

HAYS AREA BOARD OF ZONING APPEALS MEETING AGENDA  
CITY COMMISSION CHAMBERS 1507 MAIN, HAYS, KS  
FEBRUARY 11, 2015  
8:15 A.M.

1. **CALL TO ORDER BY CHAIRMAN.**

2. **CONSENT AGENDA.**

A. Minutes of the regular meeting of January 14, 2015

*Action: Consider approving the minutes of the January 14, 2015 meeting.*

3. **PUBLIC HEARING ITEMS**

A. Public hearing to consider a request from Justin Gottwald and L. Van & Janice K Witthuhn for a 35' setback variance to reduce the setback along Hwy 183 and Reservation Rd. from 35' to 0' to allow an off-premise sign to be constructed on an existing sign base. (Case # 01-15)

*Action: Consider approving a variance request for a sign for the property at 1000 Reservation Road and Hwy 183.*

4. **NON-PUBLIC HEARING ITEMS. – None**

5. **OFF AGENDA ITEMS/COMMUNICATIONS.**

A. Update on the Zoning Regulations Rewrite

6. **ADJOURNMENT.**

Any person with a disability and needing special accommodations to attend this meeting should contact the Planning, Inspection and Enforcement office (785-628-7310) 48 hours prior to the scheduled meeting.

**DRAFT  
HAYS AREA BOARD OF ZONING APPEALS  
COMMISSION CHAMBERS IN CITY HALL  
MINUTES  
JANUARY 14, 2015  
8:15 A.M.**

**1. CALL TO ORDER:** The Hays Area Board of Zoning Appeals met on Wednesday, January 14, 2015 at 8:15 a.m. in Commission Chambers at City Hall. Chairman Lou Caplan declared a quorum was present and called the meeting to order.

**Roll Call:**

Present: Lou Caplan  
Jerry Sonntag  
Thomas Lippert

Absent Gerald Befort  
Shane Pruitt

City Staff Present: Jesse Rohr, Superintendent of Planning, Inspection and Enforcement.

**2. CONSENT AGENDA:**

**A. MINUTES:** Jerry Sonntag moved, Tom Lippert seconded the motion to approve the minutes from the December 10, 2014 meeting with the following corrections:

Lou Caplan pointed out two corrections to the December 10, 2015 meeting under case #16-14: Page 12 – change the sentence from “Lou Caplan asked if there is anyone in the audience” to: “Lou Caplan asked if there were any comments from the audience”.

Page 12 to 13 – Clarify about the comments and conditions associated with the motion

Vote: Ayes: Lou Caplan  
Jerry Sonntag  
Thomas Lippert

**3. PUBLIC HEARING ITEMS:** None.

**4. NON-PUBLIC HEARING ITEMS:**

**A. CASE # 01-15 – CONSIDER SETTING A PUBLIC HEARING TO CONSIDER A REQUEST FROM JUSTIN GOTTWALD AND L VAN & JANICE K WITTHUHN FOR A 35’ SETBACK VARINCE TO REDUCE THE SETBACK ALONG HWY 183 AND RESERVATION ROAD FROM 35’ TO 0’ TO ALLOW A SIGN TO BE CONSTRUCTED ON AN EXISTING SIGN BASE.** Jesse Rohr presented the information and location of the proposed sign on the above property on the overhead visual. The general location is at the intersection of Hwy 183 and Reservation Road.

The applicant has requested a variance to reduce the front yard building setback from the required 35 feet to 0 feet to place his business sign (Cutting Edge Collision) on an off-premise existing sign base at 1000 Reservation Road.

The sign base will contain the business sign for the on-premise business (Countryside Homes) and the proposed off-premise advertising sign (Cutting Edge Collision) if the variance is approved. He showed them a picture of the sign.

This case is unique because of the sign regulations. An on-premise advertising sign is allowed with no variance, although an off-premise advertising sign is to meet the building setback; thus the reason for this variance request.

If approved, the applicant will also have to apply for a permit from the Kansas Department of Transportation because it is along a state highway.

With the sign permit process, there will be confirmation that they have acquired the KDOT permit.

Jerry Sonntag asked if the wording will stay the same for the off-premise sign requirement in the sign regulations with the zoning and subdivision regulations rewrite. Jesse Rohr answered that the sign regulations are included in the rewrite, although staff has not seen that module yet.

