

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

Amended Agenda 10-12-09

WEDNESDAY, OCTOBER 14, 2009

4:00 p.m. – County Commission Meeting
-Convene

CONSENT AGENDA

- (1)(a) Consider approval of Commission Orders;
- (b) Grant authorization for Douglas County Application for an authorized Emergency Vehicle Permit (Sheriff's Office)

REGULAR AGENDA

- (2) KEMA Awards presentation to Emergency Management (Teri Smith)

- (3) Consider approval of expenditure of 911 funds for mandated FCC Narrowbanding Spectrum. (Selma Southard)

- (4) Consider a request to create public road right-of-way for N 1675 Road, to the west of the terminus of E 350 Road, in section 29-12-18. Request submitted by John Solbach on behalf of the property owners of record, Fred and Judy Vermette." (John Solbach)

- (5) Executive Session for 1) the purpose of consultation with County Counselor on matters, which would be deemed, privileged under the attorney-client relationship. The justification is to maintain attorney client privilege on a matter involving Douglas County and 2) discussion on an acquisition of right-of-way for a Douglas County project.

- (6) Other Business
 - (a) Consider approval of Accounts Payable (if necessary)
 - (b) Appointments
 - (c) Miscellaneous
 - (d) Public Comment

- (7) Adjourn

WEDNESDAY, OCTOBER 21, 2009

-Consider approval of **SP-8-38-09**: a Site Plan for Westar fabric filter and scrubber upgrade project, located at 1250 N 1800 Rd. Submitted by Westar Energy, property owner of record. Sheila Stogsdill, Assistant Planning Director.

- Consider the appropriate range of variation for Mid-States Material's detailed reclamation plans for Phases 1A, 2, 3 and 4 of the Big Springs Quarry; 2 North 1700 Road. Submitted by Professional Engineering Consultants for Mid-States Ventures, L.L.C., property owner of record.(Mary Miller is the Planner)

WEDNESDAY, OCTOBER 28, 2009

-Receive Planning review of the Conditional Use Permit and all conditions attached thereto as required by Condition of Use XIV of the Hamm Eudora Quarry [CUP-12-16-02]. Mary Miller is the Planner.

WEDNESDAY, NOVEMBER 4, 2009

-Lone Star Weed Discussion

FRIDAY, NOVEMBER 6, 2009

9:00 a.m. -Canvass for Baldwin Special Election

WEDNESDAY, NOVEMBER 11, 2009

WEDNESDAY, NOVEMBER 18, 2009

-Notice to Township for Cereal Malt Beverage Licenses

-Recognize volunteers for Emergency Management (Jillian Blair) (At approx. 7:00 p.m.)

WEDNESDAY, NOVEMBER 25, 2009

-No Commission Meeting

WEDNESDAY, DECEMBER 2, 2009

- Approve Cereal Malt Beverage Licenses

Note: The Douglas County Commission meets regularly on Wednesdays at 4:00 P.M. for administrative items and 6:35 P.M. for public items at the Douglas County Courthouse. Specific regular meeting dates that are not listed above have not been cancelled unless specifically noted on this schedule.

1(b)



**DOUGLAS COUNTY
APPLICATION FOR AN AUTHORIZED EMERGENCY VEHICLE PERMIT**

Please type or print the following information:

Check One: New
 Annual Renewal
(If renewal, attach old permit. **Must be renewed annually by January 31.**)

Name: Dillon Filkins

Street Address: 327 Eisenhower Dr Phone # (785) 764-1921

City: Lawrence State: KS Zip Code: 66044 County: Douglas

Make of Vehicle: Ford Year of Vehicle: 2002

Style of Vehicle: F-350 License Tag #: 773 AVF

VIN #: 1FTSX31F72ED3368 Driver's License #: K01-80-4335

Vehicle Insurance Company Name: Allied Insurance Policy #: 72-2-2528532
**Attach copy of insurance card.

Agency: Kanwaka Township Fire Dept

Agency Address: 548 N 1700 Rd Lawrence KS

Agency Head Signature: [Signature]

I HEARBY CERTIFY, I have read and agree to abide by the requirements set forth in Chapter 8 of the Kansas Statutes which relate to the operation of Emergency Vehicles.

I FURTHER CERTIFY, I will drive with due regard for the safety of others as required by K.S.A. 8-1506.

I FURTHER CERTIFY, I will return my permit when requested by the Sheriff. This permit is not transferable to any other person or vehicle.

I FURTHER CERTIFY, violating any of these laws and/or rules and the commission of other serious traffic violations may be grounds for the cancellation of my vehicle being designated as an "Authorized Emergency Vehicle".

[Signature]
Signature of Applicant

5-Oct-09
Date

[Signature]
Kenneth M. McGovern, Sheriff

Oct 6 2009
Date Permit #

Authorization granted by County Commission on this _____ day of _____, 200__.

Douglas County Emergency Management Memo

Date: October 5, 2009
To: Douglas County Commission
CC: Craig Weinaug
From: Teri Smith
RE: Award Recognition

The Commission is being asked to recognize the following Emergency Management staff:

- Teri Smith – Emergency Management Professional Of The Year which is presented to a Kansas emergency management professional who has been an outstanding coordinator and leader for a number of years.
- Sheila Meggison – Outstanding New Emergency Management Professional who is recognized as a new emergency management professional serving 18 months or less.
- Jillian Blair – Kansas Certified Emergency Manager which is a professional certification of emergency managers in Kansas

Chuck Magaha, Kansas Emergency Management Association President will present these awards.

