

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for 8/4/04 PLANNING COMMISSION MEETING

P.A.S.: Special Permit #04038

PROPOSAL: To allow a 100' broadcast tower for satellite master antenna television system (SMATV).

LOCATION: Northeast of the intersection of North 31st Street and North View Drive.

LAND AREA: Approximately 28 acres.

CONCLUSION: Subject to compliance with the conditions of approval at the end of this report, this request generally complies with the requirements of the Zoning Ordinance and the intent of the Comprehensive Plan.

<u>RECOMMENDATION:</u>	Conditional Approval
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GENERAL INFORMATION:

LEGAL DESCRIPTION: See attached ownership certificate.

EXISTING ZONING: R-5 Residential

EXISTING LAND USE: Vacant

SURROUNDING LAND USE AND ZONING:

North:	Apartments	R-5
South:	Commercial	H-4, B-5
East:	Vacant	R-3, B-2, I-3
West:	Commercial	B-5

ASSOCIATED APPLICATIONS: AA#04060 - An administrative amendment currently under review to SP#1586 for the Waterbrook CUP to allow 378 apartment units.

ALTERNATE USES: Staff finds this use to be generally compatible at the proposed location on the site. However, if there is opposition due to proximity to the existing apartments to the north, an alternate location moving the tower to the southwest corner of the site could be considered for approval.

COMPREHENSIVE PLAN SPECIFICATIONS:

Page F25 - The 2025 Comprehensive Plan's Land Use Plan designates residential land uses for this site.

Page F126 - Wireless Telecommunications - The placement and construction of such facilities need to occur in a way that is compatible with the natural and built environment. Taller, more intensive facilities should be located in commercial and industrial areas. Facilities in residential areas should be unobtrusive, of a scale consistent with the neighborhood setting, and sited in a way that does not detract from the enjoyment of the neighborhood by its residents.

TOPOGRAPHY: The land is generally sloping across this site and falls from west to east, with the highest point at the northwest corner, and the lowest point at the southeast corner. There is an existing detention pond near the main entrance to the apartment complex at the southeast corner of the site.

ANALYSIS:

OVERVIEW

The applicant is also the developer and owner of the planned apartment complex proposed for this site. An administrative amendment under review shows a proposed layout for 378 units in eight buildings. As part of the development, the owner provides cable television service to all the units in the complex via a satellite master antenna television system. The proposed antenna is for reception only, and receives television signals from local and regional stations as well as satellite programming. The signals are received by a series of antennas mounted on the antenna and then distributed to the units at no charge. Associated SMATV ground equipment is located in an outbuilding sited near the tower.

A distinction is made between this tower which is being built for TV signal reception only, and those built to support cellular telephone or PCS antennas. As defined in Lincoln Municipal Code (LMC) Title 27, this application is considered a broadcast tower while cellular and PCS are treated as wireless facilities. However, LMC Section 27.63.150 requires that broadcast towers be reviewed using Chapter 27.68 (Personal Wireless Facilities) for the purpose of zoning review.

STANDARDS FOR EVALUATION:

Conformity with Comprehensive Plan.

1. The Comprehensive Plan designates urban density residential uses in this area, surrounded by commercial and industrial. This request is consistent with the types of land uses and the nature of development recommended by the Land Use Plan.

Preference of site location in accordance with Chapter 27.68.080.

2. There are three location preferences as follows:

A. Preferred Location Sites:

(1) Publicly owned sites on which personal wireless facilities can be unobtrusively located with due regard to visibility, aesthetic issues, traffic flow, public safety, health and welfare. Such sites may include locating on existing buildings, co-locating on existing towers, screened roof-top mounts, water towers, billboards, electric substations, or other camouflaged sites, but shall not include new towers.

(2) Privately owned sites with existing structures on which personal wireless facilities can be unobtrusively located with due regard to visibility, aesthetic issues, traffic flow, public safety, health and welfare. Such sites may include locating on existing buildings, co-locating on existing towers, screened rooftop mounts, water towers, billboards, electric substations, or other camouflaged sites, but shall not include new towers.

(3) Publicly owned sites in which the facility is minimally obtrusive, has a minimal impact on the surrounding area, is an appropriate distance from residential land uses, has minimal impact on residential uses, with due regard being given to the scale of the facility and the surrounding area and the impact on the location.

