE) REQUESTS ATTACHED	yes
NARRATIVE LETTER PROVIDING AN OVERVIEW OF PROJECT	yes
COMPLETION OF PRELIMINARY PLAT CHECKLIST	yes
COMPLETION OF PAYMENT RESPONSIBILITY FORM	yes
X PRIVATE SUBDIVISION REGULATIONS ATTACHED (IF APPLICABLE)	
PHASE I DRAINAGE REPORT	yes
? .PDF COPY OF PLAT	yes
? SUBMITTAL IN CAD / GIS FORMAT (ON CD)	yes
PROOF OF DEVELOPER'S OWNERSHIP INTEREST	yes

***SUBMISSION PACKETS MUST BE COMPLETED IN FULL OR THEY WILL NOT BE RECEIVED BY THE CITY.**

I HEREBY affirm that I am authorized by the Developer to complete this **Application for Preliminary Plat** and that this request is in compliance with Chapter 154: Subdivisions stated in the Code of Ordinances of the City of O'Fallon, as indicated.

Applicant's Signature

O'Fallon ILLINOIS

Planned Use / Re-Zoning Application

NAME OF PROJECT: Fifty and Lawn

ADDRESS/GENERAL LOCATION: Hwy 50 and Lawn St.

SUBDIVISION NAME & LOT NUMBER(S):

PARCEL NUMBER(S): 04-30.0-300-027 648 W Hwy 50 (presently)

PLEASE CHECK THE TYPE OF APPLICATION (PLEASE CHECK ONE):

- PLANNED USE
- RE-ZONING (STANDARD MAP AMENDMENT)

SUMMARY DATA (RESPOND TO ALL THAT APPLY):

PRESENT ZONING: SR-2

PROPOSED ZONING: B1 (P) + MR ~~B1~~ (P)

PROPOSED # OF LOTS: 12

PROPOSED # OF DWELLING UNITS: 20

PROPOSED NUMBER OF BUILDINGS: 12

PROPOSED GROSS FLOOR AREA: 22,790 ft²

AREA IN ACRES: 6

PRESENT USE: Ag

APPLICANT INFORMATION:

NAME: Terry Johnson

COMPANY: Triple Net Management

ADDRESS: 907 Oak Oaks Dr.
Caseyville, IL 62232

PHONE: 977-8367

FAX:

EMAIL: TerryJ@barbockmorphy.com

SIGNATURE OF APPLICANT

DESIGN PROFESSIONAL INFORMATION:

NAME: Dave Dillow

COMPANY: Woolpert Eng.

ADDRESS: 343 Fountains Pkwy
FH, IL 62208

PHONE: 632-7004

FAX:

EMAIL: dave.dillow@woolpert.com

SIGNATURE OF DESIGN PROFESSIONAL

STAFF USE ONLY

DATE RECEIVED: RECEIVED NOV - 7 2016

APPLICATION RECEIVED BY:

APPLICATION FEE: $500.00

PROJECT ID #: P2016-15

STAFF ASSIGNED: J. Randall

PLAN REVIEW FEE ~~DEPOSIT~~ REC'D: yes

RECEIVED NOV - 7 2016
S 16-12 +
P2016-15

Project Narrative For:

Fifty and Lawn, a planned unit development (PUD)

This project is proposed for the northwest corner of Highway 50 and Lawn Street on approximately 6 acres. The frontage on Highway 50 is proposed for B-1 zoning for two commercial lots consistent with other commercial properties across the street. The northern part of this property is proposed for MR-~~2~~ 1m with 10 duplex lots which adjoins MR-2 zoning to the West. Hillcrest Drive will be extended to Lawn Street and create the 10 lots for a total of 20 units. This project will be developed potentially in three phases:

Phase One: We will grade the entire 6 acres to balance the property because of extreme slope to be southwest. We will also remove the trees along Lawn Street. We will sell lot #1 to a developer who will build an approximately 10,640 SF Dollar General store along with the regional detention basin that will serve the entire 6 acres, and the entrance to Highway 50 serving both commercial lots. Photos of the Dollar General elevations are attached.

Phase 2: Once we identify a developer for the duplexes, we will record the Final Plat for that area and sell the MR-~~2~~ 1m land to the developer who will then extend Hillcrest Drive and make improvements to Lawn Street as required. The duplexes will be similar in design to the ones on Old Collinsville Road at St. Ellen development. Photos of these units are attached as reference.

Phase 3: We will sell lot #2 (the corner commercial lot). At this time we have not identified a purchaser or potential user for this lot. Currently we are marketing the site as a small retail center consistent with others along Highway 50 similar to the photo attached. The developer of this lot will be required to connect the rear parking lot of Dollar General to allow access to lawn Street. Improvements to Lawn Street will be made at that time if not earlier when the multifamily development is constructed.

Please note that phase 2 and phase 3 may be flip-flopped depending on demand of which development comes first.

About the developer: Terry Johnson is a commercial real estate broker / developer with 31 years' experience in the O'Fallon, Shiloh, and Fairview Heights area. Mr. Johnson is under contract to act as the landowner's developer under his company Triple Net Management Inc. Mr. Johnson is also a real estate broker with the Barber Murphy Group. Mr. Johnson has developed many properties in the O'Fallon area including the commercial lots across the street from this development, the recently developed restaurant plaza with the Egg and I and Bella Milano restaurants, and over 100 commercial land sales in the immediate area.

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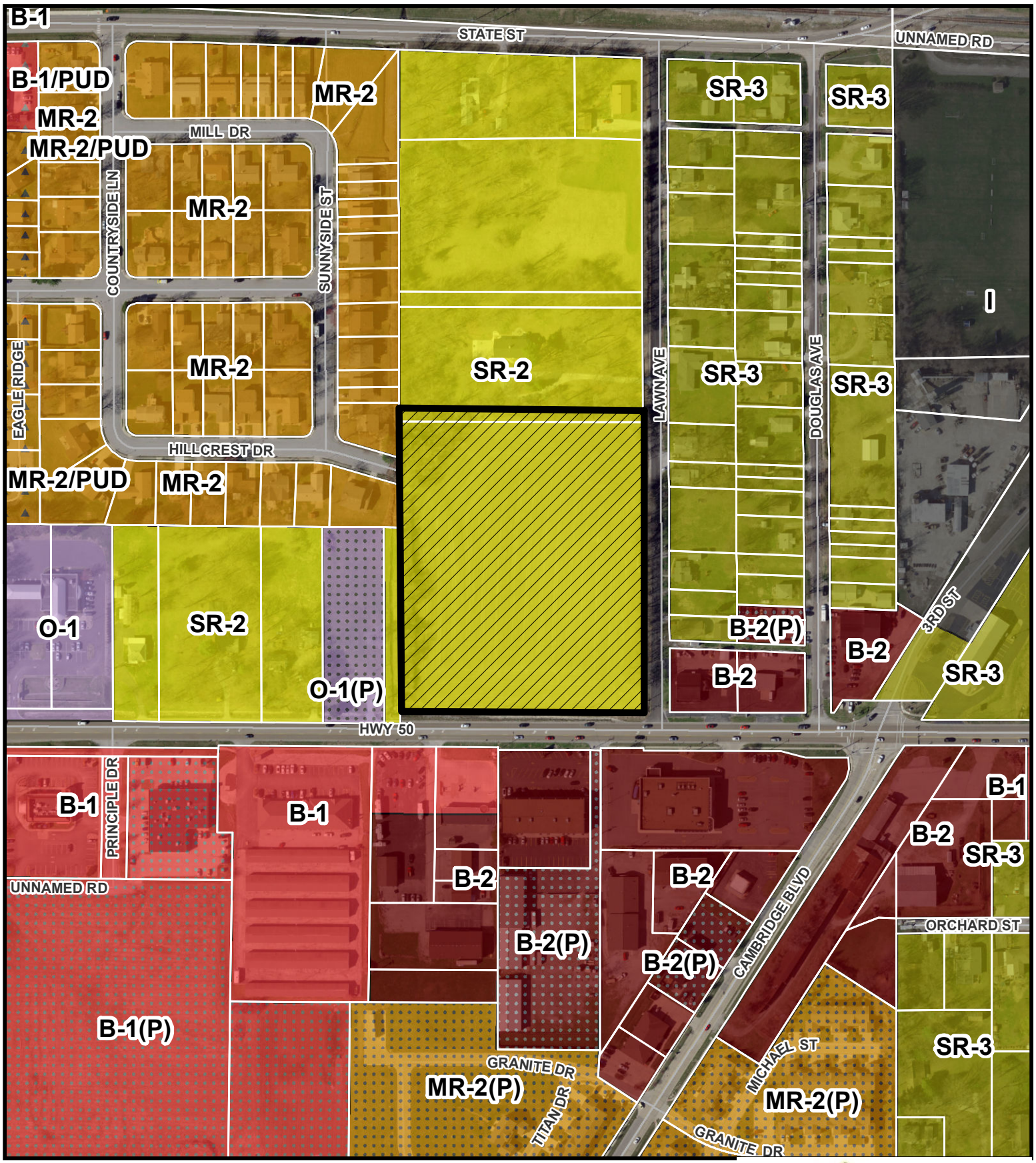
316-12

Fifty and Lawn
Variance From Design Criteria
O'Fallon Ordinances Section 155.032 N – Typical Roadway Section

The proposed roadway section does not conform with current city of O'Fallon standard details. Due to existing right of way width and existing roadway section of Hillcrest Drive west of the development the proposed roadway typical section is intended to match the existing section for a uniform roadway section for the extension of Hillcrest Drive.

P2016-16 & S16-12: Highway 50 and Lawn Avenue Zoning Map



P2016-16 & S16-12: Highway 50 and Lawn Avenue Surrounding Land Use Map

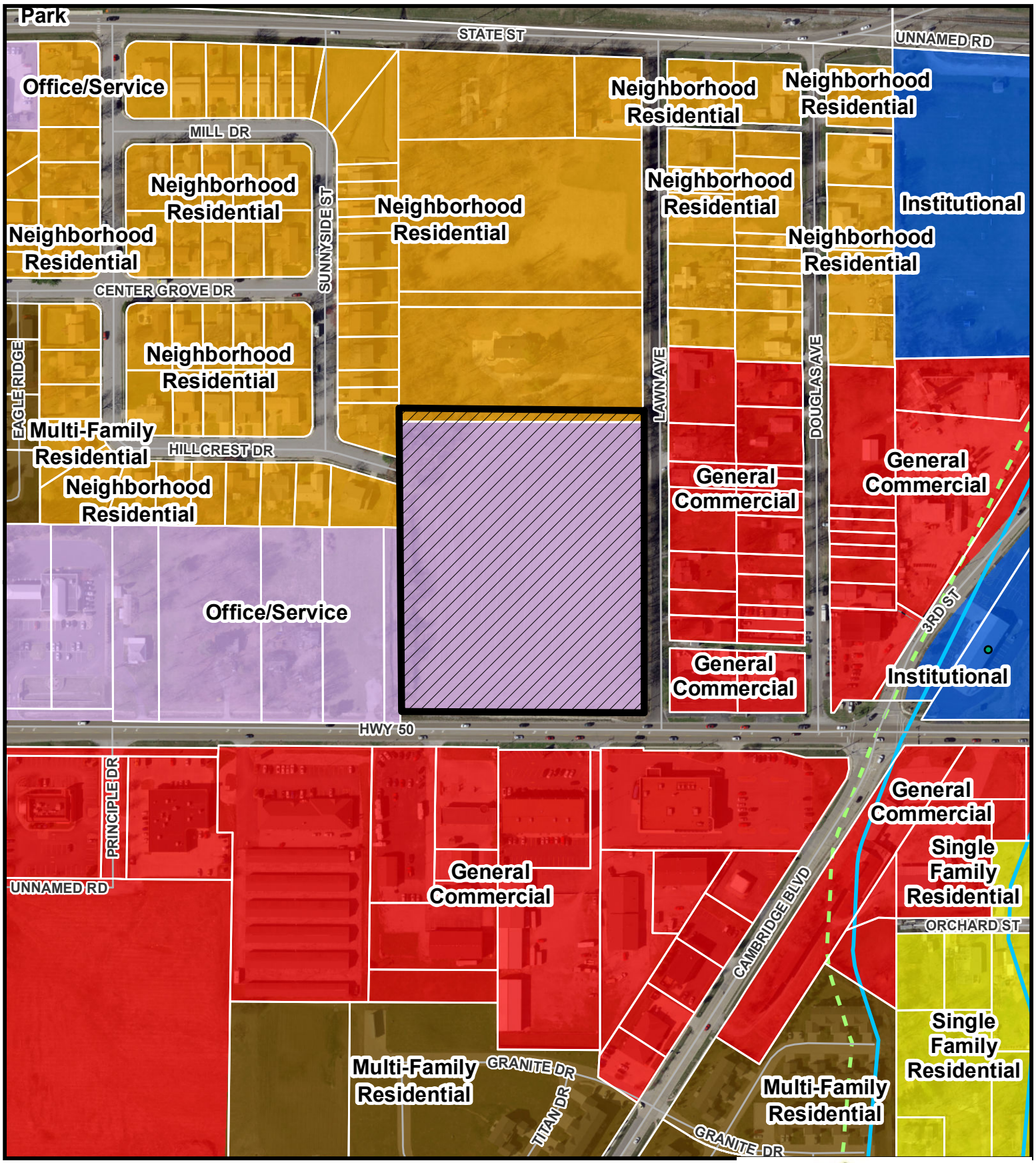
Subject Property

0 62.5 125 250 375 500 Feet

N W E S

O'Fallon ILLINOIS

P2016-16 & S16-12: Highway 50 and Lawn Avenue Furture Land Use Map



Subject Property

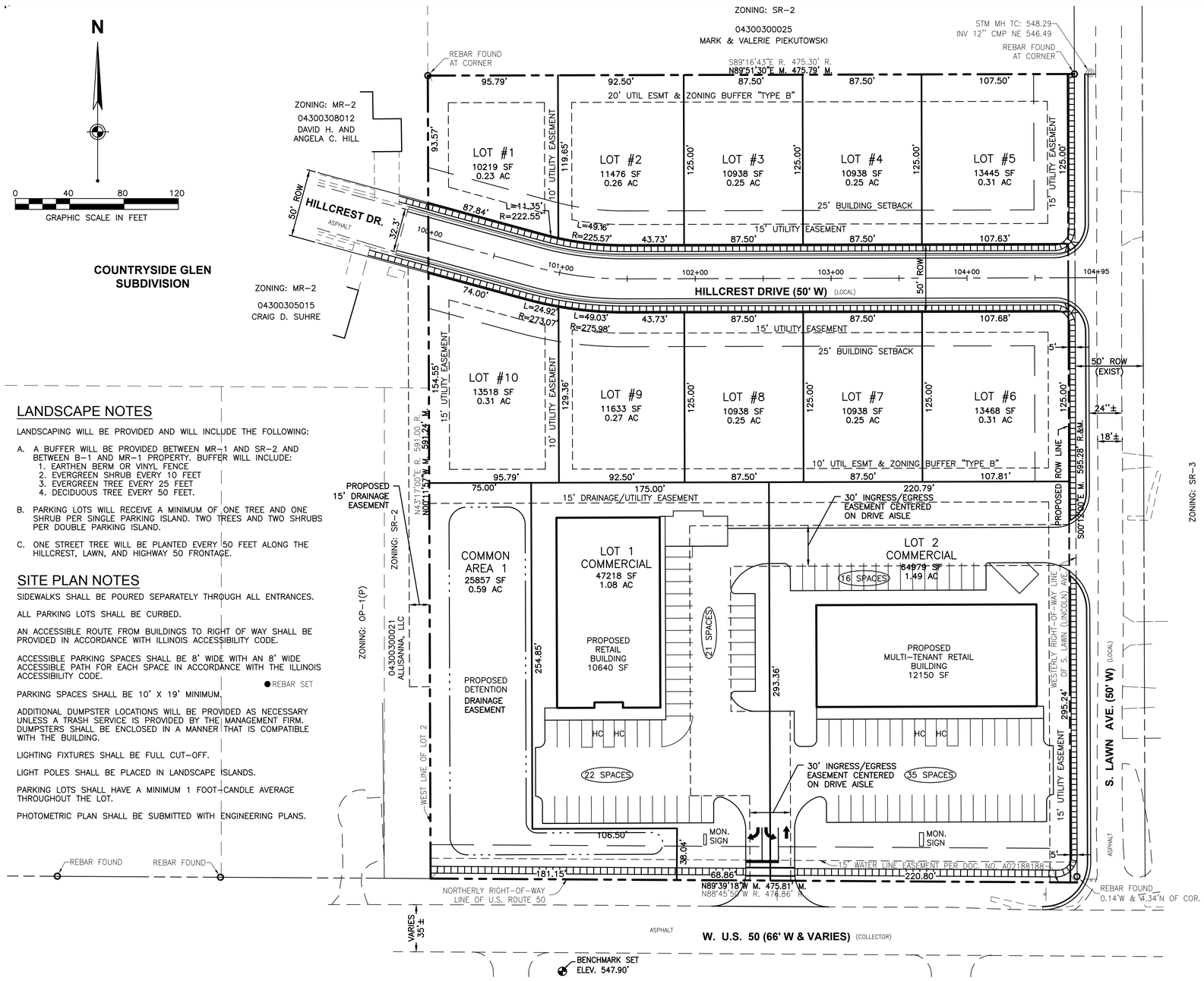
0 70 140 280 420 560 Feet

N W E S

O'Fallon ILLINOIS

PRELIMINARY PLAT
FIFTY AND LAWN

PART OF LOTS 1 AND 2 OF THE SUBDIVISION OF PART OF THE WEST HALF OF SECTION 30, TOWNSHIP 2 NORTH, RANGE 7 WEST OF THE THIRD PRINCIPAL MERIDIAN, REFERENCE BEING HAD TO THE PLAT THEREOF RECORDED IN THE ST. CLAIR COUNTY RECORDER'S OFFICE IN BOOK OF PLATS "V" ON PAGE 27.



LANDSCAPE NOTES

LANDSCAPING WILL BE PROVIDED AND WILL INCLUDE THE FOLLOWING:

A. A BUFFER WILL BE PROVIDED BETWEEN MR-1 AND SR-2 AND BETWEEN B-1 AND MR-1 PROPERTY. BUFFER WILL INCLUDE:
   1. EARTHEN BERM OR VINYL FENCE
   2. EVERGREEN SHRUB EVERY 10 FEET
   3. EVERGREEN TREE EVERY 25 FEET
   4. DECIDUOUS TREE EVERY 50 FEET.