**Douglas
County 9-1-1
Emergency
Communications**

To: Douglas County Commissioners,
Nancy Thellman, Chairperson
James Flory
Mike Gaughan

From: Selma M. Southard,
DG Emergency Communications

Date: 09/30/09

Ref: Expenditure of 911 Fee Fund

Commissioners,

I am seeking authorization to utilize Douglas County 911 Fee Funds to implement and upgrade Douglas County's VHF Fire Radio System to the mandated FCC Narrowbanding Spectrum.

- Currently fire public safety radio systems are operating on a 25 kHz-wide channels. The Federal Communications Commission (FCC) has mandated that all Non-Federal Public Safety licensees currently using 25 kHz radio system migrate to narrow band 12.5 kHz channels by January 1 2013. Agencies that do not meet this deadline will face a loss of communications capabilities.
- I am considering TFM Comm Inc. as a sole source vendor since the majority of this equipment already exists and was installed by them. Existing equipment is being re-programmed, and new equipment must be purchased because it is un-programmable. We need to maintain equipment and installation consistency.
- This expenditure is appropriate use of 911 Fee Funds and will be paid from the 911 equipment reserve fund.
- The 911 Advisory agrees with the recommendation to utilize 911 Fee Fund for the purchases listed on the ECC Narrowband quote, (complete) portion of the summary and equipment sheets for the ECC.
- Listed on the same quote is Kansas University Police departments Communications Center portion of the Narrowbanding in the amount of \$987.56. This amount will be paid for by the Kansas University Police Department.
- Douglas County Emergency Management is also listed on the quote in the amount of \$17,457.51. Emergency Management is going to attempt to get grant funding.
- Total Cost for The Douglas County ECC is: \$103,721.79 -(see attached equipment sheet)

Cc Craig Weinaug, County Administrator
ECC Department File



Sales Quotation



MOTOROLA
Authorized Two-Way
Radio Dealer



Acct Rep: LISA ROWLAND

Quotation #: 83399

TFM Comm Inc
125 SW Jackson St.
Topeka, KS 66603-3311

Telephone: (785) 233-2343
Fax : (785) 234-6848

Date: 9/28/2009
Quote Valid For :
30 Days

To: DOUGLAS CO EMG COMM CENTR

111 E 11TH
LAWRENCE KS 66044-0000
Telephone: (785) 832-5237
Fax:
Contact: JIM DENNEY

QTY:	ITEM #:	DESCRIPTON:	UNIT PRICE	TOTAL
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WSCA CONTRACT PRICED

1	*NSI	KU NARROWBAND QUOTE, COMPLETE	987.56	987.56
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WSCA CONTRACT PRICED

1	*NSI	ECC NARROWBAND QUOTE, COMPLETE	103,721.79	103,721.79
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WSCA CONTRACT PRICED

1	*NSI	EOC NARROWBAND QUOTE, COMPLETE	17,457.51	17,457.51
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Subtotal: 122,166.86
Sales Tax: 0.00

Quotation Total: 122,166.86

Equipment:
Installation:
Terms:

Quote Notes:
FCC CHARGES REFLECT CHANGING EMISSION DESIGNATOR ONLY, TO 12.5 NARROW, ON 10 CALL SIGNS.

Customer is responsible for all applicable sales tax and/or incurred shipping charges. It is the sole responsibility of the customer to have a valid FCC license for all two-way radio equipment.

CUSTOMER IS RESPONSIBLE FOR ALL FCC AND FREQUENCY COORDINATION FEES

The information in this quotation is PROPRIETARY & CONFIDENTIAL for use by TFMComm Inc and the Client referred to within.

LEASE or INSTALLMENT PURCHASE CONTRACT: \$ _____ per MO. for _____ months.

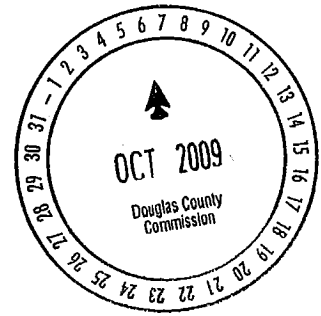
Accepted By: Print: _____ Signed: _____
Customer P/O: _____ Date: _____ Title: _____