(4) Sites in commercially or industrially zoned districts in which the facility is minimally obtrusive, has a minimal impact on the surrounding area, is an appropriate distance from residential land uses, has minimal impact on residential uses, with due regard being given to the scale of the facility and the surrounding area and the impact on the location.

B. Limited Preference Sites, in order of priority:

(1) Sites on other public property.

(2) Sites on other commercially or industrially zoned property.

(3) Screened antennas on multi-family residential structures exceeding 30' in height.

(4) Camouflaged structures with minimal impact on residential land uses.

C. Sensitive Location Sites. Sites located in areas with residential uses, environmentally sensitive areas, Capitol View Corridors, the Capitol Environs District, entryway corridors, downtown, landmarks or landmark districts, properties listed or eligible to be listed on the National Register of Historic Places, the Airport Environs, and other sensitive areas. The applications for personal wireless facilities which are located at sensitive sites will be required

to demonstrate a technical need to locate a personal wireless facility at a sensitive site and that other reasonable alternatives do not exist for the facility at a location which is not a sensitive site.

This site is considered a sensitive location site because it's located in a residential area.

Compatibility with abutting property and land uses.

3. Special Permit #1586 approved a CUP allowing up to 738 apartment units on this R-5 site. The approximate northwest quarter of the site is already developed with apartments; the development associated with this request proposes to build 378 apartment units on the remainder of the site. The R-5 is bounded by R-3, B-2, H-4, B-5 and I-3, and with the exception of the existing apartments and vacant R-3 adjacent to the southeast corner of the site, all surrounding development is or will be either commercial or industrial.

Adverse impacts such as visual, environmental or noise impacts.

4. The antenna reception is line-of-site, and is dependent upon elevation. The tower is sited at the northwest corner of complex at the highest point on the site to maximize reception and minimize the height of the tower. Required screening will help mitigate the visual impact; no other impacts are noted. The Health Department review includes an advisory comment noting that in the event that on-site back-up power generation is required, it must comply with LMC 8.24 - Noise Control Ordinance.

Availability of suitable existing structures for antenna mounting.

5. There are not any existing towers or structures tall enough within one-half mile of this site to accommodate collocation. A new facility is required in this area to accommodate the antennas.

Scale of facility in relation to surrounding land uses.

6. The tower is 100' high, and is setback 100' from property lines, an amount twice the required fall zone for wireless facilities. Compatibility of scale is provided by the amount of separation between the proposed tower and surrounding uses, and the fact that those uses are either three-story apartments or those allowed in commercial and industrial districts. The zoning pattern supports uses that are generally compatible and of an intensity consistent with such a facility.

Impact on views/vistas and impact on landmark structures/districts, historically significant structures/districts, architecturally significant structures, landmark vistas or scenery and view corridors from visually obtrusive antennas and back-up equipment.

7. This tower is near, but outside a capitol view corridor and no significant impacts are noted.

Color and finish.

8. The tower will have a galvanized finish consistent with LMC 27.68.110(c).

Ability to collocate.

9. This tower is not being constructed to accommodate wireless facilities as contemplated by Chapter 27.68 (Personal Wireless Facilities), but rather to serve as a receiving antenna for television signals. The applicant states that the tower is not built to accommodate additional carriers because SMATV systems are allowed to only serve the privately-owned developments that own and operate them, and to prevent signal interference caused by proximity of different systems.

Screening potential of existing vegetation, structures and topographic features, and screening potential of proposed facilities, ground level equipment, buildings and tower base.

10. An elevation provided as part of the application shows the tower in relationship to a mature 65'-tall tree, however no landscaping is shown on the site plan. Design Standards require deciduous and coniferous trees planted around the tower at a density that provides a 70% screen from the ground to 8' in height, with 50% or more of the trees growing to a mature height of 35' or more. The site plan must be revised to show this screening.

Evidence of good faith efforts, and demonstration that a preferred or limited preference site was not technically, legally, or economically feasible.

11. The intent of this standard is to ensure that consideration is first given to siting wireless facilities on public, commercial, or industrial land, and that siting in residential or other sensitive areas is the last resort. Considering that wireless facilities typically serve the general public, the rationale is that residential uses should be least impacted by facilities that benefit the public. Other more intensive sites should be used first when available. This standard has limited applicability in this case as the tower is located on the site that it serves.