Lou Caplan asked if there were any comments from the audience. There were none.

Lou Caplan entertained a motion.

Tom Lippert moved, Jerry Sonntag seconded the motion to set the public hearing for February 11, 2015 to consider a request by Justin Gottwald and L. Van & Janice K. Witthuhn for a 35' setback variance to reduce the setback along Hwy 183 and Reservation Rd from 35' to 0' to allow an off-premise advertising sign to be constructed on an existing sign base. (Case #01-15)

Vote: Ayes: Lou Caplan  
Jerry Sonntag  
Thomas Lippert

**5. OFF-AGENDA ITEMS/COMMUNICATIONS:**

**A. Update on the Zoning Regulations Rewrite:** Jesse Rohr explained that there will be a revised schedule being posted soon. Module 2 is under staff review.

Staff received a zoning map to review also.

Bret Keast, President of Kendig Keast, Consultant, will be taking the lead on the project since the former project leader is leaving the company to move from Houston to join another firm.

**B. Distribute I-Pads to BZA Members:** Jesse Rohr distributed the I-pads to the members of the Board.

**6. ADJOURNMENT:** Lou Caplan adjourned the meeting.

Submitted by: Linda K. Bixenman, Administrative Assistant,  
Planning, Inspection and Enforcement

DRAFT

## Board of Zoning Appeals Action Report

AGENDA ITEM: Setback Variance Application #01-15  
 ADDRESS: 1000 Reservation Rd  
 OWNER: Van Witthuhn  
 TYPE OF REVIEW: Variance  
 PRESENTED BY: Jesse Rohr, P.I.E. Superintendent  
 DATE PREPARED: February 2, 2015  
 AGENDA DATE: February 11, 2015

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### SUMMARY AND RECOMMENDED ACTION:

The applicant is requesting a variance to reduce the front yard setback from 35 feet to 0 feet, a variance of 35 feet to allow the placement of a business sign on the property located at 1000 Reservation Rd. (see attached site drawing) Staff recommends **approval** of the variance due to the request meeting the requirements of State Statute and City Ordinance as they pertain to variances and the statutory requirements, particularly uniqueness, hardship, and the spirit and intent of the adopted regulations. (as further detailed below)

### BACKGROUND:

- The applicant is requesting a variance to reduce the required front yard setback from 35 feet to 0 feet, a variance of 35 feet to allow erection of a sign on the property located at 1000 Reservation Rd.
- There is an existing sign base in this location from a previous sign – owner wished to utilize the existing base
- An on-premise sign could be located in this location with no variance, however the off-premise advertising proposed does require the variance

	Setback Required	Applicant Proposed
Front Yard	Min. 35 ft (for off-premise signage)	0
	Min. 0 ft (for on-premise signage)	0

Side Yard	0	N/A
Rear Yard	0	N/A

## STANDARDS OF EVALUATION:

*Per State Statute 12-759 and City Ordinance Sec. 71-1250*

- The BZA has the authority to grant a variance if a literal enforcement of the provisions of the adopted regulations, will, in an individual case, result in unnecessary hardship, provided:
  - The spirit of the regulations shall be observed
  - Public safety and welfare secured
  - Substantial justice shall be done
- The applicant must show that the property was acquired in good faith and that the variance is needed due to extraordinary or exceptional circumstances of the property such as exceptional narrowness, shallowness, or shape of the lot
- Before granting a variance on the basis of unusual difficulty or unreasonable hardship, there must be finding by the Board that all of the following conditions exist:
  - a. Uniqueness of the property not ordinarily found in the same zone or district and not created by willful action of the owner

**Staff Analysis:** *While there appears to be nothing unique about the property, the situation itself is unique in that there is an existing sign base at the proposed sign location. An on-premise sign could be located at the location, but regulation requires additional setbacks for off-premise signage. Cutting Edge Collision, a business located at 1013 Reservation Rd. to the east of this location plans on advertising their business on the proposed sign, therefore requiring setbacks per off-premise sign regulations, hence the need for the variance.*

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

**Staff Analysis:** *This proposed addition would not appear to have any adverse affects on the rights of nearby property owners. There was a sign in this location in the past, and the only thing changing is the businesses that will be advertising on the sign (see sign diagram).*