Qty.	Model	Description	Unit List Price	Unit Discounted Price	Total Discounted Price
3	LABOR	REPROGRAM FIRE 6 STATION IN BALDWIN	\$ 169.50	\$ 169.50	\$ 508.50
3	LABOR	REPROGRAM FIRE 9 IN LECOMPTON	\$ 169.50	\$ 169.50	\$ 508.50
5	LABOR	REPROGRAM 5 QTY CONTROL STATIONS AT LEC	\$ 169.50	\$ 169.50	\$ 847.50
3	AAH25KDF9AA5	HT1250 VHF PORTABLES	\$ 983.00	\$ 648.78	\$ 1,946.34
3	LABOR	REPROGRAM EOC 1 STATION AT STRATFORD	\$ 169.50	\$ 169.50	\$ 508.50
3	LABOR	REPROGRAM EOC 1 BACK UP AT LEC	\$ 169.50	\$ 169.50	\$ 508.50
3	LABOR	REPROGRAM EOC 5 IN LECOMPTON	\$ 169.50	\$ 169.50	\$ 508.50
2	LABOR	REPROGRAM CDM AT LEC	\$ 169.50	\$ 169.50	\$ 339.00
1	AAM25KKD9AA2	CDM1250 C.S. RADIO FOR EOC 1	\$ 783.00	\$ 571.59	\$ 571.59
1	R1595A	ASTRON POWER SUPPLY HOUSING	\$ 139.00	\$ 112.59	\$ 112.59
2.5	LABOR	PROGRAM AND SET UP, REPLACE 1 MAXTRAC C.S. AT KU DISPATCH EQUIP ROOM	\$ 169.50	\$ 169.50	\$ 423.75
2.5	LABOR	RE-PROGRAM 4 C.S. RADIOS CDM750 AT EQUIP ROOM, EOC3,FIRE6,EOC5,FIRE9	\$ 169.50	\$ 169.50	\$ 423.75
1	HKN9557A	PL259/MINI U ADAPTER	\$ 15.50	\$ 12.56	\$ 12.56
3	LABOR	REPROGRAM EOC 3 IN BALDWIN	\$ 169.50	\$ 169.50	\$ 508.50
2	LABOR	REPROGRAM CDM AT LEC	\$ 169.50	\$ 169.50	\$ 339.00
2	T5365	QUANTAR FAMILY MODEL (FIRE 3 MAIN & B/U)	\$ 7,850.00	\$ 6,123.00	\$ 12,246.00
2	X530	125W VHF	\$ 4,197.00	\$ 3,273.66	\$ 6,547.32
2	X580	REPEATER OPERATION		\$ -	\$ -
2	X597	CONVENTIONAL ANALOG	\$ 525.00	\$ 409.50	\$ 819.00
2	C101	ADD DC CONTROL	\$ 100.00	\$ 78.00	\$ 156.00
2	X269	SPECTRA TAC CONVENTIONAL	\$ 254.00	\$ 198.12	\$ 396.24
2	X52	30" CABINET	\$ 360.00	\$ 280.80	\$ 561.60
2	X676	TRIPLE INTERNAL CIRCULATOR	\$ 1,500.00	\$ 1,170.00	\$ 2,340.00
2	X182	FACTORY INSTALLED DUPLEXER	\$ 1,380.00	\$ 1,076.40	\$ 2,152.80
14	LABOR	STAGING, PROGRAMMING, SET UP, TEST AND INSTALL	\$ 169.59	\$ 169.59	\$ 2,374.26
				\$ -	\$ -
		WSCA CONTRACT PRICING		\$ -	\$ -
		DOUGLAS COUNTY ECC		\$ -	\$ -
				\$ -	\$ -
				\$ -	\$ -
				\$ -	\$ -
				\$ -	\$ -
				Total:	\$42,487.28

John M. Solbach, III
Attorney At Law

700 Massachusetts, Suite 203
Lawrence, KS 66044
(785) 841-3881
(785) 841-0043 Fax



October 5, 2009

Commissioner Mike Gaughan
Douglas County Courthouse
11th and Massachusetts Street
Lawrence, KS 66044

Re: The proposed road at 1675 E 350 Road.

Dear Commissioner Gaughan,

Thank you for taking the time to listen to our proposal last Wednesday. I hope that we were able to convey all the information which you need to make your decision. If not, please let us know and we'll be happy to come back before the commission again to work with staff if you desire.

When the Solbachs and the Vermettes entered into this land contract, we understood that we were rolling the dice to some extent over whether or not a public road would be approved, but we hoped that the county commission would work with us and allow us to make the most valuable use of this land for us.

Fred and Judy are a little bit further out there without a road than we are because without a road, they'll receive substantially less for their contract for the sale of real estate and of course it leaves them with a much less saleable house and it reduces the current county valuation as well as future county valuations for tax purposes.

To summarize, we hope the commission takes that into consideration as well as the fact that the township is not opposed and is perfectly okay with us building the road as proposed and feels that the extra cost to the township is negligible.

This is a step towards connectivity, if it becomes desirable in the future to connect Fox Run either on the north or on the east edge.

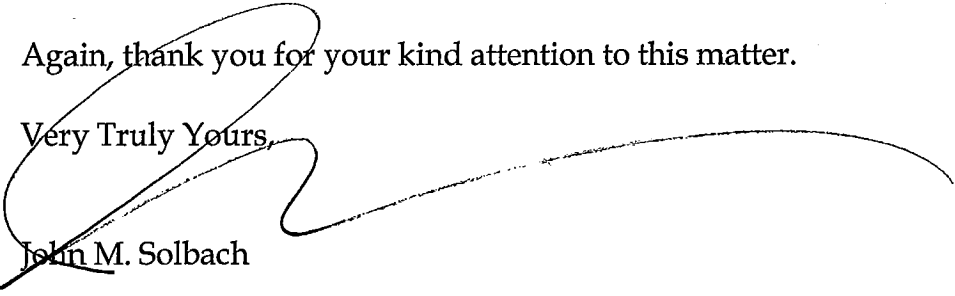
It is likely that we would be willing to grant the county an easement should the county desire to build such a road.

It will increase the county valuation and revenues to all taxing subdivisions, and most importantly, it will allow Fred and Judy Vermette to receive the maximum value for the sale of their land and ultimately for the sale of their house in the future if the road approval goes through, as well as allowing us to purchase a buildable lot.

Again, thank you for taking the time to listen, and I request that you approve this road in a way that will meet our purposes and is least costly to all parties involved.

Again, thank you for your kind attention to this matter.

