

# BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

Amended Agenda 06/07/11

## WEDNESDAY, JUNE 8, 2011

12:00-1:30 p.m.-Lunch meeting with LMH Trustee and Administration at LMH Hospital, Conference Room D North. (More than one Commission may attend. No County Business will be considered.)

### **4:00 p.m.**

-Convene

-Proclamation celebrating June 13-17, 2011 as "Dad's Days." (Jenn Preston)

-Consider approval of the minutes of May 11 and May 18, 2011.

## CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders;
- (b) Review and approve 7<sup>th</sup> Judicial District Fiscal Year 2012 Grant Conditions between the Juvenile Justice Authority and Douglas County (Pam Weigand);
- (c) Consider approval to authorize the County Administrator to enter into a performance agreement with Plastikon Healthcare, LLC in conjunction with the City of Lawrence (Corey Mohn, City of Lawrence)
- (d) Consider approval of a resolution for the creation of the Yankee Tank Dam District (Craig Weinaug);
- (e) Consider purchase 20 Motorola portable radios for the Sheriff's Department as part of the Project 25 compliance purchase project (Ken McGovern); and
- (f) Consider approval of acquisition of right of way to replace Bridge No. 4.00N-9.16E (Michael Kelley)

## REGULAR AGENDA

- (2) Consent Agenda approval to award contract for Project No. 2011-12 Microsurfacing Route 442 from Route 1029 (E 550 Road) to US-40 highway (Keith Browning)
- (3) Consider awarding contract for pavement rehabilitation Project No. 2011-13 Route 1061 from N 1 Road (Franklin County line) to US-56 highway (N 200 Rd)(Keith Browning)
- (4) Consider Approval of Contract for Engineering Services 3R Improvements to Route 442 from E 1 Road to Stull Project No. 2011-9 (Keith Browning)
- (5) **Z-3-10-11**: Consider a request to rezone approximately 32 acres from I-2 (Light Industrial) to A (Agricultural), located at 670 N 1800 Rd. Submitted by Paul Werner Architects, for Rockwall Farms L.C., property owner of record. (PC Item 1; approved 9-0 on 5/23/11)(Mary Miller is the Planner)
- (6) **Executive Session to discuss acquisition of property**
- (7) Other Business
  - (a) Consider approval of Accounts Payable (if necessary)
  - (b) Appointments:
    - Bicycle Advisory Commission**
    - Board of Zoning Appeals 10/2011 (2 positions-current not eligible for reappointment)**
  - (c) Miscellaneous
  - (d) Public Comment

## **RECESS**

6:35 p.m. -Reconvene

- (8) **Z-3-7-11**: Consider a request to rezone approximately 6 acres from A (Agricultural) and B2 (General Business) to B2 (General Business), located at 751 Hwy 40. Submitted by Kathleen Baker Wolfe,

property owner of record. (PC Item 4; approved 9-0 on 5/23/11) (Mary Miller is the Planner)

(9) Adjourn

**WEDNESDAY, JUNE 15, 2011**

6:35 p.m.

- 1)Public Hearing for comment regarding sale of county owned real property and 2) consider entering a contract to sell and convey fee title to real estate (Michael Kelly)
- Public Hearing regarding petition to setup a benefit district for Rock Creek Cemetery District (Roberta Peterson)
- Discussion of County's excessive noise regulations (Commissioner Flory)

**WEDNESDAY, JUNE 22, 2011-light or no meeting**

**WEDNESDAY, JUNE 29, 2011-light or 4:00 p.m. Only**

**WEDNESDAY, JULY 6, 2011**

**MONDAY, JULY 11, 2011**

8 am to 1pm – Commissioner Budget Hearing

**TUESDAY, JULY 12, 2011**

8 am to 1pm – Commissioner Budget Hearing

**WEDNESDAY, JULY 13, 2011**

**TUESDAY, JULY 19, 2011**

-Commission Budget Hearing

**WEDNESDAY, JULY 20, 2011**

-Commission Budget Hearing

**WEDNESDAY, JULY 27, 2011**

**WEEK OF MONDAY, JULY 25, 2011**

-Additional Budget Work Sessions, if necessary

**WEDNESDAY, AUGUST 10, 2011**

-2012 Budget Public Hearing

**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.*



200 Maine, Ste. B Lawrence, KS 66044  
p: 785-843-0721 ex. 336 f: 785-843-3161

## **Proclamation By Chairman Jim Flory on Dad's Days**

**Whereas**, *Dads of Douglas County*, and many other organizations that provide services to families are celebrating Dad's Days, June 13-17, 2011 in Lawrence, KS; and

**Whereas**, these organizations and many others are working to promote and support fatherhood by raising awareness of the value of fathering in Douglas County, Kansas; and

**Whereas**, all dads across the country and in Douglas County, Kansas deserve recognition for the role they play in the health and happiness of their children; and

**Whereas**, in recognizing and supporting the people, programs and policies that are committed to high-quality services to dads as the right choice for families;

I, Jim Flory, Chairman of the Douglas County, Kansas Commissioners do hereby proclaim June 13-17, 2011 as Dad's Days in Lawrence.

DOUGLAS COUNTY ADMINISTRATOR

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1100 Massachusetts  
Lawrence, KS 66044  
785-832-5328  
785-832-5148 (Fax)  
cweinaug@douglas-county.com

June 3, 2001

## Memo

TO: Commissioners

FROM: Craig Weinaug

RE: Conditions of Grant (Consent item on agenda)

Attached please find a document entitled Agreement: Conditions of Grant which required execution by the Chair of the Board of Commissioners. This agreement sets out all of the standard conditions which we must comply with every year as a part of the Block grant operating funds that we receive from JJA.

# ***AGREEMENT***

## ***CONDITIONS OF GRANT***

A grant is hereby awarded, commencing on the 1st day of July 2011, from the Kansas Juvenile Justice Authority, hereinafter referred to as "JJA," to the **Douglas County Board of County Commissioners**, hereinafter referred to as "GRANTEE." This grant and conditions, to which both parties agree and which are enumerated below, remain effective until June 30, 2012. Acceptance of block grant funds indicates GRANTEE'S acknowledgement of, and intent to comply with, all the conditions outlined below.

### **I. GRANTEE AGREES TO:**

- A. Utilize grants funds for the development, implementation, operation and improvement of juvenile community correctional services pursuant to K.S.A. 75-7038 through 75-7053 and amendments thereto, as submitted in the GRANTEE'S comprehensive plan and grant application.
- B. Perform intake and assessment functions as required pursuant to K.S.A. 75-7023 and amendments thereto, and in accordance with JJA's Juvenile Intake and Assessment Services Standards.
- C. Perform juvenile intensive supervised probation functions as required pursuant to K.S.A. 75-7034 et seq. and in accordance with JJA's Community Agency Supervision Standards.
- D. Perform case management services for juvenile offenders placed in JJA custody and in accordance with JJA's Community Agency Supervision Standards.
- E. Assume the authority and responsibility for funds received through JJA in accordance with the provisions of the JJA Financial Rules and Guidelines for Graduated Sanctions and Prevention Block Grants.
- F. Convene a juvenile corrections advisory board pursuant to K.S.A. 75-7044 and amendments thereto, and determine and establish an administrative structure for the effective administration and delivery of the comprehensive juvenile justice system.
- G. Provide administrative oversight to enhance the operational and evaluation procedures by assessing program efficiency and effectiveness of juvenile justice programs funded by state block grant funds.
- H. Notify JJA in writing, within ten (10) days of appointment, of administrative changes of the Chairperson for the Board of County Commissioners and Juvenile Corrections Advisory Board, Administrative Contact, Director of Juvenile Intake and Assessment, Community Case Management and Juvenile Intensive Supervised Probation.
- I. Adhere to all applicable Federal and State laws and regulations, the Interstate Compact for Juveniles, K.S.A. 38-1008 *et seq.*, as well as JJA field standards, policies and procedures, and JJA's Financial Rules and Guidelines for Graduated Sanctions and Prevention Block Grants. GRANTEE shall be responsible for any and all costs associated with non-compliance under this section.
- J. Expend JJA funds, including, but not limited to, prevention and/or graduated sanctions in accordance with GRANTEE's funding application approved by JJA.
- K. Acknowledge this grant may be terminated by either party upon a minimum of ninety (90) days written notice to the other party. Upon termination, the unexpended balance of funding distributed to GRANTEE shall be returned to JJA within thirty (30) days.
- L. Acknowledge that if, in the judgment of the Commissioner of JJA, sufficient funds are not appropriated to fully continue the terms of this agreement, JJA may reduce the amount of the grant award.
- M. Follow all applicable state and federal laws related to confidentiality of information in regard to juvenile offenders. This provision is not intended to hinder the sharing of information where necessary to effect delivery of services when undertaken in compliance with applicable laws.

- N. Neither assume nor accept any liability for the actions or failures to act, either professionally or otherwise, of JJA, its employees and/or its contractual agents.
- O. Not consider employees or agents of the GRANTEE as agents or employees of JJA. GRANTEE accepts full responsibility for payment of unemployment insurance, workers compensation and social security, as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this Grant.
- P. Not hold JJA and the State of Kansas, and their employees, officials or agents, liable for any damages or costs arising from the cancellation, voiding, denial or withholding of funds to GRANTEE.
- Q. Submit problems or issues regarding the terms of this grant in writing to the Commissioner of the Juvenile Justice Authority for final review and resolution.
- R. If any provision of this grant violates any statute or rule of law of the State of Kansas, it is considered modified to conform to that statute or rule of law.
- S. Provide each child under its responsibility for placement and care with the protections found in Section 471 of Title IV-E of the Social Security Act and Kansas' Title IV-E Plan and perform candidate for foster care determinations in accordance with Section 471(a)(15) of the Social Security Act. In connection with the performance of services under this Agreement, GRANTEE also agrees to comply with the provisions of the Civil Rights Act of 1964, as amended (78 Stat. 252), Section 504 of the Rehabilitation Act of 1973, Public Law 93-112, as amended, the Regulations of the U. S. Department of Health and Human Services issued pursuant to these Acts, the provisions of Executive Order 11246, Equal Employment Opportunity, dated September 24, 1965, the provisions of the Americans with Disabilities Act of 1990, Public Law 101-336 and the Health Insurance Portability & Accountability Act of 1996; in that compliance shall include, but is not limited to, disclosing only that information that is authorized by law, authorized by the juvenile offender or his parent or legal guardian, setting a time limit on the authorization and disclosure, taking safeguards to prevent use or disclosure of the records, keeping an accounting of all requests for records and documenting its efforts to either protect or release relevant records; there shall be no discrimination against any employee who is employed in the performance of this Agreement, or against any applicant for such employment, because of age, color, national origin, ancestry, race, religion, creed, disability, sex or marital status. This provision shall include, but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. GRANTEE agrees that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the GRANTEE. GRANTEE further agrees to insert similar provisions in all sub-contracts for services allowed and authorized under this Agreement under any program or activity.
- T. Provide services to applicable juveniles residing or adjudicated in GRANTEE'S Judicial District.
- U. Maintain books, records, documents, and other evidence in a manner that accurately reflects receipts and expenditures of all programs funded by this grant.
- V. Not use state funds allocated through this grant to supplant GRANTEE'S present Federal, State or local funding of services or programs.
- W. Maintain records and submit reports containing such information and at such times as required by JJA.
- X. Attend all applicable training sponsored by JJA.
- Y. Enter into agreements with member counties and/or private, public or not-for-profit entities for the delivery of graduated sanctions and prevention services in order to maximize the effective and efficient use of state resources. All agreements between GRANTEE and member counties or subcontractors shall be in writing and shall require compliance with these award conditions. GRANTEE shall be responsible for ensuring member county and/or subcontractor compliance with these grant conditions, JJA Juvenile Intake and Assessment Standards, JJA Community Agency Supervision Standards, the Financial Rules and Guidelines for Graduated Sanctions and Prevention Block Grants, and state and federal law. If requested by JJA, the GRANTEE shall forward a copy of all such agreements to JJA indicating compliance with this condition.

**II. JJA AGREES TO:**

- A. Establish standards, policies and procedures for Juvenile Intake and Assessment, Community Case Management and Juvenile Intensive Supervised Probation, and provide consultation and technical assistance to GRANTEE for the implementation of the comprehensive juvenile justice system.
- B. Provide oversight necessary to support the Juvenile Justice Reform Act.
- C. Maintain case management purchase of service funds for services in the Case Management Payment System Handbook.
- D. Receive and process invoices for non-Medicaid provider services contained in the Handbook.
- E. Assume responsibility for payment of Medicaid services contained in the Case Management Payment System Handbook.
- F. Delegate authority to Grantee to sign consents necessary in the administration of programs for juvenile offenders in the custody of the Kansas Juvenile Justice Authority to GRANTEE or its designees.
- G. Acknowledge this grant may be terminated by either party upon a minimum of ninety (90) days written notice to the other party. Upon termination, the unexpended balance of funding distributed to GRANTEE shall be returned to JJA within thirty (30) days.
- H. Conduct audits and reviews of GRANTEE to determine their level of compliance with Juvenile Intake and Assessment, Community Case Management, and Juvenile Intensive Supervised Probation standards and the Case Management Payment System Handbook, JJA Financial Rules and Guidelines for Graduated Sanctions and Prevention Block Grants, and all applicable laws, regulations, and policies. In the event of a finding of unsatisfactory compliance with its obligations under this Agreement, or a finding based upon other evidence of a serious violation and/or lack of compliance with Agreement, all applicable Federal and State laws and regulations, as well as JJA field standards, policies and procedures, JJA may withhold part or all of any grant due or to become due to GRANTEE as payment for services rendered hereunder.
- I. Neither assume nor accept any liability for the actions or failure to act, either professionally or otherwise, of GRANTEE, its employees and/or its contractual agents.

**APPROVED BY: Chairperson, Board of County Commissioners**

Name: \_\_\_\_\_  
(Please Print First Name, MI, and Last Name)

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

**APPROVED BY: Kansas Juvenile Justice Authority Commissioner**

Name: Curtis Whitten

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

# Memorandum

## City of Lawrence

### City Manager's Office

TO: Douglas County Commission  
Craig Weinaug, County Administrator

CC: David L. Corliss, City Manager  
Diane Stoddard, Assistant City Manager

FROM: Corey Mohn, Economic Development Coordinator

DATE: May 27, 2011

RE: Plastikon Agreement

#### *Background*

Plastikon purchased the Serologicals Building in East Hills Business Park with plans to manufacture high tolerance parts and accessories for the diagnostic healthcare and pharmaceutical industries. Plastikon will commence operations in Lawrence by the end of calendar year 2011. The City of Lawrence and Douglas County have finalized the Plastikon Healthcare, LLC Performance Agreement for Economic Development Incentives.

#### *Major Provisions*

Plastikon requested an employee training incentive of \$500 per employee, paid over 5 years by the City and County, with a maximum payment of \$63,000 to Plastikon over those five years. The \$63,000 total is based on the creation of 126 full-time employees.

Two major provisions for consideration:

1. Section 4. a: The agreement indicates a full-time employee is one that is working 32 hours per week, which is consistent with Plastikon's employee rules and also makes the position benefit-eligible. This is consistent with other local manufacturers. The agreement also allows Plastikon to count part-time employment hours to create full-time equivalents (FTE), but this is capped at a maximum of 5 FTEs of the total of 126 employees.
2. Targets for employee creation have been adjusted from the original proposal for the first two years. This was done in response to their slower-than-anticipated move in schedule. The adjustment does not affect the overall total projection of 126 jobs, nor the hiring targets for years 3-5, but shifts 13 employee starts from 2011 to 2012. City staff recalculated the benefit/cost ratio and found negligible impact to this change.



*Recommended Actions*

City staff recommends the County Commission authorize the County Administrator to enter into a performance agreement with Plastikon Healthcare, LLC in conjunction with the City of Lawrence.

**PLASTIKON HEALTHCARE, LLC PERFORMANCE AGREEMENT  
FOR ECONOMIC DEVELOPMENT INCENTIVES**

*Whereas*, Plastikon Healthcare, LLC, a Kansas limited liability company ("Plastikon"), is a wholly owned subsidiary of Plastikon Industries, Inc. Plastikon Industries, Inc. submitted a revised application for Incentives to the City of Lawrence, Kansas ("City"), which is attached hereto and incorporated herein by reference; and

*Whereas*, the City in cooperation with Douglas County ("County") endeavors to achieve three goals for economic development: (1) job growth in excess of population growth; (2) increasing the share of the tax base coming from non-residential growth; and (3) increasing career opportunities by attracting highly-skilled jobs in expanding industries; and

*Whereas*, the City's Economic Development policies codified in Chapter 1, Article 21 of the Code of the City of Lawrence, Kansas, 2009 Edition, and amendments thereto, identify light manufacturing and distribution and life sciences / research as industries that should be a focus of the City's economic development efforts; and

*Whereas*, the City's Economic Development policies provide that the City may, in cooperation with the County, utilize incentives, including loans and/or grants, among other assistance, to provide new businesses capital for job training; and

*Whereas*, on December 2, 2010, the Public Incentives Review Committee reviewed and commented on Plastikon's request for an employee training incentive based upon its revised application; and

*Whereas*, on December 14, 2010, the governing body of the City conducted a public hearing on the request for the employee training incentive, and in reliance upon Plastikon's Revised Application, the governing body of the City did approve the employee training incentive conditioned upon certain conditions precedent including but not limited to 1) execution of a performance agreement between the City, the County and Plastikon pursuant to Chapter 1, Article 21 of the City Code, and other lawfully required conditions and approvals; and

*Whereas*, on December 15, 2010, the Board of County Commissioners of Douglas County conducted a hearing on the request for the employee training incentive and in reliance upon Plastikon's Revised Application to the City, the Board of Commissioners of Douglas County did approve the employee training incentive conditioned upon the execution of a performance agreement between the City, the County and Plastikon; and

*Whereas*, Section 1-2107 of the City Code provides that each company that receives an incentive from the City will be held accountable to certain performance provisions contained in a performance agreement between the company and the City;

*Whereas*, the City, the County and Plastikon desire to enter into this Performance Agreement;

**NOW THEREFORE** in consideration of the mutual covenants herein, the City, the County, and Plastikon hereby enter into this Performance Agreement and agree as follows:

1. **Recitals.** The above recitals are incorporated herein by reference as if fully set forth herein.

