



# Pottawatomie County Planning Commission

Andrew Klein - Chair  
Tim Diederich - Member  
Jared Cox - Member

Shellee Maginness - Vice Chair  
Armon Bosse Jr. - Member  
Robert Boyd - Member  
Norm Stutzman - Member

Marcie Wood - Secretary  
Michael Heigert - Member  
Doug Kern - Member

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## Agenda

Date: February 21, 2019  
Time: 7:00 P.M.  
Location: Pottawatomie County Office Building - Sunflower Room (Basement)  
612 E. Campbell St.  
Westmoreland, KS

1. Call to Order - Roll Call
2. Public Comments – *Non Agenda Items Only*
3. Consent Agenda - *Items are those of a routine nature and will be approved by one motion, without separate discussion. Commission members may ask questions or accept questions from the floor. Members may request an item be removed from the Consent Agenda and added at the end of the Regular Agenda for more discussion.*

No items

4. Approval of January 17, 2019 Meeting Minutes
5. Adoption of the Regular Agenda
6. Regular Agenda
  - A. Rezoning Request  
Applicant: Carl Stich  
Location: Lot 2 of Dot Com Plex Subdivision  
Located in the NW Quarter of the NW Quarter of  
Section 33, Township 9, Range 10 in Louisville Township  
Current Zoning: CN – Commercial Neighborhood  
Requested Zoning: R1 – Single Family Residential
  - B. Amendment to the Unified Development Regulations  
Article 5, Section 100-D-12  
A change to the Conditional Use Permit requirements for the placement  
of publicly and privately owned communication towers.
7. County Comprehensive Plan Update  
Green Valley Neighborhood Plan Update
8. Adjournment



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## Meeting Minutes for January 17, 2018

**In Attendance:** Armon Bosse Jr.  
Marcie Wood  
Norm Stutzman  
Robert Boyd  
Andrew Klein  
Doug Kern  
Shellee Maginness  
Jared Cox

**Location:** Public Works Building  
Sunflower Room  
612 E. Campbell St.  
Westmoreland, KS

**Absent:** Michael Heigert  
Tim Diederich

**Staff:** John Keller - County Planner  
Gregg Webster - Zoning Administrator  
Stephan Metzger - Assistant Planner  
Peter Clark - Public Works Director

### **Call to order**

Vice-Chair Shellee Maginness called the meeting to order at 7:00 P.M.  
The roll was called by Marcie Wood, with members being present as shown.

### **Public Comment**

There was no public comment on non-agenda items.

### **Consent Agenda**

There were no items on the consent agenda.

### **Approval of December 13, 2018 Meeting Minutes**

Doug Kern made a motion to approve the minutes as written. Wood seconded the motion and it was approved unanimously.

### **Regular Agenda**

John Keller asked that the final plat of Brockman Subdivision be added to the agenda.

Wood made a motion to approve the agenda with the change. JR Bosse seconded the motion and it was approved unanimously.

### **Preliminary Plat Review - The Glen At Heritage Hills**

Keller presented the staff's report.

He discussed the location, the size of the tract and the current zoning.

He explained the plat contained 19 lots proposed to be used for single family residential and 1 lot for neighborhood commercial.

He stated the drainage study and traffic analysis were reviewed and approved at the rezoning hearing in December 2018.

He talked about the lot sizes and layout. He noted a tract being platted for the detention pond use, which will be part of a larger tract, to be deeded to the County by the developer.

He noted the plat has been reviewed by staff and has found to be in substantial conformance with the subdivision regulations, and recommended approval.

Kern made a motion to approve the final plat as presented.

Wood seconded the motion and was approved by all.

#### **Final Plat Review – The Glen At Heritage Hills**

Keller presented the staff's report.

He noted that the final plat is for the same area as shown on the preliminary plat.

He explained that staff has reviewed the plat and finds it to be in substantial conformance with the subdivision regulations.

Wood made a motion to approve the final plat as presented.

Jared Cox seconded the motion and it was approved by all.

#### **Final Plat Review – Brockman Subdivision**

Keller presented the staff's report.

He explained the proposed plat is a re-plat of six existing small lots in the Oak Canyon Subdivision, and noted the location of Oak Canyon Subdivision.