Very Truly Yours,



John M. Solbach

cc. Fred and Judy Vermette
cc. other commissioners
cc. Keith Browning



DOUGLAS COUNTY PUBLIC WORKS

1242 Massachusetts Street
Lawrence, KS 66044-3350
(785) 832-5293 Fax (785) 841-0943
dgcpubw@douglas-county.com
www.douglas-county.com

Keith A. Browning, P.E.
Director of Public Works/County Engineer

MEMORANDUM

To : Board of County Commissioners

From : Keith A. Browning, P.E., Director of Public Works/County Engineer *KB*

Date : September 23, 2009

Re : Consider request to create road right-of-way in Kanwaka Township
N 1675 Road west of E 350 Road

John Solbach, on behalf of property owners Judy & Fred Vermette, is requesting the BOCC create additional road right-of-way in Kanwaka Township. The proposed road would be N 1675 Road, and would extend west from the current terminus of E 350 Road ¼-mile south of N 1700 Road. They are interested in creating this right-of-way to allow another buildable lot for the 25-acre parcel immediately southwest of the terminus of E 350 Road. In order to allow another buildable lot, at least 500 feet of right-of-way must be created. We would require a road to be constructed to the proposed entrance of the second buildable lot, so the full 500-foot length may not need to be constructed.

Home Rule Resolution No. 08-5-2 (attached) stipulates evaluation and review criteria when extending or creating a public road. In addition to Economic considerations, the home rule resolution lists certain Road Network considerations and Safety and Environmental considerations.

In my opinion, a road connection between E 318 Road in Fox Run subdivision and E 350 Road would be an improvement to the road network since it would provide connectivity between Route 442 (Stull Road) and N 1700 Road. It would provide another means to access properties in the area. This would be particularly beneficial to properties along E 350 Road lying south of an existing culvert approximately 480 feet south of N 1700 Road. Those properties are currently inaccessible during a 1%-chance flood (100-year flood).

The road creation requested by Mr. Solbach would not complete such a connection between E 318 Road and E 350 Road, but it would be a small step towards a connection. My current opinion is that such a connection should follow E 350 Road alignment south to the quarter-section line, then continue west to E 318 Road. I feel the topography is more favorable along that route.

Kanwaka Township has indicated they are not in favor of connecting E 318 Road to E 350 Road. They would be concerned if many more houses are constructed along such a connection due to the relatively poor geometry (width and grade) of E 350 Road. They have not indicated, however, they are against the current request for creation of 500 linear feet of N 1675 Road right-of-way.

September 23, 2009
Page Two

Kanwaka Township estimates the annual maintenance cost at \$400 for the requested road.

Charter Resolution No. 07-4-1 (attached) outlines two alternate processes for creating, or "laying out", road right-of-way. Required notice to the public and neighboring property owners is somewhat different depending on by which process the BOCC is creating road right-of-way. If the BOCC desires to pursue creating the requested road right-of-way, the BOCC needs to determine the appropriate process under Charter Resolution No. 07-4-1. We will then ensure appropriate public notice, and schedule a public hearing. A resolution creating the requested road right-of-way will be prepared for BOCC consideration following the public hearing.

Also attached are responses from Linda Finger, Planning Resources Coordinator, to two paragraphs contained in Mr. Solbach's application for right-of-way creation.

Action Required: Consider the request to create road right-of-way for N 1675 Road, to extend 500' west from the current terminus of E 350 Road ¼-mile south of N 1700 Road in Section 29-12-18, and provide direction to staff as appropriate.

Responses from Linda Finger, Planning Resources Coordinator

Response to Economic Conditions 3:

Any parcel of land that existed as a separately described parcel in the Register of Deeds office as of 12-31-2006 has a vested right to a building permit for a residence (if one does not already exist) or to building permits for improvements, additions or renovations to an existing residence. This vested right is lost when a property is divided. If a property division is created in the rural area through the administrative review procedure [Parent Parcel/ Original Tract] established in the Subdivision Regulations for property divisions, an owner may establish new residential development rights for each property division created. [RE: section 11-101(e) (1) (In the city's version of the Subdivision Regulations¹ this is section 20-801(e) (1)]

"A division created in conformance with this Chapter, or created in conformance with the Exemption section of the previously adopted Subdivision Regulations that were in effect prior to December 20, 2006, and said division was filed and recorded as a plat of survey, deed, or affidavit of equitable interest identifying the division as a separate tract of real estate at the Register of Deeds office (i) on or before June 1, 2005; or (ii) after June 1, 2005, and as of December 31, 2006, provided a division made after June 1, 2005, met the 10 acre requirement and other requirements for a residential building permit pursuant to Douglas County Resolution No 05-6-5 and resolutions extending such Resolution, shall remain lawfully existing, retaining established rights to the issuance of a building permit, subject to additional regulatory authority of the Governing Body. Such legally created Parcel shall not be subject to further review under this Chapter; unless or until it is further divided."

Response to Safety and Environmental Considerations 4:

Without public road access the parcel has value for agricultural uses but is not an "otherwise developable parcel". The parcel becomes developable for residential purposes when: a) there is road frontage of 250' and an improved road surface to the proposed driveway; and, b) the property division, from the parcel on file at the Register of Deeds office on 12-31-2006, is created through a Certificate of Survey following the administrative procedure in section 11-106 of the Subdivision Regulations (also known as section 20-806 in the city's development code).

¹ The Lawrence Development Code, which includes the Subdivision Regulations as Article 8, is Chapter 20 in the City Code. In the County Code, the Subdivision Regulations are Chapter XI. This is why two numbers exist for each section of the jointly adopted Subdivision Regulations.

HOME RULE RESOLUTION NO. HR 08-5-2

A HOME RULE RESOLUTION PROVIDING POLICY CONSIDERATIONS WHEN ESTABLISHING OR EXTENDING PUBLIC ROADS BASED UPON LANDOWNER-INITIATED REQUESTS AND REPEALING RESOLUTION HR-07-12-6

WHEREAS, K.S.A. 19-101a, and amendments thereto, authorizes the Board of County Commissioners (hereinafter after the "Board") to transact all County business and perform all powers of local legislation and administration it deems appropriate.