2. **Plastikon Heathcare, LLC.** On the effective date of the Performance Agreement, Plastikon is a plastic manufacturing company that specializes in the manufacturing of high tolerance parts and accessories for the diagnostic healthcare and pharmaceutical industries. Plastikon's planned Lawrence facility will manufacture sterile fluid filled resin products utilizing blow-fill-seal technology. The end products will be used in clinical diagnostic labs in the United States and other countries. PSP Kansas, LLC is a related entity that purchased the Building. Plastikon leases the Building from PSP Kansas, LLC.

3. **Condition For Distribution of Employee Training Incentive.** Prior to the City and County distributing any portion of the Employee Training Incentive (as described below), Plastikon shall purchase the building located at 3780 Greenway Circle in East Hills Business Park in Lawrence, Kansas (the "Building") and shall commence operations within the facility by December 31, 2011.

4. **Employee Training Incentive From City and County.** The City and County agree to share equally in the Employee Training Incentive provided herein. For each new full time employee employed by Plastikon in the Lawrence, Kansas facility, and subject to the performance provisions set forth in Section 5, below, the City and County will pay up to a combined total of \$63,000 (Sixty-Three Thousand and 00/100 Dollars) over five years ("the Employee Training Incentive"). If fully paid, this is the equivalent of Five Hundred Dollars (\$500.00) per employee for up to 126 employees. The City's and County's respective contribution over the five year period shall not exceed \$31,500 each.

a. **Full Time Employee Defined.** Plastikon's employment policies define a "full-time" position as an employee working more than 32 hours per week. For the purposes of this Performance Agreement, a "full time employee" shall mean any employee on the payroll at the end of the year, as shown on the Quarterly Wage Reports filed with the Kansas Department of Labor for the Fourth Quarter of each year, who has worked more than 32 hours per week for at least three (3) consecutive months of the year being measured, except that during calendar year 2011, a new full time employee shall be any new employee on the payroll at the end of the year who has worked more than 32 hours per week for at least one (1) month of 2011. Plastikon may count additional full-time employees who have worked less than the required number of months in any year, if such employee was hired to fill a vacancy created by an employee who, had he or she remained with the company, would be counted as a full time employee. No employee shall be counted more than once for purposes of this calculation. In addition, Plastikon may aggregate the hours worked by part-time employees to determine a "full time equivalent" position based upon a 32-hour work week, by documenting the number of part-time hours worked by such employees during the year, and dividing such hours by 1,664. For example, if a position satisfies these conditions as a full-time equivalent position as a result of more than one person filling such position (i.e. a job-share arrangement) such position shall count as one full-time equivalent position. Notwithstanding the foregoing, however, full time

equivalent positions may be only used to create a maximum of five (5) Employees for purposes of Paragraph 5, below.

b. **Payment of Incentive Over Five Years.** The Employee Training Incentive shall be payable by the City and County over five (5) years in annual equal installments of \$6,300 (Six Thousand Three Hundred and 00/100 Dollars) each for a total annual incentive of \$12,600 (Twelve Thousand Six Hundred and 00/100 Dollars), provided Plastikon achieves Substantial Compliance of greater or equal to 90% of its target as set forth in Paragraph 5 of this Performance Agreement. Payment of such annual Employee Training Incentive shall be made by the City and County no later than ten (10) days following the City's acceptance of the certification provided pursuant to Paragraph 5, below.

5. **Substantial Compliance of Performance Provisions.** Plastikon's annual job creation and wage structure targets shall be as set forth in Table 1 below:

**Table 1**

<b>Year</b>	<b>New Employees<sup>1</sup></b>	<b>Employees<sup>2</sup></b>	<b>Avg. Annual Salary<sup>3</sup></b>	<b>Lowest Hourly Wage</b>	<b>Capital Investment<sup>4</sup></b>
<b>2011</b>	<b>21</b>	<b>21</b>	<b>\$46,875</b>	<b>\$12.26</b>	<b>\$7,000,000</b>
<b>2012</b>	<b>25</b>	<b>46</b>	<b>\$46,875</b>	<b>\$12.26</b>	
<b>2013</b>	<b>20</b>	<b>66</b>	<b>\$46,875</b>	<b>\$12.26</b>	
<b>2014</b>	<b>25</b>	<b>91</b>	<b>\$46,875</b>	<b>\$12.26</b>	
<b>2015</b>	<b>35</b>	<b>126</b>	<b>\$46,875</b>	<b>\$12.26</b>	

<sup>1</sup>**New Employees** shall be the increase of Employees from the previous year.

<sup>2</sup>**Employees** will be the total full-time employees determined in paragraph 4, above.

<sup>3</sup>**Average Annual Salary** is the average year end salary of all employees, determined by dividing gross wages paid by the number of Employees. For year 2011, the Average Annual Salary shall be converted to an annualized average, based upon wages and salaries paid after the company commences substantial business operations.

<sup>4</sup>**Capital Investment** shall be any purchases or expenditures of real property, machinery and equipment by Plastikon or PSP Kansas, LLC, but shall not include any administrative or legal fees.

Substantial compliance of the performance provisions based upon the targets set forth in Table 1 above shall be evaluated annually. Each year will be evaluated separately. Plastikon shall certify to the City and County compliance with this Agreement's wage, capital and job requirement for the preceding year by March 1 following the end of each year through 2015. The City and the County shall have a period of thirty (30) days to evaluate such certification and approve or deny the payment request. In connection with such review, the City and the County may, during such times reasonably determined by Plastikon, arrange to view Plastikon's quarterly wage reports submitted to the Kansas Department of Labor, to confirm Plastikon's annual verification. If the quarterly wage reports reveal a material discrepancy, the City or County shall also have the right to view such other documents as may be reasonably necessary to reconcile such inconsistency. In no event shall the City or the County retain copies of wage and employment records without first ensuring the continued confidentiality of such records, out of consideration for the privacy of Plastikon's employees.

Failure to meet compliance requirements in any one year may, at the discretion of the City or the County, result in a reduction of incentives for such year. If Plastikon does not provide the information required for its annual report or does not certify that the data it submits for the annual evaluation is accurate, it may be subject to incentive reductions for the then current year.

Compliance	Annual Incentive Payment
90% or greater	100%
80% to 89%	85%
70% to 79%	75%
Less than 70%	0%

There will be no clawbacks for incentives provided in any prior year. Each year will be evaluated separately and will be based on the projections in this Agreement. Each element as shown in the example below will be considered as a separate element for compliance:

*Example of Substantial Compliance Calculation:*

**PLASTIKON INCENTIVE CALCULATION FOR 2013**

	<b>New Employees</b>	<b>FTE Employees</b>	<b>Average Annual Salary</b>	<b>Lowest Hourly Wage</b>
2013	18	63	\$46,875	\$12.10
Target, 2013	20	66	\$46,875	\$12.26
Compliance	90%	95%	100%	99%

<b>Total Compliance</b>	<b>96%</b>
<b>Award</b>	<b>100%</b>

**Total Compliance** is the average of compliance for each of the four elements evaluated.

PIRC shall annually review and monitor compliance for the employment training incentive in accordance with Chapter 1, Article 21, and *shall report to the City Commission and Douglas County.*

6. **Adverse Findings.** City staff shall notify Plastikon of any adverse finding prior to an incentive reduction being taken. Plastikon may appeal an adverse finding to the City Commission in accordance with the procedures set forth in Chapter 1, Article 21 of the City Code.

7. **No Joint and Several Obligations.** Plastikon understands that the City and County are responsible solely for the payment of their respective portion of the Employee Training

Incentive as set forth in Paragraph 4 of this Agreement. Neither the City nor the County shall be jointly or severally liable for the other's portion of the Employee Training Incentive.

8. **Kansas Cash Basis Law.** The City and County each represent and warrant that the expenditures contemplated by this Agreement to be made for the current budget year are actually on hand and will not violate the Kansas Cash Basis Law, K.S.A. 10-1101, et seq. The obligations of each municipality for subsequent years are subject to appropriation in accordance with the Kansas Cash Basis Law.

9. **Notices.** Except as otherwise specifically provided herein, all notices or demands under this Agreement shall be in writing, addressed to the parties at the addresses set forth below, or as the parties may, from time to time, otherwise designate in writing:

**City:** City of Lawrence, Kansas  
Attention: City Manager  
6 East 6<sup>th</sup> Street  
P.O. Box 708  
Lawrence, KS 66044

**County:** Douglas County  
Attention: County Administrator  
1100 Massachusetts Street  
Lawrence, Kansas 66044

**Plastikon:** Plastikon Healthcare, LLC  
Attn: John Low  
688 Sandoval Way  
Hayward, California 94544

With a copy to:  
Matthew S. Gough  
Barber Emerson, L.C.  
1211 Massachusetts St.  
P.O. Box 667  
Lawrence, Kansas 66044

10. **Miscellaneous Provisions.**

a. The persons who have executed this Agreement represent and warrant that they are duly authorized to execute this Agreement in the representative capacity.

b. Paragraph headings of this Agreement are for convenience only and are not to be construed as part of this Agreement and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof.

c. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

d. The terms and provisions of this Agreement shall be interpreted in accordance with and governed by the laws of the State of Kansas.

e. The terms of this Agreement shall extend to and be binding upon the permitted assigns and successors of the parties to this instrument.

f. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

g. This Agreement may not be amended or modified without the written consent of the City, the County, and Plastikon.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2011.

**CITY**

**COUNTY**

\_\_\_\_\_  
City of Lawrence, Kansas  
By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Douglas County, Kansas  
By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PLASTIKON**

Plastikon Heathcare, LLC,  
a Kansas limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(Published in *THE LAWRENCE JOURNAL-WORLD* on May 17, 2011 and May 24, 2011)

**RESOLUTION NO. 11-18**

**A RESOLUTION CALLING A PUBLIC HEARING ON THE (I) ADVISABILITY OF CREATING A COMMUNITY IMPROVEMENT DISTRICT WITHIN DOUGLAS COUNTY, KANSAS, (II) AUTHORIZING THE MAKING OF CERTAIN IMPROVEMENTS THEREIN, AND (III) SETTING FORTH THE GENERAL NATURE OF THE IMPROVEMENTS, THE ESTIMATED OR PROBABLE COSTS THEREOF, THE PROPOSED METHOD OF ASSESSMENT AND FINANCING; AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH PUBLIC HEARING.**

**WHEREAS**, K.S.A. 12-6a26 *et seq.*, as amended (the "Act") authorizes the Board of County Commissioners (the "Board") of Douglas County, Kansas (the "County") to create Community Improvement Districts within the County and to cause certain improvements to be made therein and the levying and collecting of special assessments upon property in the district deemed by the Board to be benefited by such improvements; and

**WHEREAS**, a petition (the "Petition") was filed with the Douglas County Clerk on April 4, 2011, requesting the creation of a Community Improvement District (the "District") within the County and the making of certain internal improvements therein (the "Project"); and said Petition sets forth: (a) the general nature of the proposed Project; (b) the estimated cost of the proposed Project; (c) the proposed method of financing the proposed Project; (d) the proposed amount and method of assessment; (e) a map and legal description of the proposed District; and (f) the proposed apportionment of the cost between the District, the County-at-large and others; and

**WHEREAS**, the County Clerk has certified that the Petition was signed by the owners of more than (i) 55% of the land area within the proposed District, and (ii) 55% of the assessed value of the land area within the proposed District, and is otherwise sufficient; and

**WHEREAS**, pursuant to the Act, prior to considering the formation of the District and imposition of special assessments, the Board must conduct a public hearing, notice of which shall be given in accordance with the Act.

**THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS:**

**SECTION 1. Petition.** The Board finds that the Petition is in compliance with the provisions of the Act.

**SECTION 2. Public Hearing.** A public hearing before the Board regarding the creation of the District and imposition of the special assessments shall be held on June 1, 2011 at 6:35 p.m. or as soon thereafter as the Board may hear such matter, at the Board's meeting room at 1100 Massachusetts St., Lawrence, Kansas.

**SECTION 3. Description of Proposed District, Project, Estimated Cost, Method of Financing, and Method of Assessment.** The Petition requests the creation of the District, identifies the general nature of the proposed project, estimated cost, method of financing, and method of assessment as follows:

(a) **General Nature of the Proposed Project.** The general nature of the proposed Project is as follows:

Rehabilitation of Yankee Tank Dam (Wakarusa Watershed Joint District No. 35, site 24) to bring the



dam structure into compliance with state and federal dam safety regulations. Yankee Tank dam will extend flood control benefits to the downstream properties for another 100 years. Additional incidental benefits include wildlife habitat enhancement, aquatic plants and fisheries improvements, local recreational restoration, and community esthetic value re-creation through a restored permanent pool, and improved water quality.

(b) **Estimated Cost of the Proposed Project.** The estimated cost of the Project is: \$1,988,600.

(c) **Proposed Method of Financing the Proposed Project.** The proposed method of financing the District's share of the proposed Project is through issuance of Douglas County, Kansas full faith and credit bonds, to be paid by special assessments imposed against the property within the District pursuant to K.S.A. 12-6a30, but only if the Project is constructed. No community improvement district sales tax shall be imposed pursuant to K.S.A. 12-6a31.

(d) **Proposed Apportionment of Costs of Proposed Project.** The proposed apportionment of the cost of the Project between the District, the County-at-large, and others is: Not to exceed \$180,000 to be paid by the District and the remaining amounts to be paid from a consortium of other public and private entities such as, but not limited to, the City of Lawrence, Kansas, Douglas County, Kansas, Wakarusa Watershed Joint District No. 35, the Kansas Department of Transportation, Kansas Conservation Commission, and the Natural Resources Conservation Service, an agency of the United States Department of Agriculture.

(e) **Proposed Method of Assessment of Proposed District's Share of Costs.** The proposed amount of the assessment to be paid by the District is \$180,000. The proposed method of assessment of the proposed District's portion of the costs of the proposed Project is by shares, with the total number of shares being 38 and each separate parcel of land being allocated the number of shares assigned to it as set forth in **Exhibit A**. In the event that any initial parcel of land is later subdivided, the unpaid assessment on that parcel shall be prorated to the new subparcels on the basis of land area. In the event that any unplatted parcel is platted, the assessment otherwise attributable to any land coming within streets or other public property shall be spread among the new platted lots on the basis of land area.

(f) **Legal Descriptions and Map of Proposed District.** Legal descriptions of real property to be included within the proposed District are set forth in **Exhibit A**. and a map of the proposed District is set forth in **Exhibit B**.

**SECTION 4. Notice of Public Hearing.** Notice of such public hearing shall be given by publication of this Resolution once a week for two consecutive weeks in the official County newspaper, the last publication being not less than 7 days prior to the public hearing. In addition, the County Clerk shall cause a copy of this Resolution to be sent (i) by certified mail to all owners of property within the proposed District, and (ii) by first class mail, postage prepaid, to the City of Lawrence, the Lawrence-Douglas County Planning Commission, all such mailings to occur not less than 10 days prior to the public hearing.

**SECTION 5. Effective Date.** This Resolution shall be in full force and effect from and after its adoption by the Board.