CONDITIONS:

Site Specific:

1. This approval permits a 100' broadcast tower and accessory building for SMATV ground equipment.

General:

2. Before receiving building permits:
 - 2.1 The permittee shall complete the following instructions and submit the documents and plans to the Planning Department for review and approval.
 - 2.1.1 A revised site plan including 5 copies showing the following revisions:
 - 2.1.1.1 The required number of trees to provide screening consistent with Design Standards.
 - 2.2 The construction plans shall comply with the approved plans.

Standard:

3. The following conditions are applicable to all requests:
 - 3.1 Before use of the facility all development and construction shall have been completed in compliance with the approved plans.
 - 3.2 All privately-owned improvements shall be permanently maintained by the owner or an appropriately established homeowners association approved by the City Attorney.
 - 3.3 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
 - 3.4 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
 - 3.5 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however,

said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.

Prepared by:

Brian Will, 441-6362, bwill@lincoln.ne.gov
Planner
July 21, 2004

**CONTACT/
APPLICANT**

James Hall
Edward Rose Properties
6101 Newport Road
PO Box 3015
Kalamazoo, MI 49003 269-323-9484

OWNER:

Arthur Knox
920 Lone Tree Lane
Lincoln, NE 68521



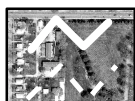
2002 aerial

Special Permit #04038 N. 31st & Folkways Blvd Waterbrook

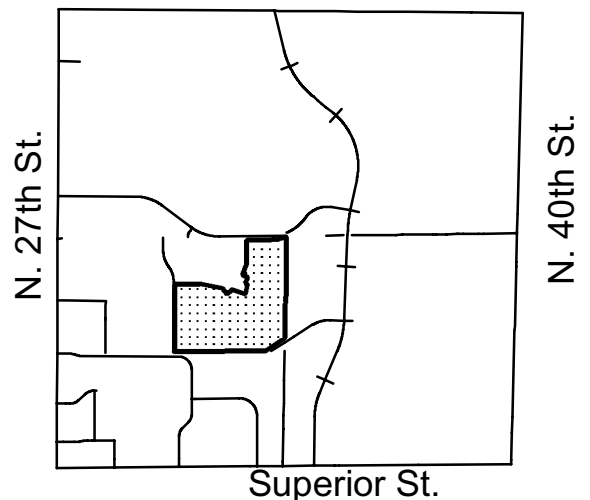
Zoning:

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- R-C Residential Conservation District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District