B. PARKING LOTS WILL RECEIVE A MINIMUM OF ONE TREE AND ONE SHRUB PER SINGLE PARKING ISLAND. TWO TREES AND TWO SHRUBS PER DOUBLE PARKING ISLAND.

C. ONE STREET TREE WILL BE PLANTED EVERY 50 FEET ALONG THE HILLCREST, LAWN, AND HIGHWAY 50 FRONTAGE.

SITE PLAN NOTES

SIDEWALKS SHALL BE POURED SEPARATELY THROUGH ALL ENTRANCES.

ALL PARKING LOTS SHALL BE CURBED.

AN ACCESSIBLE ROUTE FROM BUILDINGS TO RIGHT OF WAY SHALL BE PROVIDED IN ACCORDANCE WITH ILLINOIS ACCESSIBILITY CODE.

ACCESSIBLE PARKING SPACES SHALL BE 8' WIDE WITH AN 8' WIDE ACCESSIBLE PATH FOR EACH SPACE IN ACCORDANCE WITH THE ILLINOIS ACCESSIBILITY CODE.

PARKING SPACES SHALL BE 10' X 19' MINIMUM.

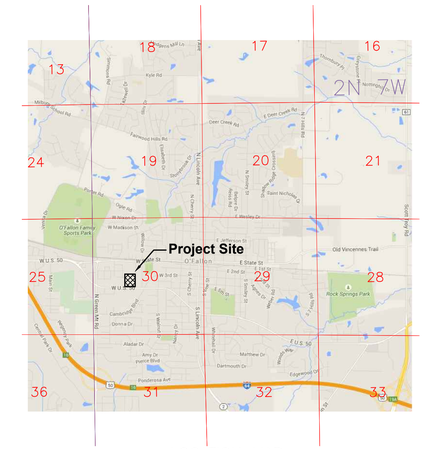
ADDITIONAL DUMPSTER LOCATIONS WILL BE PROVIDED AS NECESSARY UNLESS A TRASH SERVICE IS PROVIDED BY THE MANAGEMENT FIRM. DUMPSTERS SHALL BE ENCLOSED IN A MANNER THAT IS COMPATIBLE WITH THE BUILDING.

LIGHTING FIXTURES SHALL BE FULL CUT-OFF.

LIGHT POLES SHALL BE PLACED IN LANDSCAPE ISLANDS.

PARKING LOTS SHALL HAVE A MINIMUM 1 FOOT-CANDLE AVERAGE THROUGHOUT THE LOT.

PHOTOMETRIC PLAN SHALL BE SUBMITTED WITH ENGINEERING PLANS.



LOCATION MAP
NOT TO SCALE

SITE DATA

PLANNED DEVELOPMENT

GROSS AREA	= 6.48 AC (282,266 SF)
PUBLIC ROW AREA	= 0.61 AC (26,703 SF)
NET AREA	= 5.87 AC (255,563 SF)
NUMBER OF LOTS	= 13
DENSITY	= 2.0 LOTS/ACRE
COMMON GROUND AREA	= 0.59 ACRES

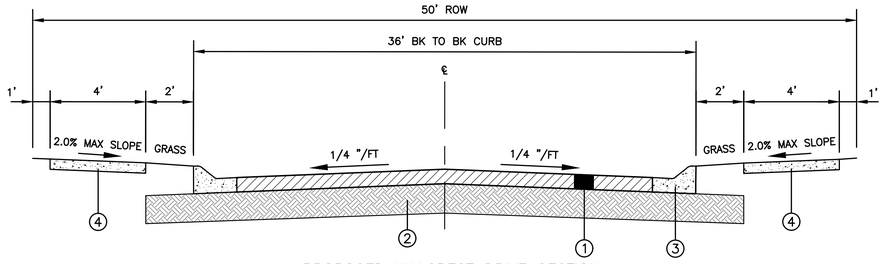
NOTES:
STREET LIGHTS SHALL BE INSTALLED BY AMEREN IP & COORDINATED BY THE DEVELOPER.

ALL UTILITIES SHALL BE UNDERGROUND

EASEMENTS NOT SHOWN FOR CLARITY. EASEMENTS WILL BE PROVIDED AT SUBDIVISION PERIMETER, LOT FRONT YARDS, AND AS NECESSARY TO ACCOMMODATE ALL UTILITIES.

ALL PEDESTALS AND TRANSFORMERS SHALL BE LOCATED A MINIMUM OF 15' FROM CITY UTILITIES.

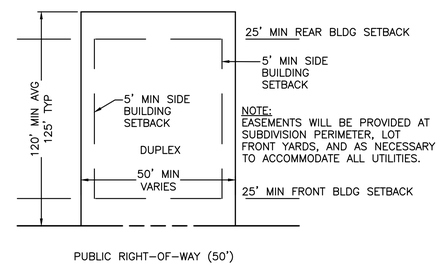
OWNER:	NITESHKUMAR B. ALKA R. PATEL 904 SPYGLASS HILL CASEYVILLE, IL 62232
DEVELOPER:	TERRY JOHNSON 907 FAIR OAKS DR CASEYVILLE, IL 62232 PHONE: 618.977.8367
ENGINEER:	DAVID DILLOW, PE 062-047964 WOOLPERT, INC 343 FOUNTAINS PARKWAY, SUITE 100 FAIRVIEW HEIGHTS, IL 62208 PHONE: 618.632.7004
LAND SURVEYOR:	STEVE KREGER, PLS 035-002985 WOOLPERT, INC 343 FOUNTAINS PARKWAY, SUITE 100 FAIRVIEW HEIGHTS, IL 62208 PHONE: 618.632.7004
EXISTING ZONING:	CITY OF O'FALLON SR-2
PROPOSED ZONING:	PLANNED USE (MR1, B1)
FLOODPLAIN:	FIRM MAP NUMBER 17163C0210D, EFFECTIVE DATE NOV 5, 2003. ZONE "X" (NO SHADING)
SEWAGE DISPOSAL:	CITY OF O'FALLON
WATER SUPPLY:	CITY OF O'FALLON
ELECTRIC SERVICE:	AMEREN IP PROPOSED UNDERGROUND SERVICE
GAS SERVICE:	AMEREN IP



PROPOSED HILLCREST DRIVE SECTION
NOT TO SCALE

TYPICAL ROADWAY SECTION LEGEND

1. 7" NON-REINFORCED PCC PAVEMENT OR 7" BIT CONC
2. 12" STABILIZED SUBGRADE
3. 2' MOUNTABLE CONCRETE CURB & GUTTER PER CITY OF O'FALLON STANDARDS
4. 4" THICK PCC SIDEWALK (6" THICK THROUGH DRIVEWAYS), MAX SLOPE AT 2%



NOTE:
EASEMENTS WILL BE PROVIDED AT SUBDIVISION PERIMETER, LOT FRONT YARDS, AND AS NECESSARY TO ACCOMMODATE ALL UTILITIES.

PROPOSED TYPICAL RESIDENTIAL LOT LAYOUT
NOT TO SCALE

No.	DATE	REVISION
	11/20/16	UPDATED PER CITY REVIEW COMMENTS

PROJECT No: 76876
DATE 9/22/16
DES.
DR.
CKD.

Terry Johnson
907 Fair Oaks Dr
Caseyville, IL 62232
Phone: 618.977.8367
DEVELOPER

WOOLPERT
DESIGN GEOSPATIAL INFRASTRUCTURE
373 Fountains Parkway, Suite 100
Fairview Heights, Illinois 62208
Phone: 618.632.7004
ENGINEER: DAVID M. DILLOW, PE
SURVEYOR: STEVE KREGER, PLS

FIFTY AND LAWN
WEST HWY 50 & SOUTH LAWN AVE
O'FALLON, ST. CLAIR COUNTY, ILLINOIS
PRELIMINARY PLAT

SHEET NO.
1 of 4

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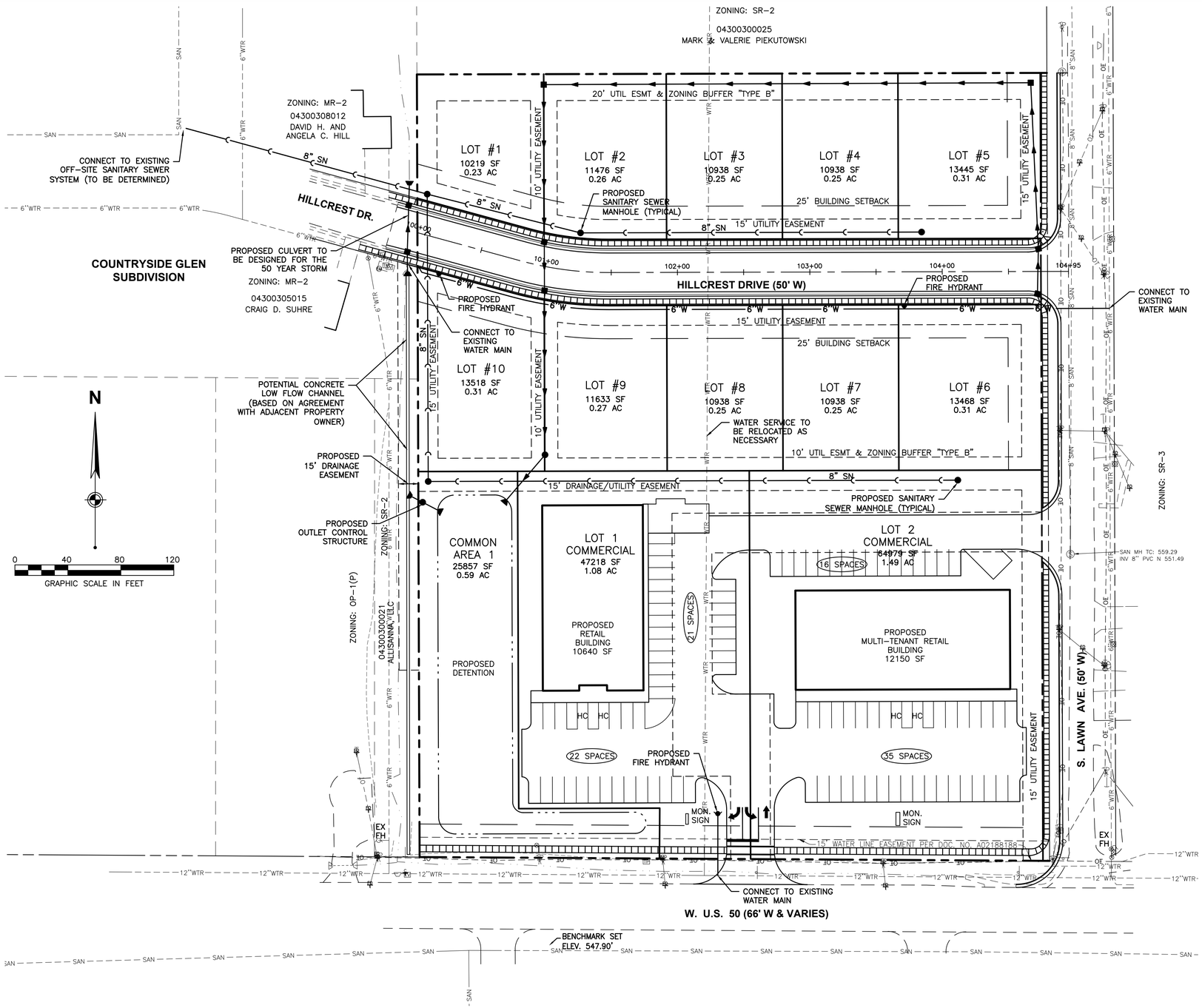
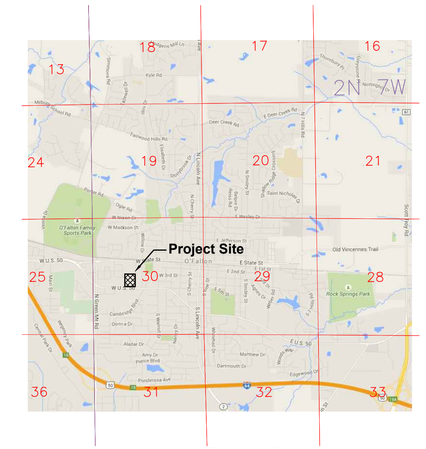
PRELIMINARY UTILITY PLAN

FIFTY AND LAWN

PART OF LOTS 1 AND 2 OF THE SUBDIVISION OF PART OF THE WEST HALF OF SECTION 30, TOWNSHIP 2 NORTH, RANGE 7 WEST OF THE THIRD PRINCIPAL MERIDIAN, REFERENCE BEING HAD TO THE PLAT THEREOF RECORDED IN THE ST. CLAIR COUNTY RECORDER'S OFFICE IN BOOK OF PLATS "V" ON PAGE 27.





LOCATION MAP
NOT TO SCALE

LEGEND

- 6"W — PROPOSED WATER MAIN
- PROPOSED STORM SEWER
- PROPOSED SANITARY SEWER
- PROPOSED INLET
- PROPOSED END SECTION WITH RIP RAP PROTECTION
- PROPOSED MANHOLE

No.	DATE	REVISION
	11/20/16	UPDATED PER CITY REVIEW COMMENTS

PROJECT No: 76876
DATE 9/22/16
DES.
DR.
CKD.

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Terry Johnson
907 Fair Oaks Dr
Caseyville, IL 62232
Phone: 618.977.8367
DEVELOPER

FIFTY AND LAWN

WEST HWY 50 & SOUTH LAWN AVE
O'FALLON, ST. CLAIR COUNTY, ILLINOIS

PRELIMINARY UTILITY PLAN

SHEET NO.

2 of 4

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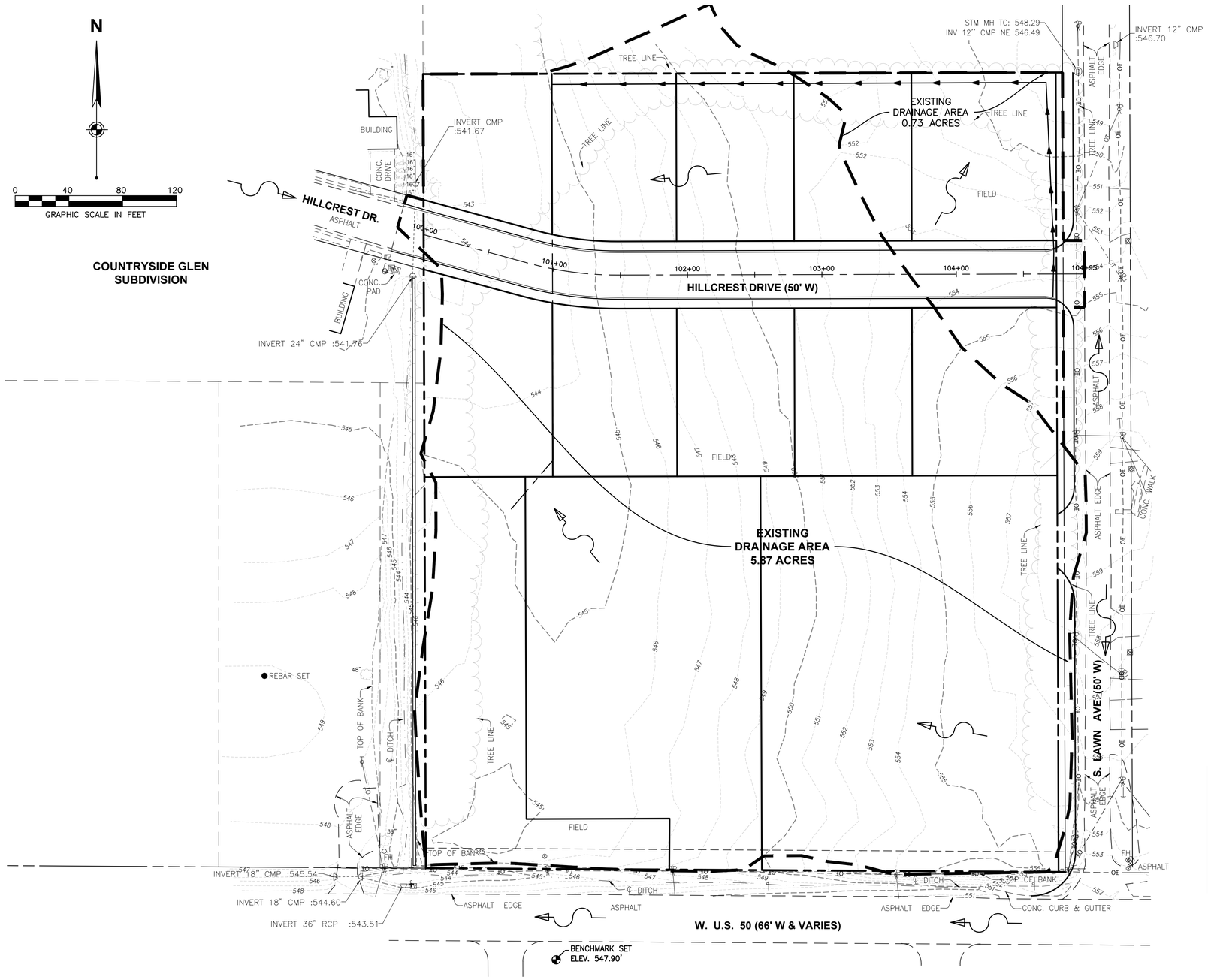
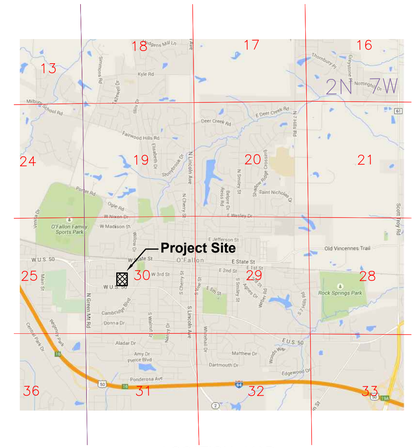
PHASE 1 DRAINAGE PLAN

FIFTY AND LAWN

PART OF LOTS 1 AND 2 OF THE SUBDIVISION OF PART OF THE WEST HALF OF SECTION 30, TOWNSHIP 2 NORTH, RANGE 7 WEST OF THE THIRD PRINCIPAL MERIDIAN, REFERENCE BEING HAD TO THE PLAT THEREOF RECORDED IN THE ST. CLAIR COUNTY RECORDER'S OFFICE IN BOOK OF PLATS "V" ON PAGE 27.