**ADOPTED** by the Board of County Commissioners of Douglas County, Kansas on June 8, 2011.

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Jim Flory, Chair

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Nancy Thellman, Commissioner

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Mike Gaughan, Commissioner

ATTEST:

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Jameson D. Shew, County Clerk

# EXHIBIT A

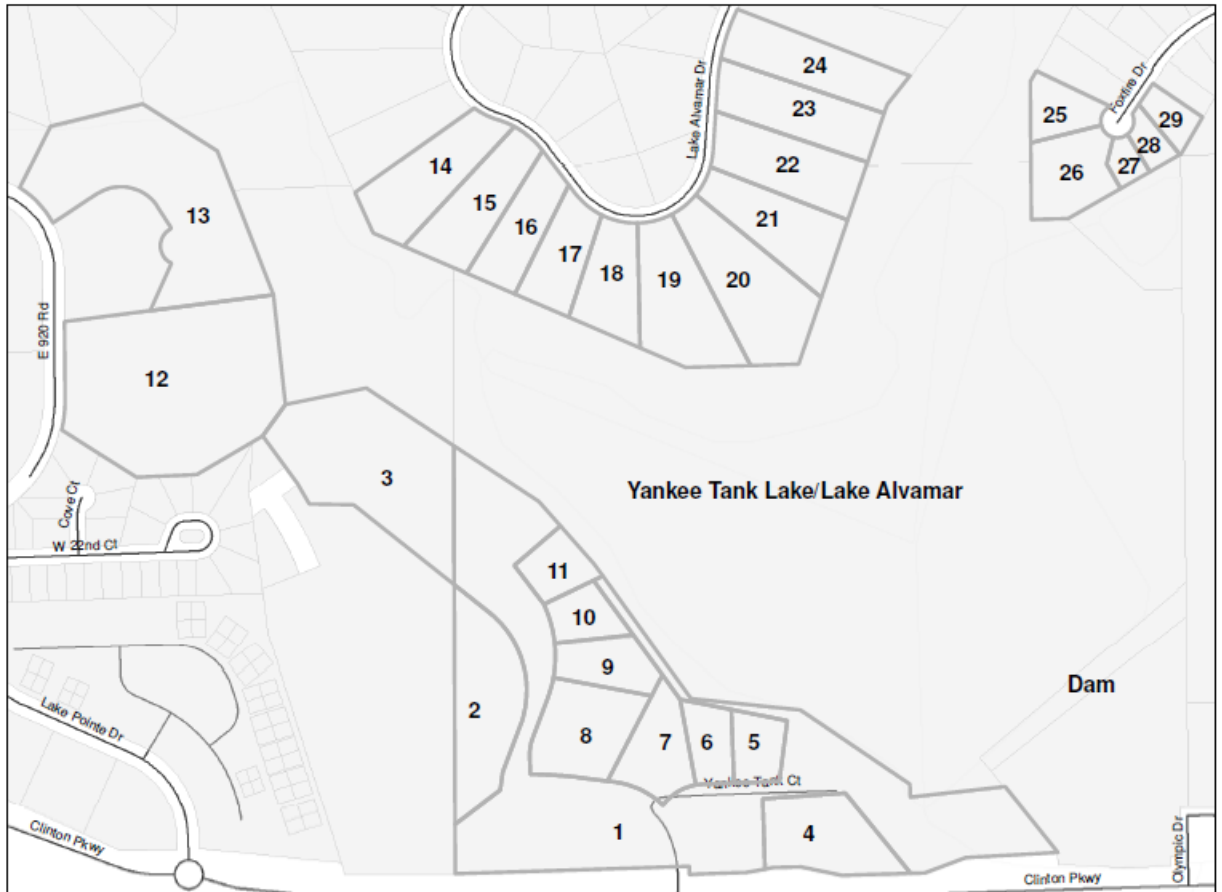
## Property Within Proposed Yankee Tank Community Improvement District

Tract #	Owner1		Legal	Assessed Value	Shares
1	ALVAMAR INC	ATTN STUNTZ RICHARD	5-13-19 SE QR THAT PORTION OF 400356B03 ANNEXED ORD 7550 985/5185 DESC: COM SW CR SD QR N00DEG12'37"W 235.75 FT ALONG W LN SD QR TO PT BEG TH ALONG W LN SD QR 179.4 FT TH N52DEG33'09"E 242.1 FT TH N08DEG11'38"E 65.6 FT TH N20DEG43'33"E 178.9 FT TH N15DEG24'35"W 460.3FT TH N51DEG32'41"W 158.8 FT TO A PT ON W LN SD QR TH N00DEG12'37"W 505.2 FT TH S56DEG36'24"E 369.1 FT TH S41DEG31'01"E 118.4 FT TH S49DEG31'19"W 221.1 FT TH S37DEG17'34"E 177.1 FT THE S15DEG45'12"E 148.1 FT TH S02DEG13'59"W 124.9 FT TH S20DEG32'25"W 234.1 FT TH SLY 130.9 FT TH S86DEG12'11"E 176.7 FT TH S82DEG43'19"E 104.8 FT TH S64DEG29'00"E 197.3 FT TH N62DEG11'28"E 114.2 FT TH N87DEG55'33"E 279.2 FT TH N07DEG19'07"E222 FT TH N78DEG44'32"W 396.8 FT TH N35DEG57'51"W 534 FT TH N64DEG30'13"E 37 FT TH S35DEG41'38"E 548.1 FT TH S84DEG02'14"E 398.9 FT TH S55DEG53'48"E 480.5 FT TH S01DEG50'40"E 46.7 FT THE N83DEG05'46"E 345.7 FT TH S38DEG43'06"E 306.2 FT TH S86DEG47'33"W 334.7 FT TH S89DEG32'12"W 159 FT TH S88DEG16'39"W 51 FT TH N39DEG24'05"W 365.9 FT TH S86DEG05'46"W 299.7 FT TH S01DEG50'40"E 259.3 FT THS79DEG52'29"W 71	7,180.00	7.9
2	ALVAMAR INC	ATTN STUNTZ RICHARD	5-13-19 SE QR THAT PORTION OF 400356B03 ANNEXED ORD 7550 985/5185 DESC: COM SW CR SD QR N00DEG12'37"W 415.15 FT ALONG W LN SD QR TO PT BEG TH N52DEG33'09"E 242.1 FT TH N08DEG11'38"E 65.6 FT TH N20DEG43'33"E 178.9 FT TH N15DEG24'35"W 460.3FT THE N51DEG32'41"W 158.8 FT TO PT ON E LN SD QR TH S00DEG12'37"E 870.8 FT TO PT BEG 3.6A (DIV 2005 400356B03)	1,380.00	1.5
3	ALVAMAR INC	ATTN STUNTZ RICHARD	5-13-19 SW QR THAT PORTION OF 400355KB ANNEXED IN ORD 7550 985/5185 DESC: COM SE CR SD QR N00DEG12'37"W 1285.23 FT ALONG LN SD QR TO PT BEG TH CONT ALONG SD E LN 505.2 FT TH N56DEG36'24"W 380.8 FT TH S78DEG21'47"W 300.5 FT TH S35DEG54'53"WTH 140 FT TH S36DEG02'25"E 260.30 FT TH S88DEG57'13"E 160.7 FT TH S51DEG32'41"E" 466.5 FT TO PT BEG 6.3A (DIV 2005 400355KB)	5,745.00	2.6
4	BELVEDERE LC	ATTN HERRMAN MICHAEL	HERRMAN ADD BLK 1 LT 1 A SUBDIVISION OF	31,620.00	1
5	K U ENDOWMENT ASSN	ATTN SOUKUP MONTE	5-13-19 COM AT SE COR SEC 5	1,800.00	1
6	BRAND JOHN W JR	HOFFMAN WILLIAM E	5-13-19 BEG AT PT WHICH IS S89DEG46'05"W ALONG S LINE 1640.17 FT & N 0DEG13'55"W 424.92 FT FROM SE COR SE 1/4 TH S89DEG43'30"W 113.8 FT TH WLY ON 185 FOOT RADIUS CURVE TO LEFT ARC LENGTH 25 FT TH N08DEG36"W 315.62 FT TH S76DEG56'32"E 189.53 FT TH S 0DEG16'30"E 266.9 FT TO PT BEG 1.061A	720.00	1
7	BILLINGS ROBERT G	ATTN BILLINGS BEVERLY	5-13-19 BEG AT PT WHICH IS S89DEG46'05"W ALONG S LINE 1778.89 FT & N 0DEG13'55"W 423.13 FT FROM SE COR SE 1/4 TH SWLY ON 185 FOOT RADIUS CURVE TO LEFT WITH 114.28 FOOT CHORD BEARINGS63DEG59'28"W ARC LENGTH 116.18 FT TH S46DEG00'05"W 27.27 FT TH NWLY ON 310 FOOT RADIUS CURVE TO LEFT WITH 194.04 FOOT CHORD BEARING N62DEG41"W ARC LENGTH 197.36 FT TH N80DEG55'19"W25 FT TH N29DEG01'57"E 433.64 FT TH S34DEG09'51"E 110 FT TH S08DEG36'E 315.62 FT TO PT BEG 1.816A	690.00	1

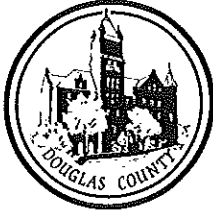
8	BEERS MICHAEL A TRUSTEE		5-13-19 COM AT SE COR SEC 5 THS89DEG46'05"W ALONG S LINE SD SEC 2377.49 FT TH N 0DEG13'55"W 483.27 FT FOR PT BEG:TH N 0DEG13'55"W 66.01 FT TH ON CURVETO RIGHT RADIUS 165 FT ARC DISTANCE 65 FT TH N22DEG20'25"E 157.74 FT TH ON CURVE TO LEFT RADIUS OF 435 FT ARC DISTANCE 76.49 FT TH S77DEG44'05"E 362.22 FT TH S29DEG01'57"W 348.91 FT TH N80DEG55'19"W 104.88 FT TH ON CURVE TO LEFT RADIUS 1455FT ARC DISTANCE 176.8 FT TO BEG 2.61A	28,915.00	1
9	JAM PROPERTIES LLC	ATTN BLOMGREN DANIEL M	5-13-19 BEG AT PT WHICH IS S89DEG46'05"W	1,010.00	1
10	JAM PROPERTIES LLC	ATTN BLOMGREN DANIEL M	5-13-19 BEG AT PT WHICH IS S89DEG46'05"W	385.00	1
11	FLORY MICHAEL A & CHERYL A TRUSTEES		5-13-19 TR OF LAND IN SE QR DESC AS:BEG AT PT WHICH IS S88DEG09'20"W ALONG S LINE 2306.97 FT & N01DEG50'40"W 1098.52 FT FROM SE COR SE QR TH NLY ON 425 FOOT RADIUS CURVE TO LEFT WITH 176.38 FOOT CHORD BEARING N37DEG17'34"W ARC LENGTH 177.67FT TH N49DEG31'19"E 223.6 FT TH S41DEG31'01"E 188.09 FT TH S35DEG41'38"E 51.23 FT TH S64DEG40'58"W 240.92 FT TO PT BEG 1.077A	790.00	1
12	HENRIQUEZ FRANCOIS G II & STEPHENSON LAURA A TRUSTEES		LAKE ESTATES SUB NO 6 BLK 1 LT 1	85,105.00	1
13	PALEY GEORGE F TRUSTEE		LAKE ESTATES SUB NO 3 LT 7.LESS 3.609A D	8,525.00	1
14	GADZIA JOSEPH E		THE RESERVE AT ALVAMAR BLK 1 LT 21 A	83,375.00	1
15	STEVENS THEODORE J	STEVENS KATHLEEN H	THE RESERVE AT ALVAMAR BLK 1 LT 20 A	26,385.00	1
16	ALVAMAR INC	ATTN STUNTZ RICHARD	THE RESERVE AT ALVAMAR BLK 1 LT 19 A	19,335.00	1
17	ALVAMAR INC	ATTN STUNTZ RICHARD	THE RESERVE AT ALVAMAR BLK 1 LT 18 A	21,480.00	1
18	ALVAMAR INC	ATTN STUNTZ RICHARD	THE RESERVE AT ALVAMAR BLK 1 LT 17 A	23,035.00	1
19	SAND RIAN	SAND AMY J	THE RESERVE AT ALVAMAR BLK 1 LT 16 A	101,450.00	1
20	GERMANN MICHAEL C & VICKI L TRUSTEES		THE RESERVE AT ALVAMAR BLK 1 LT 15 A	152,220.00	1
21	KLISH DARREN	KLISH LAURA	THE RESERVE AT ALVAMAR BLK 1 LT 14 A	24,135.00	1
22	PATEL SANDIP	PATEL DIPAK & PATEL ASHISH	THE RESERVE AT ALVAMAR BLK 1 LT 13 A	24,405.00	1
23	SCHMIDT TIMOTHY W	SCHMIDT KIMBERLY J	THE RESERVE AT ALVAMAR BLK 1 LT 12 A	130,845.00	1
24	NORTH TANK LC	ATTN BROWN DOUG	THE RESERVE AT ALVAMAR BLK 1 LT 11 A	25,630.00	1
25	RLCC INC	ATTN LAING RODNEY D	FOXFIRE ADD NO 5 BLK 2 LT 16 A	10,550.00	1
26	LAING RODNEY D	LAING JANNAH K	FOXFIRE ADD NO 5 BLK 2 LT 17A A	132,410.00	1
27	RLCC INC	ATTN LAING RODNEY D	FOXFIRE ADD NO 5 BLK 2 LT 18A A	9,720.00	1
28	GIBSON HARRY	GIBSON BECKY	FOXFIRE ADD NO 5 BLK 2 LT 19 A	110,655.00	1
29	VAUGHN DAVID A	VAUGHN LAURA M	FOXFIRE ADD NO 5 BLK 2 LT 20 A	106,930.00	1
			TOTAL	1,176,425.00	38

# EXHIBIT B

Yankee Tank Community Improvement District



08-24-10



## DOUGLAS COUNTY PUBLIC WORKS

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

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

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### MEMORANDUM

TO : Board of County Commissioners

FROM : Keith A. Browning, P.E., Director of Public Works  
Michael D. Kelly, L.S., County Surveyor *MK*

DATE : June 3, 2011

RE : Drainage Structure Replacement; Bridge No. 4.00N – 9.16E  
Acquisition of Easement; Consent agenda

A project has been designed to replace a deficient drainage structure located one (1) mile north of Worden on N900 Road. Plans were developed in-house and negotiations with the second of two landowners for permanent easement are finally complete. You may recall the contract with the first landowner (Jehle) was executed in March 2011. Negotiations were protracted with the second landowner (Hornberger) due to some fence concerns.

Construction is planned for mid-summer 2011 and will be accomplished primarily using county personnel.

To ensure the proper completion of a necessary construction project approval is recommended for the attached CONTRACT FOR HIGHWAY PURPOSES.

**ACTION REQUIRED:** Consent agenda approval of the CONTRACT FOR HIGHWAY PURPOSES for Drainage Structure No. 4.00N – 9.19E.

Project No. 04000919  
R/W Negotiation Details

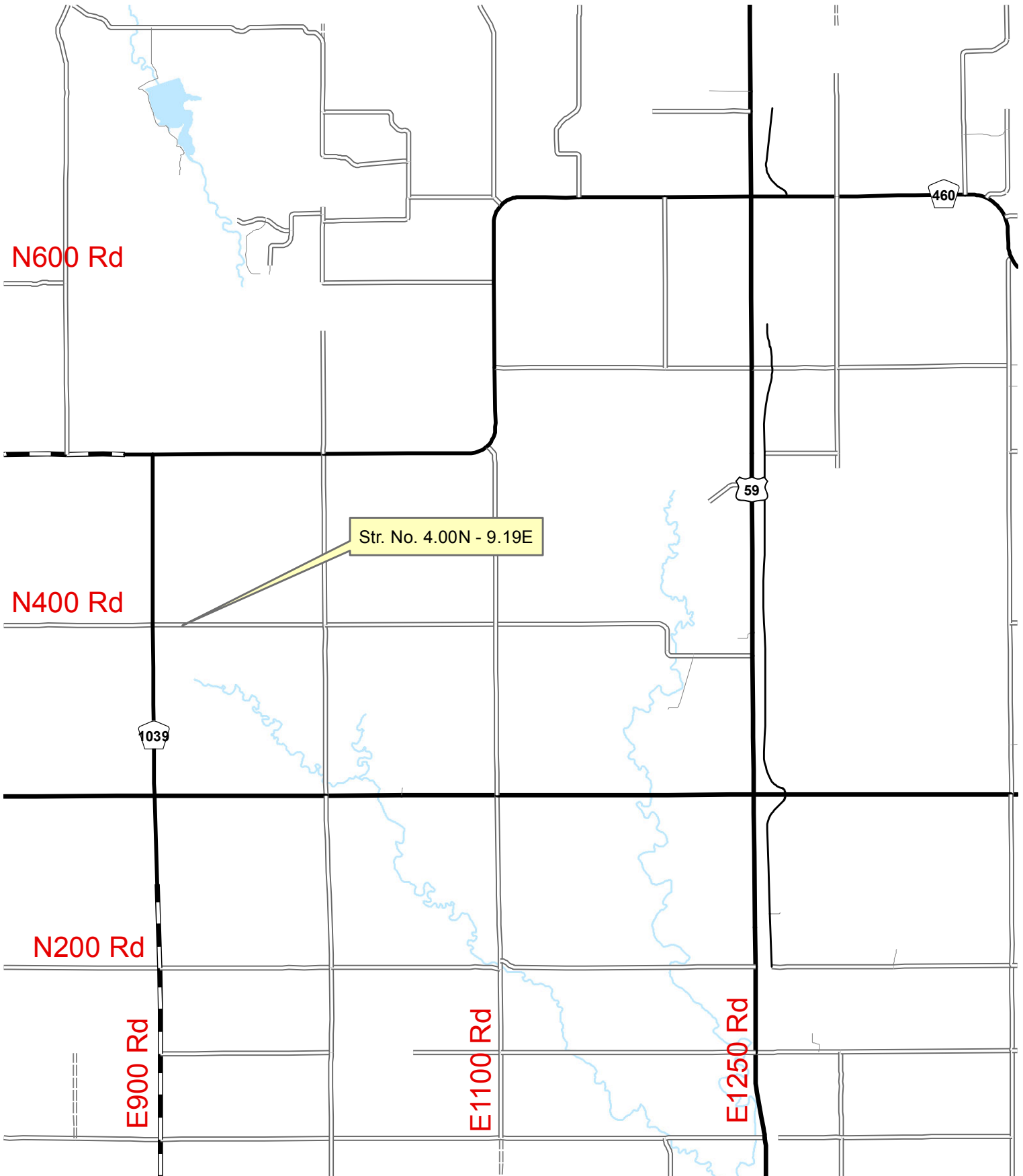
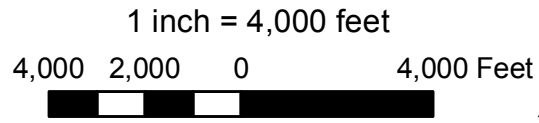
18-May-11

Tract 1 - C-HO Farms, Inc

parent parcel = 160 acres

R/W	0.1946	ac.	\$	3,600.00	/ac.	\$	700.56
Temp. Esmt	0.0622	ac.	\$	360.00	/ac.	\$	22.39
Fence (barb w/metal post)	505	ft.		\$2.25	/ft.	\$	1,136.25
Corner assemblies	4	ea.		\$650.00	/ea.	\$	2,600.00
End assembly	2	ea.		\$450.00	/ea.	\$	900.00
Cattle Panel	3	ea.		\$20.00	/ea.	\$	60.00
Steel Cable	65	ft.		\$2.00	/ft.	\$	130.00
Hardware	150			\$1.00		\$	150.00
Reimburse sales tax for fence rounding	8.85%	of	\$	4,976.25		\$	440.40
						\$	<u>10.40</u>
total						\$	<b>6,150.00</b>

# Str. No. 4.00N - 9.19E General Location Map





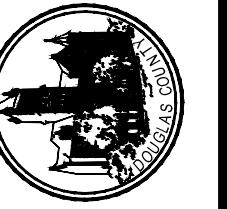
STA. 10+00 - SL =  
NW COR. SEC. 32, T14S, R19E  
N 180039.01  
E 2071780.57

C-HO Farms Inc.  
ATTN Charles F Hornberger JR.

