

## US-56 Gap Analysis

### *Douglas County, Kansas*

#### Article 8: Subdivision Design and Improvements

##### Zoning Regulations for the Unincorporated Territory of Douglas County

<p>Article 8: SUBDIVISION DESIGN AND IMPROVEMENTS</p>	
<p>20-801 General (a) Purpose and Intent</p> <p>(a)(2)(i)</p> <p>(a)(2)(ix)</p> <p>(d)(2)(vi)</p>	<p>Consider amending (1)(i) to include after "continuity," "and functionality."</p> <p>Consider amending this section to include after "sector" ",corridor."</p> <p>Consider amending this section to add after "congestion" "and conflicting turning movements."</p> <p>Note: The County's access management standards adopted by resolution, should be reviewed to ensure that those standards are consistent with the access management recommendations of the US-56 Corridor Management Plan.</p>
<p>20-802 General Review and Approval Procedures</p>	<p>Consider adding new subsection (i) entitled "Appeals," as follows:</p> <p><b>Appeals.</b></p> <p>A. Procedure for appeals from the effect of the requirements in this Chapter.</p> <p>1. An appeal to the County Commission may be taken by any applicant aggrieved by any decision of the County requiring the applicant to conform a proposed development to the requirements of this Article and who alleges that the final decision of the County constitutes a "taking" without just compensation under the 5<sup>th</sup> Amendment to the United States Constitution or under the Kansas Constitution. On appeal, the burden will be on the appellant to establish, by the preponderance of the evidence:</p> <p>a. with respect to a requirement, which is imposed as a condition of approval of the development application, that the applicant convey to the County an interest in land:</p>

	<ul style="list-style-type: none"><li>(1) that there is not an essential nexus between the challenged requirement and the public purposes sought to be achieved by the challenged requirement, or</li><li>(2) that, through an individualized determination, the challenged condition is not roughly proportionate both in nature and extent to the impact of the development proposed in the development application; and</li></ul> <p>b. with respect to other requirements imposed by this Chapter, that:</p> <ul style="list-style-type: none"><li>(1) the requirements result in a denial of all beneficial economic or productive use of the property; or</li><li>(2) the requirements constitute a permanent physical occupation or invasion of the applicants property; or</li><li>(3) the burden that the requirement places on the applicant is greater than the benefit that the requirement confers on the general public, considering all of the following and any other relevant factor:<ul style="list-style-type: none"><li>(a) the temporal relationship between the effective date of the ordinance and the date the applicant (or if the applicant is not the landowner, the date the landowner) acquired the property that is the subject of the development application;</li><li>(b) the degree of interference created by the challenged requirements with the applicant's reasonable investment-backed expectations that the property could be developed free of the impacts of the challenged requirements;</li><li>(c) whether, and if so the extent to which, the development proposed by the applicant is prejudicial to the</li></ul></li></ul>
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health, safety or general welfare of others or constitutes a nuisance or nuisance-like activity; (d) the extent to which the challenged requirements achieve important public purposes; (e) the economic impact of the challenged requirements on the applicant's (or if the applicant is not the landowner, the landowner's) entire parcel and contiguous parcels commonly owned, as determined through a comparison of the value of this ownership without application of the challenged requirements with its value with application of the challenged requirements; and (f) that applicant is not necessarily entitled to the most profitable use of the property.

2. With respect to all appeals made pursuant to this subsection, the person seeking the appeal shall file a written notice of appeal with the County Clerk within 15 days of the date of the final decision from which the appeal is being taken. The notice shall specifically identify the grounds for the appeal and include all other information required by this Section to be submitted with the notice of appeal. If notice in compliance with all requirements of this Section is not timely filed, all rights to appeal the decision are waived.
3. The County Clerk, immediately upon receipt of the notice, shall transmit to the County Commission all the papers constituting the record concerning the action from which the appeal is taken.
4. A properly effectuated appeal shall stay all proceedings in furtherance of the action from which the appeal is taken.
5. The County Commission shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as written notice to all interested parties.
6. The County Commission, after considering all evidence presented by the applicant in support of