One Square Mile
Sec. 6 T10N R7E



● Zoning Jurisdiction Lines
○ City Limit Jurisdiction



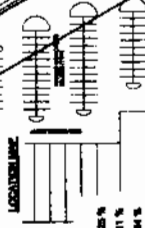
PROPOSED GARDEN APARTMENTS WATERBROOK C.U.P. AMENDMENT LINCOLN, NEBRASKA

PRELIMINARY SITE PLAN

PREPARED BY:
EDWARDS MARK ARCHITECTS, INC.
4011 HENNING ROAD
LINCOLN, NEBRASKA 68502
308-252-2400



SCALE: AS SHOWN
DATE: MARCH 18, 2004

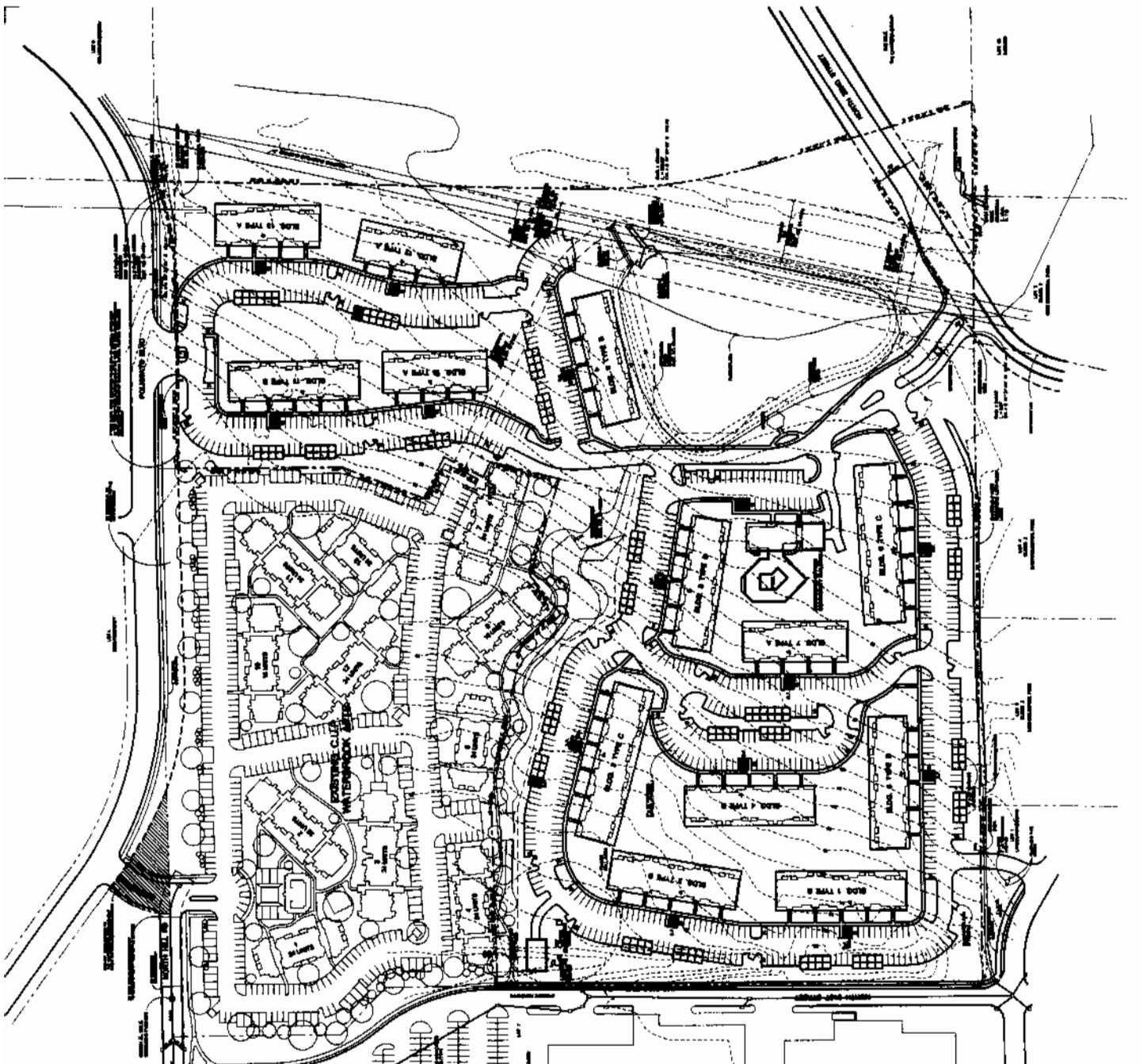


SITE SIZE BALD ADVERS
PARKING SPACES 767 (1 PREFERRED)
BUILDING COVERAGE 6.26 %
PARKING LOT & DRIVE COVERAGE 2.11 %
OPEN SPACE 31.63 %

BUILDING SCHEDULE					
BUILDING TYPE	NO. UNITS	TOTAL UNITS	FLOOR AREA	NO. OF FLOORS	NO. OF BUILDINGS
A	18	18	3,200	4	1
B	18	36	6,400	7	2
C	22	58	10,400	7	2

TOTAL UNITS 98 (104 MAX.)
ONE BEDROOM 261
TWO BEDROOM 127

NOTES:
1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES AND THE LATEST EDITIONS OF THE NATIONAL FIRE PROTECTION ASSOCIATION (NFPA) CODES.
2. ALL UTILITIES SHALL BE SHOWN AS LOCATED BY FIELD SURVEY OR AS SHOWN ON RECORD PLANS.
3. ALL UTILITIES SHALL BE DEEPENED TO A MINIMUM OF 48" BELOW FINISHED GRADE.
4. ALL UTILITIES SHALL BE PROTECTED BY A MINIMUM OF 18" OF CONCRETE OR 24" OF ASPHALT.
5. ALL UTILITIES SHALL BE PROTECTED BY A MINIMUM OF 18" OF CONCRETE OR 24" OF ASPHALT.
6. ALL UTILITIES SHALL BE PROTECTED BY A MINIMUM OF 18" OF CONCRETE OR 24" OF ASPHALT.
7. ALL UTILITIES SHALL BE PROTECTED BY A MINIMUM OF 18" OF CONCRETE OR 24" OF ASPHALT.



Conc.

90

N 88° 09' 28" E 291.04'

MAINTENANCE/
SMATV BLDG.