He noted the property owner wishes to combine the 6 lots into one lot, as the lots individually may not be able to be built on.

He stated the plat has been reviewed by staff and is found to be in substantial conformance with the subdivision regulations.

Kern made a motion to approve the final plat as presented.

Cox seconded the motion and it was approved unanimously.

#### **Other Discussion**

Stephan Metzger gave an update on the County Comprehensive Plan, reminding the Board of the joint meeting with the Board of County Commissioners on Monday, February 4, at 4:00 in the Sunflower Room.

He also stated there would be an open house on the plan on February 4, at 6:00 p.m. at the Westmoreland Elementary School gymnasium.

He also gave an update on the Green Valley Neighborhood Plan.

He noted there would be a Town Hall Meeting on February 5, at the National Guard Armory in Manhattan, at 6:00 p.m.

He explained the proposed agenda for the meeting, with information being on the County's website as well.

As there was no further business, the meeting was adjourned.



## STAFF REPORT

MEETING DATE: 02/21/2019

TO: Pottawatomie County Planning Commission  
FROM: Office Staff of Planning and Development

**FINAL COPY**

### MEETING RULES:

1. Staff presents proposal
2. Applicant presents the development proposal
3. Persons given written notification are entitled to speak first
4. Applicant is entitled to rebut any testimony
5. Hearing is closed and the Planning Commission is entitled to ask questions of any person present
6. Motion and Vote
7. Commission members must state reasons for their vote.

Action: Rezoning request by Carl Stich/Applicant

Current zoning designation: CN - Commercial Neighborhood

### STATUS

The current zoning status of this tract is CN – Commercial Neighborhood – Dot-Complex Subdivision

### CURRENT REQUEST

The request is to rezone lot number 2 of Dot-Complex from CN – Commercial Neighborhood to R1 – Single Family Residential

### THE TRACT

- The subject area is located several miles north of Wamego, Kansas at the intersection of Elm Slough Rd. and Highway 99. This neighborhood commercial area contains several businesses and one single family house and was platted in November of 2000 as Dot Complex on 4.2 acres.
- The zoning request concerns only the single family home located on lot 2 with .88 acres. This CN area was rezoned in December of 1999 and constructed in 2000-2001. The existing house was included in the rezoning request by the applicant under the assumption that it could be rented or sold for offices or light commercial businesses.

### HISTORY

- For the past 18+ years the proprietors have been unsuccessful in attracting commercial or office uses and have continued to use the structure for a residence. Under the current circumstances the residence is a legal non-conforming use. This allows the owner to use the structure as a residence until a suitable CN use can be found.

## HISTORY

One of the principles (and thus a finding of fact) of zoning is - can the structure be used for the purpose that it was originally zoned? In this particular case it is evident that the market will not support a commercial use of the building and therefore should be returned to its original use.

A decision to return the house to a residential use would be in keeping with the Kansas Supreme Court instructions to planning commissions that one of the key criteria for a rezoning decision is if the property can be used for its intended purpose as zoned (Golden v Overland Park)

## SUGGESTED FINDING OF FACT

- The nearby environs consist of commercial buildings and residences.
- Nearby properties are zoned A1-Agriculture, AR-Agriculture/Residential, R1-Single Family residential and CN-Commercial Neighborhood.
- The property is currently used as a residence and we assume that the market will not support offices or legal commercial uses at this location.
- This property is not vacant but has not been used for its intended purpose for 18+ years. The staff suggests that the rezoning would not be detrimental to the immediate neighborhood nor would the use conflict with the general character of the area. The staff finding is that there would be no impact since the actual use of the building would remain unchanged. A finding of fact is required by the Planning Commission following the public comment period.
- There is no indication that the continued use of the building as a residence would diminish the value to nearby property. To the contrary, allowing the residence to continue as a CN use would work a hardship on the applicant because of its non-conforming use status which would raise a flag at the time of resale to another party.
- The rezoning proposal meets the criteria for rezoning in that it appears that it cannot be used for its intended purpose. The staff supports the change to R1.
- In terms of conformance with the master plan, there is no conflict in this particular case since the residence was a pre-existing use

## ADDITIONAL CONDIITONS

We do not suggest any additional conditions be attached to the rezoning request

## TECHINCAL REPORTS

The applicant was not required to submit a storm water management report and a traffic analysis. A traffic analysis was discussed in December of 1999 for the rezoning hearing.