	<p>the appeal and any evidence presented by the County in rebuttal or otherwise presented in relation to the appeal, shall render a written decision in the form of findings of fact and conclusions of law. If the County Commission determines that applicant has not met the requisite burden of proof, it shall affirm, wholly or partly, the decision from which the appeal was taken. If the County Commission determines that the applicant has met the requisite burden of proof, it may reverse or modify the decision from which the appeal was taken and make a decision respecting development application as it determines is appropriate and in conformity with all applicable laws. In making this new decision, the County Commission may attach any condition it deems necessary to further the purposes of this Chapter.</p>
<p>20-804 Cluster Developments in the Urban Growth Areas  (c) (1)(x) Minimum Road Right(s)-of-Way   (c)(1)(xi) Minimum Frontage and Entrance Spacing Requirements   (d) Restrictive Covenants (5)   (e) Notice to Nearby Property Owners (1)   (g) Application (4)</p>	<p>Consider amending this section by adding a new sentence after the first sentence that provides that cluster development located adjacent to the rights-of-way for a federal or state highway when the existing rights-of-way is not equal to the minimum projected necessary right-of-way for such highway, as shown on any adopted corridor plan, shall be subject to a condition that the subdivider dedicate, by separate instrument to the county, that portion of additional land necessary to preserve the projected necessary right-of-way, as shown on any adopted corridor plan, that is roughly proportionate to the demands generated by that cluster development on the adjacent highway.</p> <p>Note: The County's access management standards adopted by resolution, should be reviewed to ensure that those standards are consistent with the access management recommendations of the US-56 Corridor Management Plan.</p> <p>Consider amending subsection (5) to reference highways as well as streets/roads.</p> <p>Consider amending this subsection to provide that notice of the proposed division shall be sent to KDOT at the same time that notice is sent to owners of record of property within one-quarter mile of the subject property.</p> <p>(g)(4) Consider this section to include a certificate of mailing for KDOT.</p> <p>Consider amending this subsection to include a certificate of mailing to KDOT.</p>

((g)(5)(ii)	Consider amending this subsection to ensure that the spacing requirements, with respect to US-56, are consistent with the recommendations of the US-56 Corridor Management Plan.
<p>20-805 Large Parcel Property Divisions in Urban Growth Areas (c) Immediate Development Area and Future Development Area (1) Immediate Development Area(v) Minimum Road Right(s)-of-Way</p> <p>(c)(1)(vi) Minimum Frontage and Entrance Spacing Requirements</p> <p>(e) Notice to Nearby Property Owners (1)</p> <p>(f) Application (5)(ii)</p> <p>(f)(5)</p>	<p>Consider amending this section by adding a new sentence after the first sentence that provides that a Large Parcel Property Division located adjacent to the rights-of-way for a federal or state highway when the existing rights-of-way is not equal to the minimum projected necessary right-of-way for such highway, as shown on any adopted corridor plan, shall be subject to a condition that the subdivider dedicate, by separate instrument to the county, that portion of additional land necessary to preserve the projected necessary right-of-way, as shown on any adopted corridor plan, that is roughly proportionate to the demands generated by that Large Parcel Property Division on the adjacent highway.</p> <p>Note: The County's access management standards adopted by resolution, should be reviewed to ensure that those standards are consistent with the access management recommendations of the US-56 Corridor Management Plan. (e)(1) add notice to KDOT</p> <p>Consider amending this subsection to require notice to KDOT of proposed division if that division is deemed to have an impact on development in the US-56 Corridor. (f)(4) Consider amending this section to require a specific mailing for the letter mailed to KDOT.</p> <p>Note: The County's access management standards adopted by resolution, should be reviewed to ensure that those standards are consistent with the access management recommendations of the US-56 Corridor Management Plan.</p> <p>Consider adding a new build-out plan requirement specifying the plan shall show projected necessary right-of-way for any highway with respect to which the County or a city has adopted a corridor management plan.</p>
<p>20-806 Property Divisions in the Rural Area (Outside the UGAs) (c) Applicability (2)</p> <p>(d Residential Development Parcel )(2)(v) Minimum Frontage and Entrance Spacing Requirements</p> <p>(d)(2)(vi) Minimum Road Right(s)-</p>	<p>Consider amending this subsection to require that the application also show the projected necessary rights-of-way of any federal or state highway, as shown on an adopted area or corridor plan.</p> <p>Note: The County's access management standards adopted by resolution, should be reviewed to ensure that those standards are consistent with the access management recommendations of the US-56 Corridor Management Plan</p> <p>Consider amending this section by adding a new sentence after the</p>