LOCATION MAP
NOT TO SCALE

LEGEND

- ----101---- EXISTING MINOR CONTOUR
- ---100--- EXISTING MAJOR CONTOUR
- EXISTIGN DRAIN BASIN
- EXISTING FLOW PATTERN

SOIL TYPES

St. Clair County, Illinois (IL163)

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
384A	Edwardsville silt loam, 0 to 2 percent slopes	2.4	19.8%
384B	Edwardsville silt loam, 2 to 5 percent slopes	4.2	35.0%
385A	Mascoutah silty clay loam, 0 to 2 percent slopes	5.4	45.2%
Totals for Area of Interest		**12.0**	**100.0%**

No.	DATE	REVISION
	11/20/16	UPDATED PER CITY REVIEW COMMENTS

PROJECT No: 76876
DATE 9/22/16
DES.
DR.
CKD.

Terry Johnson
907 Fair Oaks Dr
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FIFTY AND LAWN

WEST HWY 50 & SOUTH LAWN AVE
O'FALLON, ST. CLAIR COUNTY, ILLINOIS

PHASE 1 DRAINAGE PLAN

SHEET NO.

3 of 4

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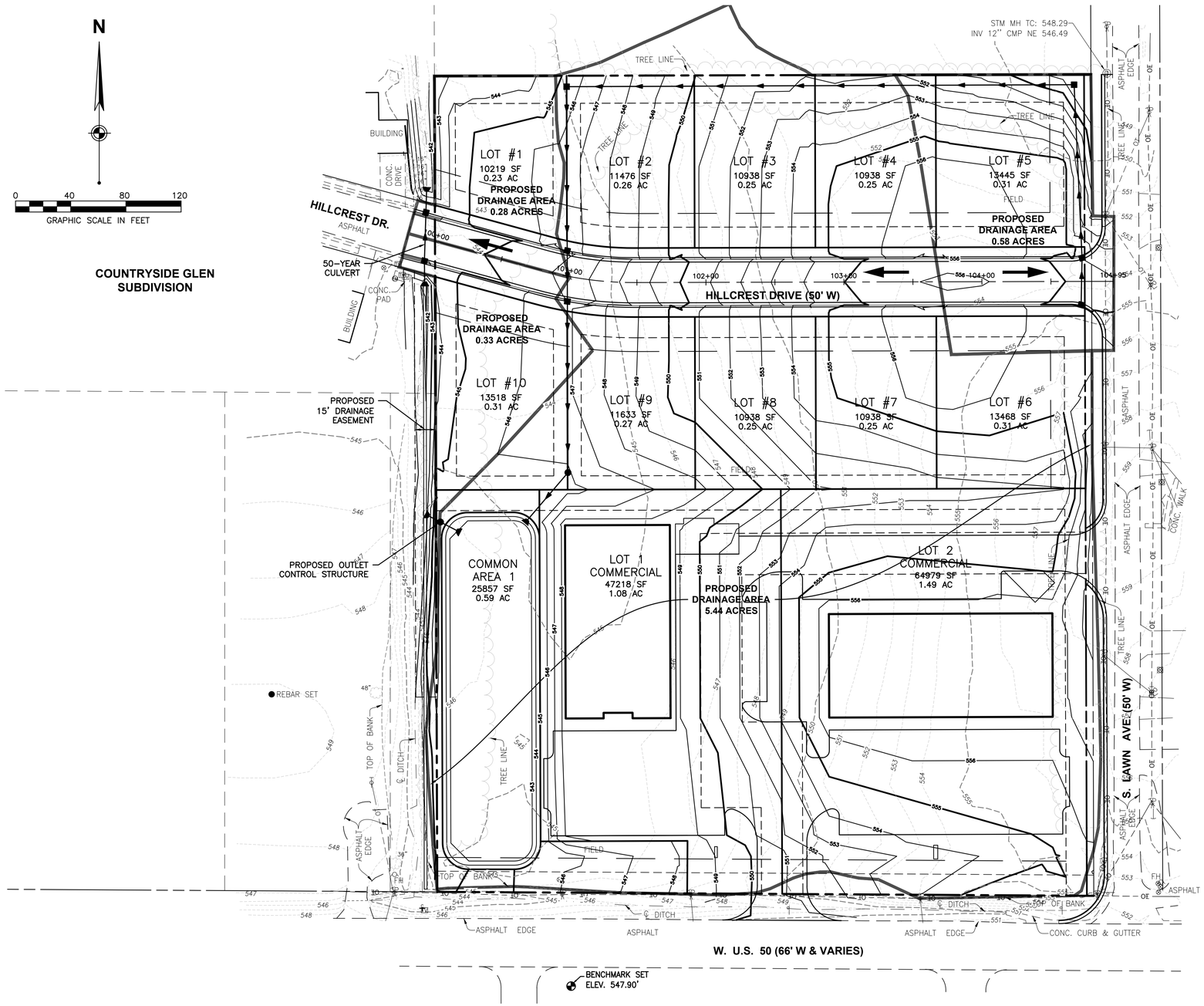
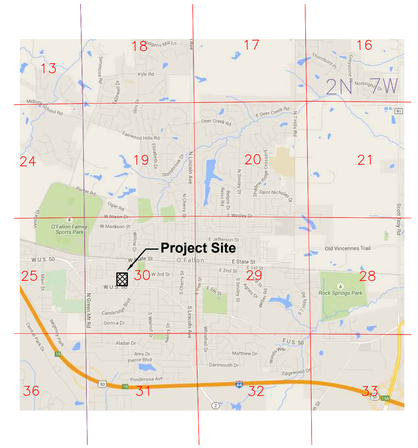
PHASE 1 DRAINAGE PLAN

FIFTY AND LAWN

PART OF LOTS 1 AND 2 OF THE SUBDIVISION OF PART OF THE WEST HALF OF SECTION 30, TOWNSHIP 2 NORTH, RANGE 7 WEST OF THE THIRD PRINCIPAL MERIDIAN, REFERENCE BEING HAD TO THE PLAT THEREOF RECORDED IN THE ST. CLAIR COUNTY RECORDER'S OFFICE IN BOOK OF PLATS "V" ON PAGE 27.





LOCATION MAP
NOT TO SCALE

LEGEND

- 101 — PROPOSED MINOR CONTOUR
- 100 — PROPOSED MAJOR CONTOUR
- PROPOSED DRAIN BASIN
- PROPOSED INLET
- PROPOSED STORM SEWER
- PROPOSED ROADWAY DRAINAGE
- PROPOSED END SECTION WITH RIP RAP PROTECTION
- PROPOSED STORM MANHOLE

PROPOSED DRAINAGE NOTES:

DETENTION BASIN DISCHARGE AND CONCRETE SWALE ON WESTERN PROPERTY AS SHOWN CONCEPTUALLY BASED ON OBTAINING EASEMENT FROM ADJACENT PROPERTY OWNERS. IF EASEMENT IS NOT OBTAINED, IMPROVEMENTS TO EXISTING SWALE WILL NOT BE INSTALLED AND DISCHARGE FROM BASIN WILL BE INSTALLED ON LAWN AT 50 PROPERTY IN A DRAINAGE EASEMENT.

No.	DATE	REVISION
	11/20/16	UPDATED PER CITY REVIEW COMMENTS

PROJECT No: 76876
DATE 9/22/16
DES.
DR.
CKD.

WOOLPERT
DESIGN | GEOSPATIAL | INFRASTRUCTURE
373 Fountains Parkway, Suite 100
Fairview Heights, Illinois 62208
Phone: 618.632.7004
ENGINEER: DAVID M. DILLOW, PE
SURVEYOR: STEVE KREGER, PLS

Terry Johnson
907 Fair Oaks Dr
Caseyville, IL 62232
Phone: 618.977.8367
DEVELOPER

FIFTY AND LAWN

WEST HWY 50 & SOUTH LAWN AVE
O'FALLON, ST. CLAIR COUNTY, ILLINOIS

PHASE 1 DRAINAGE PLAN

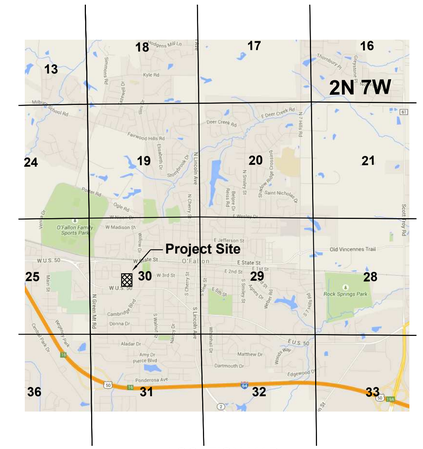
SHEET NO.
4 of 4

G:\DE\Clients\Johnson Properties\O'Fallon\Output\76876 Johnson Properties - Ofallon PRE PLAT.dwg Plotted By:Brown, Eric Plotted:November 21, 2016, 5:24:38 PM

PRELIMINARY LANDSCAPE PLAN

FIFTY AND LAWN

PART OF LOTS 1 AND 2 OF THE SUBDIVISION OF PART OF THE WEST HALF OF SECTION 30, TOWNSHIP 2 NORTH, RANGE 7 WEST OF THE THIRD PRINCIPAL MERIDIAN, REFERENCE BEING HAD TO THE PLAT THEREOF RECORDED IN THE ST. CLAIR COUNTY RECORDER'S OFFICE IN BOOK OF PLATS "V" ON PAGE 27.



LOCATION MAP
NOT TO SCALE

LEGEND

- EVERGREEN SHRUB
- CANOPY SHADE TREE
- EVERGREEN TREE
- DECIDUOUS TREE
- —x— VINYL FENCE

N

0 40 80 120
GRAPHIC SCALE IN FEET

LANDSCAPE NOTES

LANDSCAPING WILL BE PROVIDED AND WILL INCLUDE THE FOLLOWING:

A. A BUFFER WILL BE PROVIDED BETWEEN MR-1 AND SR-2 AND BETWEEN B-1 AND MR-1 PROPERTY. BUFFER WILL INCLUDE:
   1. EARTHEN BERM OR VINYL FENCE
   2. EVERGREEN SHRUB EVERY 10 FEET
   3. EVERGREEN TREE EVERY 25 FEET
   4. DECIDUOUS TREE EVERY 50 FEET.

B. PARKING LOTS WILL RECEIVE A MINIMUM OF ONE TREE AND ONE SHRUB PER SINGLE PARKING ISLAND. TWO TREES AND TWO SHRUBS PER DOUBLE PARKING ISLAND.

C. ONE STREET TREE WILL BE PLANTED EVERY 50 FEET ALONG THE HILLCREST, LAWN, AND HIGHWAY 50 FRONTAGE.

No.	DATE	REVISION

PROJECT No: 76876
DATE 9/22/16
DES. ____
DR. ____
CKD. ____

Terry Johnson
907 Fair Oaks Dr
Caseyville, IL 62232
Phone: 618.977.8367
DEVELOPER

WOOLPERT
DESIGN | GEOSPATIAL | INFRASTRUCTURE
373 Fountains Parkway, Suite 100
Fairview Heights, Illinois 62208
Phone: 618.632.7004
ENGINEER: DAVID M. DILLOW, PE
SURVEYOR: STEVE KREGER, PLS

FIFTY AND LAWN

WEST HWY 50 & SOUTH LAWN AVE
O'FALLON, ST. CLAIR COUNTY, ILLINOIS

PRELIMINARY LANDSCAPE PLAN

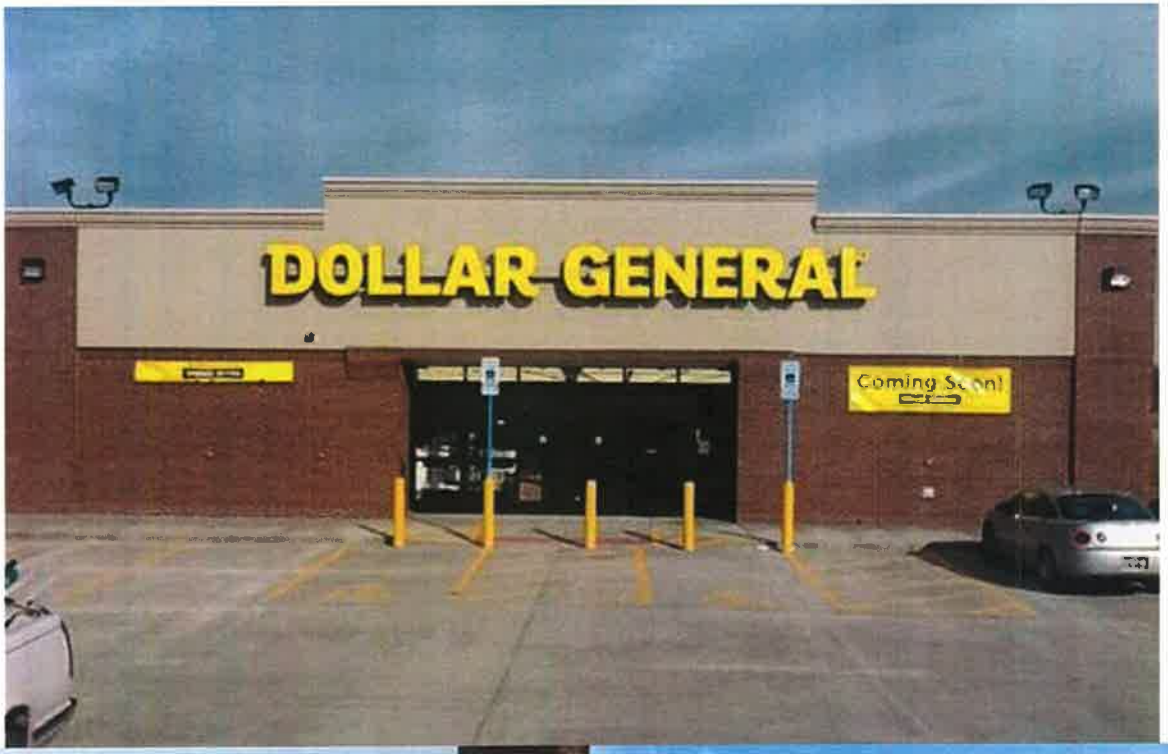
SHEET NO.

1 of 1

SEAL

G:\DE\Clients\Johnson Properties\O'Fallon\Output\76876 Johnson Properties - Ofallon Landscape.dwg Plotted By:Brown, Eric Plotted:November 17, 2016, 10:57:49 AM

DG on lot 1



RECEIVED NOV - 7 2016

retail center on lot 2

RECEIVED NOV - 7 2016

duplexes

RECEIVED NOV - 7 2016

DOLLAR GENERAL
DOLLAR GENERAL
Now Open!

DOLLAR GENERAL
DOLLAR GENERAL

DOLLAR
GENERAL
pepsi
NOW OPEN

GRAND OPENING!
DOLLAR GENERAL
GRAND OPENING!
GRAND OPENING!

DOLLAR GENERAL
DOLLAR GENERAL

DOLLARGENE
CADTEC
Drafting Studio
2013

DOLLAR GENERAL

DOLLAR GENERAL

MEMORANDUM

TO: Community Development Committee

FROM: Justin Randall, Senior City Planner

THROUGH: Ted Shekell, Director of Community Development

DATE: January 9, 2017

SUBJECT: P2016-14: Flying Aces Lounge, Planned Use (2nd Reading) – NO CHANGES

Project Update

The Community Development Committee discussed the planned use at the November 28, 2016 meeting and asked for staff to reach out to Scott Air Force Base. Staff received comment back from the base, "The only concern would be to ensure there is no excessive noise created by the new establishment. Directly behind the property is one of our housing areas and we need to maintain compatible quality of life noise levels for the residents."

Recommendation

The Planning Commission held a public hearing on the above referenced application at their November 22, 2016 meeting. The Commission voted 5-ayes and 2-nays to approve the requested Planned Use application for Flying Aces Lounge, subject to the amended conditions recommended by staff, to include a note on the discussion of the Commission on video gaming based on the testimony given by the applicant.

Project Background and Summary

The applicant, Nathan Schmidt of K & S Enterprises, LLC, has filed an application requesting approval to operate a 1,400 square foot restaurant and alcohol sales in an existing retail center located at 829 Siebert Road. The retail center is located just west of the Shiloh gate at Scott Air Force Base. The applicant is requesting the property be rezoned from "B-1" Community Business District, to "B-1(P)", Planned Community Business District to allow the restaurant with alcohol sales. The restaurant interior will seat approximately 50 persons, including the bar seating. Proposed hours of operation will be Sunday to Saturday 11:00 AM to 2:00 AM. The entire retail center building is approximately 8,300 square foot in size and has a mixture of tenants.

At the Planning Commission meeting, the applicant noted their interest in also having video gaming as a part of the business operations. The Commission discussed the applicant's interest in video gaming. Staff provided the Commission with an overview of the state and city regulations regarding video gaming and the requirements to have a liquor license to obtain a video gaming license from the state.

Please see the attached Plan Commission Project Report for more detailed information on the proposal.

Staff Recommendation

Staff recommends approval of the use, with the following conditions:

1. Testimony given at the Planning Commission indicated the applicant would also be interested in video gaming as a part of the applicant's business plan.
2. A variance to the number of required parking spaces, so long as 3 accessible spaces are provided in accordance with the Illinois Accessibility Code.
3. This Planned Use rezoning approval includes approval of a restaurant with alcohol sales at 829 Seibert Road.

4. A liquor license will be required to serve alcohol at this location.
5. Any building modifications will require a Building Permit.
6. Temporary and permanent signage will require a Sign Permit.

Attachments:

1. Report to Plan Commission

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE 623, ZONING DISTRICTS OF THE CITY OF O'FALLON, ILLINOIS (DEVELOPMENT KNOWN AS "FLYING ACES") TO BE AT 829 SIEBERT ROAD ON PARCEL NUMBER: 09-10.0-301-004.