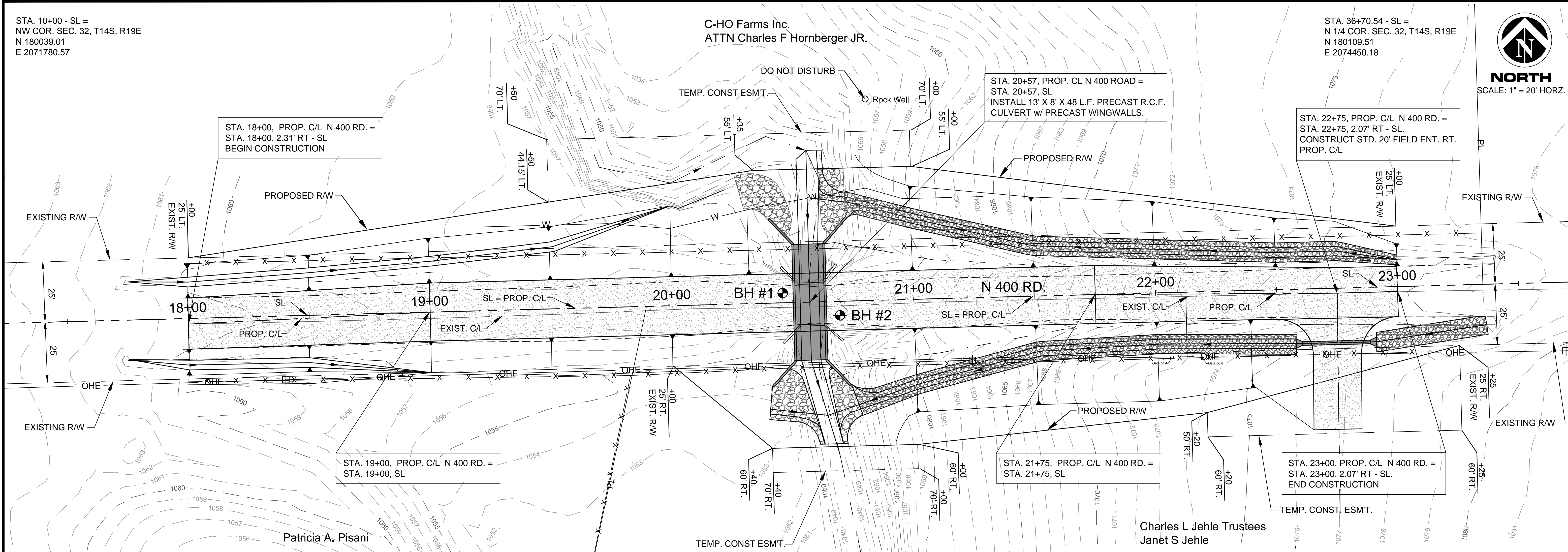
STA. 36+70.54 - SL =  
N 1/4 COR. SEC. 32, T14S, R19E  
N 180109.51  
E 2074450.18



Douglas County Public Works  
1242 Massachusetts  
Lawrence, Kansas 66044



Project: ROAD RECONSTRUCTION AND STORM DRAINAGE  
Project No.: 0400019  
Designed By: A.S.  
Checked By: T.G.  
Drawn By: L.H.  
Date: 7/1/2010



**LOG OF BORING NO. B-1** Page 1 of 1

CLIENT		PROJECT				
Douglas County Department of Public Works		New Culvert				
SITE		STRUCTURE				
North 400 Road Lawrence, Kansas		Structure No. 0400-0919				
DEPTH, ft.	USCS SYMBOL	SAMPLES				TESTS
		NUMBER	TYPE	RECOVERY, in	SPT-N BLOWS / ft.	
0.5	CL	1	SS	8	13	15
1.7	CH	2	SS	8	14	18
3	CL	3	SS	10	11	23
4	CH	4	SS	12	2	40
5	PA	5	SS	15	21	22
6	SS	6	SS	97/12	15	

DESCRIPTION: Approx. Surface Elev.: 99.5 ft  
0.5' 6" GRAVEL  
LEAN TO FAT CLAY, brown, stiff to very soft  
17' \*\*SHALE, severely to moderately weathered, gray brown to dark gray, soft to moderately hard  
BOTTOM OF BORING

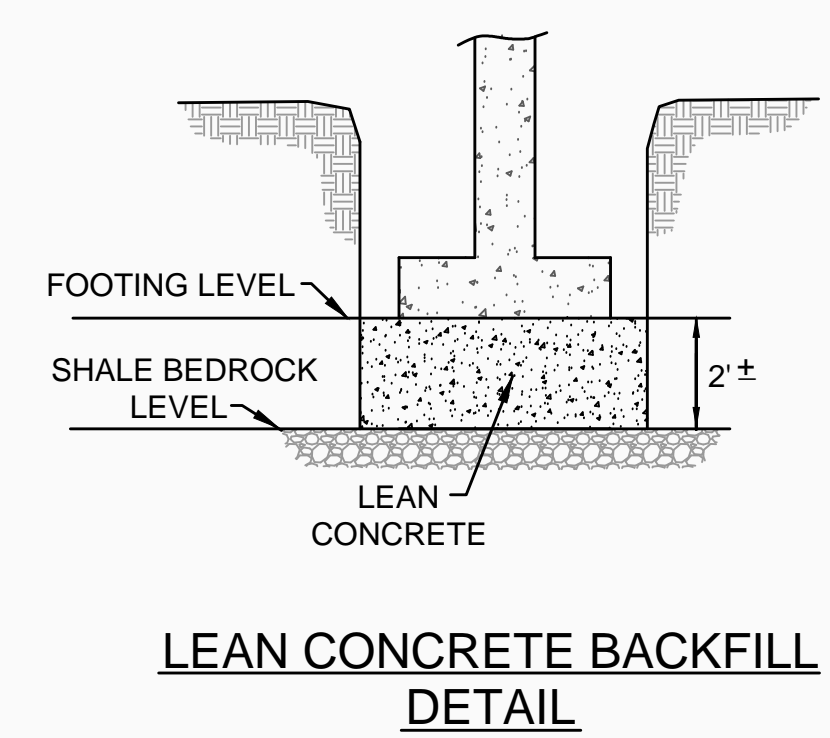
\*\*\*Classification estimated from disturbed samples. Core samples and petrographic analysis may reveal other rock types.

WATER LEVEL OBSERVATIONS, ft  
WL 9 WS 12 AB  
WL 9

BORING STARTED 3-16-10  
BORING COMPLETED 3-16-10  
RIG 380 FOREMAN BJ  
APPROVED DAB JOB # 02105044

**GENERAL NOTES FOR DRAINAGE STRUCTURE**

- SOFT CLAY SOILS SHALL BE REMOVED TO SUITABLE SHALE BEDROCK.
- FOUNDATIONS SHALL BEAR ON OR WITHIN THE SEVERELY OR MODERATELY WEATHERED SHALE BEDROCK.
- WATER WILL LIKELY BE ENCOUNTERED NEAR OR ABOVE PLANNED FOUNDATION ELEVATION. DEWATERING WILL BE REQUIRED.
- THE BASE OF ALL FOUNDATION EXCAVATIONS SHALL BE FREE OF WATER AND LOOSE / SOFT SOIL AND ROCK PRIOR TO PLACING CONCRETE.
- CONCRETE SHALL BE PLACED SOON AFTER EXCAVATING TO REDUCE BEARING STRATUM DISTURBANCE. IF MATERIALS AT BEARING LEVEL BECOMES EXCESSIVELY DRY, DISTURBED, SATURATED, OR FROZEN, THE AFFECTED SOIL SHALL BE REMOVED PRIOR TO PLACING CONCRETE.



**LOG OF BORING NO. B-2** Page 1 of 1

CLIENT		PROJECT				
Douglas County Department of Public Works		New Culvert				
SITE		STRUCTURE				
North 400 Road Lawrence, Kansas		Structure No. 0400-0919				
DEPTH, ft.	USCS SYMBOL	SAMPLES				TESTS
		NUMBER	TYPE	RECOVERY, in	SPT-N BLOWS / ft.	
0.5	PA	1	SS	8	50/2	25
1.7	CH	R1	DB	62%	RQD	34%
4.3	SS	2	SS	15	36	19
5	DB	R2	DB	93%	RQD	40%
11.5	DB	R3	DB	90%	RQD	90%
16.5	DB	R4	DB	100%	RQD	60%

DESCRIPTION: Approx. Surface Elev.: 102 ft  
0.5' 6" GRAVEL  
1.7' FAT CLAY, brown  
\*\*LIMESTONE, slightly weathered, thin bedded, gray, moderately hard  
4.3' \*\*SHALE, severely to moderately weathered, brown, soft to moderately hard  
11.5' \*\*SHALE, slightly weathered, dark gray, moderately hard  
16.5' BOTTOM OF BORING

\*\*\*Classification and stratigraphic boundaries estimated from visual observations of core samples. Petrographic analysis may reveal other rock types and stratigraphic classifications.

WATER LEVEL OBSERVATIONS, ft  
WL NONE WD  
WL

BORING STARTED 3-16-10  
BORING COMPLETED 3-16-10  
RIG 380 FOREMAN BJ  
APPROVED DAB JOB # 02105044

PROPOSED R/W AND BORING LOGS SHEET 3 OF 9  
N 400 RD. - STRUCTURE NO.0400N 0919E

**MEMORANDUM**

To : Board of County Commissioners

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

Date : June 2, 2011

Re : Consent Agenda approval to award contract for Project No. 2011-12  
Microsurfacing Route 442 from Route 1029 (E 550 Road) to US-40 highway

Bids were opened May 16 for Project No. 2011-12, microsurfacing Route 442 from Route 1029 (E 550 Road) to US-40 highway. "Microsurfacing" is a modified slurry seal that seals the cracks like a chip seal, but has a longer life than a chip seal.

We solicited bids for a Base Bid and an Alternate Bid. The base bid includes microsurfacing both travel lanes and both paved shoulders (36' total width). The alternate bid includes microsurfacing both travel lanes (24' total width) and chip sealing both 6'-wide paved shoulders using smaller aggregate cover material than for a typical chip seal.

We received bids from three contractors, as follows (also see attached bid tabulation):

<u>Contractor</u>	<u>Base Bid</u>	<u>Alternate Bid</u>
Vance Brothers	\$ 58,090.00	\$ 56,199.65
Ballou Pavement Solutions	\$ 102,454.50	\$ 118,284.60
Donelson Construction	\$ 110,679.90	No Bid
Engineer's Estimate	\$ 89,165.00	\$ 85,131.00

It is recommended to accept the low base bid from Vance Brothers in the amount of \$58,090.00. The base bid is recommended since microsurfacing the shoulders is preferable to chip sealing the shoulders, and accepting the alternate bid would result in very little cost savings. Funds are available in Road & Bridge Fund 201 from the Overlay and Chip Seal line items and from the CIP's Annual Contract Pavement Maintenance line item.

Construction will take approximately one work week, and will be done between July 1 and August 31.

Action Required: Consent Agenda approval to accept the low base bid from Vance Brothers and award a construction contract in the amount of \$58,090.00 for Project No. 2011-12, microsurfacing Route 442 from Route 1029 to US-40 highway.

DOUGLAS COUNTY PUBLIC WORKS  
 BID TABULATION PROJECT NO. 2011-12  
 MICROSURFACE RTE 442 FROM E550 TO E700 (36' WIDTH)  
 BID NO. 11-F-0015  
 16-May-11

ITEM	DESCRIPTION	UNIT	APPROX. QUANTITY	ENGINEER'S ESTIMATE		VANCE BROS.		BALLOU PVMT SOLUTION		DONELSON CONST.	
				UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
1	Aggregate for Microsurfacing	Ton	365	\$100.00	\$36,500.00	\$65.00	\$23,725.00	\$149.00	\$54,385.00	\$165.00	\$60,225.00
2	Emulsified Asphalt (CSS-1H)(Modified)	Ton	44	\$700.00	\$30,800.00	\$625.00	\$27,500.00	\$715.00	\$31,460.00	\$815.00	\$35,860.00
3	Mineral Filler	Ton	7.3	\$250.00	\$1,825.00	\$250.00	\$1,825.00	\$215.00	\$1,569.50	\$213.00	\$1,554.90
4	Mobilization	L.S.	1	\$15,000.00	\$15,000.00	\$2,500.00	\$2,500.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
5	Traffic Control	L.S.	1	\$5,000.00	\$5,000.00	\$2,500.00	\$2,500.00	\$5,000.00	\$5,000.00	\$3,000.00	\$3,000.00
6	Flagger (Set)	Hour	1	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00
BID TOTAL					\$89,165.00		\$58,090.00		\$102,454.50		\$110,679.90

ALTERNATE BID

ITEM	DESCRIPTION	UNIT	APPROX. QUANTITY	ENGINEER'S ESTIMATE		VANCE BROS.		BALLOU PVMT SOLUTION		DONELSON CONST	
				UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
1	Aggregate for Microsurfacing	Ton	243.3	\$100.00	\$24,330.00	\$65.00	\$15,814.50	\$223.00	\$54,255.90	\$0.00	\$0.00
2	Emulsified Asphalt (CSS-1H)(Modified)	Ton	29.3	\$700.00	\$20,510.00	\$625.00	\$18,312.50	\$715.00	\$20,949.50	\$0.00	\$0.00
3	Mineral Filler	Ton	4.9	\$250.00	\$1,225.00	\$250.00	\$1,225.00	\$215.00	\$1,053.50	\$0.00	\$0.00
4	Emulsified Asphalt (CRS-1HP) for seal	Ton	8.5	\$725.00	\$6,162.50	\$620.00	\$5,270.00	\$1,130.00	\$9,605.00	\$0.00	\$0.00
5	Cover Material (CM-L)(Special)	C.Y.	55	\$45.00	\$2,475.00	\$46.00	\$2,530.00	\$79.50	\$4,372.50	\$0.00	\$0.00
6	Manipulation	Sta.	82.9	\$65.00	\$5,388.50	\$78.50	\$6,507.65	\$108.00	\$8,953.20	\$0.00	\$0.00
7	Mobilization	L.S.	1	\$20,000.00	\$20,000.00	\$3,000.00	\$3,000.00	\$12,055.00	\$12,055.00	\$0.00	\$0.00
8	Traffic Control	L.S.	1	\$5,000.00	\$5,000.00	\$3,500.00	\$3,500.00	\$7,000.00	\$7,000.00	\$0.00	\$0.00
9	Flagger (Set)	Hour	1	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00	\$0.00	\$0.00
ALT. BID TOTAL					\$85,131.00		\$56,199.65		\$118,284.60		NO BID

**MEMORANDUM**

To : Board of County Commissioners

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

Date : June 1, 2011

Re : Consider awarding contract for pavement rehabilitation Project No. 2011-13  
Route 1061 from N 1 Road (Franklin County line) to US-56 highway (N 200 Rd)

Bids were opened May 26 for the referenced project. The project entails milling a 1"-depth off the existing pavement, patching, and overlaying the pavement with hot mix asphalt.

We received bids from four contractors as shown below (also see attached bid tabulation). The Engineer's Estimate was \$257,946.00.

CONTRACTOR	BID AMOUNT
SUNFLOWER PAVING	\$249,119.34
O'DONNELL CONST	\$264,500.50
KILLOUGH CONST.	\$268,372.99
J.M. FAHEY CONST.	\$416,221.00

You will recall during the April 20 meeting the BOCC approved soliciting bids for this work. This department anticipated receiving favorable bids given the bids for Project No. 2011-6, pavement resurfacing on Route 1061 from US-56 highway to N 1200 Road. We feel the low bid from Sunflower Paving is indeed favorable, and we recommend the BOCC accept the low bid. Sunflower Paving is associated with R.D. Johnson Construction, the contractor for Project No. 2011-6.

It is recommended to accept the low bid from Sunflower Paving in the amount of \$249,119.34. Funds are available in Road & Bridge Fund 201 from the Overlay and Chip Seal line items and from the CIP's Annual Contract Pavement Maintenance line item. I also request authority to approve change orders totaling up to 5% of the contract amount.

Action Required: Accept the low total bid from Sunflower Paving and award a construction contract in the amount of \$249,119.34 for Project No. 2011-13, pavement resurfacing on Route 1061 from N 1 Road to US-56 highway, and authorize the Public Works Director to approve change orders up to 5% of the contract amount.

DOUGLAS COUNTY PUBLIC WORKS  
PROJECT 2011-13  
DESCRIPTION: MILL, PATCH & OVERLAY ROUTE 1061 FROM N0000 TO N0200  
BID TABULATION  
BID NO. 11-F-0016  
May 26, 2011

ITEM #	DESCRIPTION	UNIT	APPROX QUANTITY	ENGINEER'S ESTIMATE		SUNFLOWER PAVING		O'DONNELL CONST		KILLOUGH CONST.		J.M. FAHEY CONST.	
				UNIT COST	AMOUNT	UNIT COST	AMOUNT	UNIT COST	AMOUNT	UNIT COST	AMOUNT	UNIT COST	AMOUNT
1	Mobilization	L.S.	1	\$6,000.00	\$6,000.00	\$3,000.00	\$3,000.00	\$1,500.00	\$1,500.00	\$2,200.00	\$2,200.00	\$5,000.00	\$5,000.00
9	Traffic Control	L.S.	1	\$5,000.00	\$5,000.00	\$8,566.00	\$8,566.00	\$11,400.00	\$11,400.00	\$5,750.00	\$5,750.00	\$37,000.00	\$37,000.00
2	Milling (1" nominal)	S.Y.	28,285	\$1.00	\$28,285.00	\$0.50	\$14,142.50	\$0.60	\$16,971.00	\$0.93	\$26,305.05	\$1.00	\$28,285.00
3	HMA-Commercial Grade (Class A)(Surface)	TON	3,364	\$52.00	\$174,928.00	\$53.06	\$178,493.84	\$54.25	\$182,497.00	\$55.16	\$185,558.24	\$79.00	\$265,756.00
4	HMA-Commercial Grade (Class A)(Patch)	TON	400	\$65.00	\$26,000.00	\$65.71	\$26,284.00	\$90.00	\$36,000.00	\$86.00	\$34,400.00	\$125.00	\$50,000.00
5	Aggregate Shouldering (AS-1)	TON	591	\$23.00	\$13,593.00	\$23.00	\$13,593.00	\$17.50	\$10,342.50	\$16.70	\$9,869.70	\$40.00	\$23,640.00
6	Flagger (Set Price)	HOURL	1	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00	\$40.00
7	Monument Box	EACH	3	\$700.00	\$2,100.00	\$1,000.00	\$3,000.00	\$1,250.00	\$3,750.00	\$750.00	\$2,250.00	\$1,500.00	\$4,500.00
8	Maint. and Restoration of Haul Roads (Set)	L.S.	1	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00
TOTAL					\$257,946.00		\$249,119.34		\$264,500.50		\$268,372.99		\$416,221.00

SUMMARY	
CONTRACTOR	BID AMOUNT
SUNFLOWER PAVING	\$249,119.34
O'DONNELL CONST	\$264,500.50
KILLOUGH CONST.	\$268,372.99
J.M. FAHEY CONST.	\$416,221.00

## MEMORANDUM

To : Board of County Commissioners

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

Date : June 2, 2011

Re : Consider Approval of Contract for Engineering Services  
3R Improvements to Route 442 from E 1 Road to Stull  
Project No. 2011-9

This project is included in the CIP, and entails improving Route 442 to meet 55-mph design standards and provide paved shoulders. The project will complete improvements to "Stull Road" such that the road will have 6'-wide paved shoulders from the Shawnee County line to US-40 highway. The CIP allocates \$4,000,000 for this project. Significant portions of the road segment will require reconstruction, while in other portions paved shoulders will be added to the existing roadway. Where the existing road is utilized, the pavement surface will be overlaid to add pavement structure.