<p>of-Way</p>	<p>first sentence that provides that a Property Division In the Rural Area located adjacent to the rights-of-way for a federal or state highway, when the existing rights-of-way are not equal to the minimum projected necessary right-of-way for such highway, as shown on any adopted corridor plan, shall be subject to a condition that the subdivider dedicate, by separate instrument to the county, that portion of additional land necessary to preserve the projected necessary right-of-way, as shown on any adopted corridor plan, that is roughly proportionate to the demands generated by that Large. Parcel Property Division on the adjacent highway.</p>
<p>20-807 Certificate of Survey, Administrative Review Procedures (e) Requirements and Material to be Included</p> <p>(f) Criteria for Review</p> <p>(f)(3)</p> <p>(i)Appeals(2)</p>	<p>Consider adding a new subsection between existing subsections (xvii) and (xix) indicating that the area covered by the plat is included in the US-56 Corridor Management Plan. See Section I.C.2., Implementation Chapter of the US-56 Corridor Management Plan for details.</p> <p>Consider amending the first sentence to say, "an application for division requiring Certificate of Survey 'may' be approved 'with or without conditions' <i>if and only if</i> it meets <b>all</b> the following criteria;"</p> <p>Consider amending this section to add after "Comprehensive Plan," "and adopted area or corridor plans."</p> <p>Consider amending this section to require the provision of notice of an appeal to KDOT, if the Certificate of Survey is deemed to have an impact on development in the US-56 Corridor.</p>
<p>20-808 Minor Subdivisions</p> <p>(d) Criteria for Review(3)</p> <p>(d)(6)</p>	<p>Consider amending this section by adding a new sentence after the first sentence that provides that a minor subdivision located adjacent to the rights-of-way for a federal or state highway, when the existing rights-of-way are not equal to the minimum projected necessary right-of-way for such highway, as shown on any adopted corridor plan, shall be subject to a condition that the subdivider dedicate, by separate instrument to the county, that portion of additional land necessary to preserve the projected necessary right-of-way, as shown on any adopted corridor plan, that is roughly proportionate to the demands generated by that minor subdivision on the adjacent highway.</p> <p>Consider amending this section to add after "Comprehensive Land Use Plan of Lawrence and Douglas County," "or any area or corridor plan adopted by the County or any city in the County."</p>

(d)(7)	Consider amending this subsection to add after "Land Use Plan," "or any adopted area or corridor plan."
20-809 Major Residential and Non-Residential Subdivisions (d) Criteria for Review (4)	Consider amending this subsection to add after "sector," ",corridor."
(d)(5)	Consider revising this subsection to reference the US-56 Corridor Management Plan or any other adopted area or corridor plan.
(d)(7)	Note: Adopted master plans for water and wastewater systems should be reviewed to confirm that these plans are consistent with the recommendations of the US-56 Corridor Management Plan and that it does not propose the location of any utilities within the necessary projected right-of-way for US-56 as shown on the US-56 Corridor Management Plan.
(f) Review and Action by the Planning Commission(1)	Consider adding a requirement in this subsection requiring notice to KDOT of the review of a preliminary plat by the Planning Commission at a time that will allow KDOT sufficient opportunity to provide input on the preliminary plat.
(h) Effects of Approval of the Planning Commission(1)	Consider amending this subsection to include after "approval," "with or without conditions."
(i) Preliminary Plat – Review and Action by Governing Body(1)	Consider amending this subsection to include after "approval," "with or without conditions."
(k) Final Plat - Application (l)(2)	Consider revising this subsection to require that the final plat application contain a statement that the area covered by the plat is also with the area covered by the US-56 Corridor Management Plan. <u>See</u> , Section I.C.2 . Implementation Chapter, US-56 Corridor Management Plan.
(l) Final Plat – Review by Planning Director (2)(vi)	Consider amending this subsection to also require consistency with the County Comprehensive Plan or any adopted area or corridor plan.
20-810 Subdivision Design Standards (b)Frontage and Access (2)	Note. Ensure that this subsection is consistent with the recommendations of the US-56 Corridor Management Plan (d)(1)(iii) ...."any adopted Major Thoroughfares Plan or corridor plan". ("corridor plan" is underlined, regarding the arrangement of arterial and collector streets)
(d (3) ) Intersecting Streets (ii)	Consider amending this section to provide but in no event shall be inconsistent with the recommendations of any adopted corridor plan.