WHEREAS, K.S.A. 68-101 et seq. and Douglas County Charter Resolution 07-4-1 provide for the establishment of new and extension of existing public roads in the unincorporated areas of Douglas County if the Board determines the road will be appropriate and in the public interest or will be of public utility.

WHEREAS, by Resolution HR-07-12-6 the Board imposed a moratorium on establishing or extending public roads based upon the petition or request of one or more landowners, so that the Board could study and develop a policy to guide the Board in determining when the establishment or extension of such roads will be appropriate and in the public interest or of public utility.

WHEREAS, the Board adopts such a policy as set forth in this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS, SITTING IN REGULAR SESSION THIS 21st DAY OF May, 2008, AND INTENDING TO EXERCISE THE POWERS OF HOME RULE LEGISLATION PURSUANT TO K.S.A. 19-101a, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Policy on Establishing or Extending Public Roads. The Board hereby adopts the following policy evaluation & review criteria to use in the deliberation to of a petition from one or more landowners to establish a new public road, or to extend an existing public road right-of-way, and in determining whether the new road is appropriate and in the public's interest, or that it will be of public utility.

The criteria for evaluation of such petitions are provided in the following tables. A petition must be accompanied by written responses to the following criteria before it will be placed on a Commission's agenda for public discussion.

CATEGORY	EVALUATION & REVIEW CRITERIA
I. Economic Considerations	Cost benefit analysis prepared by the petitioner that provides the County Commission with the following information for review: <ol style="list-style-type: none">1. an estimate of the cost of road construction;2. an estimate of the total maintenance cost to the Township [based on cost figures provided by the County Engineer to the petitioner]; and,3. a realistic estimate of the tax appraisal value and the number of additional homes to be built with access from the proposed road over a period of no more than 10 years.

CATEGORY	EVALUATION & REVIEW CRITERIA
II. Road Network Considerations	The proposed road will be an improvement to the current road network in the Township it is located in and the appropriate Township Board and the County Engineer have reviewed and recommended approval.

The County Commission may also consider safety and environmental issues when deliberating on a petition for a new road. The landowners petitioning for a new road may also request review under the safety and/or environmental criteria to lend additional support to and/or justification for the request for a new public road. The safety and environmental criteria are in the following table:

CATEGORY	EVALUATION & REVIEW CRITERIA
III. Safety & Environmental Considerations	<ol style="list-style-type: none"> 1. The proposed road will provide a safer way to access existing residential properties than currently exists; 2. The proposed road will improve connectivity across a one-mile square grid by the addition of a through road that would improve emergency and/or safety vehicle response time to residences within the one-mile square grid; 3. The proposed road would eliminate: a steep slope approach, a low water crossing, a railroad crossing, or other similar safety concern; or, 4. The proposed road will create an alternative access to an otherwise developable parcel, which reduces the development impact on environmental features such as FEMA floodplain; jurisdictional wetland; or significant stands of mature trees.

The foregoing evaluation and review criteria are not exclusive and the Board may consider other factors that it deems important to any individual case. The foregoing policy considerations need not necessarily apply to (1) widening existing public roads, (2) accepting the dedication of roads in platted subdivisions, or (3) establishing new or extending existing public roads at the Board's initiative.

SECTION 2. *Revocation of Resolution HR-07-6.* Resolution HR-07-12-6, by which the Board imposed a moratorium on establishing or extending public roads based upon the petition or request of one or more landowners, is revoked.

SECTION 3. *Severability.* If any section, clause, sentence, or phrase of this Resolution is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining parts of this Resolution.


SECTION 4. *Publication.* This is a home rule resolution and shall be effective after publication one time in the Official County newspaper.

ADOPTED this 21st day of May, 2008.

**BOARD OF COUNTY COMMISSIONERS OF
DOUGLAS COUNTY, KANSAS:**



Bob Johnson, Chair



Jere McElhane, Member



Charles Jones, Member

ATTEST:



Jameson D. Shew, County Clerk

CHARTER RESOLUTION NO. 07-4-1

A Charter Resolution Exempting Douglas County, Kansas From The Provisions of K.S.A. 68-102 Relating to the Laying Out, Altering or Vacating Roads, and Providing Substitute and Additional Provisions Relating Thereto

WHEREAS, K.S.A. 19-101 *et seq.* provides that counties may exercise home rule powers, including adopting charter resolutions which exempt such counties from the acts of the Kansas Legislature.

WHEREAS, the County of Douglas, Kansas ("County") is a county, duly created and organized, under the laws of the State of Kansas.

WHEREAS, K.S.A. 68-101 *et seq.* is an enactment of the Kansas Legislature relating to the opening and laying out of roads, which enactment is applicable to the County, but is not uniformly applicable to all counties within the State of Kansas.

WHEREAS, the Board of County Commissioners (the "Board") desires, by charter resolution, to exempt the County from the provisions of K.S.A. 68-102, and to provide substitute and additional provision thereof.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS, MEETING IN REGULAR SESSION AND INTENDING TO EXERCISE ITS POWERS OF CHARTER HOME RULE PURSUANT TO K.S.A. 19-101b, DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Exemption. The County, by the power vested in it by K.S.A. 19-101b, hereby elects to exempt itself from and make inapplicable to it, the provisions of K.S.A. 68-102.