- c. The strict application of the code will constitute unnecessary hardship upon the property owner

**Staff Analysis:** *Due to the location of Cutting Edge Collision being “off the beaten path”, and the need for directional signage to their location, a hardship could be constituted if the sign could not be erected in the proposed location which gives a clear indication of the location of Cutting Edge Collision.*

- d. The variance will not adversely affect the public health, safety, morals, order, convenience, propriety, or general welfare

**Staff Analysis:** *This proposed addition would not appear to adversely affect the public health, safety, morals, order, convenience, propriety, or general welfare.*

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

**Staff Analysis:** *The proposed sign location and variance request would not seem to go against the spirit and intent of the regulations.*

#### **OPTIONS:**

- Approve the variance as requested
- Approve the variance with amendments
- Do not approve the variance

#### **RECOMMENDED ACTION:**

Staff recommends **approval** of the variance due to the request meeting the requirements of State Statute and City Ordinance as they pertain to variances and the statutory requirements, particularly uniqueness, hardship, and the spirit and intent of the adopted regulations.

#### **ATTACHMENTS:**

- Variance application
- Variance justification and site map from owner
- Picture(s)
- Map(s)

### APPLICATION FOR VARIANCE

I. Name of Applicant <sup>+</sup> Justin Gottwald ~~Justin Gottwald~~ Phone 785-628-6220

Mailing Address 1013 Reservation Rd Hays, KS 67601

Name of Owner <sup>+</sup> (if different from applicant) L. VAN E. JANICE K. WITTHUHN Phone 785-628-6758

Mailing Address 2756 Thunderbird Dr Hays, KS 67601

Name of Authorized Agent \_\_\_\_\_ Phone \_\_\_\_\_

Mailing Address \_\_\_\_\_

Relationship of applicant to property is that of tenant

(Owner, tenant, lessee, other)

II. The variance is requested for a reduced set back from 35ft off  
the premise boundary, To where the current base is in the ground

on property located at 1000 Reservation Rd and legally described as: see Attached  
sheet

in the City of Hays and which is presently zoned C-2

Give metes and bounds description below or on attached sheet: (required only if property is not part of a legally recorded plat)

III. The applicant and owner herein, or authorized agent and owner:

- A. Acknowledges receipt of an instruction sheet concerning the filing and hearing of this variance request.
- B. Acknowledges the fee requirements established; and that the appropriate fee is herewith tendered.
- C. Agrees to conform to all requirements of the appropriate section of the Zoning Regulations if this application is approved.
- D. Acknowledges right to appeal the decision of the board to the District Court.

[Signature]  
APPLICANT

\_\_\_\_\_  
AUTHORIZED AGENT (IF ANY)

L. Van E. Janice K. Witthuhn  
OWNER

Janice K. Witthuhn

**OFFICE USE ONLY:**

RECEIVED IN THE PLANNING, INSPECTION, ENFORCEMENT DIVISION ON December 11, 2014

TOGETHER WITH THE APPROPRIATE FEE OF \$ 50.00 Receipt # 610651

Sinda Bjornman, Administrative Assistant

NAME AND TITLE

**Date: Thursday, December 11, 2014**

**To: Hays Area Board of Zoning**

**From: Justin Gottwald Co- owner and Representative for Cutting Edge Collision**

We here by request an off premise sign to be located at 1000 Reservation Rd, closer to the premises boundary than 35ft.

**A. Uniqueness**

Due to the fact that Cutting Edge Collision is not on a major road, we would like to place a sign at 183 and Reservation Rd to direct traffic to our location. The sign will be a shared sign between Country Side Homes (The property owner) and Cutting Edge Collision. Placing a sign at 1000 Reservation Rd 35ft back of the premises boundary would be wasteful to not use the existing sign base that is already established. Also it would not benefit us fully because we are looking for a sign to direct traffic not just advertise.

**B. Adjacent Property**

The sign will not affect the adjacent property because where we want to place the sign it is over 50 ft. to adjacent property other than the roads.

**C. Hardship**

Placing the sign on the lot as required by zoning regulations would place the sign at least 35ft off the boundaries of the property. The sign located 35ft off the boundaries of the property would make it confusing for potential customers to decipher which business is located at which property. With being a fairly new company and not being in the best location it is crucial to the success of our business to get a sign at this location.