<p>(d)(4) Cross Sections</p> <p>(f) Permanent Utility Easements (1)</p> <p>(g) Parks, Open Space, Schools and Other Public Facilities.</p>	<p>Note: These subsections should be reviewed to ensure that the requirements contained herein are consistent with the recommendations of the US-56 Corridor Management Plan.</p> <p>Consider amending the second sentence to specify that permanent utility easements shall not be located in any area which is necessary projected right-of-way for US-56.</p> <p>(g) Consider amending this subsection to include a reference to any adopted corridor plan in addition to a Comprehensive Plan for Parks and Recreation. Also note that the Comprehensive Plan for Parks and Recreation should be reviewed to ensure that it does not propose the location of parks and recreation areas in areas which are projected necessary right-of-way for US-56.</p>
<p>20-811 Public Improvements (b)Streets (3) Rural Area (ii)</p> <p>20-812 Contents of Plats (a Preliminary Plat )(1) Materials to be Included</p> <p>(b) Final Plat(2) Materials to be Included.</p>	<p>Consider amending this subsection to add a reference to any adopted corridor plan.</p> <p>Consider amending this subsection to add a new provision requiring that right-of-way for US-56 be shown on each preliminary plat, if applicable.</p> <p>Consider amending this subsection to add a requirement that the plat contain language indicating that the area covered by the plat is included within the US-56 Corridor Management Plan. See Section I.C.2., Implementation Chapter, US-56 Corridor Management Plan for details.</p>
<p>20-813 Administration and Enforcement (d) Building Permits in the Unincorporated Area of Douglas County</p> <p>(g) Variances (2)(ii)</p>	<p>Consider amending both subsections (1) and (2) to include that no building permits shall be issued for any new structure or any improvement to an existing residential building if that building or structure is located in the area which is projected necessary right-of-way for US-56.</p> <p>Considering amending this subsection) to include the requirement that the variance be consistent with the Comprehensive Plan and any adopted area or corridor plan.</p>
<p>20-814 Building Setbacks, Enforcement, Exceptions (a) Building or Setback Lines on Major Streets or Highways</p>	<p>Consider amending this section to require building setbacks lines be established that are consistent with the future projected necessary right-of-way for US-56.</p>
<p>ZONING REGULATIONS FOR THE UNINCORPORATED TERRITORY OF DOUGLAS COUNTY</p>	
<p>Article 2: Purpose</p>	<p>Consider amending this Article by adding to the end of the first sentence "and to implement the Comprehensive Plan and any other adopted area and corridor plan."</p>