Section 2. Substitute Provisions and Additional Provisions. The County, by the power vested in it by K.S.A. 19-101b, hereby provides substitute and alternate provisions for K.S.A. 68-102 as follows:

Laying out, altering or vacating roads. (a) Upon petition of any adjacent landowner, the board of county commissioners may lay out, alter, or vacate a road. The board of county commissioners also may lay out or alter any road when deemed necessary by the board.

(b) The board of county commissioners may vacate any road in the county whenever the board determines such road is not a public utility by reason of neglect, nonuse, or inconvenience or from other cause or causes such road has become practically impassable and the necessity for such road as a public utility does not justify the expenditure of the necessary funds to repair such road or put the same in condition for public travel.

(c) Notice of the laying out, altering or vacating any road shall be given in the manner provided by K.S.A. 68-102a, and amendments thereto.

(d) As a complete alternative to the procedures set forth in subparagraph (a), (b) and (c) of this section and the procedures set in K.S.A. 68-101, *et seq.* and any other applicable law pertaining to laying out, altering, relocating, widening, or vacating any road, the board of county commissioners may, by resolution and without formal viewing, lay out, alter, relocate, widen, extend, or vacate any road or roads, with or without the presentation of a petition, as the board determines appropriate and in the public interest; provided, however, that the simple widening of road right-of-way shall not require a formal resolution of the board of county commissioners. Any resolution vacating a road pursuant to this subsection shall reserve to the county and utilities such rights-of-way and easements as, in the judgment of the board of county commissioners, are necessary or desirable for public service. All land or right-of-way required for the laying out, altering, relocating, widening, or extending of a road shall be acquired by the board of county commissioners by purchase, donation, dedication or, if the owner or owners of the land shall refuse to sell for an amount acceptable to the board of county commissioners, donate, or dedicate said land, by exercise of the right of eminent domain pursuant to article 5 of chapter 26 of Kansas Statutes Annotated, and amendments thereto. The county surveyor shall prepare a plat of survey or similar document for any road laid out, altered, relocated, widened, or vacated pursuant to this subparagraph, and the county engineer shall record in the public road records the location, relocation, extension, change, or vacation of any such road. Notice of the laying out, altering, relocating, widening, or vacating any public road pursuant to this subparagraph, containing a reasonable description of the proposed changes, shall be given to each owner of property adjoining the road, sent by first class mail to the at the address where the owner's property tax statements are sent; provided that such notice need not be given if the owner has previously granted additional right-of-way or signed any other agreement conveying land or right-of-way with respect to the road project.

Section 3. Severability. In the event that any provision or section of this Charter Resolution is deemed or ruled unconstitutional or otherwise illegal or invalid by a court of competent jurisdiction, such illegality or invalidity shall not affect any other provision of this Charter Resolution. In such instance, this Charter Resolution shall be construed and enforced as if such illegal or invalid provision had not been contained herein.

Section 4. Revocation. Charter Resolution 94-2-1 is hereby revoked.

Section 5. Effective Date. The county clerk is directed to cause this Charter Resolution to be published once each week for two consecutive weeks in the official County newspaper. This Charter Resolution shall become effective 60 days after the final publication, unless a petition signed by a number of electors of the Douglas County equal to not less than 2% of the number of electors who voted at the last preceding November general election or 100 electors, whichever is the greater, shall be filed in the office of the county election officer demanding that this Charter Resolution be submitted to a vote of the electors. If such a valid petition is filed, this Charter Resolution shall not take effect until submitted to a referendum and approved by the electors of Douglas County, to be called and held in accordance with K.S.A. 19-101b.

Passed and Approved this 30th day of April, 2007, by the Board of County Commissioners of Douglas County, Kansas.

**BOARD OF COUNTY COMMISSIONERS OF
DOUGLAS COUNTY, KANSAS:**



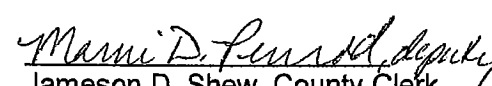
Bob Johnson, Chair



Jere McElhaney, Member

Charles Jones, Member

ATTEST:


Jameson D. Shew, County Clerk

John M. Solbach, III
Attorney At Law

700 Massachusetts, Suite 203
Lawrence, KS 66044
(785) 841-3881
(785) 841-0043 Fax

Craig Weinaug
County Courthouse
11th and Massachusetts Street

September 23, 2009

Re: Application for establishing or extending a public road to run west 500ft (approved) actually being built 350ft from a point 16.75 miles north of the Franklin County line and 3.5 miles from the Shawnee County line. It would lie to the west of East 350 Road, ¼ mile south of North 1700 Road. It would straddle the land currently owned by Howard Hildenbrand on the north and Judy and Fred Vermette and John and Pat Solbach on the south. Each landowner provided a 35ft easement (total 70 feet), which is already on file with the register of deeds.

UNDER ECONOMIC CONSIDERATIONS

1. The cost of the road would be borne by landowners John and Patricia Solbach and Fred Vermette. The county engineer suggests an 18ft surface within the 70ft easement. It would be a gravel road. The topography is very flat but slopes slightly to the west. Some scrub trees would need to be removed. Contractor Ludd Heine indicates that he could build the road for less than \$2,000 or so plus the cost of material (1 or 2 steel culverts and the rock to surface the road).
2. The township estimates that the total cost of maintaining the road would be no more than a few hundred dollars per year, perhaps less than \$100 per year. They would put rock on the road every three to five years and would maintain it periodically and may involve some snow removal but with almost no traffic on the road, the maintenance cost is very small.
3. Without the approval of this road, the existing house would not be permitted under current county rules to obtain the building permit for remodeling or expansion. That would significantly decrease the fair market value of that house and impede the ability of the current owners to sell the house to someone who would want to remodel or add to the house. We believe that would reduce the county valuation based upon fair market value by 25 to 40,000 dollars, and with a resulting reduction in tax revenues of approximately \$515 per year. If another house with an estimated value of \$200,000 were built within the next ten years, that would produce additional revenue for the two property taxes of \$2,576 per year. Over the course of ten years, this would be tax revenues of approximately \$30,000. The county's share of that would have to be figured from the total as with the townships.