WHEREAS, the applicant, Nathan Schmidt of K & S Enterprises, LLC, has filed an application requesting approval of a planned use rezoning to authorize a restaurant with alcohol sales at 829 Siebert Road in O'Fallon, Illinois; and

WHEREAS, the applicant has filed an application with the City of O'Fallon, Illinois pursuant to the requirements of all applicable laws, including City Ordinance 3471, "Planned Uses"; and

WHEREAS, the Planning Commission of the City of O'Fallon, Illinois held a public hearing on November 22, 2016, in accordance with state statute, and recommended to approve the petitioner's request to obtain a B-1(P) Planned Community Business District zoning for the property with a vote of 5 ayes to 2 nays as outlined in the adopted Planning Commission Report, attached hereto and declared to be an inseparable part hereof (Exhibit A); and

WHEREAS, on December 12, 2016 the Community Development Committee of the City Council reviewed the rezoning and recommended approval with a vote of 3 ayes to 1 nay.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF O'FALLON, ST. CLAIR COUNTY, ILLINOIS AS FOLLOWS:

Section 1. That upon the effective date of this Ordinance, the described property, known as "Flying Aces", be henceforth classified as zoning district B-1(P) Planned Community Business District, as a restaurant with alcohol sales, with the following conditions:

1. Testimony given at the Planning Commission indicated the applicant would also be interested in video gaming as a part of the applicant's business plan.
2. A variance to the number of required parking spaces, so long as 3 accessible spaces are provided in accordance with the Illinois Accessibility Code.
3. This Planned Use rezoning approval includes approval of a restaurant with alcohol sales at 829 Seibert Road.
4. A liquor license will be required to serve alcohol at this location.
5. Any building modifications will require a Building Permit.
6. Temporary and permanent signage will require a Sign Permit.

Section 2. A Certified Copy of this ordinance, with all referenced attachments, shall be filed with the City Clerk's office of the City of O'Fallon, Illinois.

Upon its passage and approval, this Ordinance shall be in full force and effect ten (10) days after its publication in pamphlet form as required by law.

Passed by the City Council this _____ day of _____ 2017.

****

ATTEST:

(seal)

_____
Philip A. Goodwin, City Clerk

Approved by the Mayor this _____ day

of _____ 2017.

_____
Gary L. Graham, Mayor

ROLL CALL:	McCoskey	Meile	Kueker	Albrecht	Hagarty	Gilreath	Smallhear	**SUB TOTALS**
Aye								
Nay								
Absent								

ROLL CALL:	Roach	Marsh	Hursey	Drolet	Holden	Cozad	Gerrish	**SUB TOTALS**	**SUM OF TOTALS**
Aye									
Nay									
Absent									

PROJECT REPORT

TO:	Planning Commission
FROM:	Justin Randall, Senior City Planner
THRU:	Ted Shekell, Community Development Director
DATE:	November 22, 2016
PROJECT:	P2016-14: Flying Aces Lounge- Planned Use Rezoning

Location: 829 Seibert Road

Applicant:	K & S Enterprises, LLC, 3410 Fairway Drive, Highland, IL 62249
Owner:	Gary & Sue Clinton, 2620 Lauren Lake Drive, Belleville, IL 62221
Submitted:	October 19, 2016

Project Summary

The applicant, Nathan Schmidt of K & S Enterprises, LLC, has filed an application requesting approval to operate a 1,400 square foot restaurant and alcohol sales in an existing retail center located at 829 Siebert Road. The retail center is located just west of the Shiloh gate at Scott Air Force Base. The applicant is requesting the property be rezoned from "B-1" Community Business District, to "B-1(P)", Planned Community Business District to allow the restaurant with alcohol sales. The restaurant interior will seat approximately 50 persons, including the bar seating. Proposed hours of operation will be Sunday to Saturday 11:00 AM to 2:00 AM. The entire retail center building is approximately 8,300 SF in size and has a mixture of tenants.

Existing Conditions

Surrounding Zoning:		Surrounding Land Use:	
North:	A, Agricultural (City)	North:	Agricultural
East:	B-1, Community Business (City) O-3, Scott Airport Overlay (County)	East:	Retail and SAFB
South:	O3, Scott Airport Overlay (County)	South:	Residential
West:	B-1, Community Business (City) O-3, Scott Airport Overlay (County)	West:	Office and SAFB

Applicable Ordinances, Documents and Reports

O'Fallon Comprehensive Plan:
The O'Fallon Comprehensive Plan Future Land Use Map depicts the subject property as *General Commercial* which is consistent with the proposed project.

Code of Ordinances:
The zoning hearing has been triggered due to §158.116 of the O'Fallon Code of Ordinances which requires planned use approval for "any proposed amendment or change in zoning to a use offering liquor sales and/or consumption on- or off-premises." Due to this requirement, the applicant is requesting a change of zoning from B-1 Community Business District, to B-1(P), Planned Community Business District. The proposed rezoning is subject to Chapter 158 (Zoning) of the Code of Ordinance and must meet the requirements of the B-1 Community Business District.

Public Notice:
Public Notice of this project has been fulfilled in accordance with Section 158.255 and158.256 of the City of O'Fallon Zoning Regulations. More specifically, the applicant has notified property owners within 250 feet of the subject property via certified mail of the filing of the zoning amendment. Additionally, the City has notified property owners within 250 feet of the subject parcel of the public hearing at least 15 days prior to the hearing and published notice of the public hearing in a local newspaper at least 15 days in advance. Proof of notification is on file with the City's Community Development Department.

Discussion Points/Issues

Land Use
The subject property is identified as *General Commercial* on the Future Land Use Map of the Comprehensive Plan, and commercial, office and Scott Air Force Base operations surround the subject property to the north, east, west and south. The building is a multi-tenant retail space and has previously been used for multiple restaurants and multiple retail/office uses. A restaurant with alcohol sales is a consistent land use in the *General Commercial* land use category. The closest residence is approximately 320' south of the retail center.

Building
As noted, the entire retail center is approximately 18,300 square foot in size, totaling three buildings. The building in which the proposed restaurant is located is approximately 8,500 square feet. The proposed restaurant will occupy approximately 1,400 square feet and a number of other retail, office and restaurant tenants. The interior finish of the restaurant will include small kitchen, restrooms, bar, and table seating.

Parking
The existing paved parking area provides 86 parking spaces; however, the site has no accessible spaces. These parking spaces are shared by all tenants of the retail center. Restaurants require 9 spaces per 1,000 square feet and retail and office uses require 4 spaces per 1,000 square feet. Overall, there is 18,276 square feet of building, which if all of the site was retail would require 73 parking spaces. The site currently has two restaurants, Subway (1,200 square feet) and Shannon's Kitchen (1,200 square feet) and this would be the third restaurant for a total of 3,800 square feet. The restaurant tenant spaces would 34 parking spaces and the remain building would require 58 spaces for a total of 92 parking spaces, 6 less than the amount provided. Additionally, since the site currently does not have any accessible spaces and 3 spaces are required by law, staff is recommending with the approval of the restaurant land use the site need to have at least one accessible space per building.

Additionally, the restaurant spaces are small in nature and do not have a ton of seating like a typical restaurant. However, if additional restaurant spaces are going to be leased in the plaza, there will need to be analysis to ensure there will not be a parking problem in the future.

Therefore, based on the nature of the restaurants and the ability to get accessible parking spaces up to code, staff recommends approval of a reduction in the parking required for the plaza.

Signage
The building is permitted to display one wall sign in accordance with the City's sign regulations. A separate sign permit will be required to display such signage.

Hours of Operation
It was noted that proposed hours of operation will be 11:00 AM to 2:00 AM daily. This is consistent with a Class A Liquor License.

Review and Approval Criteria

Section 158.119 of Article 6 "Planned Uses" lists several criteria for evaluating planned uses. Evaluation of the project based on these factors is included under each criterion.

1. The criteria governing the rezoning of the property and approval of site plans, as set forth in the standards and requirements found elsewhere in the zoning code or in other applicable law,
   The project meets all applicable zoning standards.
2. The physical design of the proposed plan and the manner in which said design makes adequate provisions for public services, provides adequate control over vehicular traffic, provides for and protects designated common open space and park dedication, and furthers the amenities of light, air, recreation and visual enjoyment.
   The proposed development will not have a significant impact on traffic.
3. The relationship and compatibility of the proposed plan to adjacent properties and the surrounding neighborhood.
   The new restaurant will not negatively affect adjacent properties. There are a number of commercial businesses, including restaurants, in the existing plaza.
4. The conformity with the standards and principles of the Comprehensive Plan and all other adopted regulations, including the Commercial Design Handbook dated July 6, 2009 and on file with the City Clerk. *(Ord 3665; passed 5-3-10)*
   The proposal is consistent with the Comprehensive Plan and the Commercial Design Handbook is not applicable in this case.
5. The use(s) are designed, located and proposed to be operated so that the public health, safety and welfare will be protected.
   The proposed development is designed to be operated to protect the public health, safety and welfare.
6. An identified community need exists for the proposed use.
   Yes, a community need exists for the proposed use.
7. The proposed use(s) will not impede the normal and orderly development and improvement of the surrounding property, nor impair the use, enjoyment, or value of neighboring properties.
   The development will not impede the normal and orderly development and use of the surrounding property, nor will it impair the use, enjoyment, or value of neighboring properties.
8. The degree of harmony between the architectural quality of the proposed building and the surrounding neighborhood.
   The existing building is similar to and will not detract from many of the structures surrounding the property.
9. The appropriateness of the minimum dimensions and areas of lots and yards set forth in the applicable zoning district regulations.
   The proposed development meets the area-bulk requirements set forth in the B-1 Community Business District.

Staff Recommendation

Staff recommends approval of the Planned Use Rezoning to allow the Flying Aces Lounge restaurant and alcohol sales at 829 Seibert Road with the following conditions:

1. A variance to the number of required parking spaces, so long as 3 accessible spaces are provided in accordance with the Illinois Accessibility Code.
2. This Planned Use rezoning approval includes approval of a restaurant with alcohol sales at 829 Seibert Road.
3. A liquor license will be required to serve alcohol at this location.
4. Any building modifications will require a Building Permit.
5. Temporary and permanent signage will require a Sign Permit.

Attachments

Attachment 1 – Project Application
Attachment 2 – Narrative
Attachment 3 – Zoning Map, Future Land Use Map and Aerial Map

O'Fallon ILLINOIS

Planned Use / Re-Zoning Application

NAME OF PROJECT: Flying Aces Lounge

ADDRESS/GENERAL LOCATION: 829 Seibert Road, O'Fallon, IL

SUBDIVISION NAME & LOT NUMBER(S): SCOTT GATE PLAZA

PARCEL NUMBER(S): 09-10.0-301-004

CITY OF O'FALLON
OCT 19 2016
DATE PAID

PLEASE CHECK THE TYPE OF APPLICATION (PLEASE CHECK ONE):

X PLANNED USE – $250 – CHANGE OF USE
o RE-ZONING (STANDARD MAP AMENDMENT)

SUMMARY DATA (RESPOND TO ALL THAT APPLY):

PRESENT ZONING: B-1
PROPOSED ZONING: B-1(P)
PROPOSED # OF LOTS: N/A
PROPOSED # OF DWELLING UNITS: N/A
PROPOSED NUMBER OF BUILDINGS: N/A
PROPOSED GROSS FLOOR AREA: 1,200 SQ. FT
AREA IN ACRES: N/A
PRESENT USE: VACANT RETAIL SPACE

APPLICANT INFORMATION:

NAME: Nathan Schmidt (K&S Enterprises, LLC)
COMPANY: K & S Enterprises, LLC
ADDRESS: 3410 Fairway Dr
Highland, IL 62249
PHONE: 618-975-5878
FAX:
EMAIL: Schmidty_28@hotmail.com

Nathan Schmidt
SIGNATURE OF APPLICANT

DESIGN PROFESSIONAL INFORMATION:

NAME: N/A - EXISTING BUILDING
COMPANY:
ADDRESS:
PHONE:
FAX:
EMAIL:

SIGNATURE OF DESIGN PROFESSIONAL

Property Owner: Gary + Sue Clinton
2620 Lauren Lake Dr.
Belleville, IL 62221

STAFF USE ONLY

DATE RECEIVED: 10-19-16
APPLICATION RECEIVED BY: J. Randall
APPLICATION FEE: $250.00
PROJECT ID #: P2016-14
STAFF ASSIGNED: J. Randall
PLAN REVIEW FEE DEPOSIT REC'D: N/A

K & S Enterprises, LLC

D/B/A: Flyin' Aces Lounge

Chris Korte and myself (Nathan Schmidt) are seeking a business approval to construct a store in the City of O'Fallon, Illinois. We would like to present to you the idea of building an upscale lounge at the address of 829 Seibert Road, O'Fallon, Illinois. Our idea came to us as we were searching for the perfect location, we feel as if the lounge would be very successful in the Scott Gate Plaza. I have reached out to Gary Clinton and signed a lease with him for the retail space he has to offer. With the space provided we wish to establish an upscale lounge in which the tenants of Scott Air Force Base and surrounding area may use to relax, meet friends, grab a bite to eat, or have a beverage. There will also be comfortable seating and television provided for games and such. We believe there will be a significant amount of people wanting a clean upscale environment. With that being said our food items would include homemade pizzas, wings, and various appetizers. We would also like to incorporate a cocktail list to quench their thirst. The target market we are seeking is adults ages 21-55 which can be achieved from the traffic count that enters and leaves Scott Air Force Base on a daily basis. We are requesting a liquor license from the city of O'Fallon and insure our city, state, and federal requirements are maintained, as well as good standing with the city. Thank you for your time and we look forward to doing business in O'Fallon, Illinois.

Nathan Schmidt

618-975-5878

Scott Gate Plaza
805-873 Seibert Rd (829 Seibert)
CINDY LN
BOBBIE DR
GOLF COURSE RD
OLD STATE RT 158
SEIBERT RD
AIR MOBILITY DR
SECTION LINE RD
OAKGROVE CIR
ASH CREEK RD
MORNINGSIDE CIR
CEDARWOOD DR
GALAXY DR
HOSPITAL DR
UNNAMED RD
CLAY ST
LOSEY ST
BUCHER ST
BEECH ST
SCOTT DR
SYMINGTON DR
VOSLE
LOSEY
GOETTL
BIRCHAR
HERITAGE
GREENFIELD CIR
BIRCHARD ST
ENLISTED DR
METRO PLAZA LN
WARD DR
MARTIN ST
NORTH DR
K ST
Soldier Way
WINTERS ST
POW MIA DR

P2016-14: Flying Aces Lounge - Zoning Map

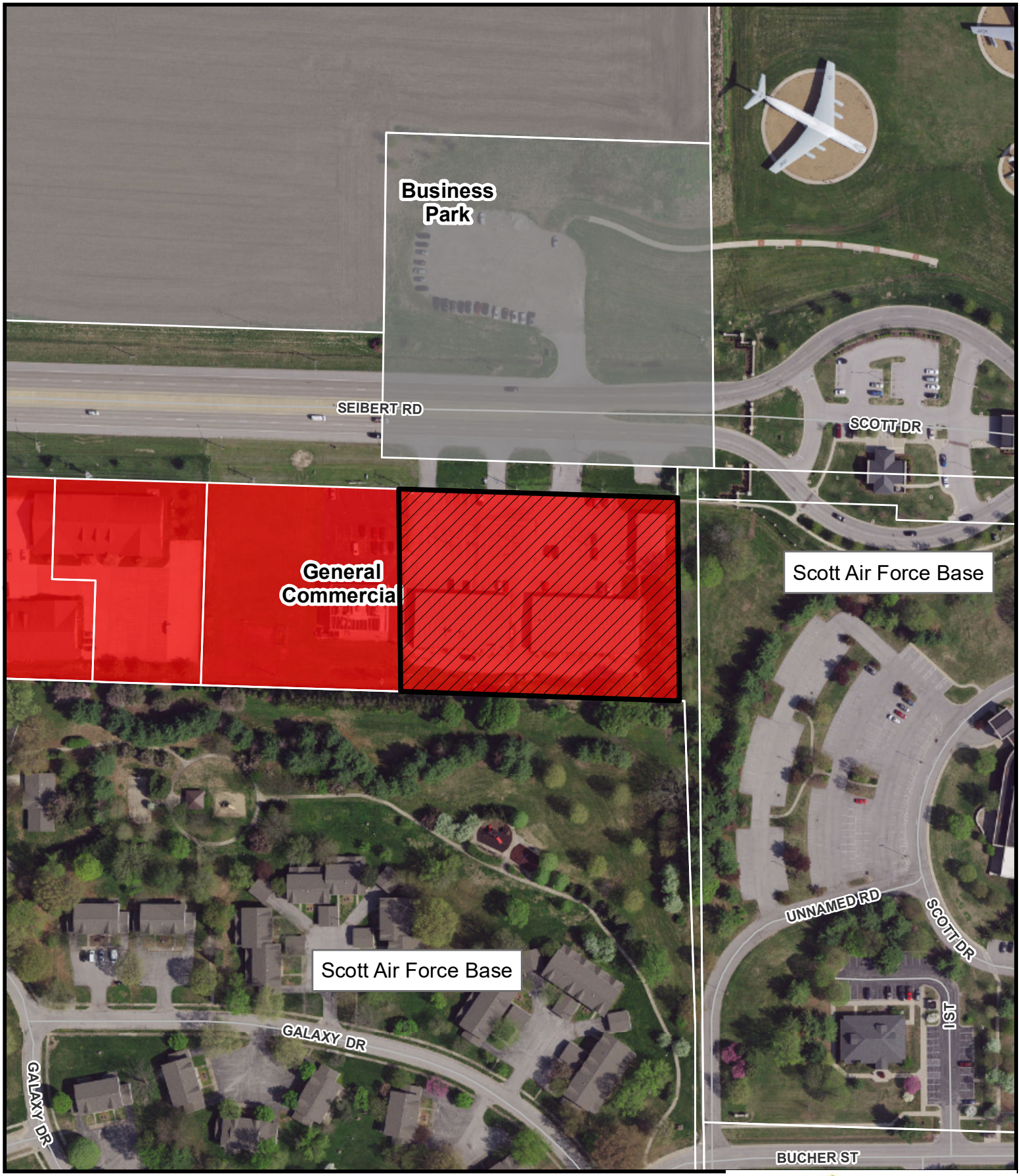
Subject Property

0 45 90 180 270 360 Feet

N W E S

O'Fallon ILLINOIS

P2016-14: Flying Aces Lounge - Future Land Use Map



Subject Property

0 45 90 180 270 360 Feet

N W E S

O'Fallon ILLINOIS

P2016-14: Flying Aces Lounge - Aerial Map

Subject Property

0 45 90 180 270 360 Feet

N W E S

O'Fallon ILLINOIS

MEMORANDUM

TO: Community Development Committee

FROM: Justin Randall, Senior City Planner

THROUGH: Ted Shekell, Director of Community Development

DATE: January 9, 2017

SUBJECT: Lincoln Park Villas - Final Plat (1st Reading)

Background

The applicant, Chad Hartle of RCH 9, LLC, is proposing a Final Plat of the senior development known as Lincoln Park Villas, consisting of a 72-unit multi-family community for seniors 55 years of age or old, including a clubhouse facility with fitness equipment, open gathering areas, and offices. The property is located on the west side of Lincoln Avenue, just south of GCS Credit Union and O'Fallon Public Library.