36



21

3.8 METER
SATELLITE
DISHES

100'
LATTICE
RECEIVING
TOWER

18

28

TOWER
FALL AREA

North arrow
No Scale

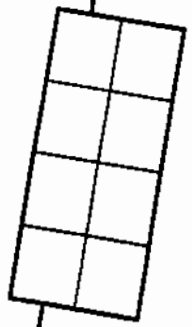
00° 42' 30" E 705.43'

TYPE B

RECEIVED

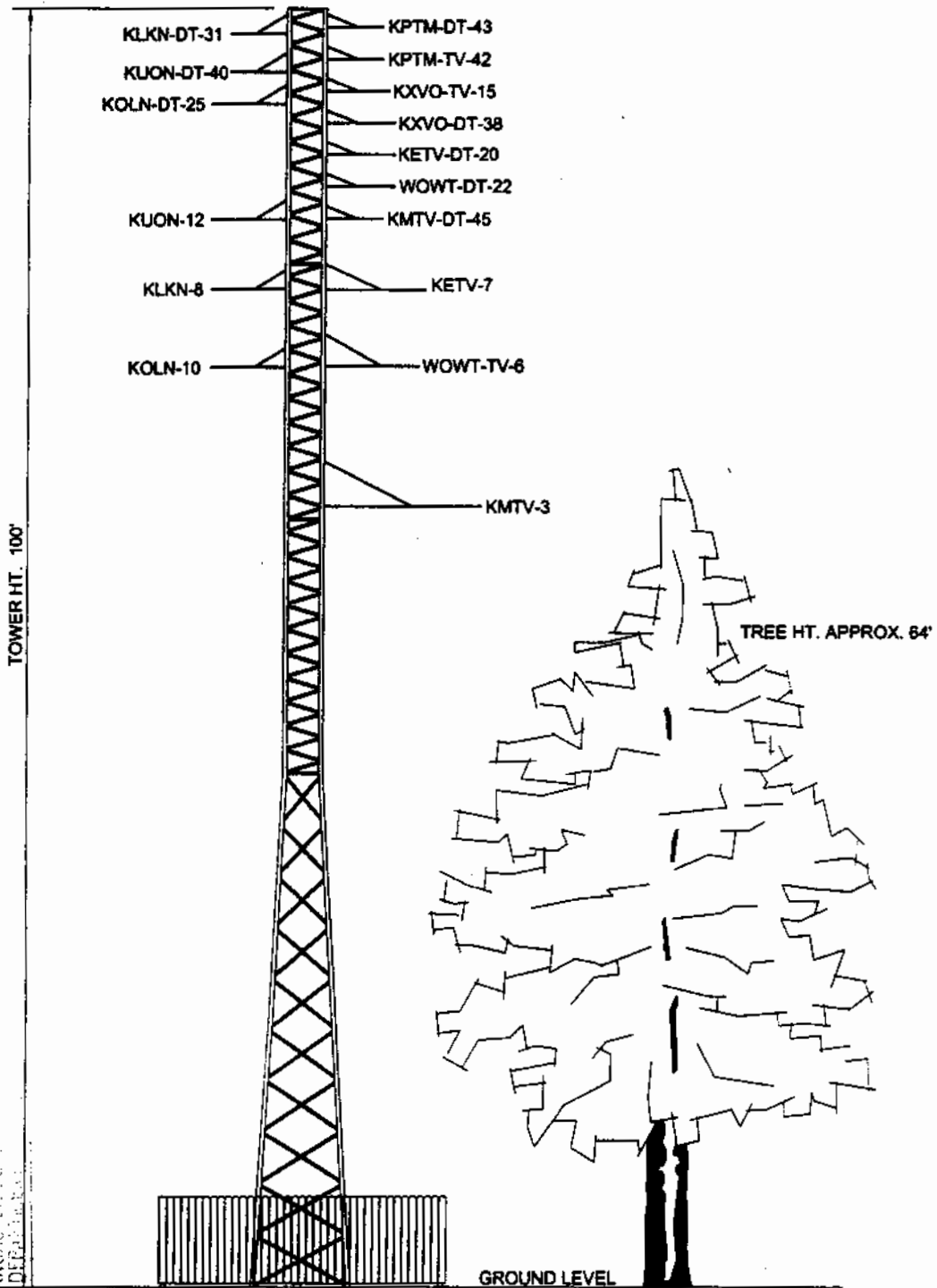
JUL 8 2004

TELECOMMUNICATIONS
DIVISION
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE



PROPOSED GARDEN APARTMENTS LINCOLN, NEBRASKA

ROHN 100' TOWER



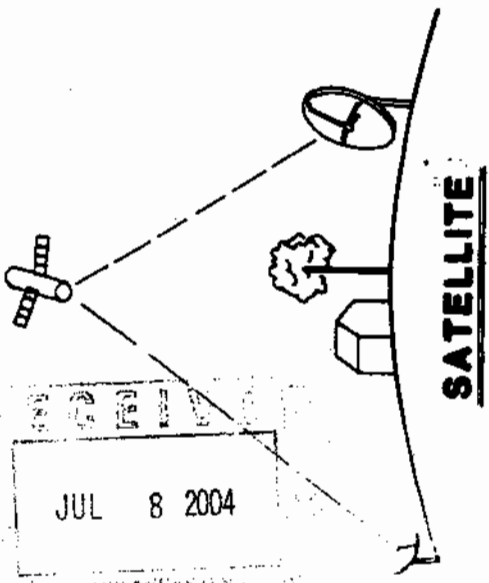
JUL 8 2004

TOWER ELEVATION AND ANTENNAE ARRAY DETAIL

SHOWING ANALOG & DIGITAL ANTENNAE AS REQUIRED

UNLIKE SATELLITE SIGNALS (I.B.O., CNN, ESPN, ETC.), BROADCAST SIGNALS HAVE TO CONTEND WITH INTERFERENCE FROM PHYSICAL STRUCTURES (BUILDINGS, TERRAIN, TREES, ETC.) AND ELECTRICAL INTERFERENCE (POWER LINES, NEON LIGHTS, ELECTRIC MOTORS, IGNITION SYSTEMS, ETC.).

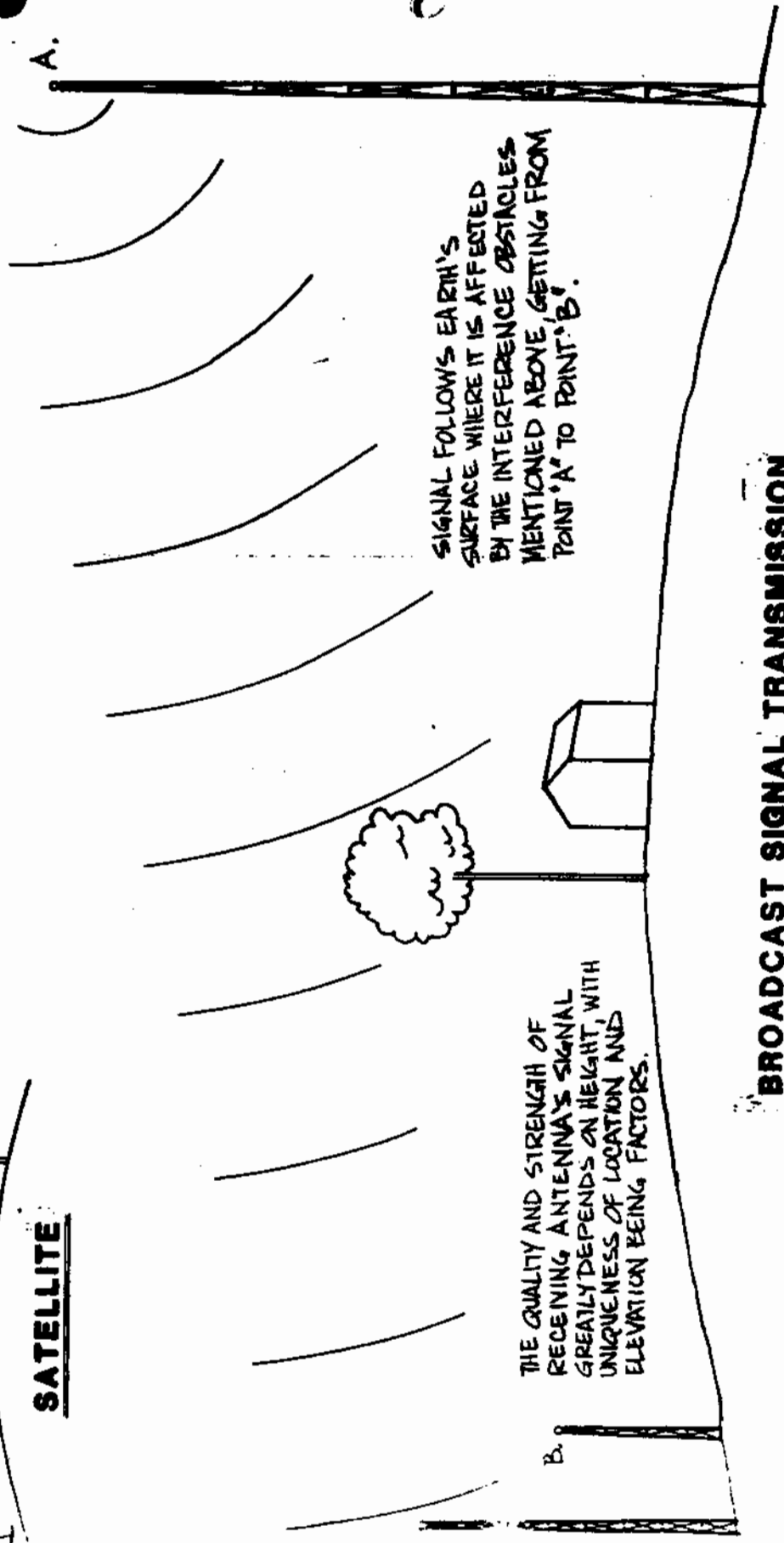
T.V. BROADCAST ANTENNA - TRANSMITTER - USUALLY VERY HIGH - 400' - 1,500'