Purchasing policy procedures were followed to select the consulting firm of BG Consultants, Inc. to provide engineering design services for this project. The selection committee was comprised of Douglas County public works officials.

Attached are two (2) original contracts for signature by the BOCC. The contract is an hourly contract with a total not-to-exceed cost of \$349,678.91. This cost includes the cost of a geotechnical study, which is needed for pavement design and determining foundation needs for cross road culverts. The not-to-exceed cost is slightly lower than our estimate for design engineering costs included in the CIP allocation.

Action Required: Approval of a contract with BG Consultants, Inc. for engineering design services at a not-to-exceed cost of \$349,678.91 for Project No. 2011-9, 3R improvements to Route 442 from E 1 Road to Stull.



**ENGINEERING SERVICES AGREEMENT**

**Project No. 2011-9**

**Route 442, 3R Improvements from E 1 Road to Stull (Route 1023)**

THIS Engineering Services Agreement is entered into by and between Douglas County, Kansas ("County") and BG Consultants, Inc. ("Engineer"), as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ (the "Effective Date").

**RECITALS**

WHEREAS, County desires to employ Engineer to provide professional engineering services in the design of certain road(s) and/or bridge(s) in Douglas County, Kansas, in connection with Douglas County Project No. 2011-9 (the "Project"); and

WHEREAS, Engineer agrees to provide such services.

**TERMS OF AGREEMENT**

NOW THEREFORE, in consideration of the promises contained in this Agreement, County employs Engineer and Engineer agrees to provide professional engineering services as follows:

**I. DEFINITIONS**

In addition to other terms defined in the body of this Agreement, the following terms shall have the meanings ascribed herein unless otherwise stated or reasonably required by this Agreement, and other forms of any defined words shall have a consistent meaning:

"Additional Services" means any services requested by County which are not covered by Exhibit A.

"Agreement" means this contract and includes change orders issued in writing.

"County Engineer" means the person employed by County with the title of County Engineer, who is licensed to practice engineering in the State of Kansas.

"Engineer" means the company or individual identified in the preamble of this Agreement. Engineer shall employ for the services rendered engineers, architects, landscape architects, and surveyors licensed, as applicable, by the Kansas State Board of Technical Professions.

"Contract Documents" means those documents identified in the Contract for Construction of the Project, including Engineering Documents. All terms defined in the General Conditions of the Contract for Construction shall have the same meaning when used in this Agreement unless otherwise specifically stated, or in the case of a conflict, in which case the definition used in this Agreement shall prevail in the interpretation of this Agreement.

"Engineering Documents" means all plans, specifications, reports, drawings, tracings, designs, calculations, computer models, sketches, notes, memorandums and correspondence related to the Engineering Services.

"Engineering Services" and "Services" mean the professional services and other acts or duties required of Engineer under this Agreement, together with Additional Services as County may request and as evidenced by a supplemental agreement pursuant to the terms of this Agreement.

"Project" means the Douglas County project identified above in the Recitals.  
"Subsurface Borings and Testing" means borings, probings and subsurface explorations, laboratory tests and inspections of samples, materials and equipment, and appropriate professional interpretations of all of the foregoing.

## **II. COMPENSATION**

Engineer's compensation and related matters are as follows:

### **A. MAXIMUM TOTAL FEE AND EXPENSE**

Engineer's fee shall be based on the actual hours expended on the Project at the rates indicated in the attached Estimate of Engineering Fee (attached hereto as Exhibit B and incorporated herein by reference) and the actual reimbursable expenses permitted under this Agreement and incurred on this Project, with the fee and reimbursable expenses not to exceed \$ 349,678.91 ("Total Maximum Fee"). The Total Maximum Fee is based on the scope of Services outlined in Exhibit A, attached hereto and incorporated herein by reference, which Services shall be completed on or before December 31, 2013. Engineer's fees and expenses shall not exceed the amounts for each phase as detailed in Exhibit B. Additional or alternative methods of compensation shall be paid only with written approval of the County Engineer.

### **B. HOURLY RATE**

Any Additional Services which are not set forth in this Agreement will be charged on the basis of the hourly rate schedule in Exhibit B and reimbursable expenses not contemplated in this Agreement will be charged at actual cost. No Additional Services or costs shall be incurred without written approval by County.

### **C. REIMBURSABLE EXPENSES**

Reimbursable expenses shall be included in the Total Maximum Fee and shall be reimbursed at Engineer's actual cost, without mark-up. Reimbursable expenses must be authorized by County and include expenses of transportation in connection with the Project, expenses in connection with authorized out-of-town travel, long-distance communications, expenses of printing and reproductions, postage and facsimile transmissions, expenses of renderings and models requested by County, and other costs as authorized by County. Reimbursable expenses will not include overhead costs or additional insurance premiums, which are included in the hourly rate structure. Unit rates for reimbursable expenses are included in Exhibit B. Records documenting reimbursable expenses shall be made available to County if requested in writing. Production of these documents shall be made at Engineer's office during normal business hours within a reasonable time of request, at a date and time mutually convenient to both parties.

### **D. SALES TAX EXCLUDED**



Compensation as provided for herein is exclusive of any sales, use or similar tax imposed by taxing jurisdictions on the amount of compensation, fees or services. Should such taxes be legally imposed, County shall reimburse Engineer for such taxes in addition to the contractual amounts provided. Engineer, however, shall use County's sales tax exemption where applicable, and County need not reimburse Engineer for sales or use taxes Engineer pays in transactions legally exempt from such tax.

#### **E. BILLING**

Engineer shall bill County monthly for all its fees and reimbursable expenses. Monthly pay requests must generally be received by the 5th day of the month. The bill submitted by Engineer shall itemize the Services and reimbursable expenses for which payment is requested, and shall be deemed to include a representation by Engineer to County that the Services have proceeded to the point stated in the bill and that amounts requested in the bill are due and owing pursuant to this Agreement. County agrees to pay Engineer within 10 days after approval by the governing body or 30 days after the invoice is received, whichever is later.

#### **F. COUNTY'S RIGHT TO WITHHOLD PAYMENT**

In the event County becomes credibly informed that any material representations of Engineer provided in its monthly billing are wholly or partially inaccurate, County may withhold payment of disputed sums then, or in the future, otherwise due Engineer until the inaccuracy and the cause thereof is corrected to County's reasonable satisfaction. In the event County questions some element of an invoice, that fact shall be made known to Engineer as soon as reasonably possible. Engineer will assist in resolution of the matter and transmit a revised invoice if necessary. County shall pay the undisputed portion of any invoice as provided in Paragraph E above.

#### **G. PROGRESS REPORTS WITH PAY APPLICATIONS**

A written progress report, as set out in Exhibit C (attached hereto and incorporated herein by reference) must be submitted with each monthly bill, indicating the percentage completion of each specific design task and those tasks that will be performed the following month. This report will serve as support for payment to Engineer.

#### **H. CHANGES IN SCOPE**

For substantial modifications in authorized Project scope and/or substantial modifications of drawings and/or specifications previously accepted by County, when requested by County and through no fault of Engineer, Engineer shall be compensated for the time required to incorporate such modifications at Engineer's standard hourly rates per Exhibit B. An increase in Total Maximum Fee or contract time, however, must be requested by Engineer and must be approved through a written supplemental agreement prior to performing such Services. Engineer shall correct or revise any errors or deficiencies in its designs, drawings or specifications without additional compensation when due to Engineer's negligence, error, or omission.

#### **I. ADDITIONAL SERVICES**

Engineer shall provide services in addition to those described in this Agreement, including Exhibit A, when such services are requested in writing by County. Prior to providing any such Additional Services, Engineer shall submit a proposal outlining the Additional Services and an estimation of total hours and a maximum fee, based upon the Fee Schedule in Exhibit B. Payment to Engineer, as compensation for these Additional Services, shall be in accordance with the Fee Schedule in Exhibit B. Reimbursable expenses incurred in conjunction with Additional Services shall be paid at actual cost. Reimbursable expenses will not include overhead costs or additional insurance premiums, which are included in the hourly rate structure. Unit rates for reimbursable expenses are included in Exhibit B. Records of reimbursable expenses pertaining to Additional Services shall be made available to County if requested in writing. Production of these documents shall be made at Engineer's office during normal business hours within a reasonable time of request, at a date and time mutually convenient to both parties.

### **III. RESPONSIBILITIES OF ENGINEER**

Engineer shall furnish and perform the Engineering Services in all phases of the Project, as specifically provided in Exhibit A and which are required for the completion of the Project, according to the Project Schedule set forth in Exhibit D, attached hereto and incorporated herein. Such services shall include the following services during the following Project phases:

#### **A. PRELIMINARY DESIGN PHASE**

Engineer shall do the following during the preliminary design phase:

1. Services: Engineer shall provide the services during this phase as described in Exhibit A.
2. Preliminary Design Documents: Engineer shall furnish County with 3 copies of the preliminary design documents for review as set out in Exhibit A.
3. Probable Cost: Engineer shall furnish County an opinion of probable Project cost based on Engineer's experience and qualifications. If the probable cost exceeds the amount budgeted for the Project, County may terminate this Agreement at the completion of this phase. If directed by County, Engineer shall modify the drawings and specifications as necessary to achieve compliance with the budgeted construction cost, and be compensated as Additional Services.

#### **B. FINAL DESIGN PHASE**

Engineer shall do the following during the final design phase:

1. Services: Engineer shall provide the services during this phase as described in Exhibit A.
2. Final Design Documents: Engineer shall furnish County with raster files and hard copies of the final plans in an accepted format as specified in Exhibit A.

The raster files, as well as the hard copies, shall contain all required signatures from County and the signature and seal of the design engineer.

3. Contract Documents: County standard Contract Documents shall be used and Engineer shall furnish all details and specifications that are unique for the Project.

**C. BIDDING PHASE**

Engineer shall do the following during the bidding phase:

1. Services: Engineer shall provide the Services during this phase as described in Exhibit A.
2. Bids Exceeding Cost Estimate: If bids exceed the estimated probable Project cost, County may discuss with Engineer and the lowest responsible bidder ways to reduce the cost, and Engineer shall provide suggestions for reducing the Project costs. This discussion will be accomplished at no additional cost to County.

**D. CONSTRUCTION PHASE**

Engineer shall do the following during the construction phase:

1. Services: Provide the Services during this phase as described in Exhibit A.
2. Administration: County will provide in-house administration of the construction contract; however, Engineer shall consult with and advise County and act as County's representative when requested. If County requests, Engineer shall provide contract for construction administration and observation services as Additional Services.
3. Contract Interpretation: When requested by County, Engineer shall visit the site and issue necessary interpretations and clarifications of the Contract Documents. Engineer shall provide such services at no additional cost to County.
4. Additional Drawings: If, during construction, situations arise which require additional drawings or details, or revision of the plan drawings or details, Engineer agrees to provide such additional drawings or revisions at no additional cost to County when such changes are required to correct Engineer's errors or omissions in the original design and preparation of construction drawings. If additional drawings or details are required through no fault of Engineer, or are beyond its control, both parties agree to negotiate an equitable payment to Engineer for its services rendered, which shall be accomplished through a supplemental agreement.
5. Shop Drawings: Engineer shall review and take appropriate action on each contractor's shop drawings and samples, and the results of tests and inspections and other data which each contractor is required to submit for the limited purposes of checking for compliance with the design concept and

information shown in the Contract Documents. Such review shall not extend to means, methods, sequences, techniques, quantities, fabrication processes, procedures of construction, coordination of the work with other trades, or to safety precautions and programs incident thereto, all of which are the sole responsibility of the contractor, unless an obvious defect or deficiency exists, in which case Engineer shall advise County of such defect or deficiency so the same can be prevented.

#### **E. GENERAL DUTIES AND RESPONSIBILITIES**

Engineer shall have the following general duties and responsibilities:

1. **Personnel:** Engineer shall assign only qualified personnel to perform the Engineering Services. At the time of execution of this Agreement, the parties anticipate that the following individual will perform as the principal on this Project: David J. Hamby, P.E. ("Project Principal"). The Project Principal shall be the primary contact with County and shall have authority to bind Engineer. So long as the Project Principal remains actively employed or retained by Engineer, this individual shall continue to serve as the Project Principal.
2. **Independent Contractor:** Engineer is an independent contractor and as such is not an employee of County.
3. **Special Services:** Engineer may be called upon to serve as a witness in any litigation, arbitration, legal or administrative proceeding arising out of the Project. If Engineer is requested in writing by County to appear as a witness, Engineer will be paid its hourly fee as reflected on the Fee Schedule in Exhibit B; provided, however, that Engineer shall not be paid its hourly fee if the appearance is to defend Engineer's Engineering Services.
4. **Subsurface Borings and Testing:** If County requests subsurface boring or other tests for design, in addition to those described in Exhibit A, Engineer shall prepare specifications for the taking of the additional testing. Such testing may be provided by Engineer through other contractors. Payment to Engineer will be negotiated in writing.
5. **Service by and Payment to Others:** Any work authorized in writing by County and performed by a party other than Engineer or its approved subcontractors shall be contracted for and paid for by County directly to the third party. Fees for such work shall be subject to negotiation between County and the third party and shall be approved by County prior to the performance of any such work.
6. **Subcontracting or Assignment of Services:** Engineer shall not subcontract or assign any of the Engineering Services to be performed under this Agreement without first obtaining the written consent of County regarding the Services to be subcontracted or assigned and the firm or person proposed to perform the Services. Unless otherwise stated in County's written consent to a subcontract or assignment, no subcontract or assignment will release or discharge Engineer from any obligation under this Agreement.

7. **Endorsement:** Engineer shall sign and seal all final plans, specifications, estimates and engineering data furnished by Engineer. Any review or approval by County of any documents prepared by Engineer, including, but not limited to, the plans and specifications, shall be solely for the purpose of determining whether such documents are consistent with County's construction program and intent. No review of such documents shall relieve Engineer of its responsibility for their accuracy. It is Engineer's responsibility to verify the existence of any and all rights-of-way and easements, including temporary construction easements, that are necessary for the Project. Rights-of-way and easements shown on the plans shall have proper legal verification to prove their existence.
8. **Professional Responsibility:** Engineer will exercise reasonable skill, care and diligence in the performance of the Engineering Services as is ordinarily possessed and exercised by a licensed professional engineer performing the same services under similar circumstances. Engineer represents to County that Engineer is professionally qualified to provide such services and is licensed to practice engineering by all public entities having jurisdiction over Engineer and the Project.
9. **Inspection of Documents:** Engineer shall maintain all Project records for inspection by County during the term of this Agreement and for 3 years following the completion of the Project.

#### **IV. RESPONSIBILITIES OF COUNTY**

##### **A. GENERAL DUTIES AND RESPONSIBILITIES**

County shall have the following general duties and responsibilities:

1. **Communication:** County shall provide to Engineer information and criteria regarding County's requirements for the Project, examine and timely respond to Engineer's submissions, and give notice to Engineer whenever County observes or otherwise becomes aware of any defect in the Engineering Services.
2. **Access:** County shall procure and provide access agreements for Engineer to enter public and private property when necessary.
3. **Program and Budget:** County shall provide full information stating County's objectives, schedule, budget with reasonable contingencies, and necessary design criteria.
4. **Other Engineers:** County may contract with "specialty" engineers when such services are requested by Engineer.
5. **Testing:** County shall furnish any tests required to supplement the scope of services or tests required by law.
6. **Bond Forms:** County shall furnish all bond forms required for the Project.

7. Project Representative: County Engineer, or County Engineer's designee, shall represent County in coordinating the Project with Engineer, with authority to transmit instructions and define policies and decisions of County.
8. Payment: Pay Engineer its fees and reimbursable expenses in accordance with this Agreement.

## **V. PROJECT SCHEDULE**

The Project Schedule is set forth in Exhibit D, attached hereto and incorporated by reference. Engineer shall perform the Engineering Services in a timely manner; provided, however, if, during its performance, for reasons beyond the control of Engineer, protracted delays occur, Engineer shall promptly provide written notice to County describing the circumstances preventing continued performance and Engineer's efforts to resume performance.

## **VI. SUSPENSION OR TERMINATION OF THE CONTRACT**

### **A. SUSPENSION BY ENGINEER**

Engineer may suspend performance of the Services under this Agreement if County consistently fails to fulfill County's material obligations under this Agreement, including County's failure to pay Engineer its fees and costs, within 15 days of Engineer's delivery to County of written notice of such default; provided, however, that Engineer may not suspend performance of Services based upon non-payment of fees or costs that is subject to a bona fide dispute, for which this Agreement authorizes County to withhold payment. Any such suspension shall serve to extend the contract time on a day for day basis.