With respect to road network considerations, if the long term plan is to connect Fox Run with East 350 Road, this would move that connection towards that goal. We likely would consent or agree to allow a road to be built over our land to connect to East 350 Road and such a road could be built basically following contour lines.

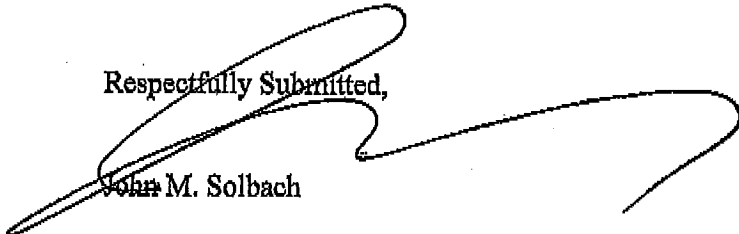
The county engineer suggested the road should go south for a quarter of a mile and then back west for a quarter of a mile, but that would be a longer road. You'd still have to cross the deep ravine where there currently is a pond and if it took 35 feet from each landowner it would place the road too close to the existing house at Fox Run. Following the contour lines would still take us across the deep ravine where that ravine is filled with damn structure at the current time and could easily be further filled and be made wide enough for a public road.

There are no existing easements along the county engineer's proposed route. There is an existing easement where we're proposing to build the road or we could give one.

SAFETY AND ENVIRONMENTAL CONSIDERATIONS:

1. The proposed road will provide a safer way to access existing residential properties.
2. There will be some improvement toward connectivity.
3. Not applicable
4. The road will create an alternative access to an otherwise developable parcel. There are trees where the road would be built but they are relatively small trees and not of a particularly desirable species.