SATELLITE

THE QUALITY AND STRENGTH OF RECEIVING ANTENNA'S SIGNAL GREATLY DEPENDS ON HEIGHT, WITH UNIQUENESS OF LOCATION AND ELEVATION BEING FACTORS.

SIGNAL FOLLOWS EARTH'S SURFACE WHERE IT IS AFFECTED BY THE INTERFERENCE OBSTACLES MENTIONED ABOVE, GETTING FROM POINT 'A' TO POINT 'B'.



BROADCAST SIGNAL TRANSMISSION

JUL 8 2004

**STATEMENT OF PURPOSE
JULY 2004**

Edward Rose Properties, Inc. is one of the companies within Edward Rose and Sons Building Enterprises, a privately owned firm engaged in the development, construction and management of residential properties. The company is headquartered in Farmington Hills, Michigan with additional offices in Indianapolis, Indiana and in Flint and Kalamazoo, Michigan. The firm has been actively engaged in residential construction without interruption since 1921, and has built over 60,000 single-family and multi-family dwellings.

The majority of new construction at this time is of rental units and is being financed internally or by conventional lending sources. The company acts as developer, general contractor, and property manager and retains ownership of the multifamily developments. The Kalamazoo office of Edward Rose and Sons Building Enterprises will be responsible for this development. This office developed and currently manages apartment communities in Michigan, Indiana, Missouri, Wisconsin, Ohio and Omaha, Nebraska.

A submittal to amend the Waterbrook CUP to allow us to construct a 378-unit multifamily development has been made.

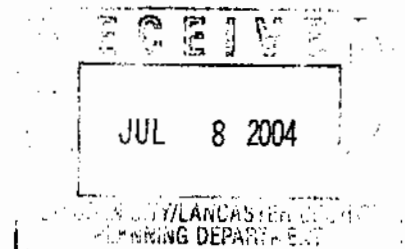
The development will be privately financed. Edward Rose Properties, Inc. will act as developer, general contractor and property manager, and will remain the owner of the development after construction is completed.

It is our practice to provide our own cable system to our communities that we deliver via a SMATV (Satellite Master Antenna Television) system. We require a 100' reception tower to receive broadcast channels from local and regional television stations, as well as satellite programming. The local broadcast signals are received by multiple antennas located on the tower and are distributed to each apartment at no charge.

The 100' tower specification is required for two reasons:

1. To receive a quality signal, as explained on the attached Broadcast Signal Transmission sketch;
2. To allow space on the tower to locate the various antennas with sufficient clearance and position to avoid signal interference with each other. We currently have to install two (2) receiving antennas for each channel: one for the current analog signal being used by most broadcasters, and a second antenna to receive a digital (high definition) signal which is mandated by the FCC for signal broadcast by the year 2006. (See tower graphic attached).

The location of the proposed tower is in the northwest corner of the site, which takes optimum advantage of the existing topography, eliminating the need to request a tower higher than 100'. This is on the edge of CUP R-5 zoning, with the land use to the west of the site being commercial development.