## **Possible Actions**

1. Adopt the findings
2. Adopt the findings with modifications
3. Reject the proposal for substantial reasons
4. Set aside for future action

## ACTION

Proposed change to Article 5, Section 100 – D-12 of the Pottawatomie County Unified Development Regulations, regarding the placement of publicly and privately owned communication towers.

12. Publicly and privately owned communications towers and customary accessory uses, but this shall not include a communications tower/antenna system that has an agriculture purpose.

Required data and findings include:

a. Data

- i. General development plan which identifies the site location, boundary, tower(s), wires, anchors, existing and proposed structures, parking and access, with the names of owners and the use of parcels within 2,500 ft of the tower.
- ii. Written authorization from the property owner(s) acknowledging the application.
- iii. Application for a conditional use permit
- iv. Identification of the number of antennae/cells the tower is designed to accommodate.
- v. Line of sight analysis showing the potential visual and aesthetic impacts on residential property with 1,500 feet of the tower's base.
- vi. Copy of the proposed lease agreement with the property owner.

b. Findings of Conditions

- i. Setback - The tower must be located a distance equal to its vertical height - from any habitable structure.
- ii. The result(s) of the line of sight analysis must indicate that the tower and its lighting will not unreasonably intrude on nearby residences, within 1,500 feet, lessen residential property values, or create safety concerns.
- iii. Presence by the applicant at the appropriate public hearing
- iv. Submission of an acceptable agreement to remove the tower and or antenna within 180 days after cessation of use together with a sufficient performance bond, letter or credit, or other financial assurance - if required by the County Commission.
- v. Applicant must show that the new tower is designed to accommodate additional antennae equal in number to the applicant's present and future need, and will accommodate co-located antennae requested by public and private concerns.
- vi. The applicant must demonstrate that a tower proposed to be located in a zoned residential area, or an area planned for residences, cannot reasonably be located in a non-residential area for valid technical reasons.
- vii. The applicant must demonstrate that the proposed communications device(s) cannot be co-located on an existing tower, existing building, water tower, or other suitable structure.
- viii. The applicant must demonstrate that the tower will not obstruct traffic vision or distract drivers if located in a public easement.

BACKGROUND

Section 332(c)(7) of the Communications Act preserves state and local authority over zoning and land use decisions for personal wireless service facilities, but sets forth specific limitations on that authority. Specifically, a state or local government may not unreasonably discriminate among providers of functionally equivalent services, may not regulate in a manner that prohibits or has the effect of prohibiting the provision of personal wireless services, must act on applications within a reasonable period of time, and must make any denial of an application in writing supported by substantial evidence in a written record. The statute also preempts local

decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions, assuming that the provider is in compliance with the Commission's RF rules.

- This amendment modifies conditional use requirements for cell towers in order to bring the UDO into compliance with changes to the Telecommunications Act and Kansas Statutes.

Jwk/02/21/2019



Article 5, Section 100-D-12

(EXISTING TEXT WITH PROPOSED CHANGES SHOWN)

12. Publicly and privately owned communications towers and customary accessory uses, but this shall not include a communications tower/antenna system that has an agriculture purpose.