<p>Article 4: General Provisions, Districts, and District Maps 4-1 Districts Established</p> <p>4-6.06</p> <p>General Recommendations</p>	<p>Consider establishing overlay districts at critical locations along the Corridor, particularly where the US-56 Corridor Management Plan indicates high density development will locate.</p> <p>Consider amending this provision to add after "major thoroughfare plan," "or on the US-56 Corridor Management Plan."</p> <p>General Provisions. Although not necessary to adopt an ordinance establishing a moratorium, the County's zoning regulations could include specific authority to adopt moratoria in situations where it desires to allow the County time to adopt code or plan revisions before development is allowed to proceed. See Section 1.B.1., Implementation Chapter of the US-56 Corridor Management Plan.</p>
<p>Article 5: Building Location-Relation to Established Ultimate Street Right-Of-Way 5-1.01.01</p>	<p>Consider revising this section to add a proviso that in any event Base Setback Lines plus the front yard requirements shall be of sufficient distance to ensure that the right-of-way for US-56 is protected.</p>
<p>Article 14: V-C Valley Channel District Regulations</p>	<p>Consider establishing overlay districts at critical locations along the Corridor, particularly where the Corridor Management Plan indicates high density development will locate.</p>
<p>Article 15: Reserved</p>	<p>Consider adoption of planned districts. See, Section I.B.2.b., Implementation Chapter, US-56 Corridor Management Plan.</p>
<p>Article 18: Height, Area and Bulk Requirements</p>	<p>Consider adding a footnote to this table referencing Section 5-1.01.01, relating to setbacks from highways.</p>
<p>Article 19: Supplemental Use Regulations – Conditional Uses – Temporary Uses Section 19-1.02 (g)</p> <p>Section 19-5 Temporary Business Uses and Temporary Business Use Permits: (2)(e)</p>	<p>Consider revising this section to add a reference to other adopted area and corridor plans.</p> <p>Consider amending this section to add a new (3) providing that if the temporary use is determined to have an impact on development and uses along the US-56 Highway, notice shall be provided to KDOT.</p>
<p>Article 19A: Site Plan Approval Section 19A-3 Procedure</p> <p>Section 10A-4. Site Plan Contents</p> <p>Section 19A-5. Conditions of Approval</p>	<p>Consider amending this section to provide that if a site plan application is determined to have an impact on development in the US-56 Corridor, KDOT shall be provided notice of the receipt of such application and the recommendation of the planning staff with ample time for input to the Board of Commissioners from KDOT.</p> <p>Consider adding a new requirement between existing sections 5. And 6. stating that the plan shall include the right-of-way for US-56, if applicable.</p> <p>Consider amending this section to add a condition of approval requiring consistency with the County Comprehensive Plan and any adopted area or corridor plans.</p>

<p>Section 19A-5(3)</p>	<p>Consider amending this subsection by adding a new condition that the development proposed by the site plan be consistent with the County's comprehensive plan and any adopted area or corridor plan.</p>
<p>Article 21: Supplemental Height, Area, and Bulk Requirements</p>	<p>Section 21-4.03.01. Consider amending this section to include federal and state highways in addition to street or major thoroughfare.</p>
<p>Article 22: Large-Scale Developments – The Community Unit Plan Section 22-1 Procedure</p>	<p>Consider amending this section to require that KDOT receive notice of any plan for use and development that has the potential to have an impact on development in the US-56 Corridor.</p>
<p>Article 23: The Board of Zoning Appeals Section 23-2.03  Section 23-4. Special Yard and Height Exceptions:</p>	<p>Consider amending second sentence in this section to require that variances not be inconsistent with the County Comprehensive Plan or any adopted area or corridor plan.</p> <p>Consider amending this section to add a proviso that the special yard exception proposed maintains a distance from the proposed right-of-way line of US-56 to protect that right-of-way.</p>
<p>Article 24: Changes and Amendment Section 24-1.03(g)  Section 24-1.03  Section 24-2  Section 24-3(1)</p>	<p>Consider amending this section to add conformance with any adopted area or corridor plan.</p> <p>In addition, the third from the last paragraph should be amended to provide that KDOT shall be provided notice at least 20 days before the hearing, if it is determined that the application will impact development within the US-56 Corridor.</p> <p>Consider amending the first sentence to allow the planning commission to recommend approval with conditions.</p> <p>Considering adding at the end "with or without conditions."</p>
<p>Article 29:</p>	<p>Consider revising title to Enforcement, Violations, Penalties and Appeals and adding new Section 29-5 entitled "Appeals," as follows:</p> <p><b>Appeals.</b></p> <p>A. Procedure for appeals from the effect of the requirements in this Chapter.</p> <p>1. An appeal to the County Commission may be taken by any applicant aggrieved by any decision of the County requiring the applicant to conform a proposed development to the requirements of this Article and who alleges that the final decision of the County constitutes a "taking" without just</p>