The proposed final plat is consistent with the approved preliminary plat and improvement plans. There are a few clean-up items that will need to be revised on the final plat prior to second reading.

Budgetary Impact

There will be a park land dedication requirement of 0.72 acre, with the requirement being fulfilled through a fee in lieu of land in the amount of $36,720, $510.00 per unit.

Legal Impact

None

Recommendation

Community Development and Public Work staff recommend the Lincoln Park Villas Final Plat for approval, subject to final review of the improvements plans.

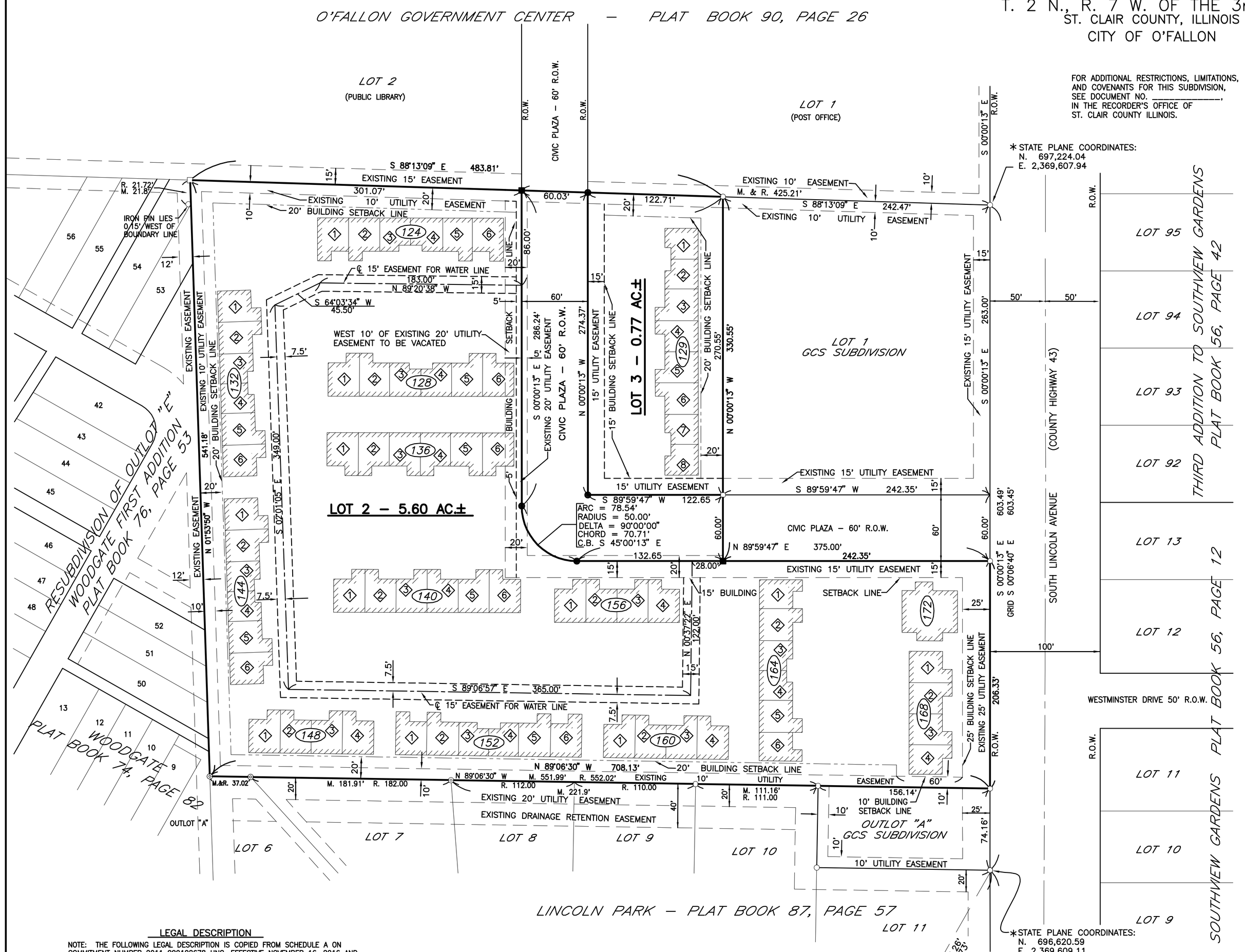
Attachments

Aerial
Lincoln Park Villas Final Plat

FINAL PLAT

LINCOLN PARK VILLAS

A SUBDIVISION OF LOT 2 OF GCS SUBDIVISION
BEING PART OF LOT 2 IN THE N.E. 1/4 OF SECTION 31
T. 2 N., R. 7 W. OF THE 3rd P.M.
ST. CLAIR COUNTY, ILLINOIS
CITY OF O'FALLON



FOR ADDITIONAL RESTRICTIONS, LIMITATIONS, AND COVENANTS FOR THIS SUBDIVISION, SEE DOCUMENT NO. _____, IN THE RECORDER'S OFFICE OF ST. CLAIR COUNTY ILLINOIS.

BASIS OF BEARING:
DOCUMENT NO. A0242308

50 25 0 50 100 150
SCALE IN FEET

ALL UTILITY EASEMENTS ARE TO BE USED FOR THE PURPOSES OF INSTALLATION AND MAINTENANCE OF PUBLIC AND MUNICIPAL UTILITIES AND FOR SURFACE WATER DRAINAGE.
ALL UTILITY EASEMENTS BEING USED FOR DRAINAGE PURPOSES SHALL BE MAINTAINED BY THE RESPECTIVE LOT OWNER.

STORM SEWER THAT LIES OUTSIDE THE CIVIC PLAZA RIGHT–OF–WAY IS TO BE MAINTAINED BY THE RESPECTIVE LOT OWNER.

INDIVIDUAL LOTS AND BUILDINGS MAY NOT SOLD

THE ERROR OF CLOSURE OF THE TRACT BEING SUBDIVIDED IS NOT MORE THAN ONE (1) FOOT IN FIVE THOUSAND (5,000) FEET

LEGEND

- ⊗ BRASS PLUG FOUND
- ○ IRON PIN FOUND
- ● IRON PIN SET WITH CAP STAMPED: "R AND A PLS 2579"
- □ CONCRETE MONUMENT FOUND
- ■ 4"x4"x36" CONCRETE MONUMENT SET
- EXISTING EASEMENT LINE
- PROPOSED EASEMENT LINE
- BUILDING SETBACK LINE
- M. MEASURED DISTANCE
- R. RECORDED DISTANCE
- TYPICAL 911 STREET ADDRESS: BUILDING NUMBER AND UNIT NUMBER
- (124) BUILDING NUMBER
- (1) UNIT NUMBER
- BUILDING FOOTPRINT

I DO HEREBY CERTIFY THAT THE FOLLOWING AGENCIES WERE PROPERLY NOTIFIED IF REQUIRED AND TO THE BEST OF MY KNOWLEDGE HAVE APPROVED THIS PROJECT.

ILLINOIS HISTORICAL PRESERVATION AGENCY (IHPA)
ILLINOIS DEPARTMENT OF NATURAL RESOURCES (IDNR – ENDANGERED SPECIES)
ILLINOIS DEPARTMENT OF NATURAL RESOURCES (IDNR – STREAM HYDRAULICS)
NATIONAL RESOURCE CONSERVATION SERVICE (NRCS)
U.S. ARMY CORPS OF ENGINEERS (USACE – CLEAN WATER ACT / STREAM HYDRAULICS)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (EPA– STORM WATER PERMIT)
ST. CLAIR COUNTY DEPARTMENT OF ROADS AND BRIDGES (ENTRANCE PERMIT)
ILLINOIS DEPARTMENT OF TRANSPORTATION DIVISION OF HIGHWAYS (IDOT – ENTRANCE PERMIT)
U.S. DEPARTMENT OF AGRICULTURE (USDA – PRIME FARM LAND)

TIMOTHY W. PRUETT
054-7227
REGISTERED PROFESSIONAL ENGINEER OF ILLINOIS

Timothy W. Pruett

Date of Signing

Date of License Expiration

STATE OF ILLINOIS } SS
COUNTY OF ST. CLAIR}

THIS PLAT HAS BEEN REVIEWED FOR 911 IMPLEMENTATION.

911 COORDINATOR DATE

STATE OF ILLINOIS } SS
COUNTY OF ST. CLAIR}

THIS PLAT HAS BEEN APPROVED BY THE ST. CLAIR COUNTY HIGHWAY DEPARTMENT WITH RESPECT TO ROADWAY ACCESS PURSUANT TO THE REQUIREMENTS OF ST. CLAIR COUNTY GOVERNING ACCESS RIGHTS.

COUNTY ENGINEER DATE

I, GREG J. HAHN, ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 3769, DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THIS PLAT IS A TRUE AND ACCURATE REPRESENTATION OF A SURVEY AND SUBDIVISION MADE UNDER MY DIRECT SUPERVISION AT THE REQUEST OF LINCOLN PARK VILLAS, LLC FOR THE PURPOSE OF SUBDIVIDING THE TRACT INTO LOTS AS SHOWN. IN WITNESS WHEREOF, I HEREUNTO SET MY HAND AND LAND SURVEYOR SEAL THIS _____ DAY OF _____, 2016.

GREG J. HAHN, I.P.L.S. #3769
LICENSE EXPIRATION DATE: 11/30/2018

STATE OF ILLINOIS } SS
COUNTY OF ST. CLAIR}

WE, THE UNDERSIGNED, DO HEREBY CERTIFY THAT NONE OF THE LAND BEING SUBDIVIDED BY THIS PLAT IS LOCATED WITHIN A SPECIAL FLOOD HAZARD AREA AS IDENTIFIED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) ON THE "FLOOD INSURANCE RATE MAP" FOR THE COUNTY OF ST. CLAIR, ILLINOIS ON MAP NUMBER 17163C0210, DATED NOVEMBER 5, 2003. THERE IS NO GUARANTEE IMPLIED, HOWEVER, THAT THE PROPERTY IS NOT SUBJECT TO FLOODING.

LINCOLN PARK VILLAS, LLC
RCH 9, LLC., MANAGING MEMBER, CHAD HARTLE, MANAGER

GREG J. HAHN, I.P.L.S. #3769 DATE
LICENSE EXPIRATION DATE: 11/30/2018

STATE OF ILLINOIS } SS
COUNTY OF ST. CLAIR}

I, THE UNDERSIGNED, THE OWNER OF THE TRACT SHOWN ON THIS PLAT, HAVE CAUSED SAID TRACT TO BE SURVEYED AND SUBDIVIDED IN THE MANNER SHOWN, AND SAID SUBDIVISION IS TO BE HEREINAFTER KNOWN AS "LINCOLN PARK VILLAS" ALL RIGHTS–OF–WAY AND EASEMENTS SHOWN HEREON ARE HEREBY DEDICATED TO THE USE OF THE PUBLIC, INCLUDING THE RELEASE AND WAIVER OF THE RIGHT OF HOMESTEAD UNDER THE HOMESTEAD EXEMPTION LAWS OF THE STATE OF ILLINOIS.
THIS SUBDIVISION LIES WITHIN O'FALLON COMMUNITY SCHOOL DISTRICT # 90 (K–8) AND O'FALLON TOWNSHIP HIGH SCHOOL DISTRICT # 203 (9–12)

DATED THIS _____ DAY OF _____, 2016

LINCOLN PARK VILLAS, LLC
RCH 9, LLC., MANAGING MEMBER, CHAD HARTLE, MANAGER

STATE OF ILLINOIS } SS
COUNTY OF ST. CLAIR}

I, _____ NOTARY PUBLIC IN AND FOR SAID COUNTY IN THE STATE AFORESAID, DO HEREBY CERTIFY THAT

PERSONALLY KNOWN BY ME TO BE THE SAME PERSON WHOSE NAME ARE SUBSCRIBED TO THE FOREGOING INSTRUMENT AS SUCH OWNERS, APPEARED BEFORE ME THIS DAY IN PERSON AND ACKNOWLEDGED THAT HE SIGNED AND DELIVERED THIS PLAT AS HIS FREE AND VOLUNTARY ACT FOR THE USES AND PURPOSES THEREIN SET FORTH. GIVEN UNDER MY HAND AND NOTARIAL SEAL

THIS _____ DAY OF _____, 2016

AT _____

MY COMMISSION EXPIRES: NOTARY PUBLIC

STATE OF ILLINOIS } SS
COUNTY OF ST. CLAIR}

APPROVED BY THE CITY COUNCIL OF THE CITY OF O'FALLON, ILLINOIS

THIS _____ DAY OF _____, 2016

MAYOR CITY CLERK

STATE OF ILLINOIS } SS
COUNTY OF ST. CLAIR}

I, THE UNDERSIGNED, COUNTY CLERK OF ST. CLAIR COUNTY, ILLINOIS, DO HEREBY CERTIFY THAT I HAVE EXAMINED THE ABOVE PLAT, AND THAT I HAVE SEARCHED THE RECORDS OF MY OFFICE TO ASCERTAIN WHETHER ALL REDEEMABLE SALES FOR UNPAID TAXES OR SPECIAL ASSESSMENTS HAVE BEEN PAID AS REQUIRED BY THE STATUTES UPON ALL OF THE PROPERTY EMBRACED WITHIN THIS PLAT, AND I HEREBY CERTIFY THAT I FIND NO REASONABLE TAX SALE OR UNPAID FORFEITED TAXES AGAINST ANY OF THE REAL ESTATE EMBRACED IN THIS PLAT AND I HEREBY APPROVE THE SAME FOR ASSESSMENT PURPOSES.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL OF MY OFFICE THIS _____ DAY OF _____, 2016.

COUNTY CLERK

LEGAL DESCRIPTION

NOTE: THE FOLLOWING LEGAL DESCRIPTION IS COPIED FROM SCHEDULE A ON COMMITMENT NUMBER 2011 999102678 UNC, EFFECTIVE NOVEMBER 16, 2016 AND PRINTED ON DECEMBER 6, 2016, ON THE COMMITMENT FOR TITLE INSURANCE PREPARED BY FIDELITY NATIONAL TITLE INSURANCE COMPANY.

LOT 2 OF THE FINAL PLAT OF GCS SUBDIVISION, A SUBDIVISION OF PART OF LOT 2 OF THE NORTHEAST 1/4 OF SECTION 31, TOWNSHIP 2 NORTH, RANGE 7 WEST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 11, 2007 AS DOCUMENT NUMBER A02042308 IN THE OFFICE OF THE RECORDER OF ST. CLAIR COUNTY, IN ST. CLAIR COUNTY, ILLINOIS.

EXCEPTING THEREFROM ALL COAL AND MINERALS UNDERLYING AND ALL RIGHTS AND EASEMENTS IN FAVOR OF THE ESTATE OF SAID COAL AND OTHER MINERALS. SITUATED IN ST. CLAIR COUNTY, ILLINOIS.

RHUTASEL and ASSOCIATES, INC.
CONSULTING ENGINEERS • LAND SURVEYORS
FREEBURG, ILLINOIS (618) 539–3178
CENTRALIA, ILLINOIS (618) 532–1992
IL. LICENSE NO. 184–000287

PLAT TO BE RECORDED BY:
CHAD HARTLE, MANAGER
RCH 9, LLC.
2201 WALTON, SUITE 9
JACKSON, MO 63755

* STATE PLANE COORDINATES ARE ILLINOIS COORDINATE SYSTEM, WEST ZONE NAD 1983 (CORS ADJUSTMENT) COORDINATES WERE DERIVED FROM WOOLPERT CORS (NGS PID# D12211) ON APRIL 16, 2007 BY GPS OBSERVATIONS

K:\21015-RCH_O'fallon\SURVEY\FINAL PLAT\LINCOLN PARK VILLAS FINAL PLAT.dwg, 1/3/2017 2:43:57 PM

O'Fallon
ILLINOIS

MEMORANDUM

TO:	**Community Development Committee**
FROM:	**Justin Randall, Senior City Planner**
THRU:	**Ted Shekell, Director of Community Development** **Jeff Taylor, Director of Public Works**
DATE:	**January 5, 2017**
SUBJECT:	**Clearwave Right of Way Use Agreement (RESOLUTION)**

Project Background and Summary:

Clearwave Communications, operating out of Harrisburg IL, and having a local office on Green Mount Road, is seeking to use existing city right of way to construct fiber optic cable in various location in O'Fallon, as shown in the attached Right of Way Use Agreement. They will primarily serve businesses with high capacity fiber optic service for internet and phone, offering speeds up to 1GB. This first phase of build-out will be approximately 14,500 linear feet within the City. They will use their own in-house crews for construction, and installation will be with directional boring. Their first customers in O'Fallon will include the new St. Elizabeth Hospital and the Auffenberg car dealerships.

As compensation to the City for use of our ROW, Clearwave will be required to indemnify the City and will be subject to the 5% Illinois Simplified Municipal Telecommunications Tax payable to the City.

Recommendation:

The Agreement with Clearwave has been reviewed by Jeff Taylor, City Engineer, Ted Shekell, Community Development Director, and Dan Vogel, Special Legal Counsel to the City of O'Fallon, and the Right of Way Use Agreement is recommended as provided.

CITY OF O'FALLON, ILLINOIS
RESOLUTION NO. 2017-

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH CLEARWAVE COMMUNICATIONS FOR USE OF CITY RIGHT OF WAY

WHEREAS, Clearwave Communications has agreed to the terms of a Right of Way Use Agreement, as outlined in the attached agreement, with the City of O'Fallon; and

WHEREAS, the City finds this proposed Agreement to be in the interest of the public welfare.

NOW THEREFORE BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF O'FALLON, ILLINOIS THAT:

1) The Mayor be authorized to sign a Right of Way Use Agreement with Clearwave Communications, which is attached hereto and made part of this resolution

2) This resolution shall become effective immediately upon its adoption by City Council.

Resolved by the Mayor and City Council of the City of O'Fallon this _____ day of _____, 2017.