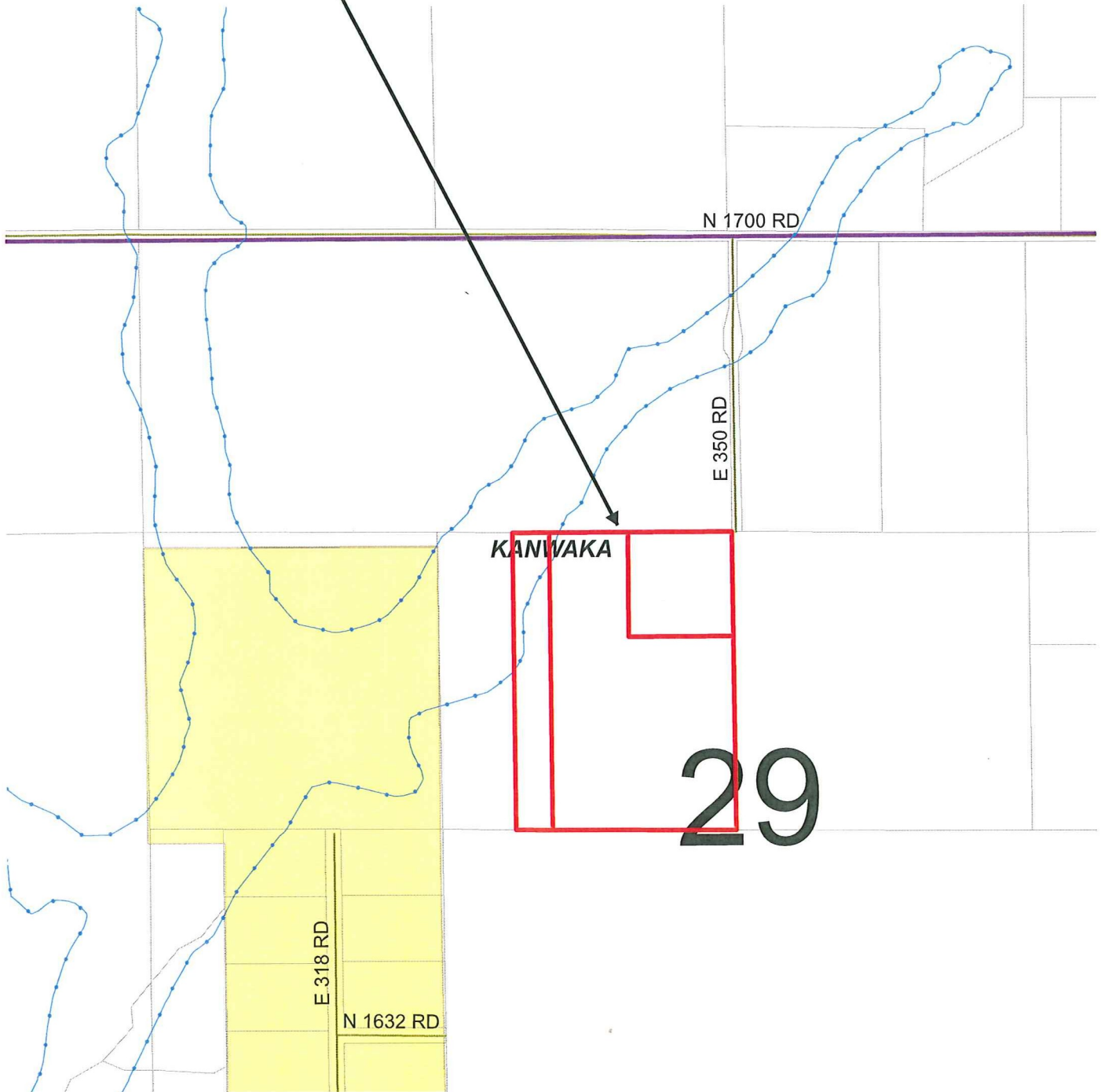
Respectfully Submitted,


John M. Solbach

New Road Request for N 1675
west of E 350 Road
section 29-12-18



Location of new road right-of-way
500' dedicated & 350' constructed



Legend

FEMA FLOODPLAIN Ln_Typ

<all other values> 500 Year Floodplain

Floodway Fringe

FLOODWAY

Access Mgmt Classifications

Hwy or Freeway

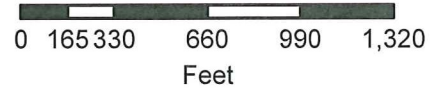
Principal Arterial

Minor Arterial

Major Collector

Minor Collector

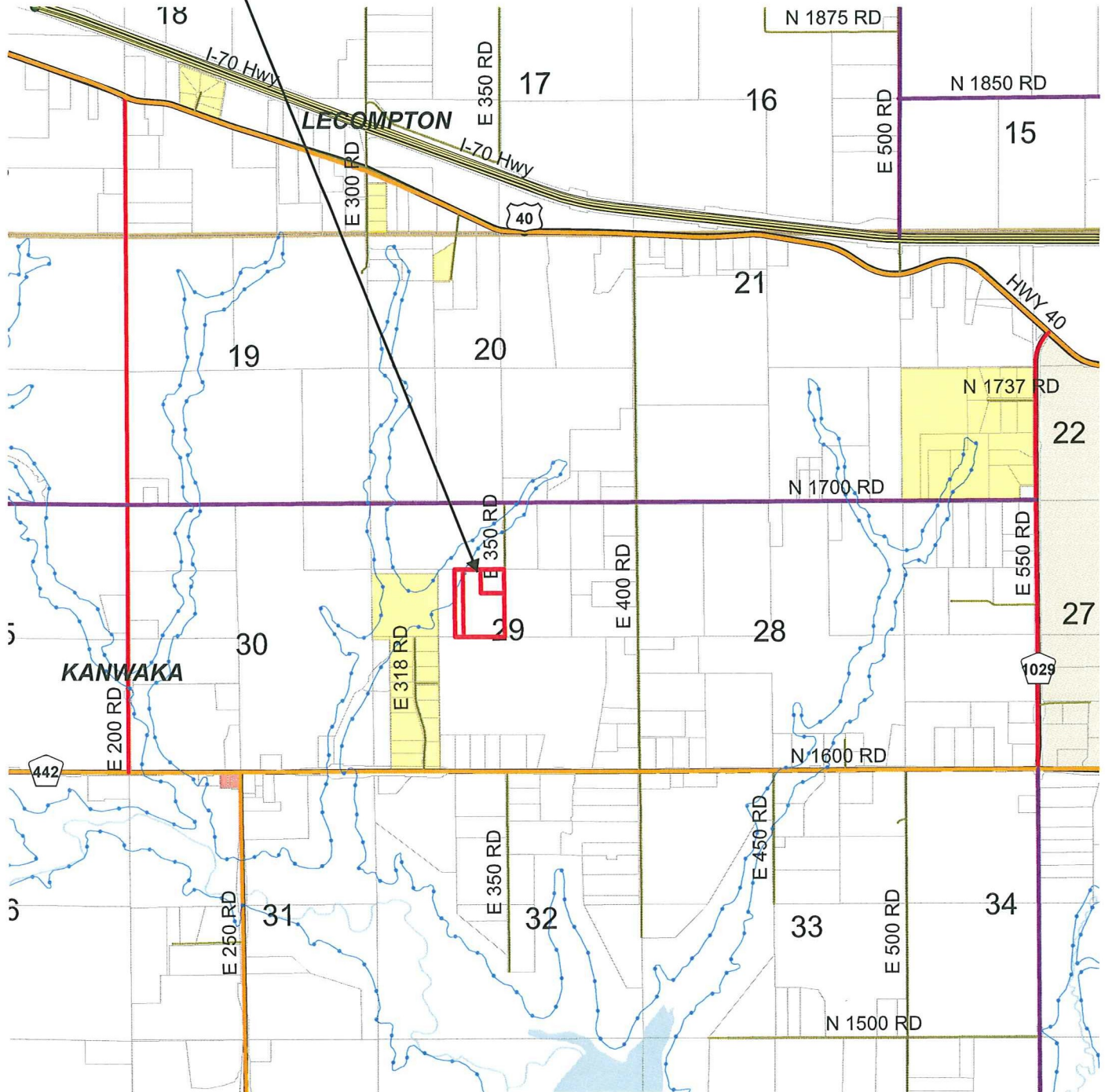
COUNTY ZONING



New Road Request for N 1675
west of E 350 Road
in section 29-12-18



Location of new road right-of-way
500' dedicated & 350' constructed



Legend

- | | | | |
|--------------------------------|------------------------------------|----------------------|--|
| FEMA FLOODPLAIN Ln_Type | Floodway Fringe | Minor Arterial | |
| <all other values> | FLOODWAY | Major Collector | |
| 500 Year Floodplain | Access Mgmt Classifications | Minor Collector | |
| Hwy or Freeway | Principal Arterial | | |
| | | | |
| | | COUNTY ZONING | |