### **B. TERMINATION BY ENGINEER**

Engineer may terminate this Agreement upon 15 days written notice to County if (i) County suspends performance of the Services for its convenience for a period of 60 consecutive days through no act or fault of Engineer or a subcontractor or their agents or employees or any other persons or entities performing portions of the Engineering Services under direct or indirect contract with Engineer, or (ii) Engineer has suspended the performance of its Services for a period of 60 consecutive days pursuant to Section VI.A. above; and, during said 15 day written notice period, County has failed to cure its default. If Engineer terminates this Agreement, County shall pay Engineer such amounts as if County terminated this Agreement for its convenience pursuant to Section VI.E.

### **C. TERMINATION BY COUNTY FOR CAUSE**

County may terminate this Agreement for cause upon 7 days written notice to Engineer: (i) persistently or repeatedly refuses or fails to supply enough qualified workers or proper materials; (ii) assigns or subcontracts any part of the Engineering Services without County's prior written consent; or (iii) otherwise is guilty of substantial breach of this Agreement; and, during said 7 day written notice period, Engineer fails to cure its default.

If County terminates this Agreement for cause, Engineer shall immediately transfer to County digital and mylar copies of all Engineering Documents completed or partially

completed at the date of termination. In addition, County may without prejudice to any other rights or remedies of County, finish the Engineering Services for the Project by whatever reasonable method County may deem expedient, including through contract with an alternate engineer, and bill Engineer for the sum of the amounts County pays Engineer pursuant to this Agreement, plus the costs County incurs in completing the Engineering Services, reduced by the Total Maximum Fee. Upon request of Engineer, County shall furnish Engineer a detailed accounting of the costs incurred by County in completing the Engineering Services. If County terminates this Agreement for cause Engineer shall not be entitled to receive further payment until the Engineering Services are completed.

If the Engineer for any reason is not allowed to complete all the Services called for by this Agreement, the Engineer shall not be held responsible for the accuracy, completeness or constructability of the construction documents prepared by the Engineer if changed or completed by the County or by another party. Accordingly, the County agrees, to the fullest extent permitted by the law, to waive and release the Engineer, its officers, directors, employees, and subconsultants from any damages, liabilities or costs, including reasonable attorney's fees and defense costs arising from such change or completion by any other party of any construction documents prepared by the Engineer.

#### **D. SUSPENSION BY COUNTY FOR CONVENIENCE**

County may, without cause, order Engineer in writing to suspend, delay or interrupt the Engineering Services in whole or in part for such period of time as County may determine.

The Total Maximum Fee and contract time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption.

#### **E. TERMINATION BY COUNTY FOR CONVENIENCE**

County may, at any time, terminate this Agreement for County's convenience and without cause. Upon receipt of written notice from County of such termination for County's convenience, Engineer shall: (i) except for Engineering Services directed to be performed prior to the effective date of termination as stated in the notice, cease operations under this Agreement; and (ii) take actions necessary or that County may direct, for the protection and preservation of the Engineering Services and Engineering Documents.

If County terminates this Agreement for its convenience, Engineer shall immediately transfer to County digital and mylar copies of all Engineering Documents completed or partially completed at the date of termination. County shall compensate Engineer for all Services completed prior to receipt of the termination notice or performed pursuant to the termination notice. County need not pay, and Engineer waives, compensation for Engineering Services not actually provided, anticipatory profit or consequential damages.

### **VII. GENERAL PROVISIONS**

#### **A. DISPUTE RESOLUTION**

County and Engineer agree that disputes relative to the Project should first be addressed by direct negotiations between the parties. If direct negotiations fail to resolve the dispute, the party initiating the claim that is the basis for the dispute shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any

such dispute and assuming County has not terminated this Agreement, Engineer shall proceed with the Services in accordance with this Agreement as if no dispute existed.

## **B. OWNERSHIP OF ENGINEERING DOCUMENTS**

All documents and electronic files prepared or furnished by Engineer pursuant to this Agreement are instruments of Engineer's professional service, and Engineer shall retain an ownership and property interest therein. Engineer grants the County a perpetual license to use and modify instruments of Engineer's professional services for the purpose of constructing, occupying, maintaining, altering and adding to the Project and future projects relating to, incorporating, or in the vicinity of the Project. Topographic data collected by the Engineer pursuant to this Agreement shall be considered a part of the instruments of Engineer's professional service and the County's license to use this information pertains only to the portions of this data directly related to this Project. Reuse or modification of any such licensed documents, electronic files or other data by the County, shall be at the County's sole risk and without liability to Engineer, and the County agrees to indemnify and hold Engineer harmless from all claims, damages, and expenses, including attorney's fees, arising out of such reuse by the County or by others acting through the County, except the County does not agree to indemnify or hold engineer harmless from Engineer's own negligence.

## **C. INSURANCE**

Engineer shall maintain throughout the term of this Agreement the following insurance coverage:

1. Professional Liability: Professional Liability Insurance in an amount not less than \$1,000,000 per claim and in the annual aggregate, which insurance shall be maintained not only during the term of this Agreement but also for a period of 3 years after completion of the Project.
2. Commercial General Liability: Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the general aggregate. The policy shall include personal injury, products/completed operations, and contractual liability,
3. Worker's Compensation: Worker's Compensation Insurance in accordance with statutory requirements.
4. Employer's Liability: Employer's Liability Insurance in amounts not less than the following:

Bodily Injury by Accident	\$100,000	(each accident)
Bodily Injury by Disease	\$500,000	(policy limit)
Bodily Injury by Disease	\$100,000	(each employee)
5. Automobile Insurance: Automobile Liability Insurance in an amount not less than \$1,000,000 per accident to protect against claims for bodily injury and/or property damage arising out of the ownership or use of any owned, hired and/or non-owned vehicle.



6. Subcontractor's Insurance: If a part of this Agreement is subcontracted, Engineer shall either:
  - a) Cover all subconsultants in its insurance policies; or
  - b) Require each subconsultants not so covered to secure insurance which will protect against all applicable hazards or risks of loss in the amounts applicable to Engineer.
7. Valuable Papers Insurance. Valuable papers insurance to assure the restoration of any plats, drawings, notes or other similar data relating to the Engineering Services in the event of their loss or destruction.
8. Industry Ratings: Unless mutually agreed upon by County and Engineer to vary the requirements, Engineer shall provide County with evidence to substantiate that any insurance carrier providing insurance required under this Agreement satisfies the following requirements:
  - a) Is licensed to do business in the State of Kansas;
  - b) Carries a Best's Policyholder rating of A or better; and
  - c) Carries at least a Class X financial rating.

All general and automobile liability insurance shall be written on an occurrence basis. County shall be shown as an additional insured on all required insurance policies except professional liability, automobile, and worker's compensation. Each required insurance policy shall contain a provision by which County must be given 30 days notice prior to any insurance policy cancellation. Engineer shall provide County with acceptable certificates of such insurance evidencing the required insurance coverage before County issues its Notice to Proceed, at County's reasonable request, from time to time during the term of this Agreement.

#### **D. INDEMNITY**

Engineer hereby agrees to indemnify and hold harmless County and its departments, divisions, officers, employees and elected officials from all loss, damage, cost and expenses, including reasonable attorneys' fees and expenses, incurred by or on behalf of any of the foregoing arising out of or related to personal or bodily injury or property damage, that to the extent arise from or related to the wrongful acts or negligent acts, errors or omissions of Engineer or its employees, agents or subconsultants. The provisions of this section shall survive the termination of this Agreement.

#### **E. ENTIRE AGREEMENT; NO VERBAL AMENDMENTS**

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement, including the Maximum Fee and contract time and other terms and conditions, may be amended only by a written supplemental agreement signed by County and Engineer, except in the case of an emergency situation, in which case County Engineer may give verbal and facsimile approval to be followed by a written and signed supplemental agreement. If notice of any change affecting the general scope of the Engineering Services or provisions of this Agreement, including, but not limited to, Maximum Fee and contract

time, is a requirement of any insurance policy held by Engineer as a requirement of this Agreement, the provision of such notice shall be Engineer's responsibility.

**F. APPLICABLE LAW**

This Agreement shall be governed by, and is to be construed and enforceable in accordance with, the laws of the State of Kansas and the codes and established policies of County.

**G. ASSIGNMENT OF AGREEMENT**

This Agreement shall not be assigned or transferred by either party without the written consent of the other party.

**H. NO THIRD PARTY BENEFICIARIES**

Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

**I. FEDERAL LOBBYING ACTIVITIES (Only applies to projects receiving federal funds via County)**

31 U.S.C. Section 1352 requires all subgrantees, contractors, and engineers who receive federal funds via County to certify that they will not use federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the awarding of any federal contract, grant, loan or cooperative agreement. In addition, contract applicants, recipients and subrecipients must file a form disclosing any expenditures they make for lobbying out of non-federal funds during the contract period. Engineer shall obtain the necessary forms from County, execute such forms, and return such forms to County. Engineer shall also obtain executed forms from any of its subcontractors who fall within the provisions of the statute and provide such forms to County.

**J. COVENANT AGAINST CONTINGENT FEES**

Engineer warrants that it has not employed or retained any company or person, other than a bona fide employee working for Engineer, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, County may terminate this Agreement without liability or may, in its discretion, deduct from the contract price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

**K. COMPLIANCE WITH LAWS**

Engineer shall abide by applicable federal, state and local laws, ordinances and regulations applicable to this Project that are in effect as of the date of Services rendered until the Engineering Services required by this Agreement are complete. Engineer shall secure all occupational and professional licenses, permits, etc. from public and private sources necessary for the fulfillment of its obligations under this Agreement.

**L. NOTICES**

Any notice or other communication required or permitted by this Agreement shall be made in writing to the address specified below:

Engineer: David J. Hamby, P.E.  
BG Consultants, Inc.  
1405 Wakarusa Drive  
Lawrence, KS 66049

County: Keith A. Browning, P.E.  
Douglas County, Kansas  
1242 Massachusetts  
Lawrence, KS 66044

Nothing contained in this Section, however, shall be construed to restrict the transmission of routine communications between Engineer and County.

**M. TITLES AND SUBHEADINGS**

Titles and subheadings as used herein are provided only as a matter of convenience and shall have no legal bearing on the interpretation of any provision of the Agreement.

**N. SEVERABILITY CLAUSE**

Should any provision of this Agreement be determined to be void, invalid, unenforceable or illegal for any reason, such provision shall be null and void; provided, however, that the remaining provisions of this Agreement shall be unaffected thereby and shall continue to be valid and enforceable.

**O. NON-DISCRIMINATION**

Engineer agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if Engineer is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by County; and (f) if it is determined that Engineer has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by County.

**P. WAIVER**

A waiver by either County or Engineer of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other or further breach.

**Q. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon the directors, officers, partners, successors, executors, administrators, assigns, and legal representatives of the parties.

**R. RELATIONSHIP OF PARTIES**

Nothing contained herein shall be construed to make County a partner, joint venturer, or associate of Engineer, nor shall either party be deemed the agent of the other.

**S. AUTHORITY TO SIGN**

The individual signing this Agreement on behalf of Engineer represents that such person is duly authorized by Engineer to execute this Agreement on behalf of Engineer and, in doing so, that Engineer becomes bound by the provisions hereof.

**IN WITNESS WHEREOF**, the parties have executed this Agreement, effective as of the Effective Date.

**ENGINEER:**

BG Consultants, Inc.  
(Name of Engineering Firm)

By:   
Engineer's Authorized Signatory

David J. Hamby, P.E.  
Printed Name

Principal  
Title

**COUNTY:**

DOUGLAS COUNTY, KANSAS by the BOARD OF  
DOUGLAS COUNTY, KANSAS COMMISSIONERS

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name  
Title: Chair

**ATTEST:**

\_\_\_\_\_  
**Douglas County, Clerk**

**Exhibits:**

- A. Scope of Services**
- B. Fee Schedule**
- C. Form of Progress Reports**
- D. Project Schedule**
- E. CAD Requirements (if referenced in Exhibit A)**

**PROJECT NO. 2011-9**  
**Route 442, 3R Improvements from E 1 Road to Stull (Route 1023)**  
**EXHIBIT A**  
**SCOPE OF SERVICES**

**I. PROJECT LOCATION AND DESCRIPTION**

Provide professional services described as follows: Design and prepare construction drawings and specifications for 3R improvements to Route 442 between E 1 Road (west county line) and Stull (Route 1023). Improvements include adding 6' wide paved shoulders to the existing roadway section where existing horizontal and vertical alignment allow, total reconstruction (where required due to alignment modifications) with new pavement cross section including 6' wide paved shoulders, construction of new horizontal curves to accommodate a 55 mph design speed, and replacement/extension of drainage structures as needed.

**II. PRELIMINARY DESIGN PHASE (Field Check)**

1. Meet with County staff to determine specific project needs and general project desires. Also, review and receive available information and plans. Project budget will be provided by County staff.
2. Perform design and cadastral surveys as required to prepare plan and profile sheets in order to provide sufficient control, location, and land information necessary to prepare a complete set of construction plans and to prepare any legal descriptions required for easement acquisition. All surveys and point coordinates for the Project must tie into and be in the Kansas State Plane (North Zone). Cadastral surveys shall include locating the position of pertinent PLSS corners (including quarter and sixteenth corners) pertaining to the project and shall conform to the accuracy standards as set forth by the Kansas State Board of Technical Professions. All survey data must be provided to County in digital format allowing insertion into AutoCad environment using standard fieldbook format (PNEZD space delimited).
3. Obtain information from utility companies who have facilities within the Project limits. Utility companies shall be required to locate their facilities within the Project limits. Include utility locations in survey data. Provide preliminary utility coordination. Horizontal location is required for all utilities.
4. Obtain ownership and easement information on the properties that abut the Project site. Copies of all ownership maps and recorded plats will be obtained from the Douglas County Public Works Department.
5. Provide traffic engineering analysis to determine design traffic volumes and vehicle classifications.
6. Provide for any geological and geotechnical investigations, if needed, to determine required bridge/culvert foundations in accordance with Douglas County and/or KDOT requirements. Provide a written report summarizing information found and make recommendations on what is needed for the Project.

7. Provide services of a geotechnical consultant to determine the adequacy of subgrade and pavement condition. Complete a pavement evaluation and a determination of appropriate cross section and pavement to handle the design traffic volumes. Provide a written report concerning geotechnical findings and make recommendations on pavement cross-section for this project.
8. Prepare a hydrological study and analysis to establish recommendations concerning appropriate waterway opening for all drainage structures, length of the structure, and roadway profile. If appropriate, perform watershed analysis and computer flow modeling using HECRAS or other hydraulic software approved by the County. Provide a written report of the results of this hydraulic analysis with recommendations for this project and provide copies of any computer digital data.
9. Design storm drainage systems to carry the 25 year storm event in accordance with the current County standards. Prepare a hydrologic and hydraulic analysis to establish recommendations concerning storm drainage design. Include pipe/box sizes, alignments, grades, drainage easements, and associated Project design items. Perform watershed analysis and computer flow modeling using hydraulic software approved by the County. Provide a written report of the results of this hydraulic analysis with recommendations for the Project and copies of the computer digital data.
10. Review alternative design concepts with the County prior to progressing to the detail aspects of the Project. Alternative concepts shall be discussed to determine the best horizontal and vertical alignments for the Project. County's concurrence in the selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by Engineer.
11. Prepare Field Check plans in sufficient detail for County to review. These documents shall include horizontal and vertical alignments, storm sewer design, drainage area map, drainage design data, and preliminary right-of-way and easement acquisitions.
12. The following will be needed, as a minimum, to develop Field Check plans:
  - a) Prepare the base drawing with a plan portion showing existing topography, contours, utilities, property lines, right-of-way, and profiles of any existing structures and approach roadways. The base drawings shall later be used as full scale base drawings for right-of way and final design plans.
  - b) The Field Check plans shall be prepared in conformity with the state and federal design criteria appropriate for the Project, in accordance with the current Project Development Manual for Non-National Highway System Local Government Road and Street Projects, Volume 1, the Bureau of Local Projects Memorandums (BLP memos), the KDOT Design Manual, the Bureau of Design Road Memorandums, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special

Provisions and Project Special Provisions, and with the rules and regulations of the Federal Highway Administration (FHWA) pertaining thereto. Plans shall also conform to A Policy on Geometric Design of Highways and Streets (current edition, the "Green Book") prepared by AASHTO, and the Manual on Uniform Traffic Control Devices (current edition, MUTCD) prepared by the FHWA.

- c) The Field Check plans shall include the proposed additional easement and right-of-way limits, property lines and ownerships, section lines, townships and ranges, any U.S. Surveys, city limits, a general outline of the construction staging, and other critical design items.
  - d) The plan view scale shall be 1 inch = 50 feet. The profile view scale shall be 1 inch = 50 feet horizontal and 1 inch = 10 feet vertical.
13. The Consultant shall be responsible for verification, furnishing, and recording of any legal land corners necessary for legal descriptions used in easement documents. The Consultant shall tie the approved centerline or corner to established land corners.
  14. Prepare Field Check estimate of probable construction cost for the Project.
  15. Prepare two full size set of Field Check plans for County review. Allow two weeks for County review. If Project is over budget, a determination of alternates will be required. Contract may be terminated if additional funds are not available or project modifications cannot be made.
  16. Once Field Check plans have been reviewed by County staff, the Consultant shall arrange a Field Check meeting with County staff to discuss all review comments. All review comments made by County staff shall be discussed and addressed. Changes to the plans required by these comments shall be considered part of the project development process and shall not be a basis for additional design fees unless the original project scope is changed.