**D. Public Interest**

It is our goal in requesting the variance to help our customers find our businesses (Cutting Edge Collision and Country Side Homes) more easily. The sign will be new and professional. It will help dress up the south end of Hays to make it more inviting to people coming to and leaving Hays.

**E. Spirit and Intent of the Zoning Regulations**

Granting of the variance desired will not be opposed to the general spirit and Intent of the zoning regulation. The sign will be placed where signs have already been placed in the past. It will not be in the way of utilities or view from any adjacent properties.

**THIS IS A LIST OF PROPERTY OWNERS ABUTTING THE SUBJECT  
PROPERTY THAT WERE SENT NOTIFICATION OF THE PUBLIC HEARING.**

**#01-15**

Property Address	Parcel	First Name	Last Name	Address	City	State	Zip
1000 Reservation Rd	026-182-03-0-30-03-002.01-0	L Van & Janice K	Withuhn	2756 T-Bird Dr	Hays	KS	67601
0 Reservation Rd	026-182-03-0-30-02-009.01-0	City of Hays		P O Box 490	Hays	KS	67601
1000 Highway 40 BP	026-182-03-0-30-02-009.00-0	Stephen D	Tebo	303 2nd St Terrace	Ellis	KS	67637
1000 Highway 40 BP	026-182-03-0-30-02-009.00-0	Bradley S	Tebo	303 2nd St Terrace	Ellis	KS	67637
		Justin	Gottwald	1013 Reservation Rd	Hays	KS	67601
1010 Reservation Rd	026-182-03-0-30-03-002.00-0	Countryside MHP LLC		5000 Red Creek Springs Rd	Pueblo	CO	81005
1220 240th Ave	026-182-04-0-00-00-002.00-0	Kansas State University		Waters Hall	Manhattan	KS	66506
1214 240th Ave	026-182-04-0-00-00-002.00-0	Kansas State University		Waters Hall	Manhattan	KS	66506
1511 Bison Rd	026-182-04-0-00-00-002.00-0	Kansas State University		Waters Hall	Manhattan	KS	66506
1010 Highway 40 BYP	026-182-03-0-30-02-008.00-0	Huston Tires Inc		P O Box 715	Hays	KS	67601
1011 Reservation Rd	026-182-03-0-30-02-010.00-0	Glen C & Deborah	Hatfield	1901 Main St	Hays	KS	67601

(Published in The Hays Daily  
News January 18, 2015)  
**BEFORE THE HAYS AREA  
BOARD OF ZONING APPEALS  
THE CITY OF HAYS, KANSAS  
NOTICE**

TO: Justin Gottwald and L  
Van & Janice K  
Withuhn  
The Hays Area  
Planning Commission  
The City of Hays,  
Kansas, and all other  
persons concerned

You are hereby notified that pursuant to the provisions of K.S.A. 12-716 through K.S.A. 12-724 et seq. as amended, and Ordinance 3721 of the Code of Ordinances of the City of Hays, and Resolution