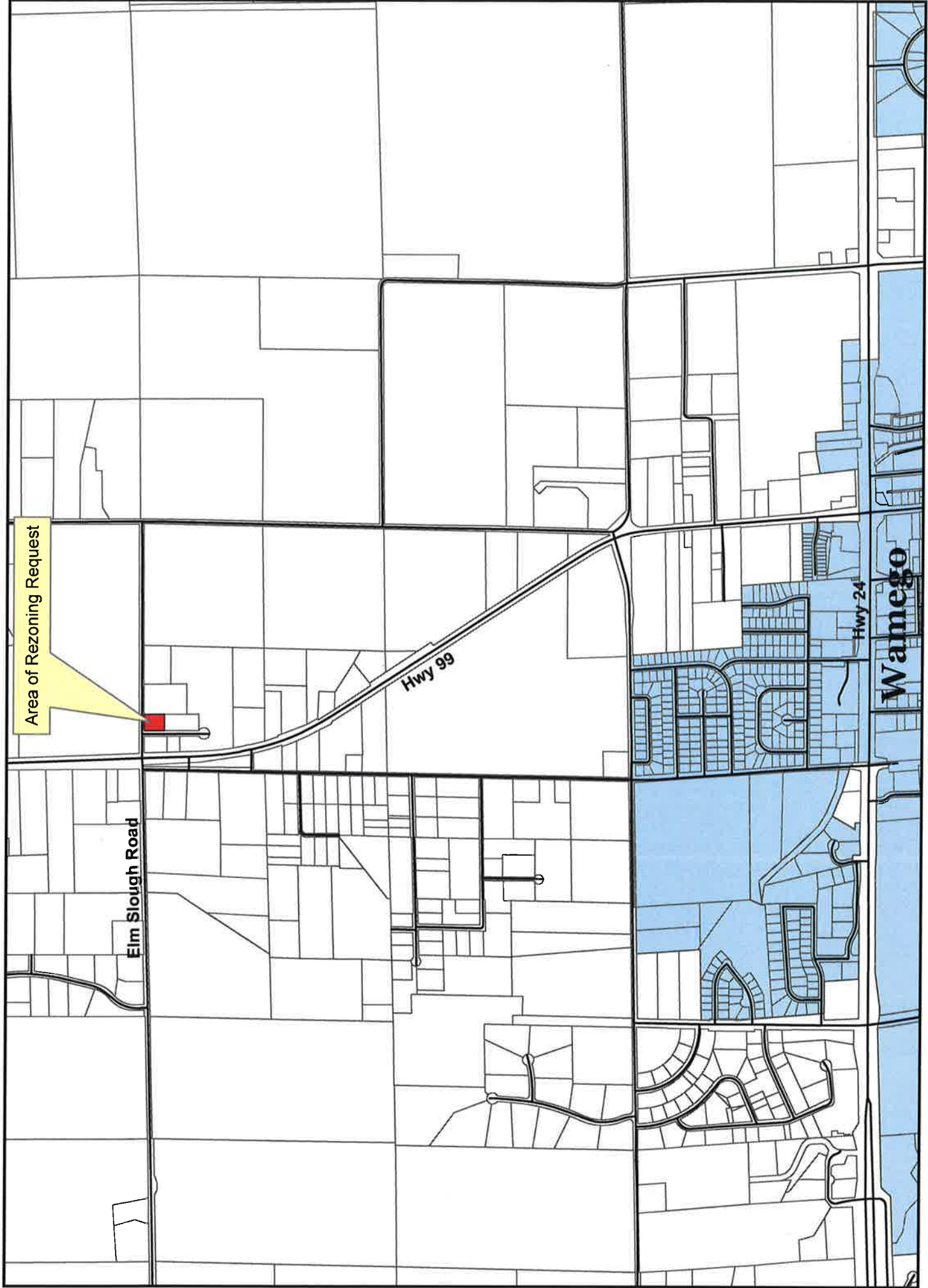
Required data and findings include:

a. Data

- i. General development plan which identifies the site location, boundary, tower(s), wires, anchors, existing and proposed structures, parking and access, with the names of owners and the use of parcels within 2,500 ft of the tower.
- ii. Written authorization from the property owner(s) acknowledging the application.
- ~~iii. Identification of the owners of all antennae and equipment to be located on the site.~~
- iii. Application for a conditional use permit.**
- ~~iv. Documentation that a valid application for an FCC license has been filed.~~
- iv. Identification of the number of antenna/cells the tower is designed to accommodate.**
- ~~v. The applicant must demonstrate that the tower is designed to accommodate additional antennae that will accommodate the applicant's current and future need, and also accommodate at least one co-located antennae if requested by Pottawatomie County and one co-located antennae requested by a public/private service provider.~~
- v. vi. Line of sight analysis showing the potential visual and aesthetic impacts on residential property with 1,500 feet of the tower's base.**
- vi. vii. Copy of the proposed lease agreement with the property owner.**