### **III. FINAL DESIGN PHASE (Office Check)**

1. If needed, attend one (1) Board of County Commissioners meeting or public meeting to discuss the proposed improvements and their impact on the adjacent properties.
2. Prepare a right-of-way strip map and furnish County with the original and two copies of the strip map as well as digital files in pdf format. Also, furnish County with 8 1/2" x 11" exhibits and legal descriptions of each property required for right-of-way or easement acquisition. The Consultant shall be responsible for making revisions to the right-of-way and construction plans resulting from negotiations with the property owners.
3. Prepare all applications, exhibits, drawings, and specifications necessary to obtain all required permits including the National Pollutant Discharge Elimination System (NPDES) Permit for Construction Activities, U.S. Army Corps of



Engineers 404 Permit, and/or the Kansas Department of Agriculture, Division of Water Resources permits. Applications shall be prepared for the County's execution and submittal. Assist the County in obtaining permit approvals by furnishing additional information about the Project design. The County will submit and pay for all permits. If necessary, provide for inclusion in the specifications, a list of the permits which must be obtained by the construction contractor.

4. The Office Check plans shall include a detailed traffic control plan with an outline for construction staging conforming to the requirements of the Manual on Uniform Traffic Control Devices and the Kansas Department of Transportation standards. The traffic control plan requires submittal to County for review and approval prior to inclusion in the final design plans.
5. The Office Check plans shall include detailed stormwater pollution prevention plans (SWP3) as required by the State.
6. The Consultant shall prepare computations for all Office Check plan quantities and bid items. If requested by Douglas County, the Consultant shall provide copies of design calculations and/or supporting documentation.
7. The Consultant shall design the plans in conformance with KDOT specifications. The Consultant shall design and detail all structures or improvements not covered by KDOT standard detail sheets or detail sheets provided by the supplier.
8. Prepare Office Check plans, incorporating all Field Check comments from County staff.
9. As a minimum, the Office Check plans shall include the following:
  - a) Title Sheet
  - b) Typical Sections
  - c) Plan Sheets
  - d) Profile Sheets
  - e) Traffic Control Plan Sheets
  - f) Stormwater Pollution Prevention Plan
  - g) Drainage Area Map
  - h) Hydrologic and hydraulic data for drainage systems
  - i) Permanent Signing Quantity Sheets
  - j) KDOT Standard Detail Sheets
  - k) Earthwork Quantities, Cross Sections and Entrance Sections with existing and proposed grades
  - l) Miscellaneous Detail Sheets, non-standard details
  - m) Summary of Quantities listed as bid items

Additional plans and information may be required to complete Office Check plans.

10. Provide all utility companies a set of Office Check plans for their use. Meet with each utility company to discuss the relocation of their facilities and the time schedule.
11. Prepare Office Check estimate of probable construction cost for the Project.
12. Submit Office Check plans to County for review. Allow two weeks for County review. All review comments made by County staff shall be discussed and addressed. Changes to the plans required by these comments shall be considered part of the project development process and shall not be a basis for additional design fees unless the original project scope is changed.
13. Provide any required Special Provisions to the KDOT construction specifications as needed for construction items on the plans. The County will prepare the Project Specifications including front end documents and the KDOT construction specifications.
14. After all comments from the County are made on the plans, submit final signed and sealed plans to the County for County signature, including all Special Provisions.
15. AutoCad .dwf files or .pdf files are to be supplied to the County in lieu of original mylars. The Consultant shall submit a .pdf file of the complete set of plans (after it is signed and sealed) using PDF Converter Professional 6.0 or other software approved by the County. Two (2) full size copies and two (2) half size copies of the final signed and sealed plans, printed on 24" x 36" bond paper or 12" x 18" bond paper as appropriate, shall also be delivered to the County.
16. At any time prior to completion and final acceptance of the construction contract for this Project, the Consultant shall be responsible for correcting all errors and omissions due to the negligence of the Consultant and submitting revised final plans to the County.

#### **IV. BIDDING PHASE**

1. Answer questions from contractors regarding the final plans. If necessary, issue any requested addenda.
2. If requested by the County, attend a pre-bid meeting to explain any extraordinary conditions or designs and to answer questions regarding the plans.
3. Review and make recommendations regarding proposed alternates or value engineering proposals by the contractor.

#### **V. CONSTRUCTION PHASE**

1. If requested by the County, attend a pre-construction meeting with the County and the contractor once the Project has been awarded to explain any

extraordinary conditions or designs and to answer questions regarding the plans.

2. Answer all questions from the contractor regarding the design and interpretation of the plans. Provide consultation concerning conditions encountered during construction that conflict with or were not addressed by the final plans.
3. Review and comment, or approve, each contractor's shop drawings and samples, the results of tests and inspections, and other data which each contractor is required to submit for the purposes of checking for compliance with the design concept and conformance with the requirements of the Contract Documents.
4. If Consultant is hired to perform construction inspection, provide County with a complete set of as-built drawings for the Project. The as-built drawings shall be provided as a digital copy, as detailed in Exhibit E (attached hereto and incorporated herein), and one set of plans on bond paper..
5. A separate agreement for construction inspection will be executed at a later date if desired by the County.
6. Following construction, if any new structures are bridge length (>20'), inspect the new structure, prepare the initial SIA report on the structure's condition, and enter inspection data into KDOT's bridge inspection web portal. Also, provide the County with inventory and operating ratings for the five standard truck configurations.

## **VI. GENERAL**

1. Prepare the design plans for the Project for such parts and sections, and in such order of completion, as designated by the County and in conformance with the Project's current official schedule. Further, Consultant agrees to complete all design plan development stages no later than the due dates on the Project's current official schedule (Exhibit D), exclusive of delays beyond the Consultant's control.
2. Provide written monthly progress reports as detailed in Exhibit C.
3. The Consultant must notify County of additional costs for service requested prior to performing the service. For example, if Consultant is asked to attend a meeting not included in the scope of service, the cost must be determined before attending.
4. Written notes from any meetings with state, federal, or other agencies will be provided to County by the Consultant. These need not be "formal minutes" but notes on discussion topics and requirements imposed.
5. All documents must be provided in the current version of Microsoft Word as designated by the County at the time of execution of this contract.

6. All drawings must be prepared on 24"x36" sheets in general conformance with KDOT standards. Also, final plans, field notes, and other pertinent Project mapping records are to be provided to County on digital format, as detailed in Exhibit E.

**VII. SPECIAL PROVISIONS**

1. The reconstruction of the bridge structure on the west edge of Stull is not included in the scope of services. If the reconstruction is deemed desirable by the County, a separate agreement will be executed.

I. DIRECT PAYROLL

Scope Item and Description	Principal / Project Manager	Project Engineer III	Senior Project Engineer	Design Engineer	Bridge Dept. Manager	Bridge Engineer	CAD System Operator	Senior Project Surveyor *	Survey Crew *	Clerical *	Total Hours	Total Payroll
	\$55.00	\$50.00	\$45.00	\$30.00	\$55.00	\$34.00	\$29.50	\$45.00	\$50.00	\$15.00		
<b>A: Preliminary Design Phase (Field Check plan preparation)</b>												
1. Meet with County staff to determine specific project needs and general project desires. Also, review and receive available information and plans. Project budget will be provided by County staff.												
a. Prepare for Meeting		2									2	\$ 100.00
b. Attend Meeting	4	4		4							12	\$ 540.00
c. Meeting Minutes		2								2	4	\$ 130.00
2. Perform design and cadastral surveys as required to prepare plan and profile sheets in order to provide sufficient control, location, and land information necessary to prepare a complete set of construction plans and to prepare any legal descriptions required for easement acquisition. All surveys and point coordinates for the Project must tie into and be in the Kansas State Plane (North Zone). Cadastral surveys shall include locating the position of pertinent PLSS corners (including quarter and sixteenth corners) pertaining to the project and shall conform to the accuracy standards as set forth by the Kansas State Board of Technical Professions. All survey data must be provided to County in digital format allowing insertion into AutoCAD environment using standard fieldbook format (PNEZD space delimited).												
a. Manage the Survey Phase	4	8						20			32	\$ 1,520.00
b. GPS Survey Control									40		40	\$ 2,000.00
c. Topographic Survey									240		240	\$ 12,000.00
d. Project Control, Right-of-Way Determination								40			40	\$ 1,800.00
e. Process Survey Data and prepare Base Drawing							60				60	\$ 1,770.00
3. Obtain information from utility companies who have facilities within the Project limits. Utility companies shall be required to locate their facilities within the Project limits. Include utility locations in survey data. Provide preliminary utility coordination. Horizontal location is required for all utilities.												
4. Obtain ownership and easement information on the properties that abut the Project site. Copies of all ownership maps and recorded plats will be obtained from the Douglas County Public Works Department.												
5. Provide traffic engineering analysis to determine design traffic volumes and vehicle classifications.												
a. 24-hour Tube Counts with Classification (provided by County Staff)											0	\$ -
b. Peak Hour Turning Movement Counts (E50/N1600 @ CR442, E100 @ CR442, E250 @ CR442)							24				24	\$ 708.00
c. Traffic Analysis		16		24							40	\$ 1,520.00
d. Traffic Engineering Report	4	16		24							48	\$ 1,800.00
6. Provide for any geological and geotechnical investigations, if needed, to determine required bridge/culvert foundations in accordance with Douglas County and/or KDOT requirements. Provide a written report summarizing information found and make recommendations on what is needed for the Project.												
7. Provide services of a geotechnical consultant to determine the adequacy of subgrade and pavement condition. Complete a pavement evaluation and a determination of appropriate cross section and pavement to handle the design traffic volumes. Provide a written report concerning geotechnical findings and make recommendations on pavement cross-section for this project.												
8. Prepare a hydrological study and analysis to establish recommendations concerning appropriate waterway opening for all drainage structures, length of the structure, and roadway profile. If appropriate, perform watershed analysis and computer flow modeling using HECRAS or other hydraulic software approved by the County. Provide a written report of the results of this hydraulic analysis with recommendations for this project and provide copies of any computer digital data.												
a. Hydrology Analysis	8	4		24			4				40	\$ 1,478.00
b. Existing Ditch and Culvert Hydraulic Analysis		8		40							48	\$ 1,600.00
c. Prepare Report		4		16							24	\$ 740.00

Scope Item and Description	Principal / Project Manager	Project Engineer III	Senior Project Engineer	Design Engineer	Bridge Dept. Manager	Bridge Engineer	CAD System Operator *	Senior Project Surveyor *	Survey Crew *	Clerical *	Total Hours	Total Payroll
9. Design storm drainage systems to carry the 25 year storm event in accordance with the current County standards. Prepare a hydrologic and hydraulic analysis to establish recommendations concerning storm drainage design. Include pipe/box sizes, alignments, grades, drainage easements, and associated Project design items. Perform watershed analysis and computer flow modeling using hydraulic software approved by the County. Provide a written report of the results of this hydraulic analysis with recommendations for the Project and copies of the computer digital data.	4	4		24	40	8	16				24	\$ 984.00
a. Tributary Analysis at Bridge (for possible Channel Change)											48	\$ 1,620.00
b. Hydraulic Analysis of Proposed Improvements (Culverts, Ditches, Entrance Pipes)											28	\$ 920.00
c. Prepare H&H Data Summary for Plans												
10. Review alternative design concepts with the County prior to progressing to the detail aspects of the Project. Alternative concepts shall be discussed to determine the best horizontal and vertical alignments for the Project. County's concurrence in the selection of an alternate or preliminary concept will be contingent on the accuracy and completeness of the background information provided by Engineer.	8	24		20	60						52	\$ 2,240.00
a. Existing Roadway Conditions Analysis (to determine rehab vs. reconstruct)		40		40							100	\$ 3,800.00
b. Geometric Design Options Analysis		8		40							48	\$ 1,600.00
c. Cross Section, Grading, Construction Limits Analysis					4	8					12	\$ 492.00
d. Bridge Analysis					4	8					12	\$ 492.00
e. Guard Fence Options				16							16	\$ 480.00
f. Culvert Extension and Channel Grading Limits		8		16							32	\$ 1,320.00
g. Meet twice with County to discuss options, revise and review for approval												
11. Prepare Field Check plans in sufficient detail for County to review. These documents shall include horizontal and vertical alignments, storm sewer design, drainage area map, drainage design data, and preliminary right-of-way and easement acquisitions.											0	\$ -
12. The following will be needed, as a minimum, to develop Field Check plans:												
a. Title Sheet								2			2	\$ 59.00
b. General Notes and Typical Sections				4				2			6	\$ 179.00
c. Plan & Profiles				40				40			80	\$ 2,880.00
d. Project Sequencing		8									8	\$ 400.00
e. Drainage Area Map				8				4			12	\$ 358.00
f. Right-of-Way/Easement Map		2		8				8			20	\$ 666.00
13. The Consultant shall be responsible for verification, furnishing, and recording of any legal land corners necessary for legal descriptions used in easement documents. The Consultant shall tie the approved centerline or corner to established land corners.									8		8	\$ 360.00
14. Prepare Field Check estimate of probable construction cost for the Project.											4	\$ 200.00
15. Prepare two full size set of Field Check plans for County review. Allow two weeks for County review. If Project is over budget, a determination of alternatives will be required. Contract may be terminated if additional funds are not available or project modifications cannot be made.								4			4	\$ 118.00
16. Once Field Check plans have been reviewed by County staff, the Consultant shall arrange a Field Check meeting with County staff to discuss all review comments. All review comments made by County staff shall be discussed and addressed. Changes to the plans required by these comments shall be considered part of the project development process and shall not be a basis for additional design fees unless the original project scope is changed.	8	8								2	18	\$ 870.00
											Subtotal A =	\$ 50,422.00

Scope Item and Description		Principal / Project Manager	Project Engineer III	Senior Project Engineer	Design Engineer	Bridge Dept. Manager	Bridge Engineer	CAD System Operator	Senior Project Surveyor	Survey Crew	Clerical	Total Hours	Total Payroll
		\$55.00	\$50.00	\$45.00	\$30.00	\$55.00	\$34.00	\$29.50	\$45.00	\$50.00	\$15.00		
<b>B. Final Design Phase (Office Check plan preparation)</b>													
1. If needed, attend one (1) Board of County Commissioners meeting or public meeting to discuss the proposed improvements and their impact on the adjacent properties.													
a. Prepare for Meeting		2	4									10	\$ 428.00
b. Attend Meeting		4	4					4				8	\$ 420.00
2. Prepare a right-of-way strip map and furnish County with the original and two copies of the strip map as well as digital files in pdf format. Also, furnish County with 8 1/2" x 11" exhibits and legal descriptions of each property required for right-of-way or easement acquisition. The Consultant shall be responsible for making revisions to the right-of-way and construction plans resulting from negotiations with the property owners.													
a. Prepare Legal Descriptions (26 properties anticipated)			2						40			42	\$ 1,900.00
b. Prepare Strip Maps								24				24	\$ 708.00
3. Prepare all applications, exhibits, drawings, and specifications necessary to obtain all required permits including the National Pollutant Discharge Elimination System (NPDES) Permit for Construction Activities, U.S. Army Corps of Engineers 404 Permit, and/or the Kansas Department of Agriculture, Division of Water Resources permits. Applications shall be prepared for the County's execution and submittal. Assist the County in obtaining permit approvals by furnishing additional information about the Project design. The County will submit and pay for all permits. If necessary, provide for inclusion in the specifications, a list of the permits which must be obtained by the construction contractor.													
a. NPDES NOI				2								2	\$ 60.00
b. 404 Permit					4		2					4	\$ 178.00
c. DWR Permit (two cell 5x3 RCB)												4	\$ 120.00
d. DWR Permit (Bridge/Stream Changes)							2					4	\$ 178.00
4. The Office Check plans shall include a detailed traffic control plan with an outline for construction staging conforming to the requirements of the Manual on Uniform Traffic Control Devices and the Kansas Department of Transportation standards. The traffic control plan requires submittal to County for review and approval prior to inclusion in the final design plans.			24					40				64	\$ 2,380.00
5. The Office Check plans shall include detailed stormwater pollution prevention plans (SWPP3) as required by the State.												0	\$ -
6. The Consultant shall prepare computations for all Office Check plan quantities and bid items. If requested by Douglas County, the Consultant shall provide copies of design calculations and/or supporting documentation.			8		16							24	\$ 880.00
7. The Consultant shall design the plans in conformance with KDOT specifications. The Consultant shall design and detail all structures or improvements not covered by KDOT standard detail sheets or detail sheets provided by the supplier.												0	\$ -
8. Prepare Office Check plans, incorporating all Field Check comments from County staff.												0	\$ -
9. As a minimum, the Office Check plans shall include the following:												0	\$ -
a. Title Sheet								4				4	\$ 118.00
b. Typical Sections			8					4				12	\$ 518.00
c. Plan Sheets (16 sheets)			32		96			96				224	\$ 7,312.00
d. Profile Sheets (16 sheets)			32		96			96				224	\$ 7,312.00
e. Traffic Control Sheets									2			2	\$ 59.00
f. Stormwater Pollution Prevention Plan									2			2	\$ 59.00
g. Drainage Area Map				8				2				10	\$ 299.00
h. H&H Sheets and Data for Drainage Systems				16				2				18	\$ 595.00
i. Permanent Signing				40				16				64	\$ 2,072.00
j. KDOT Standard Detail Sheets			2					8				10	\$ 336.00
k. Easement Quantities, Cross Sections and Entrance Sections			40		100			100				240	\$ 7,950.00
l. Miscellaneous Details			24		40			4				68	\$ 2,518.00
m. Summary of Quantities			8					2				10	\$ 459.00
n. Pavement Marking Plans			16					16				32	\$ 1,272.00
o. Guard Fence and Bridge Plans							8					28	\$ 1,043.00
p. Culvert Modifications and Extensions							2					20	\$ 713.00
q. Design Management & QA/QC Check		40		16				2				56	\$ 2,920.00