	<p>compensation under the 5<sup>th</sup> Amendment to the United States Constitution or under the Kansas Constitution. On appeal, the burden will be on the appellant to establish, by the preponderance of the evidence:</p> <ul style="list-style-type: none"> <li>a. with respect to a requirement, which is imposed as a condition of approval of the development application, that the applicant convey to the County an interest in land: <ul style="list-style-type: none"> <li>(1) that there is not an essential nexus between the challenged requirement and the public purposes sought to be achieved by the challenged requirement, or</li> <li>(2) that, through an individualized determination, the challenged condition is not roughly proportionate both in nature and extent to the impact of the development proposed in the development application; and</li> </ul> </li> <li>b. with respect to other requirements imposed by this Chapter, that: <ul style="list-style-type: none"> <li>(1) the requirements result in a denial of all beneficial economic or productive use of the property; or</li> <li>(2) the requirements constitute a permanent physical occupation or invasion of the applicants property; or</li> <li>(3) the burden that the requirement places on the applicant is greater than the benefit that the requirement confers on the general public, considering all of the following and any other relevant factor: (a) the temporal relationship between the effective date of the ordinance and the date the applicant (or if the applicant is not the landowner, the date the landowner) acquired the property that is the subject of the development application; (b) the degree of interference created by</li> </ul> </li> </ul>
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	<p>the challenged requirements with the applicant's reasonable investment-backed expectations that the property could be developed free of the impacts of the challenged requirements; (c) whether, and if so the extent to which, the development proposed by the applicant is prejudicial to the health, safety or general welfare of others or constitutes a nuisance or nuisance-like activity; (d) the extent to which the challenged requirements achieve important public purposes; (e) the economic impact of the challenged requirements on the applicant's (or if the applicant is not the landowner, the landowner's) entire parcel and contiguous parcels commonly owned, as determined through a comparison of the value of this ownership without application of the challenged requirements with its value with application of the challenged requirements; and (f) that applicant is not necessarily entitled to the most profitable use of the property.</p> <ol style="list-style-type: none"><li>2. With respect to all appeals made pursuant to this subsection, the person seeking the appeal shall file a written notice of appeal with the County Clerk within 15 days of the date of the final decision from which the appeal is being taken. The notice shall specifically identify the grounds for the appeal and include all other information required by this Section to be submitted with the notice of appeal. If notice in compliance with all requirements of this Section is not timely filed, all rights to appeal the decision are waived.</li><li>3. The County Clerk, immediately upon receipt of the notice, shall transmit to the County Commission all the papers constituting the record concerning the action from which the appeal is taken.</li><li>4. A properly effectuated appeal shall stay all</li></ol>
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	<p>proceedings in furtherance of the action from which the appeal is taken.</p> <p>5. The County Commission shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as written notice to all interested parties.</p> <p>6. The County Commission, after considering all evidence presented by the applicant in support of the appeal and any evidence presented by the County in rebuttal or otherwise presented in relation to the appeal, shall render a written decision in the form of findings of fact and conclusions of law. If the County Commission determines that applicant has not met the requisite burden of proof, it shall affirm, wholly or partly, the decision from which the appeal was taken. If the County Commission determines that the applicant has met the requisite burden of proof, it may reverse or modify the decision from which the appeal was taken and make a decision respecting development application as it determines is appropriate and in conformity with all applicable laws. In making this new decision, the County Commission may attach any condition it deems necessary to further the purposes of this Chapter.</p>
GENERAL RECOMMENDATIONS	<p>Consider establishing density transfers and incentives either in the overlay districts recommended above or in other locations in the code to encourage more dense or intense development at locations indicated on the Plan, which are appropriate for such development, and to protect environmentally sensitive features, agricultural lands or protected lower density locations. See Section 1.B.5. and 6., Implementation Chapter of the US-56 Corridor Management Plan.</p>