Approved:

_____
Gary L. Graham, Mayor

Attest:

_____
Philip A Goodwin, City Clerk

NON-EXCLUSIVE RIGHTS-OF-WAY LICENSE AGREEMENT BETWEEN THE CITY OF O'FALLON AND DELTA COMMUNICATIONS, LCC d/b/a CLEARWAVE COMMUNICATIONS

This Rights-of-Way Agreement for use of the City's Rights-of Way ("Agreement") is made and entered into as of the "Effective Date" (as defined in Section 12) by and between, Delta Communications, LCC, d/b/a Clearwave Communications, a limited liability corporation ("Licensee"), and the City of O'Fallon, Illinois, a municipality of the State of Illinois ("City"). Licensee and City may sometimes be referred to in this Agreement individually as a "Party" or collectively as the "Parties."

WHEREAS, Licensee asserts that it has been issued a certificate of public convenience and necessity by the State of Illinois Commerce Commission ("Commission"), as a provider of certain communications services with authority to operate throughout the State of Illinois, and seeks to use the City's Rights-of-Way to provide retail communication services to customers within the City; and

WHEREAS, Illinois law, Chapter 53 of the City Code, and other applicable law authorizes the City to require users of the City's Rights-of-Way to obtain consent such as by franchise or Right-of-Way Use Agreement, as applicable (a "ROW Agreement"), to establish terms of use of the Rights-of-Way within the City; and

WHEREAS, Licensee has submitted a ROW application and seeks a ROW Agreement from the City in order to authorize its use of the City's Rights-of-Way to construct, install, maintain, and operate facilities for communications within the ROW; and

WHEREAS, the City and Licensee desire to enter into this ROW Agreement to establish terms of Licensee's use of the Rights-of-Way, and to incorporate the provisions and definitions of the ROW Code (as defined in 1.2); and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

SECTION 1. GENERAL

1.1 Preservation of Police Power Authority. Any rights granted to Licensee pursuant to this Agreement are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Licensee shall be subject to all requirements of a Utility as set forth in the ROW Code, defined below, in addition to any supplementary obligations expressed herein.

1.2 Defined Terms. For purposes of this Agreement, the capitalized terms, phrases, and their derivatives shall have the meanings as set forth in the Code of Ordinances of the City, including specifically Chapter 53, and as may be amended (the "Code" or "ROW Code"). Words used in the present tense include the future tense, words in the single number include the plural number, and words in the plural number include the singular. The words "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning. The following additional capitalized terms shall also apply to this Agreement:

A. **"Communications"**: The transmission via the Facilities, in whole or in part, between or among points specified by the user, of information of the user's choosing (e.g., data, video, voice), without change in the form or content of the information as sent and received, regardless of the statutory or regulatory scheme to which such transmissions may be subject.

B. **"Communications Service"**: The transmission of writing, signs, signals, pictures, sounds or other forms of intelligence through wire, fiber, wireless or other means, including, but not limited to, any "telecommunications service," "enhanced service," "information service," or "Internet Service," as such terms are now, or may in the future, be defined under applicable law, including all instrumentalities, Facilities, apparatus (Communications Facilities), and services (among other things, the receipt, forwarding, and delivery of Telecommunications) incidental to such transmission or designed to directly or indirectly facilitate or accept such transmission and shall also include "video services" as defined by the Public Utilities Act (220 ILCS 5/21-201). The term "Communications Service" does not include the rental of conduit or physical facilities, which if proposed must be expressly separately requested below. **Any Party seeking to provide cable television, video services, or use wireless communication facilities shall be subject to additional and separate requirements, limitations and/or approvals of federal, state and local law and shall have on file with the City such authorization to provide such services prior to commencement.**

1.3 Agreement Subject to Provisions of ROW Code. This Agreement fully incorporates the provisions of the ROW Code as if fully set forth herein, and Licensee agrees as a material term of this Agreement to abide by the provisions of such Code and other applicable ordinances of the City, and to be subject to the enforcement by the City as provided therein. This Agreement may establish Licensee obligations that are supplementary to the ROW Code, but nothing in this Agreement shall be deemed to waive any obligation or requirement applicable to Licensee authorized or established by the ROW Code. The consent to use the Rights-of-Way authorized by this Agreement is subject to the continuing accuracy during the term of this Agreement of the application information provided by and maintained by Licensee for this authorization as provided to and on file with the City.

SECTION 2. GRANT OF AUTHORITY TO USE THE RIGHTS-OF-WAY

2.1 Agreement Non-Exclusive. This Agreement shall grant nonexclusive privileges to use the Rights-of-Way. The City specifically reserves the right to grant, at any time, such additional agreements or other rights to use the Rights-of-Way for any purpose and to any other person, including itself, as it deems appropriate, subject to applicable federal and state law. Nothing in this Agreement shall relieve Licensee from applying for and obtaining all necessary permits for installation of its Facilities including excavation, building, electrical, zoning, etc. before installation of its Facilities within the Rights-of-Way.

2.2 Nature of Rights Granted by this Agreement. This Agreement shall not convey title to Licensee, equitable or legal in the Rights-of-Way, and gives only the consent to occupy the City's Rights-of-Way for the purposes and for the period stated in this Agreement and subject to the requirements of this Agreement. This Agreement also shall not grant the right to use Facilities

owned or controlled by the City or a third-party, without the separate consent of the City or such third-party owning or controlling the Facilities, nor shall it excuse Licensee from obtaining appropriate access or pole attachment agreements before locating on Facilities controlled or owned by the City or a third-party.

2.3 Grant. Subject to the terms and conditions of this Agreement, the ROW Code, and the conditions set forth in Exhibit A attached hereto and incorporated herein by reference into this Agreement, Licensee is hereby granted the nonexclusive right and privilege to construct, operate, and maintain Facilities in, under, along, or over the City's Rights-of-Way for the purposes of supplying **Communications Service limited to telecommunications at retail** within the City, subject to the terms and conditions herein set forth within this Agreement and the ROW Code and all such special conditions as may be set forth in Exhibit A. As a condition of this grant, Licensee is required to obtain and maintain any permit, license certification, grant, registration or any other authorization lawfully required by any appropriate governmental entity, including, but not limited to, the City, the Federal Communications Commission, or the Commission. The size, location, and specifications of the underground Facilities and any future above-ground Facilities not authorized as provided in Exhibit A, are subject to prior City approval and consent. **Licensee shall not have the right to install wireless antennae or antennae support structures in the Rights-of-Way, nor provide services not authorized herein, without express separate written agreement and authorization of the City.** In the event that the use of the Rights-of-Way is proposed to change or Licensee desires to provide services other than as described herein, Licensee shall be required to seek amendment hereto prior to commencing such service or changed use.

2.4 Use of Rights-of-Way; Police Powers; Licensee's Use Subordinate. The Licensee shall construct and maintain its Facilities in accordance with all applicable federal, state, and local laws, codes and ordinances, including all permit requirements, and fee payments, in effect as of the Effective Date or adopted after the Effective Date, to the extent such are not in contravention of applicable law. The City makes no express or implied representation or warranty regarding its rights to authorize the installation or construction of Licensee's Facilities on any particular segment of Rights-of-Way. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon Licensee. The use of the Rights-of-Way authorized by this Agreement shall in all matters be subordinate to the City's use of and rights to the same and Licensee shall be limited to such uses as have been expressly granted to Licensee by the City. Licensee shall excavate in or install Facilities in the Rights-of-Way in locations and in a manner only as authorized by a specific permit granted by the City. Licensee shall further be subject to the City's exercise of its powers, including but not limited to its administration and regulation related to the management of the Rights-of-Way exercised in a competitively neutral, non-discriminatory, and reasonable manner.

2.5 No Interference. Licensee shall construct and maintain its Facilities to be so located, constructed, and maintained as to avoid interference with the proper use of all Rights-of-Ways and so as not to materially or without authority interfere with other users of the Rights-of-Way. Except as may otherwise be provided, the Licensee shall reasonably notify all residents and properties materially affected by the proposed work prior to commencement of such work. All construction and maintenance by Licensee or its subcontractors shall be performed in accordance with generally accepted industry standards and all standard specifications, drawings, and procedures required or approved by the City.

2.6 Notification, Joint Installation, and Collocation Requirements. Licensee shall, except in cases of emergency, prior to any excavation or installation within the Rights-of-Way, provide sufficient notification and joint installation opportunity on a shared-cost basis to potential users of the Rights-of-Way under such written policy or direction as may be established by the City. All new facilities or structures shall collocate on existing poles or within existing conduit, trenches or other existing facilities unless shown to be not feasible. New poles or other new above ground structures more than 36" in height shall be prohibited except where a verified statement is provided documenting the specific circumstances upon which the City thereafter determines that good cause requiring approval in the public interest or upon which such facility is required to be permitted by superseding law. Licensee shall further make its installed Facilities available to other Licensees on a nondiscriminatory, competitively neutral basis as may be required by federal law codified at 47 U.S.C. § 224, and as may be required by the Commission.

2.7 Licensee Responsible for Costs. The Licensee shall be responsible for all reasonable, lawfully reimbursable, documented costs incurred by the City that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Rights-of-Way, that are not otherwise accounted for as part of the permit fee established pursuant to the ROW Code. All such costs shall be itemized and the City's books and records related to these costs shall be made available upon request to the Licensee. Licensee shall be responsible for its own costs incurred removing or relocating its Facilities when required to do so by the City due to the City requirements relating to maintenance and use of the Rights-of-Way for City purposes. The Licensee shall be subject to pay the City reasonable compensation for use of the Rights-of-Way where such cost is not contrary to applicable law and where established by the City Council.

SECTION 3. TERM

3.1 Term. This Agreement shall be effective for a term of five (5) years from the Effective Date, subject to earlier termination or forfeiture as provided for elsewhere in this Agreement.

SECTION 4. TAXES

4.1 Taxes. The Licensee agrees to pay all applicable taxes including license taxes, business taxes, municipal utility taxes, video services provider fees, and other applicable taxes of the City and failure to pay such taxes shall be considered a material breach of this Agreement. Licensee shall be subject to audit and shall itemize by category of service the amount received and taxes paid for services provided by Facilities in the Rights-Of-Way. Such taxes shall be in addition to compensation or reimbursement of costs relating to use of the Rights-of-Way, if any, required herein or otherwise by the City by ordinance subject to any limitations of applicable state or federal law.

SECTION 5. TRANSFER OF AGREEMENT OR FACILITIES

5.1 Transfer of Agreement. Unless otherwise prohibited by law, Licensee shall not sell, transfer, lease, or assign, this Agreement or its rights under this Agreement, in whole or in part, without obtaining the City's prior consent, which consent will not be unreasonably withheld,

conditioned, or delayed. Provided, Licensee shall provide thirty (30) days prior written notice of such consent request, and the City shall take all reasonable steps necessary to reach a determination within sixty (60) days of the Licensee's written request. Notwithstanding the foregoing, Licensee may sell, transfer, lease or assign this Agreement or its rights under this Agreement, in whole or in part, with prior written notice to the City if to: (a) any entity controlling, controlled by or under common control with Licensee; (b) any surviving successor entity or newly created successor entity in the event of a merger, reorganization or consolidation involving Licensee. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership or this Agreement. Licensee shall not change its name under which it does business with the public without providing at least thirty (30) days prior written notice to the City.

5.2 Agreement Binding on Assignee. In the event of a sale, transfer, assignment or any other transaction Licensee may enter into that involves transfer of Licensee's rights, duties, and privileges under this Agreement, all provisions of this Agreement that are obligatory upon, or that inure to the benefit of Licensee, shall also be obligatory upon and shall inure to the benefit of any and all successors and assigns of Licensee. Further, all obligations, duties, liabilities, limitations, prohibitions, amendments and forfeitures by this Agreement created or imposed upon Licensee shall be binding upon and be assumed, kept and performed by its legal and bona fide assigns and successors in interest, according to the true intent and purpose of this Agreement, whether expressly so stated or not.

5.3 Sale or Lease of Facilities. Except as otherwise may be provided by law, Licensee shall not lease, sell, sublet or otherwise transfer possession or control or use of the Facilities, or any portion thereof, for any purpose to any person that has not obtained a duly issued Agreement or other grant by the City to use the Rights-of-Way and which includes the authority to use or maintain such leased or transferred Facilities.

SECTION 6. FORFEITURE OF LICENSE AND PRIVILEGE

6.1 Forfeiture. In case of failure on the part of the Licensee, its successors and assigns, to comply with any of the provisions of this Agreement, including the provisions of the Code, or if the Licensee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this Agreement, including the provisions of the Code, or if Licensee shall lose authority to provide its Communication Service or do business within the City under applicable law, the Licensee, its successors and assigns, shall forfeit all rights and privileges permitted herein, and all rights hereunder shall cease, terminate, and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings: Before the City proceeds to forfeit this Agreement, it shall first serve a written notice upon the Licensee, setting forth in detail the neglect or failure complained of, and the Licensee shall have thirty (30) days thereafter in which to cure the default by complying with the conditions of this Agreement. If at the end of such thirty (30) day period the City determines that the conditions have not been complied with, the City shall take action by an affirmative vote of the City Council present at the meeting and voting, to terminate the Agreement; setting out the grounds upon which said Agreement is to be canceled or terminated. Nothing herein shall prevent the City from taking any other action or remedy as may be set forth in the City's Code or as may otherwise exist at law. All remedies described in this Section are cumulative and in addition to any other rights and remedies to which the City may be entitled at law, in equity or under this Agreement.

SECTION 7. GENERAL CONDITIONS

7.1 Compliance with Laws. In performing activities and exercising its rights and obligations under this Agreement, the Licensee shall comply with all applicable federal, state, and local laws, ordinances, regulations and policies, including, but not limited to, all laws, ordinances, zoning, and other regulations and policies relating to construction, bonding, insurance, and use of public property.

7.2 Use of Public Rights-of-Way by Licensee. In addition to the requirements of the ROW Code and all other applicable laws, orders, rules, and regulations, Licensee shall use the Public Right-of-Way as required by ordinance for the performance of Facilities Work or Excavation Rights-of-Way subject to the additional following requirements:

A. Licensee shall coordinate and perform its Facilities work in a manner that minimizes adverse impact on public improvements and public projects, as reasonably determined by the City. Except where otherwise provided by law, Facilities shall be installed or replaced only after issuance of a Rights-of-Way permit from the City which shall be approved in accordance with applicable law and shall include reasonable review of the design, size, and location of such Facilities to ensure that interference with the public use or convenience does not result.

B. All earth, materials, sidewalks, paving, crossings, utilities, public improvements or improvements of any kind, damaged or removed by Licensee in its activities under this Agreement, shall be fully replaced promptly by Licensee at its sole expense and to the reasonable satisfaction of the City.

C. Prior to construction, reconstruction or relocation of any Facilities in or above the Rights-of-Way, Licensee shall submit to the City for approval, plans and specifications of the proposed installation. Such approval shall not be unreasonably withheld, delayed or conditioned.

D. It shall be the sole responsibility of Licensee to take reasonable measure to protect and defend its Facilities in the Rights-of-Way from harm or damage, including from trees and related root systems. If Licensee fails to accurately or timely locate Facilities in accordance with the applicable requirements when requested by the City, Licensee shall be responsible for any damage resulting therefrom, except to the extent the resulting damage is solely due to the negligent conduct of another.

E. Licensee shall notify the City not less than ten (10) working days in advance of any Facilities work that would require any street closure. Except in the event of any emergency, no such closure shall take place without such notice and prior authorization from the City. Where emergency actions are taken, the Licensee shall promptly thereafter provide notification and comply with permit and other procedures otherwise required. In addition, all work performed in the traveled way or which in any manner impacts vehicular or pedestrian traffic shall, at Licensee's expense, be properly signed, barricaded, and otherwise protected in accordance with the latest edition of the Manual on Uniform Traffic Control Devices, including but not limited to the Standards and Guides for Traffic Controls

for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations.

F. All Facilities work shall be performed in accordance with applicable present and future rules and regulations of the Commission, as well as applicable federal, state, and City laws and regulations. It is understood that the standards established in this paragraph are minimum standards and the other requirements established or referenced in this Agreement may be in addition to or stricter than such minimum standards.

7.3 Construction Guarantee and Maintenance. Licensee agrees that it shall be responsible for the restoration of the Rights-of-Way in the area where such Licensee was granted a permit to the satisfaction of the City. A bond, letter of credit or other surety (collectively "Surety") in the form approved by the City, and in accordance with Section 53.10, shall be posted if required by the City to guarantee construction performance. Licensee shall also be responsible for maintenance of its Facilities and any and all damage caused to the Rights-of-Way, equipment within the Rights-of-Way or otherwise by Licensee's use of the Rights-of-Way.

7.4 Audits. The City shall have the right, in its discretion, to audit the books and records of Licensee in accordance with Chapter 115 to determine if Licensee has properly accounted to the City the amount due to the City under the Licensee's obligation to pay taxes herein. Any underpayment of the amount to the City shall be paid to the City plus five percent (5%) of the total amount of the underpayment determined in an audit, plus any costs incurred by the City in conducting the audit not to exceed five percent (5%) of the total amount of the underpayment determined in an audit. Said total sum shall be paid to the City within twenty-one (21) days after the date of issuance of any invoice for the same.

7.5 Enforcement; Attorneys' Fees. The City shall be entitled to enforce this Agreement through all remedies lawfully available, and Licensee shall pay the City its costs of enforcement, including reasonable attorneys' fees.

7.6 Relationship of the Parties. Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture, or employment between the Parties.

7.7 Relocation or Removal of Facilities.

7.7.1 In addition to the requirements of Chapter 53, specifically Section 53.18, of the ROW Code, the City may in its exercise of the public interest require that Licensee, at Licensee's sole cost and expense, relocate, adjust, or reinstall any of Licensee's Facilities. The City shall give reasonable notice of such requirement to Licensee, including the location of Facilities to be relocated and a reasonable time to relocate such Facilities. Licensee shall forthwith remove, adjust, or relocate such Facilities within the reasonable time provided by the City in its written notice. The cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Licensee without expense to the City. If any Facilities are not relocated in accordance with this Section and within the reasonable time frames required by the City, the City or its contractors may relocate the Facilities and the Licensee and its surety shall be jointly and severally liable to the City for any and all costs incurred by the City, including but not limited to any liquidated delay damages.

7.7.2 Licensee shall upon request of any person other than the City requesting relocation of Facilities and holding a validly issued building or moving permit and within a reasonable period as may be established by the City, temporarily raise, lower, or relocate its Facilities as may be reasonably necessary for such permit-holder to exercise its rights under the permit. Except where good cause is approved by the City, a permit-holder must make its request at least fourteen (14) days prior to the date it intends to exercise its rights under the permit. If applicable, Licensee will, within seven (7) days of its receipt of such a request, deliver to the permit-holder an invoice for the services. However, Licensee will not be required to honor any such request unless and until the permit-holder makes payment in advance for any expenses incurred by said Licensee pursuant to said permit-holder's request.