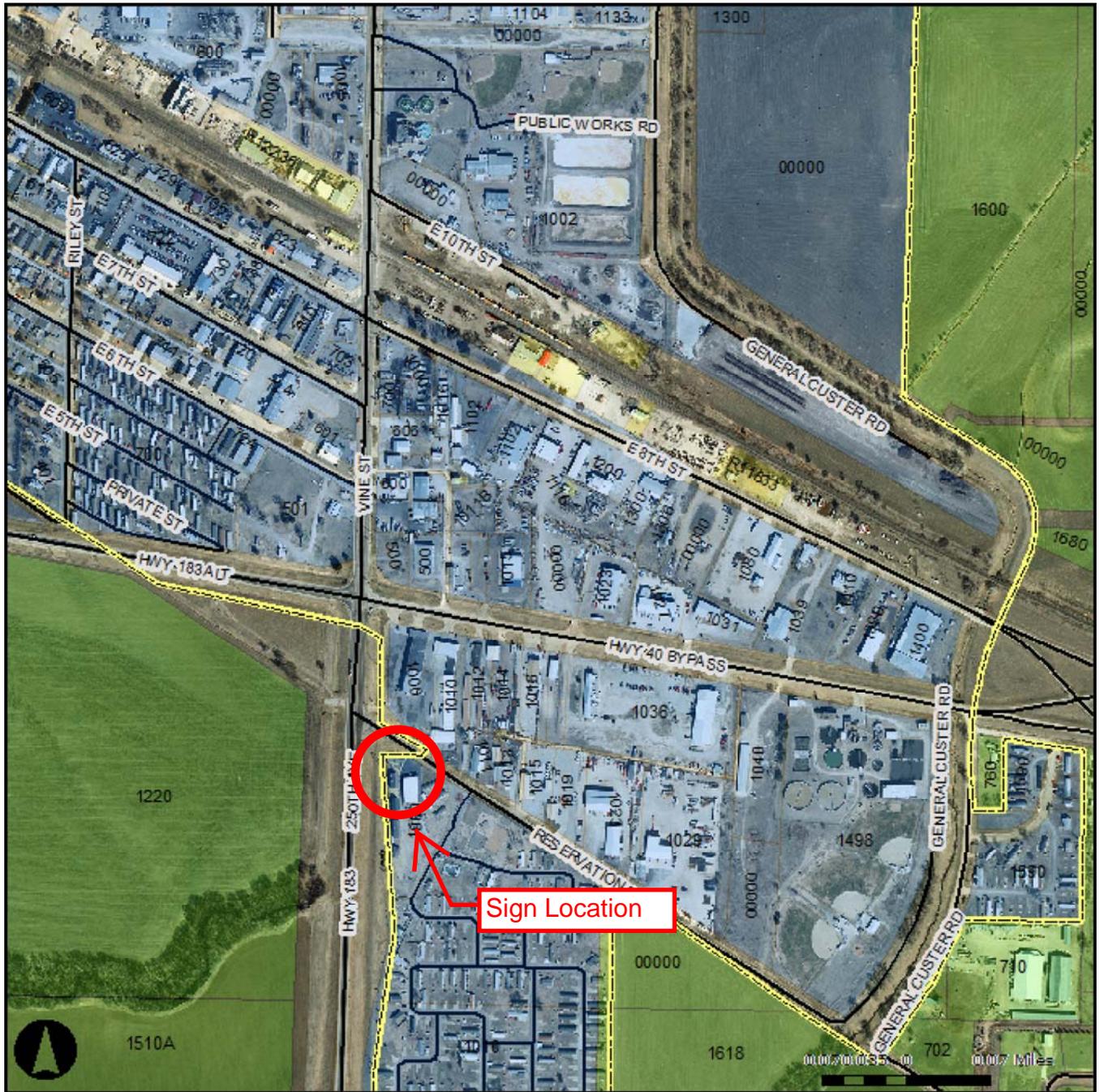
2007-8 of the Board of County Commissioners of Ellis County, Kansas, that a hearing will be had before said Board upon the appeal filed by Justin Gottwald and L Van & Janice K Withuhn.

The subject of the hearing shall be a request by Justin Gottwald and L Van & Janice K Withuhn for a variance as may be deemed by the Hays Area Board of Zoning Appeals of said City, from existing legal requirements for a thirty-five foot (35') setback variance to reduce the setback along Hwy 183 and Reservation Rd from the required thirty-five feet (35') to 0 feet (0') to allow a business sign to be constructed on an existing sign base situated in the City of Hays, Ellis County, Kansas to wit: generally located at 1000 Reservation Road.

You are hereby notified that a hearing will be had upon said appeal on the 11th day of February 2015 at 8:15 a.m., in the City Commission Chambers of City Hall, in the City of Hays, Kansas, at which time said appeal will be determined.

Lou Caplan, Chairman  
Hays Area Board of  
Zoning Appeals

# 1000 Reservation Rd



# 1000 Reservation Rd



# 1000 Reservation Rd





Sign Location  
(existing base)