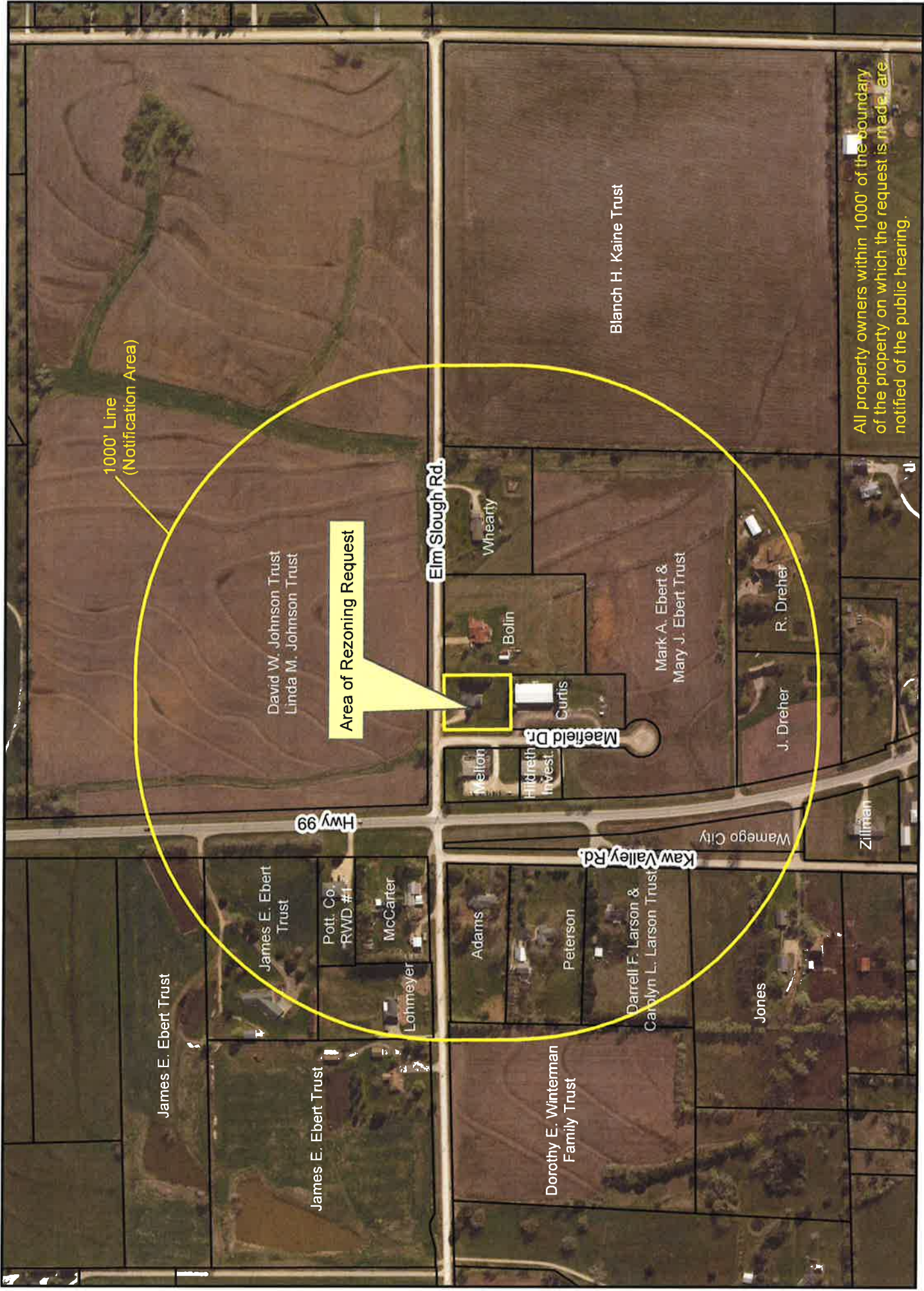
b. Findings

- ~~i. Setback—The tower must be located a distance of 25 feet plus (+) it's vertical height, or 300 feet—whichever is greater—from any habitable structure [except broadcast studio], public road, park, historic structure or monument, cemetery or from the property line of another owner.~~
- i. Setback – The tower must be located a distance equal to its vertical height – from any habitable structure.**
- ii. The result(s) of the line of sight analysis must indicate that the tower and its lighting will not unreasonably intrude on nearby residences [within 1,500 feet], lessen residential property values, or create safety concerns.
- ~~iii. That the proposed location of the tower is not within a Visual Protection Area as designated by the County Land Use Plan~~
- iii. Presence by the applicant at the appropriate public hearing.**
- iv. Submission of an acceptable agreement to remove the tower and or antenna within 180 days after cessation of use together with a sufficient performance bond, letter or credit, or other financial assurance - if required by the County Commission.
- v. Applicant must show that the new tower is designed to accommodate additional antennae equal in number to the applicant's present and future need, and will accommodate co-located antennae requested by public and private concerns.
- vi. The applicant must demonstrate that a tower proposed to be located in a **zoned** residential area, or an area planned for residences, cannot reasonably be located in a non-residential area for valid technical reasons.
- vii. The applicant must demonstrate that the proposed communications device(s) cannot be co-located on an existing tower, existing building, water tower, or other structure ~~[for valid technical reasons].~~
- viii. The applicant must demonstrate that the tower will not obstruct traffic vision or distract drivers if located in a public easement.**



Locator Map - Lot 2 Dot Com Plex Subdivision  
Rezoning Request by Carl Stich





1000' Line  
(Notification Area)

Area of Rezoning Request

David W. Johnson Trust  
Linda M. Johnson Trust

Elm Slough Rd.

Whearty

Bolin

Curtis

Melton

Hilbreth Invest.

Mark A. Ebert &  
Mary J. Ebert Trust

R. Dreher

J. Dreher

Hwy 99

James E. Ebert Trust

James E. Ebert Trust

Pott. Co.  
RWD #1

McCarter

Lohmeyer

Adams

Peterson

Darrell F. Larson &  
Carolyn L. Larson Trust

Dorothy E. Winterman  
Family Trust

Jones

Kaw Valley Rd.

Wamego City

Zillman

Blanch H. Kaine Trust