Of the approximately 50 towers we currently have in place, we have never had one fall. However, we still prepare a 100 foot "free fall" area around each, as is demonstrated on the attached graphic and site plan.

The headend (cable equipment) area will be located within a maintenance/storage garage that will be architecturally compatible with the multifamily buildings.

The tower is an open lattice construction with a galvanized finish. No lights are planned, or required, on the tower, and a security fence will be built around the tower base (detail included). We would emphasize that this is a receiving tower only and will not be used for broadcasting.

Co-locating the antennas on another tower presents additional problems, as SMATV systems are allowed to serve only the privately owned developments that own and operate them. Locating the tower off site would mean procuring easements and/or the installation of lengthy line runs that leads to signal degradation and poor reception quality. In addition, signal interference could occur from whatever purpose the tower already serves. For the same reason, we do not lease space on our towers to other users, even if we had the room to do so.

The accompanying engineering drawing is for a tower that was erected at one of our properties in the greater Omaha area. This drawing is meant as an example only. A site-specific tower will be engineered taking into account any local conditions and soil structures.

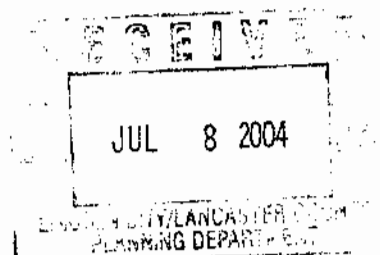
Maintenance on the tower and related facilities will be handled by our own employees. There will be on-site staff who are trained for the maintenance of the SMATV system, and technical assistance is available on an on-call basis from our Kalamazoo SMATV Department.

Any additional questions may be addressed to either of the following individuals:

EDWARD ROSE PROPERTIES, INC.
6101 Newport Road, P. O. Box 3015
Kalamazoo, MI 49003-3015

James R. Hall, Agent
PH: (269) 323-9484, Extension 7874
constructionkzoo@edwardrose.com

L. Thomas Winters, Systems Manager
PH: (269) 321-7857
twinters@edwardrose.com



First American Title Insurance Company

COMMITMENT FOR TITLE INSURANCE Nebraska Title Company, 633 S. 9th Street, Lincoln, Ne 402-476-8818 SCHEDULE A

1. Commitment Date: **February 05, 2004, 8:00am**
Issue Date: **February 17, 2004**

2. Policy (or Policies) to be issued

(a) ALTA OWNER'S POLICY

Policy Amount: [REDACTED]
Premium: [REDACTED]

Proposed Insured:

Edward Rose Properties, Inc., a Michigan corporation

(b) ALTA LOAN POLICY

Policy Amount:
Premium:

Proposed Insured:

Total Endorsement Premium: [REDACTED]

3. Fee Simple interest in the land described in this Commitment is owned, at the Commitment Date, by

Parcel 1: Knox Associates, a Nebraska limited liability company

Parcel 2: Knox Associates, L.L.C., a Nebraska limited liability company and Zimmerman-Wilhoit, L.L.C., a Missouri limited liability company, Trustees under Indenture of Trust Development and Maintenance Agreement dated April 16, 1997

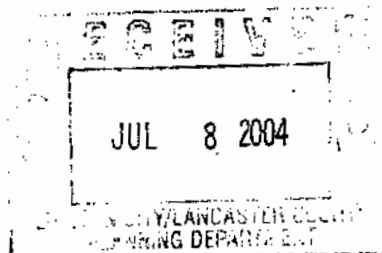
4. The land referred to in the Commitment is described as follows:

Parcel 1:

Lot 82, Irregular Tracts in the South Half of Section 6, Township 10 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska.

Parcel 2:

Lot 62, Irregular Tracts in the Southwest Quarter of Section 6, Township 10 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska.



Countersigned
Nebraska Title Company

By:

**LINCOLN-LANCASTER COUNTY HEALTH DEPARTMENT
INTER-OFFICE COMMUNICATION**

TO: Brian Will

DATE: July 19, 2004

DEPARTMENT: Planning

FROM: Chris Schroeder

ATTENTION:

DEPARTMENT: Health

CARBONS TO: EH File
EH Administration

SUBJECT: Waterbrook
Wireless Facility
SP #04038

The Lincoln-Lancaster County Health Department has reviewed the special permit application with the following noted:

- In the event that on-site emergency power generation is required, the generator must comply with Lincoln Municipal Code 8.24 - Noise Control Ordinance.