7.8 No Cause of Action Against the City. The Licensee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of this Agreement, or because of the enforcement thereof by said City, or for the failure of the City to have the authority to grant, all, or any part, of the rights herein granted; provided that said Licensee expressly acknowledges that it accepted the rights herein granted under this Agreement in reliance upon its independent and personal investigation and understanding of the power of authority of the City to enter into the Agreement herein with Licensee; provided further that the Licensee acknowledges by its acceptance of said Agreement that it has not been induced to enter into this Agreement upon any understanding, or promise, whether given verbally or in writing by or on behalf of the City, or by any other person concerning any term or condition of this Agreement not expressed herein; provided further that the Licensee acknowledges by the acceptance of this Agreement that it has carefully read the provisions, terms, and conditions hereof and all incorporated provisions and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions and acknowledges this Agreement to be a lawful and valid agreement between the City and Licensee. Nothing herein shall be deemed to waive the City's sovereign immunity.

SECTION 8. INSURANCE

8.1 Insurance. In addition to the requirements of Section 53-08 of the ROW Code, except where prohibited by law, Licensee shall file with the City evidence of liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Illinois (All insurance carriers and surplus line carriers shall be rated "A-" or better and of a class size "X" or higher by A.M. Best Company.). At all times while this Agreement remains in effect, and in recognition of the indemnification provisions set forth herein, Licensee shall, at its own cost and expense, maintain commercial general liability insurance and/or self-insurance in the amounts specified below to protect Licensee and the City, its officers, agents, employees, elected officials, and attorneys, each in their official and individual capacities, from any liability for bodily injury, death and property damage occasioned by the activities of Licensee, or any Person acting on its behalf, under this Agreement, including, but not limited to, Licensee's operations, products, services or use of automobiles or construction equipment. As proof of this compliance, Licensee shall, during the term of this Agreement, keep on file with the City Clerk a certificate of insurance and/or affidavit of self-insurance that shall show the types and amounts of coverage. If insurance is maintained through an insurance company, an endorsement or certificate of insurance shall be submitted to the City and shall state that the City is named as an additional insured with full coverage under the Licensee's policy, stating that the policy shall not be cancelled or materially

modified so as to be out of compliance with the requirements of this Section, or not renewed without thirty (30) days' advance written notice of such event being given to the City Clerk. If insurance will be provided via self-insurance, any affidavit of self-insurance shall be signed by an employee or officer of Licensee who has knowledge of Licensee's self-insurance program and is authorized to make representations as to the scope of said program, and shall contain a statement making such representations. Licensee shall not permit any subcontractor to commence or continue work until both shall have obtained or caused to be obtained all insurance required under this Section. Any self-insurance or deductible above fifty thousand dollars ($50,000.00) must be declared to and pre-approved by the City. Such insurance shall be in an amount of not less than $3,000,000.00 or such higher amount as may be specified in the ROW Code. Nothing herein or in any such policy shall be deemed to waive the City's sovereign immunity.

SECTION 9. INDEMNIFICATION

9.1 Indemnification. Licensee at its sole cost and expense, hereby agrees to indemnify, protect, release, defend (with counsel acceptable to the City) and hold harmless the City, its municipal officials, elected officials, boards, councils, commissions, officers, employees, attorneys, and agents, from and against any and all causes of action, claims, demands, all contractual damages and losses, economic damages and losses, all other damages and losses, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorneys' fees and costs of defense arising, directly or indirectly, in whole or in part, from the action or inaction of Licensee, its agents, representatives, employees, contractors, subcontractors or any other person for whose acts Licensee may be liable, in constructing, using operating, maintaining, repairing, restoring or removing Facilities, or in carrying on Licensee's business or operations in the City, or out of the fact that the City entered into this Agreement with Licensee, the rights granted to Licensee, or the activities performed, or failed to be performed, by Licensee under this Agreement, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors, or as otherwise may be limited by law. This indemnity shall apply, without limitation, to any claim or cause of action for invasion of privacy, defamation, antitrust, negligence, theft, fire, violation or infringement of any copyright, trademark, trade name, service mark or patent or intellectual property right of any person, whether or not any act or omission complained of is authorized, allowed or prohibited by this Agreement. The indemnification, duty to defend, and hold harmless obligations set forth in this Section shall survive for a period of five (5) years after the date of expiration or termination of this Agreement. Any payments required by Licensee to City pursuant to this indemnification Section or otherwise required under this Agreement shall accrue interest from the date due at one and one-half percent (1.5%) interest per month until paid.

SECTION 10. NOTICE

10.1 Notice. Any notice, demand, consent, approval, request or other communication required or permitted to be given to either Party under or with respect to this Agreement (collectively, "Notice") must be in writing and must be delivered in person, by a reputable

overnight delivery service or by certified mail, postage prepaid, return receipt requested, to the appropriate address(es) set forth below:

If Notice to Licensee:
Delta Communications, LLC d/b/a
Clearwave Communications
P.O. Box 808
Harrisburg, IL 62946
Attn: Legal

If Notice to City:
City of O'Fallon, Il
Attn: Community Development Director
255 S. Lincoln Ave.
O'Fallon, IL 62269

10.2 Receipt of Notice. If Notice is given by personal delivery, a receipt indicating that personal delivery was made must be obtained. Notice will be deemed effective on the date of receipt by the addressee as shown on the receipt if given by personal delivery, on the return receipt if Notice is given by certified mail or the confirmation of delivery form if Notice is given by overnight delivery service. Rejection or refusal to accept or the inability to deliver because of a changed address of which no proper notice was given will be deemed to be receipt of the Notice as of the date of rejection, refusal or inability to deliver. Either Party may change its address for Notice by giving Notice of address change to the other Party in the manner for giving Notice prescribed in Section 10.1.

SECTION 11. MISCELLANEOUS

11.1 This Agreement and all Exhibits constitute the entire Agreement between the Parties as to the subject matter of this Agreement, and no negotiations or discussions prior to the Effective Date shall be of any effect.

11.2 The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of any other provision.

11.3 The rights and remedies of the City shall be cumulative and in addition to any other rights and remedies provided by law or equity. The laws of the State of Illinois shall govern this Agreement.

11.4 This Agreement shall create no third-party beneficiary rights.

11.5 No term or condition of this Agreement will be deemed to have been waived by a Party unless the waiver is made in writing and is signed by the Party against whom the waiver is claimed. No waiver of default or breach of this Agreement or consent to the default or breach will be deemed to have been waived or consented to unless the waiver or consent is made in writing and signed by the Party against whom the waiver or consent is claimed. The waiver of or consent to a breach or default of this Agreement will not be deemed to be a waiver of or consent to any other breach or default of this Agreement, or to or any subsequent breach or default of the same

term or condition of this Agreement. No course of dealing or conduct or failure of a Party to strictly enforce any term, right, or condition of this Agreement constitutes a general waiver or relinquishment of the term, right, or condition.

SECTION 12. EFFECTIVE DATE AND ACCEPTANCE

12.1 Effective Date. This Agreement shall be effective on the date this Agreement is last signed by both Parties (the "Effective Date"). The Parties acknowledge that this Agreement is a lawful contract between them, that they entered into this Agreement voluntarily, and that they have full authority to sign this Agreement. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed an original, all of which together shall constitute the same instrument. Execution may be accomplished by facsimile or other electronic means.

IN WITNESS WHEREOF, this Agreement is entered into as of the Effective Date.

CITY OF O'FALLON, ILLINOIS

_____
_____, Mayor

Date: _____

ATTEST:

(CORPORATE SEAL)

_____
_____, City Clerk

Delta Communications, LLC d/b/a
Clearwave Communications

By: _____

Print Name: Scott Riggs

Title: President & CEO

Date: 1/4/17

STATE OF ILLINOIS)
) ss.
COUNTY OF SALINE)

The forgoing instrument was acknowledged before me this 9th of JANUARY 2016, 7 by SCOTT RIGGS, on behalf of the limited liability company Delta Comm. LLC, DBA Clearwave Communication. This person is personally known to me or has produced _____ as identification.

Lisa E. Berry
(Signature of Notary taking Acknowledgment)

OFFICIAL SEAL
LISA E. BERRY
Notary Public, State of Illinois
My Commission Expires 11-03-2020

Notary Public, State of ILLINOIS

My Commission Expires: 11-3-2020

Exhibit A

The Agreement granted herein is subject to the following additional conditions:

1. Nothing in this Agreement shall grant Licensee authority to use the Rights-of-Way to provide Communications Services that are authorized herein to the public within the City. If Licensee desires to provide Communication Services or otherwise use the Rights-of-Way other than as authorized herein within the City after execution of this Agreement, such service shall be provided only after amendment of this Agreement, and subject to Licensee obtaining any permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity.

2. All new Licensee Facilities shall be installed underground, except where good cause is shown to authorize use of existing above-ground Licensee Facilities. Ground-mounted pedestals customarily installed for underground Facilities shall be authorized subject to applicable permit requirements, provided that such pedestals or equipment that are larger than 3 feet in height or otherwise not customarily found within the City limits shall not be deemed authorized by this Agreement without specific separate written authorization of the City.

3. Licensee acknowledges and agrees that it is subject to the City's Simplified Municipal Telecommunications Tax and Municipal Telecommunications Infrastructure Maintenance Fee as a user of the Rights-of Way and agrees that all of its revenues from its services authorized herein shall be subject to the taxes and fees as set forth in Chapter 115 of the City's Code or as may be amended, regardless of technology or nomenclature used by Licensee to provide such services, including but not limited to wire, wireless, internet-based transmissions, and switched or unswitched, to the extent permitted by law.

4. Licensee acknowledges and agrees that pursuant to its obligation to pay all applicable taxes, including but not limited to as defined by 35 ILCS 636/5-7 and referenced in this Exhibit, any services provided shall be subject to the tax where aggregated, combined, or bundled unless Licensee can demonstrate that any revenue not subject to taxation has been separately stated on the customer's bill and taxation of such revenue is prohibited by law.

5. Licensee represents and agrees that it (including its duly licensed contractors acting on its behalf that are identified on the right-of-way permit application) shall not authorize third-parties without a valid license, Right-of-Way Use Agreement, or other lawful authorization in writing from the City to be within the City's Rights-of-Way to install or perform maintenance on its Facilities or have physical access thereto in the Rights-of-Way.

Public Works Department
255 S. Lincoln Ave.
O'Fallon, IL 62269
Phone: 618-624-4500 Ext.3
FAX: 618-624-4534

RIGHT OF WAY APPLICATION/PERMIT

Location Description – Quarter section, section, township, range, etc. To each copy of the application attach one copy of the sketch showing location. T2N R8W Sections 25&26. Work to include the following roads: Lincoln Hwy, Hartman Ln, Central Park Dr, Auto Ct, and Regency Park	**911 Address of Construction** **Nearest Intersection** Lincoln Hwy and Old Collinsville Rd
Applicant Name and Address Delta Communications d/b/a Clearwave Communications 2 North Vine St. Harrisburg, IL 62946	**Proposed Starting Date** 12/12/2016 **Anticipated Completion Date*** 1/16/2017
Engineer of Record Roth Clayton	**Contact No.** 618-294-8078
Engineer of Record Address: 2 North Vine St, Harrisburg, IL 62946	

Utility Person Responsible for Construction	Roth Clayton	**Contact No.**	618-294-8078
Utility or Project Emergency Contact	Lincoln Hobbs	**Contact No.**	618-294-9200

*Note: If the work described is not completed by the "Completion Date" specified, this permit is null and void, and the work shall not be completed unless authorized through a subsequent permit or an approved time extension.

Utility Facility/Work Type

- ☐ Electric
- ☐ CATV
- ☐ Sanitary Sewer
- ☐ Water
- ☐ Gas/Petroleum
- ☐ Chemical Treatment
- ☐ Tree Cutting/Removal
- ☒ Telephone/Communications

Line Orientation

- ☐ Overhead
- ☒ Underground
- ☐ Bridge Attachment

It is understood and agreed that approval is subject to the applicant's full compliance with the pertinent Statues, as well as any rules and regulations of other jurisdictional agencies, which may be more restrictive, and with the Illinois Department of Transportation's Utility Accommodation Policy, current edition.

Are you a member of JULIE – the Illinois One- Call System?

- ☒ Yes
- ☐ No, provide line – locate number

Roth D Clayton — 11/22/16
Signature of Authorized Representative — Date

OSP Route Engineer
Title

618-294-8078
Authorized Representative Telephone Number

City of O'Fallon – Public Works Department Permit Approval

Permit Number	Issuance Date

Director of Public Works or Authorized Designee

Fee: $100.00 Code: 3542

CITY OF O'FALLON
FRANCHISE OR RIGHTS-OF-WAY USE AGREEMENT
APPLICATION FORM

This Application is for a Franchise or Rights-of-Way Use Agreement (ROW Agreement) in the **City of O'Fallon** for the construction, maintenance, and use of utility, communication, or related facilities in the City's rights-of-way pursuant to City Code and which authorizes requirement of a franchise, license or similar agreement. This Application shall be accompanied by a deposit payment of an **Application fee of $2,500.00,** which fee shall be utilized by the City to offset the City's costs in this application and approval. If applicable, the Applicant shall be obligated to reimburse the City for its reasonable expenses associated with the review, negotiation, and adoption of an Agreement that may reasonably exceed the Application fee amount, with any amount unused to be returned upon written request. The Application will be used to determine the qualifications and eligibility of the Applicant to be granted an Agreement under federal, state, and local law, assist the City in ensuring compliance of the Applicant with applicable law, and in adapting any agreement to unique or special circumstances as may be established by the Applicant.

Any party seeking to provide wireless services, cable television or video services must also have or obtain a state or local franchise or other applicable authorization (including zoning) as may be required by law specifically authorizing those services.

It is recognized that this Application may not fully describe or coincide with all types of utility services, Communications Services, or facilities that an Applicant proposes to offer. If it is believed that certain questions are either not relevant or are inapplicable as a result of system design, law, or other reason, please indicate the basis for such belief. All Applicants are also asked to provide any additional information that they believe to be useful to the City in processing this Application and granting an agreement.

Nothing in this Application shall be deemed to provide any entitlement to use the rightsof-way except as specifically authorized by separate agreement and the Applicant acknowledges that the City may develop and apply new Ordinances or related regulations that shall govern the provision of any agreement applied for by this Application.

PART A: GENERAL INFORMATION

1. Name of Applicant, Including All Affiliates of the Applicant:

Applicant: *Delta Communications, LLC dba Clearwave Communications*

Date: *12/16/16*

Affiliates:

2. Address of Applicant: 2 North Vine St., P.O. Box 808, Harrisburg, IL 62946

3. Name, Telephone Number, and *Email Address* of Local Contact Person for Applicant:

Roth Clayton
618-841-2600
rclayton@corp.clearwave.com

4. This is an Application for (check all that apply and explain):

a. ___X__ An initial license to construct, operate and/or maintain ducts, conduits or other facilities in the City's rights-of-way.

b. _____ An expansion, change, or modification of an existing system or amendment of a franchise or Rights-of-Way Use Agreement to change or expand services or facilities.

c. _____ Renewal [describe uses] _____.

d. _____ Transfer of Agreement [attach Agreement to be transferred]

e. Other, describe: _____

5. Please state (1) type of service, if any, to be provided by facilities and use to be authorized, (2) any specific proposed terms, provisions, or requested accommodations, including a proposed duration and any scheduling constraints of the Applicant.

Retail Internet and voice service by way of buried fiber optic cable.

6. Does the Applicant have a current business license with the City? *No. Will obtain.*

7. Does the Applicant have Illinois Commerce Commission authority to provide any services within the City? _____*YES*_____ **If so, please attach a copy of all applicable Commission Orders and tariffs applicable within the City.**

8. Did the Applicant have a prior franchise or ROW agreement with the City? ____*NO*___ **If so, please attach a copy.**

9. Is any wireless (RF) communication broadcasting equipment proposed to be located within the rights-of-way? (if yes, provide detailed descriptions with all dimensions, applicable frequencies, and other specifications for each proposed location). *NO*

10. Provide proposed compensation to City for use of the rights-of-way (compensation may depend on type of use, location, and facilities, if any, used; linear facilities shall require linear foot fee per City policy):

Illinois Simplified Municipal Telecommunications Tax

PART B: DESCRIPTION OF PROPOSED CONSTRUCTION PLANS, THE SYSTEM, AND SERVICES

1. **Facilities.*** Describe in Detail: *Buried conduit containing fiber optic cable; access vaults.*

a. The geographic area within the **City of O'Fallon** in which the Applicant proposes to construct or maintain its facilities and/or offer Communications Service and a schedule for any expansion/buildout.

Clearwave is requesting access to ROW throughout the entire City of O'Fallon. Expansion will be on a per-contract basis that will commence immediately and continue indefinitely.

*** In lieu of responding to the following questions <u>1b -1e</u>, an electronic map may be submitted showing existing or proposed facilities:**

SEE MAP for responses to 1b-1e.

b. Type(s) of facilities to be installed, constructed, or utilized (e.g., reinforced conduit, duct banks, fiber, co-axial cable, copper twisted pair, wireless radio transceivers) and the proposed location within the public rights-of-way or other locations where such facilities will be placed.

c. To the extent known, the location of all facilities, including the use of existing overhead and underground public utility, conduit, communications cable, water, sewer drainage, poles, light stands and other facilities, in the public rights-of-way along the proposed route, or other locations.

(1) If the facilities are to be installed overhead, identify the space available for locating Communications facilities on existing utility poles or facilities along the proposed route (or if a renewal, identify the number and location of existing poles and facilities to which Applicant's facilities are attached).

(2) If the facilities are to be installed underground in existing facilities, identify locations and any new facilities proposed, including: *NOT APPLICABLE*

(i) The available capacity in such ducts or conduits before installation of Applicant's facilities.
(ii) The capacity that will remain after the Applicant's facilities are installed.
(iii) The number and location of additional manholes or handholes required.

(3) If Applicant is proposing to install new ducts or conduits underground in the public rights-of-way, identify:

(i) The proposed location(s).

(ii) The excess capacity that will exist after installation. *NONE.*

(iii) The number, size, and location of vaults, manholes, and handholes required.

(iv) Other equipment and facilities to be installed.

(v) The type or design of conduit (provide specification or diagram if available) and method of installation.