All property owners within 1000' of the boundary of the property on which the request is made, are notified of the public hearing.



Stich Rezoning Request - February 21, 2019



Date: 02/14/2019

## **Memorandum**

TO: Planning Commission  
FROM: Office of Planning and Development  
SUBJECT: Comprehensive Plan Update

Members of the Planning Commission,

In December of 2017, the County began the process of developing an updated Comprehensive Plan. The previous plan was completed in 1994, and was designed to extend to 2020. As part of this process, the County hired Kendig Keast Collaborative to help create a document that articulates the vision and priorities of the County over the next 25 years.

Beginning at the February Planning Commission meeting and continuing through May, County staff will begin the process of adoption with the Steering Committee, Planning Commission, and Board of County Commissioners, culminating in a joint meeting tentatively scheduled for May. The Steering Committee and Planning Commission will provide their recommendations to the Board of County Commissioners who will ultimately be the body that adopts the Plan.

Due to the size of the document, staff feels that the best course of action is to break the plan into smaller pieces and review each piece individually. For the February Planning Commission meeting, we will review the Land Use, Growth Management, and Open Space chapters of the plan. In March, we will review the Transportation, Economic Development, and Implementation chapters. Throughout the process Staff will take your comments and suggestions, and make those changes in the document.



Following the review of the plan, Staff will ask for a recommendation from the Planning Commission. This recommendation will be forwarded on to the Board of County Commissioners who will ultimately decide its adoption. The document can be found on the County's website by following the below link:

[https://www.pottcounty.org/DocumentCenter/View/2587/Pottawatomie-County-Future-County\\_01212019](https://www.pottcounty.org/DocumentCenter/View/2587/Pottawatomie-County-Future-County_01212019)

As a reminder, we will be discussing chapters two, four, and six at February's meeting if you would like to review these chapters ahead of next week's meeting. Ultimately you will have a couple of months to review the plan at your convenience.

Please let me know if you have any questions ahead of the February meeting.

Thank you

*Stephan A. Metzger*  
*Assistant Planner/Zoning Enforcement Officer*