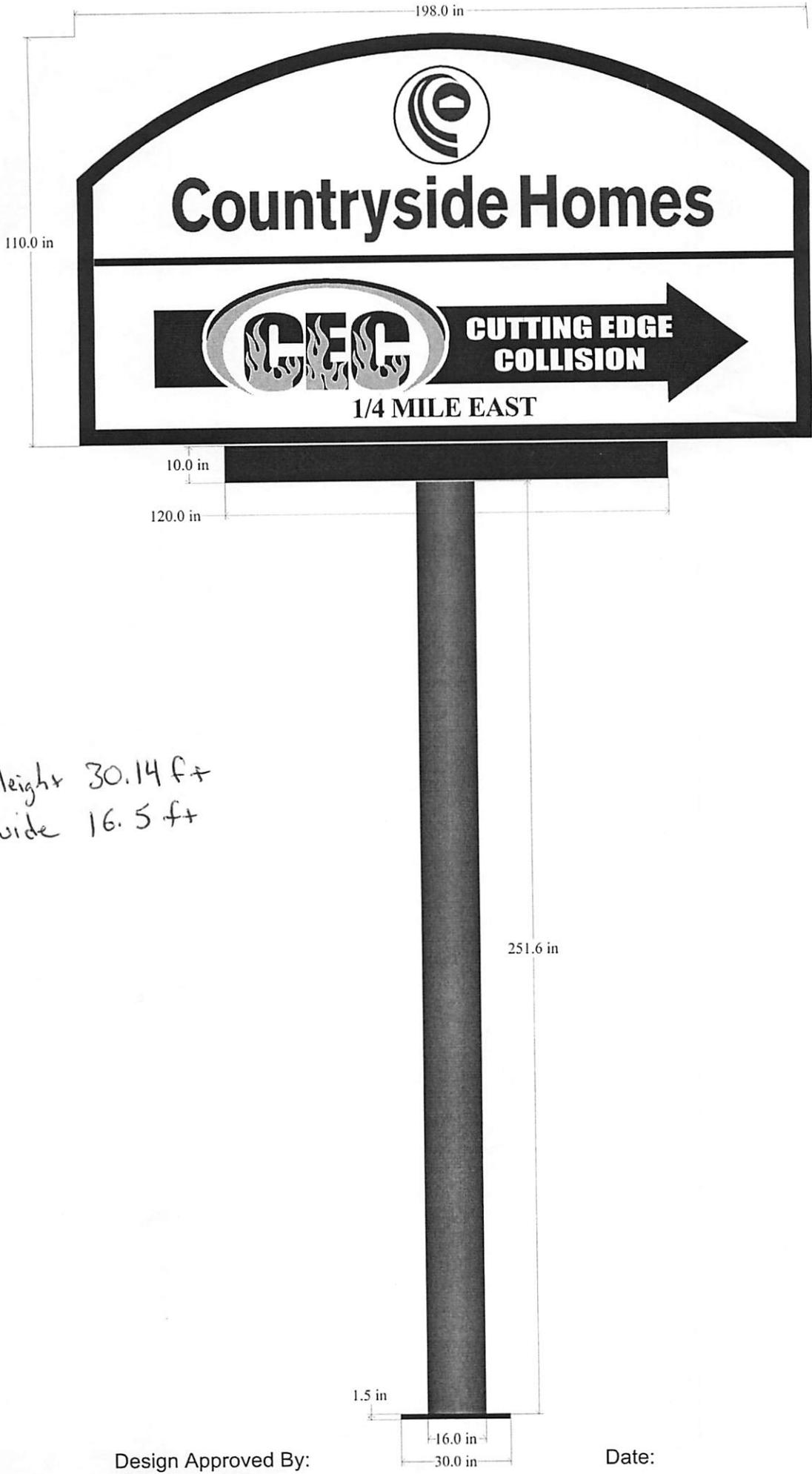


© 2014 Google



Previous Sign -  
Same Location





Total Height 30.14 ft  
 wide 16.5 ft

Design Approved By: \_\_\_\_\_

Date: \_\_\_\_\_

Parcel Details for 026-182-03-0-30-03-002.01-0

Owner Information



Owner's Name (Primary): WITTHUHN, L VAN & JANICE K

Mailing Address: 2756 Thunderbird Dr  
Hays, KS 67601-1403

Property Address



Address: 1000 Reservation Rd  
Hays, KS 67601

Neighborhood: 512 - Hays

Tract: Section: 03 Township: 14 Range: 18

Legal Description: S03, T14, R18, ACRES 2.9, TR BEG 510(S) N & 135(S) E SW COR SW4 TH  
NLY 583.68 TH E 112 TH SELY 145 TH CURVING TO THE RIGHT 235.22 TH  
SWLY 327.9 TH W 97.74 TO POB

Acres: 2.90

Market Acres: 2.90