DIRECTIONAL BORING

d. If known, the specific trees, structures, improvements, facilities, and obstructions, if any, that Applicant proposes to temporarily or permanently remove or relocate.

e. Total linear feet of facilities located in the public rights-of way of the City.

f. Provide a scaled map of the proposed service area visually indicating the same information.

SEE MAP.

2. **Services.** Describe the types of facilities and/or services that the Applicant plans to provide upon approval of a separate agreement for use of the rights-of-way for providing services. This information is necessary for the City to determine applicable fees or regulatory requirements.

Retail local telephone, long distance, internet and data services to the business over fiber.

a. Does the Applicant plan to offer telecommunications service at retail? *YES*

b. Does the Applicant plan to offer telephone service by VOIP (voice over internet protocol) technology? *YES*

c. Does the Applicant plan to offer long-distance services through its own facilities or as a resale carrier? *YES*

d. Does the Applicant plan to offer any type of video programming service to its customers, including cable television, open video system service, or video dialtone service? *NO*

e. Does the Applicant intend to lease or sell dark fiber on its system to other entities? *NO*

f. Does the Applicant intend to lease or sell transmission capacity on its system to other entities? *YES*

g. Does Applicant intend to lease or sell space in ducts, on poles, or in conduits for use by other entities? *NO*

h. Does Applicant intend to lease or sell Internet access services, enhanced information services, security services, energy-related services, or any other Communications Services not previously listed in this section? *NO*

i. Does Applicant plan to provide any service to residents or persons within the City? If so, describe all such services. *NO*

If any of the questions in this paragraph 2 answered "yes," please describe in detail to whom, how, and when such services or facilities will be offered and provide the specific state or local franchise or authority to provide such service in the City. Please note separate facilities owned by another but utilizing Applicant's facilities, including conduits, are subject to the Application requirements and fees imposed by the City. Attachments included: _____ (yes/no and list)

Beginning in 2017, retail telecommunication services will be offered to businesses, schools, and other government agencies within the City. Clearwave is a licensed CLEC in the State of Illinois. Clearwave offers transport and transit services to other ISPs.

3. Please provide a proposed schedule and completion dates for development and construction of the Applicant's proposed facilities.

Construction will commence in January of 2017 and will continue on a per-contract basis indefinitely.

4. Please describe the Applicant's proposed maintenance plan.

a. If leasing access to ducts, poles or conduits to or from third-party Communications Service providers, please explain the installation and maintenance procedures for such third-party Communications facilities. Please identify the third-parties and provide lease terms/arrangements.

NOT APPLICABLE.

5. If the Applicant proposes to provide any Communications Service, has it obtained all required federal, state, and local permits, licenses, certificates, and franchises and met all other legal requirements? If yes, please attach all relevant documentation (i.e. ICC certificate, etc.). *YES, SEE ATTACHMENTS.*

6. Will the Applicant have a local office in the City? If so, how many employees will it office? In what capacity will the employees serve? Will such employees perform construction and maintenance on the system? Will such employees serve as a local contact for the City regarding the agreement? *NO.*

7. Provide a detailed estimate of construction costs for the Initial System with respect to the use of the City's rights-of-way, including excavation and right-of-way restoration, or if this Application relates to a request to expand the type, scope, or geographical location of services, a detailed estimate of the right-of-way construction costs of such expansion. This information will be subject to independent verification by the City.

Roughly 14,500' of build within the City of O'Fallon ROW, with a cost of approximately $7.00/foot. Estimated total cost of initial build is $117,120. All construction and restoration to be completed by Clearwave Communications in-house construction team.

PART C: LEGAL BACKGROUND OF APPLICANT

1. Has the Applicant ever been engaged in any litigation with a municipality with respect to the use of rights-of-way? If so, please describe the nature of the dispute, the municipalities involved, the amount of damages, if any, paid by either party, and whether the dispute has been finally resolved. *NO*

2. List any parent companies, subsidiaries, or other entities which a controlling equity interest in the Applicant or in which Applicant owns a controlling equity interest.
   Clearwave, LLC
   111 Center St., Suite 2500
   Little Rock, AR 722201

3. Is the Applicant currently involved in any disputes before any federal, state, or local regulatory agency that would impact the ability of the Applicant to legally construct, maintain, or provide facilities or services in the City? If so, please describe. *NO*

PART D: FINANCIAL BACKGROUND OF APPLICANT

1. What will the cost be for the construction in the rights-of-way of any proposed facilities or services contemplated in the next 24 months?

   This is impossible to determine at this point as all expansion will be organically driven on a per contract for service basis.

2. Please submit a copy of proposed insurance and security fund meeting City Code requirements and any proposal for a security adequate to protect the City's interest in ensuring that all construction and related rights-of-way costs for the proposed facilities or services are covered. If Applicant claims any lawful exemption to either insurance or bonding requirements of the Code, please provide detailed basis and supporting documentation for each such exemption. *SEE ATTACHMENT.*

3. Has the Applicant ever been placed in a receivership, declared bankruptcy, been declared insolvent, or had property foreclosed upon by a creditor? If so, please explain in detail the circumstances behind each instance. *NO*

I certify that I am authorized to execute this Application and any subsequent agreement on behalf of the Applicant. I further understand that if there are material omissions of information requested by this Application or deliberately false answers given to questions on this Application, the City may revoke any agreement, permit, or license it has granted based on this Application. Further, such actions shall be subject to penalty of perjury and as may be provided pursuant to law.

Dated: 12/19/16

By: _____

Lisa E. Berry
Notary Public

OFFICIAL SEAL
LISA E. BERRY
Notary Public, State of Illinois
My Commission Expires 11-03-2020

ATTACHMENT A:

Delta Communications, LLC d/b/a Clearwave Communications ICC Order

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Delta Communications, LLC d/b/a Clearwave Communications	:	
Application for a certificate of local and interexchange authority to operate as a facilities based carrier of telecommunications services in the State of Illinois.	:	**01-0795**

ORDER

By the Commission:

On December 5, 2001, Delta Communications, LLC, d/b/a Clearwave Communications, an Illinois Limited Liability Company ("the Applicant") filed a Verified Application with the Illinois Commerce Commission (the "Commission") for Certificates of Service Authority to provide resold and facilities-based local exchange and interexchange telecommunications services in the State of Illinois pursuant to Sections 13-403,13-404 and 13-405 of the Public Utilities Act, 220 ILCS 5/1-101, *et seq.* (the "Act"). The Applicant also sought waivers of Parts 710 and 735, as well as a variance of Part 735.180.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, this matter came on for a hearing before a duly authorized Administrative Law Judge of the Commission at its offices in Chicago, Illinois, on January 17, 2002. At the conclusion of the hearing, the record was marked "Heard and Taken."

The Applicant was represented by counsel and it appeared by its President, Scott Riggs, who testified in support of the petition. Ms. Barbara Lankford, of the Consumer Services Division of the Commission's Public Utilities Division, and Ms. Karen Buckley, of the Commission's Telecommunications Department of the Public Utilities Division, appeared on behalf of the Staff.

Mr. Riggs testified that the Applicant is an Illinois Limited Liability Company that plans to provide both resold and facilities-based voice-grade and data services primarily in Southern Illinois. Since the Applicant is doing business as Clearwave Communications, it registered that name with the Illinois Secretary of State. The Applicant will lease facilities and equipment and utilize its own equipment to provide data services, internet services, prepaid local services, and interexchange services.

Mr. Riggs' testimony and the other evidence submitted in support of the Petition established that the Applicant has the requisite technical, managerial and financial qualifications to provide telecommunications services in Illinois. That evidence also established that the Applicant's management has the requisite training and experience in the telecommunications field. Mr. Riggs additionally sponsored as Exhibits the Applicant's financial statements, which demonstrate that Applicant has the financial qualifications to provide telecommunications services in Illinois. Also, Mr. Riggs' testimony establishes that the Applicant will abide by all federal and state "slamming" and "cramming" laws. (Section 258 of the Telecommunications Act of 1996 and Section 13-902 of the Public Utilities Act).

Staff stated that it had reviewed the application and supporting documentation and it has no objection to the Commission grant of the authority requested in this proceeding.

The Applicant has requested that the Commission make certain declarations and grant certain waivers of the Act, and from the rules and regulations of the Commission. The services the Applicant proposes to provide will be competitive telecommunications services, as described in Section 13-502(b) of the Act. The Applicant is required to file tariffs with the Commission under Section 13-501 of the Act, describing the nature of its services, the applicable rates and charges and the terms and conditions of the service provider. If the Applicant files the required tariffs in compliance with Section 13-502(e) and the rules adopted thereunder in 83 Ill. Admin. Code Section 745, many of the provisions of the Act, as well as regulations adopted by the Commission in Title 83 Illinois Administrative Code, will be inapplicable to the Applicant.

The Applicant seeks waivers of 83 Ill. Adm. Code Sections 710 and 735, with regard to interexchange services, and Sections 710 and 735.180, with regard to local exchange services. Section 710 is entitled "Uniform System of Accounts for Telecommunications Carriers" and Section 735 is entitled "Procedures Governing the Establishment of Credit, Billing Deposits, Termination of Service and Issuance of Telephone directories for Local Exchange Telecommunications Carriers in the State of Illinois. Section 735.180 concerns the provisioning of telephone directories by local exchange carriers.

The Applicant's request for a waiver of 83 Ill. Adm. Code Section 710, which governs maintaining books and records under the Uniform System of Accounts, should be granted in order to reduce the economic burdens of regulation on a company that provides only competitive services.

The Applicant's request for a waiver of Section 735 should also be granted in the context of interexchange services, since the rules contained therein are not applicable to interexchange services.

The Applicant should be granted its request for a variance of Section 735.180 in the context of local exchange services, which governs telephone directory services.

Section 735.50 states that a permanent variance from this Section may be granted when the Commission finds that the provision from which the variance is granted is not statutorily mandated, no party will be injured by the granting of the variance, and the rule from which the variance is granted would be unreasonable or unnecessarily burdensome, if applied.

The Commission, having reviewed the entire record and being fully advised in the premises, is of the opinion and finds that:

(1) the Commission has jurisdiction over the Applicant and the subject-matter herein;

(2) the Applicant, Delta Communications, LLC, d/b/a Clearwave Communications, an Illinois Limited Liability Company, seeks to obtain Certificates of Service Authority pursuant to Sections 13-403, 13-404 and 13-405 of the Act in order to provide resold and facilities-based local exchange and interexchange services throughout the State of Illinois, and thereby seeks to become a "telecommunications carrier" within the meaning of Section 13-202 of the Act;

(3) the recitals of fact and conclusions stated in the above portions of this Order are supported by the record and are hereby adopted as findings of fact;

(4) as is required by Sections 13-403, 13-404 and 13-405 of the Act, the Applicant possesses sufficient technical, financial and managerial resources and abilities to provide resold and facilities-based local exchange and interexchange telecommunications services within the State of Illinois;

(5) with regard to the provisioning of services on both a local exchange and interexchange bases, the Applicant is granted a waiver of 83 Ill. Adm. Code Section 710, governing the Uniform System of Accounts for telecommunications carriers, provided that Applicant continues to maintain its accounting records in accordance with Generally Accepted Accounting Principles in a level of detail similar to the accounting system it currently uses and in sufficient detail to comply with all applicable tax laws;

(6) with regard to providing telecommunications on an interexchange basis, the Applicant is granted a waiver of 83 Ill. Adm. Code Section 735, since the rules contained therein are not applicable to interexchange services;

(7) with regard to providing telecommunications services on a local basis, the Applicant is granted a variance of 83 Ill. Adm. Code Section 735.180, the requirement to publish a directory, with the understanding that it will meet its obligation to list its customers in a directory by making arrangements

with the incumbent local exchange carrier to list its customers in the directories published by that local exchange carrier;

(8) The Applicant shall comply with the requirements of 83 Ill. Adm. Code Sections 705, 755, 757, 772 and Sections 13-301, 13-301.1 and 13-502 of the Act;

(9) the Applicant should file with the Commission a tariff consisting of its rates, rules and regulations, in accordance with Sections 13-501 and 13-502 of the Act to be effective upon proper filing, before commencing service.

IT IS THEREFORE ORDERED that Delta Communications, LLC, d/b/a Clearwave Communications, be, and is hereby, granted Certificates of Service Authority pursuant to Sections 13-403, 13-404 and 13-405 of the Act.

IT IS FURTHER ORDERED that Certificates of Service Authority hereinabove granted shall be the following:

CERTIFICATE OF INTEREXCHANGE SERVICE AUTHORITY

IT IS HEREBY CERTIFIED that Delta Communications, LLC, d/b/a Clearwave Communications, is authorized pursuant to Section 13-403 of the Public Utilities Act to provide facilities-based interexchange telecommunications services within the State of Illinois.

CERTIFICATE OF SERVICE AUTHORITY

IT IS HEREBY CERTIFIED that Delta Communications, LLC, d/b/a Clearwave Communications, is authorized pursuant to Section 13-404 of the Public Utilities Act to provide resold local exchange and interexchange telecommunications services within the State of Illinois.

CERTIFICATE OF EXCHANGE SERVICE AUTHORITY

IT IS HEREBY CERTIFIED that Delta Communications, LLC, d/b/a Clearwave Communications, is authorized pursuant to Section 13-405 of the Public Utilities Act to provide facilities-based local exchange telecommunications services within the State of Illinois.

IT IS FURTHER ORDERED that Delta Communications, LLC, d/b/a Clearwave Communications, is required to file with this Commission a tariff consisting of its rates, rules and regulations, to be effective upon proper filing, before commencing service.

IT IS FURTHER ORDERED that the Delta Communications, LLC, d/b/a Clearwave Communications, is granted its request for a waiver of 83 Ill. Adm. Code Section 710, regarding the Uniform System of Accounts, as long as it maintains its accounting records in accordance with Generally Accepted Accounting Principles.

IT IS FURTHER ORDERED that Delta Communications, LLC, d/b/a Clearwave Communications, Inc., is granted its request for a waiver of 83 Ill. Adm. Code Section 735, as is set forth in Finding (6) above.

IT IS FURTHER ORDERED that Delta Communications, LLC, d/b/a Clearwave Communications, is granted a variance of 83 Ill. Adm. Code Section 735.180, as is set forth in Finding (7) above.

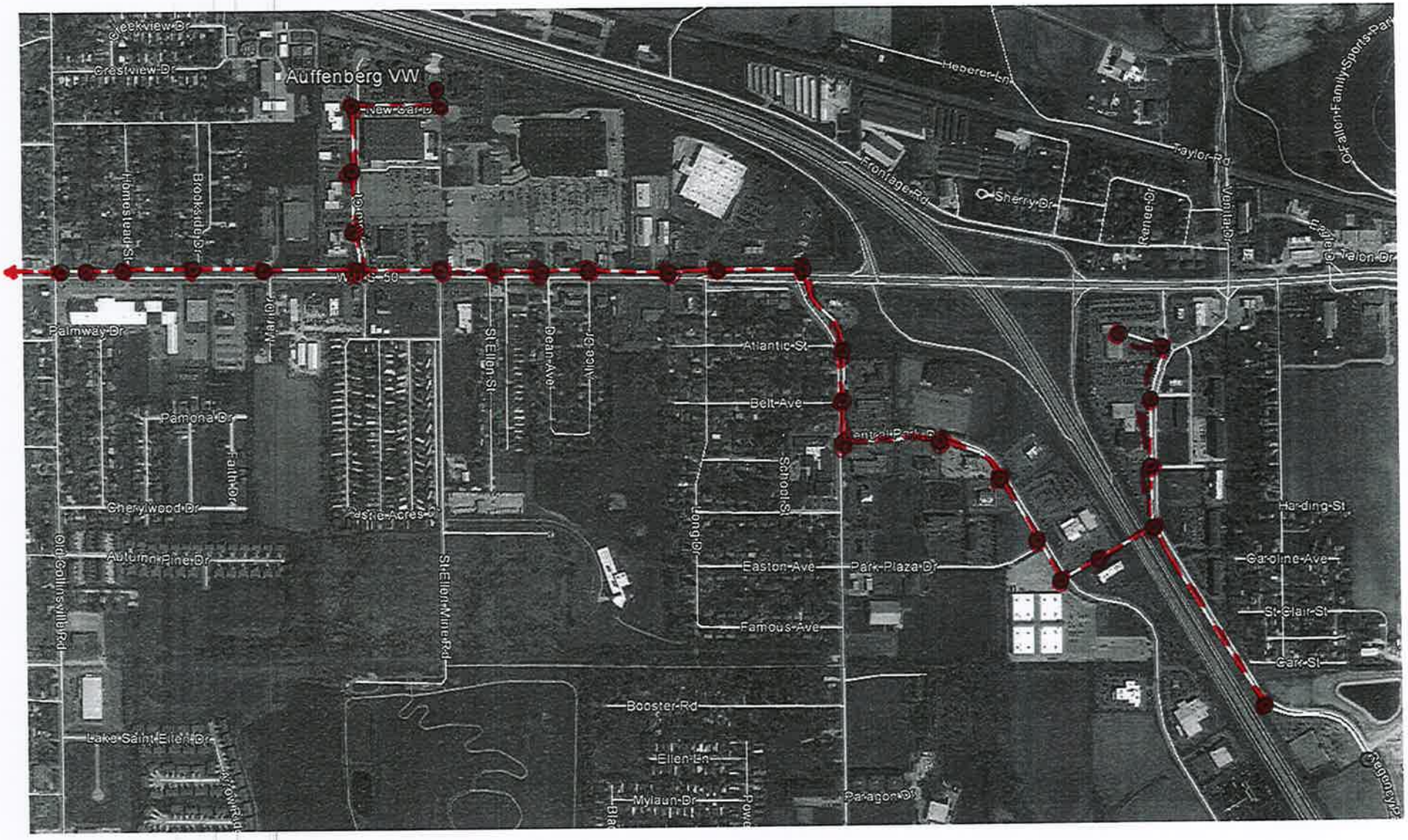
IT IS FURTHER ORDERED that Delta Communications, LLC, d/b/a Clearwave Communications, is required to comply with the provisions of 83 Ill. Adm. Code Sections 705, 720, 725, 755, 756, 757 and 772, to abide by the requirements of 83 Ill. Adm. Code Section 725, as well as the Emergency Telephone System Act, and to comply with Sections 13-301, 13-301.1 and 13-703 of the Public Utilities Act;

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code Section 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 10th day of April, 2002.

(SIGNED) RICHARD L. MATHIAS

Chairman



Roughly 14500' of build within the City of O'fallon ROW, with a cost of roughly $7.00/foot. All construction and restoration to be completed by Clearwave Communications in house construction team.