Scope Item and Description	Principal / Project Manager	Project Engineer III	Senior Project Engineer	Design Engineer	Bridge Dept. Manager	Bridge Engineer	CAD System Operator *	Senior Project Surveyor *	Survey Crew *	Clerical *	Total Hours	Total Payroll
	\$55.00	\$50.00	\$45.00	\$30.00	\$55.00	\$34.00	\$29.50	\$45.00	\$50.00	\$15.00		
10. Provide all utility companies a set of Office Check plans for their use. Meet with each utility company to discuss the relocation of their facilities and the time schedule. a. Provide Plans to each utility Company (7 Utilities will need to be coordinated) b. Meet with and Coordinate Utility Relocations	8	2		16			8				8	\$ 236.00
11. Prepare Office Check estimate of probable construction cost for the Project.		4									4	\$ 200.00
12. Submit Office Check plans to County for review. Allow two weeks for County review. All review comments made by County staff shall be discussed and addressed. Changes to the plans required by these comments shall be considered part of the project development process and shall not be a basis for additional design fees unless the original project scope is changed.			4				4				4	\$ 118.00
13. Provide any required Special Provisions to the KDOT construction specifications as needed for construction items on the plans. The County will prepare the Project Specifications including front end documents and the KDOT construction specifications.										4	8	\$ 260.00
14. After all comments from the County are made on the plans, submit final signed and sealed plans to the County for County signature, including all Special Provisions. a. QA/QC Check b. Print, Prepare and Deliver Documents	2	2	8				8				10	\$ 470.00
15. AutoCAD .dwf files or .pdf files are to be supplied to the County in lieu of original mylars. The Consultant shall submit a .pdf file of the complete set of plans (after it is signed and sealed) using PDF Converter Professional 6.0 or other software approved by the County. Two (2) full size copies and two (2) half size copies of the final signed and sealed plans, printed on 24" x 36" bond paper or 12" x 18" bond paper as appropriate, shall also be delivered to the County.							4				4	\$ 118.00
16. At any time prior to completion and final acceptance of the construction contract for this Project, the Consultant shall be responsible for correcting all errors and omissions due to the negligence of the Consultant and submitting revised final plans to the County.											0	\$ -
											Subtotal B =	\$ 45,509.00

C. Final Plan Preparation:												
1. Final Plan Revisions, Quantities, and Drafting Modifications	4	8		24			24				60	\$ 2,048.00
2. QA/QC Check	8		16								24	\$ 1,160.00
3. Print, Prepare and Deliver Documents							8				8	\$ 236.00
											Subtotal C =	\$ 3,444.00

D. Bidding Phase												
1. Answer questions from contractors regarding the final plans. If necessary, issue any requested addenda.	2	8									10	\$ 510.00
2. If requested by the County, attend a pre-bid meeting to explain any extraordinary conditions or designs and to answer questions regarding the plans.	2	4									6	\$ 310.00
3. Review and make recommendations regarding proposed alternates or value engineering proposals by the contractor.	2	2									4	\$ 210.00
											Subtotal D =	\$ 1,030.00



Scope Item and Description	Principal / Project Manager	Project Engineer III	Senior Project Engineer	Design Engineer	Bridge Dept. Manager	Bridge Engineer	CAD System Operator *	Senior Project Surveyor *	Survey Crew *	Clerical *	Total Hours	Total Payroll
<b>E. Construction Phase</b>												
1. If requested by the County, attend a pre-construction meeting with the County and the contractor once the Project has been awarded to explain any extraordinary conditions or designs and to answer questions regarding the plans.		4									4	\$ 200.00
2. Answer all questions from the contractor regarding the design and interpretation of the plans. Provide consultation concerning conditions encountered during construction that conflict with or were not addressed by the final plans.	2	16									18	\$ 910.00
3. Review and comment, or approve, each contractor's shop drawings and samples, the results of tests and inspections, and other data which each contractor is required to submit for the purposes of checking for compliance with the design concept and conformance with the requirements of the Contract Documents.		8		16							24	\$ 880.00
4. If Consultant is hired to perform construction inspection, provide County with a complete set of as-built drawings for the Project. The as-built drawings shall be provided as a digital copy, as detailed in Exhibit E (attached hereto and incorporated herein), and one set of plans on bond paper.	0	0	0	0	0	0	0	0	0	0	0	\$ -
5. A separate agreement for construction inspection will be executed at a later date if desired by the County.	0	0	0	0	0	0	0	0	0	0	0	\$ -
6. Following construction, if any new structures are bridge length (>20'), inspect the new structure, prepare the initial SIA report on the structure's condition, and enter inspection data into KDOT's bridge inspection web portal. Also, provide the County with inventory and operating ratings for the five standard truck configurations.					2						2	\$ 110.00
											<b>Subtotal E = \$</b>	<b>2,100.00</b>

TOTAL DIRECT PAYROLL (Part I) = \$ 102,505.00

II. SALARY RELATED OVERHEAD

TOTAL DIRECT PAYROLL x 1.912 = \$ 195,989.56

III. TOTAL PAYROLL PLUS OVERHEAD

TOTAL Part I + TOTAL Part II = \$ 298,494.56

IV. NET FEE

12% of TOTAL Part III = \$ 35,819.35

V. DIRECT EXPENSES

Printing and Mailing \$ 1,000.00  
 Ownership and Easement Certificates 24 @ \$150 per each \$ 3,600.00  
 Geotechnical \$ 10,000.00  
 Mileage 1500 miles @ \$0.51 per mile = \$ 765.00  
**TOTAL DIRECT EXPENSES = \$ 15,365.00**

**GRAND TOTAL (Total Payroll Plus Overhead (III) + Net Fee (IV) + Direct Expenses (V)) = \$ 349,678.91**

NOTES: 1) The hourly rates shown above are effective for services through December 31st of the contract year and are subject to revision annually.  
 2) \* = For any non exempt personnel in positions marked with an asterisk (\*), overtime will be billed at 1.5 times the hourly labor billing rates shown.

**PROJECT NO. 2011-9**  
**Route 442, E 1 Road to Stull (Route 1023)**  
**EXHIBIT C**  
**PROGRESS REPORTS**

Progress reports shall include the following:

1. Status of design: List each principal task and the percentage complete.
2. Status of right-of-way or easement descriptions: Describe the status of legal descriptions for property to be acquired for the Project.
3. Tasks to be performed in the next month: List each principal task which is anticipated to be started or completed in the next month.
4. Issues which need direction from County: List all items where further direction from County is needed by Engineer in order to complete the Project within the Project Schedule detailed in this Agreement.
5. Issues which may present a problem for meeting the Project Schedule: List all issues and problems which may prevent a timely completion of the plans or which may create a problem during construction.

**PROJECT NO. 2011-9**  
**Route 442, E 1 Road to Stull (Route 1023)**  
**EXHIBIT D**  
**PROJECT SCHEDULE**

Submit geological report with drainage structure/pavement recommendations - September 1, 2011

Submit hydrological study and analysis with recommendations - September 1, 2011

Submit Field Check plans and estimate (allow 3 weeks for County review) - November 1, 2011

Submit right-of-way or easement legal descriptions, drawings, strip map - January 1, 2012

Submit Office Check plans and estimate (allow 3 weeks for County review) - March 1, 2012

Submit Final Plans, Special Provisions, and estimate -May 1, 2012

Tentative Bid Date -November 1, 2012

Tentative Construction Start Date -February 1, 2013

**PROJECT NO. 2011-9**  
**Route 442, E 1 Road to Stull (Route 1023)**  
**EXHIBIT E**  
**CAD REQUIREMENTS**

1. Software requirement: Civil 3D (Version 2011 preferred). A layer list for each project shall accompany the digital media. Ensure that all objects are on their proper layers.
2. Project drawings shall be developed by the Consultant using Civil 3D and made available to the County on digital media. Two sets of final plans will be submitted on 24"x36" bond paper and sealed by the professional engineer responsible for the project. These two sets of plans will be signed by the Director of Public Works for Douglas County. One set will be returned to the Consultant for their permanent records and one set will be retained by Douglas County for their permanent records.
3. Once all signatures have been placed on the plans, the Consultant shall provide a digital version of the final signed and sealed plans in both .pdf and .dwt format. The Consultant shall submit a .pdf file of the complete set of plans using PDF Converter Professional 6.0 or other software approved by the County. Also, submit the base drawing, topographic drawing, and the sheet layouts in Civil 3D and .dxf format.
4. Acceptable Digital Media: DVD.
5. Compression Utilities: If a compression utility is used, save file(s) as "self-extracting" file(s).

**PLANNING COMMISSION REPORT**  
**Regular Agenda – Public Hearing Item**

PC Staff Report  
5/23/11

**ITEM NO. 1: I-2 TO A; 32 ACRES; 670 N 1800 RD (MKM)**

**Z-3-10-11:** Consider a request to rezone approximately 32 acres from I-2 (Light Industrial) to A (Agricultural), located at 670 N 1800 Rd. Submitted by Paul Werner Architects, for Rockwall Farms L.C., property owner of record. *Joint meeting with Lecompton Planning Commission.*

**STAFF RECOMMENDATION:** Staff recommends approval of the rezoning request for approximately 32 acres from I-2 (Light Industrial) to A (Agricultural) District and forwarding it to the Board of County Commissioners with a recommendation for approval based on the findings of fact found in the body of the staff report.

**ALTERNATE RECOMMENDATION:** If the Planning Commission finds that industrial development is appropriate for this property, Staff recommends that it be rezoned to I-2 with the condition that permitted uses exclude the uses permitted in the B-1 and B-2 Districts.

Applicant's reason for request: *"At the initial rezoning of this property to I-2 it was not clear what ground would be needed to accommodate the Berry Plastics Facility. It is now clear that only 62 acres is needed which leaves the additional 31.876 acres to be potentially rezoned to A as requested by the County Commissioner."*

**KEY POINTS**

- The subject property is located within 3 miles of the Lecompton city limits and this rezoning request will be considered at a joint meeting of the Lawrence-Douglas County Metropolitan and Lecompton Planning Commissions.
- The Board of County Commissioners approved a rezoning request for this property from the A to the I-2 District [Z-9-14-10] at their November 10, 2010 meeting. This rezoning was adopted with Resolution 10-28. A copy of the Planning Commission and Board of County Commission meetings regarding this rezoning request is attached.
- The property recently rezoned to the I-2 District, Lot 2 Rockwall Farm Addition, was divided into 2 lots with a Minor Subdivision, MS-2-1-11, which was approved on March 31, 2011.

**ATTACHMENTS**

Attachment A: Rockwall Farms Addition 2<sup>nd</sup> Plat, MS-2-1-11

Attachment B: Permitted Uses in the I-2 District

Attachment C: Site Plan for Berry Plastics, SP-10-58-10

Attachment D: Planning and County Commission Minutes for I-2 Zoning, Z-9-14-10

**ASSOCIATED CASES/OTHER ACTION REQUIRED**

**Associated Cases**

- Z-9-14-10: Rezoning request for this property from the A to the I-2 District, approved by Board of County Commissioners on November 10, 2010.

- SP-10-58-10: Site Plan for Berry Plastics Facility approved by Board of County Commissioners on February 2, 2011. Revision to reduce parking approved administratively on March 7, 2011.
- Minor Subdivision MS-2-1-11 creating Lots 1 and 2, Rockwall Farms Addition 2<sup>nd</sup> Plat was approved administratively on March 31, 2011. (Attachment B) The Minor Subdivision divided the subject property, Lot 1, from the property required by Berry Plastics for their warehouse and printing facility, Lot 2.

### **Other Action Required**

- Approval of rezoning by Board of County Commissioners and publication of resolution.

### **PUBLIC COMMENT RECEIVED PRIOR TO PRINTING**

- No public comment was received prior to printing this staff report.

### **Project Summary:**

On November 10, 2010 the property in Rockwall Farms Addition was rezoned as follows:

- Lot 2 from A to I-2 to accommodate a warehouse and printing facility and
- Lot 1 from A to B-2 (with conditions) to accommodate a rural tourism use.

When this rezoning occurred, the exact area needed for the warehouse and printing facility was unknown. Following the rezoning, the area necessary to accommodate the facility was determined and an application for a minor subdivision was submitted to divide the property.

The Planning Director administratively approved the Minor Subdivision but there was concern that another industrial or commercial use could be established on the newly created lot, which was not consistent with the representation that the rezoning was necessary to support only the warehouse and printing facility. In order to ensure appropriate input into the use of the newly created lot, the Administrative Determination Report for the Minor Subdivision noted that the newly created lot would be subject to the public rezoning process to determine the appropriate zoning district.

The applicant submitted an application for rezoning to the A District, but their responses in the application, and included in this staff report, indicate that they feel other zoning districts would be appropriate as well. This report will focus on the requested rezoning, I-2 to A, but will also discuss the other zoning districts that are mentioned by the applicant.

### **GENERAL INFORMATION**

Current Zoning and Land Use: I-2 (Light Industrial) District; Agricultural uses.

Surrounding Zoning and Land Use: Lot 2 of Rockwall Farms Addition 2<sup>nd</sup> Plat which is adjacent to the interior of the subject property (see Figure 1), is zoned I-2; Agricultural uses, with development approval for a light industrial use: warehouse and printing facility.

Other surrounding property:

To the north and west: A (Agricultural) District; Agricultural uses, woodlands and scattered rural residences.

To the south: A (Agricultural) District; right-of-way for N 1800 Road and I-70.

To the east: A (Agricultural District) with rezoning to B-2 (General Business) District with conditions approved and

pending publication of resolution; agricultural uses with development approval for a rural tourism use.

### **I. ZONING AND LAND USES OF SURROUNDING PROPERTIES**

The adjacent properties which are also a part of the Rockwall Farm Addition and Rockwall Farm Addition 2<sup>nd</sup> Plat, are zoned I-2 (Light Industrial) for a warehouse expansion and B-2 with conditions for a rural tourism use. Properties beyond the boundaries of the Rockwall Farm plats, are zoned A (Agricultural) and are used primarily for agriculture, open space, and rural residences.

**Staff Finding** –The surrounding area is zoned A (Agricultural) and is used primarily for agriculture, open space, rural residences and transportation network. The immediately adjacent properties included in the Rockwall Farms plat are zoned for light industrial and general commercial with conditions to accommodate a warehouse printing facility and a rural tourism use. Either the A or I-2 District would be compatible with the surrounding zoning and land uses.

### **II. CHARACTER OF THE AREA**

This is a rural area with woodlands, agriculture and rural residences. The area also contains the corridor of I-70, a state highway, and N 1800 Road, Farmer's Turnpike, which is classified a principal arterial on the Major Thoroughfares Map. Development approvals in the immediate area have been granted for a corporate retreat, which is a rural tourism use, and a warehouse. The warehouse will be set back and oriented away from the road to minimize its visual impact and the rural tourism use will use buffering and site sensitive design to maintain the rural character of the area.

**Staff Finding** -- The area is a rural area containing woodland, farmland and rural residences in close proximity to a major transportation corridor with development approvals for light industrial and rural tourism uses which have been designed for compatibility with the rural character of the surrounding area. Rezoning to the A District would maintain the rural character of the corridor, a value espoused by the applicant in the original rezoning based on the deep setback of the warehouse building. Rezoning to the I-2 or Commercial Districts could have more of a visual impact along the corridor due to the nature of the uses permitted in these districts.

### **III. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED**

Applicant's Response:

*"Although the site has roughly 32 acres included in the rezoning request only 8 of those acres near North 1800 Road are suitable for a building location. The small amount of developable acreage greatly limits the potential harm if it were to remain zoned I-2. However, we believe that the site could also be zoned B-2 to match the existing zoning to the east and be compatible with the surrounding zoning or it could be zoned back to A."*

The property is currently zoned I-2 (Light Industrial) District. Per Section 12-312-2 of the Zoning Regulations for the Unincorporated Territory of Douglas County permitted uses in the I-2 District includes any uses in the B-1 (Neighborhood business) or B-2 (General Business District), without limitation on floor area as well as animal hospital or clinic. The sections of the Zoning Regulations which identify the permitted uses in the B-1, B-2, and I-2 Districts are included with this report as Attachment B.

The staff report for the original rezoning to the I-2 District noted that, "The property is also suitable for the proposed industrial uses due to its size, topography, and access to a suitable transportation network." Figure 2 contains the slope illustration which was provided in the staff report for the original I-2 rezoning request. The majority of the subject property contains slopes which are greater than 3%.

When the property was one lot, the I-2 Zoning was appropriate as this provided a large area for future expansion of the warehouse, which was a principal reason this site was selected for the warehouse use. It also allowed the building to be located about 1000 ft back from the road. This separation and the change in grade served to reduce the visual impact of the building on the road. However, with the division of this property into 2 lots, the I-2 Zoning may no longer be appropriate for the smaller lot. With the I-2 or other industrial or commercial zoning, it would be possible to develop this property with another use; possibly removing the expansion area to the north or the buffering area to the south. The Planning Commission minutes attached with this report reflect the discussion on the buffering area between the building and the road. In addition, when the property was rezoned to the I-2 District, the buffer area for rural tourism use to the east was provided on the industrially zoned property (FIGURE 1). Whether agricultural or industrial uses are permitted on the subject property, this buffer area must be maintained.

**Staff Finding** – The land is suited for agricultural uses. Agricultural Zoning would serve to maintain the lot in its present condition, reserving the north portion for future warehouse expansion, observing the use limitations on the buffer area for the rural tourism use, and maintaining the visual buffer between the warehouse and the road. Conversely, the lot is also suited to industrial uses given the transportation network being constructed to accommodate the Berry Plastics and Woods developments, as long as the buffer for the Woods remains.

#### **IV. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED**

The property is currently undeveloped. The property was rezoned to the I-2 Zoning District in November of 2010 in association with a development application for a warehouse facility. The site plan for this warehouse [SP-11-58-10] was approved by the County Commission on February 2, 2011 (Attachment C). No development proposals have been submitted for the subject property, Lot 1 Rockwall Farms Addition, 2<sup>nd</sup> Plat.

**Staff Finding** – The property has never been developed but has been used for agricultural purposes.

#### **V. EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY**

Applicant's response:

*"Down zoning this site from I-2 to A or anywhere in between would not detrimentally affect the nearby property."*

The requested rezoning to the A District would not detrimentally affect nearby property as it would maintain the historic use of the property and the area between the building and N 1800 Road could remain undeveloped. The topography in this area and the orientation of the warehouse serve to reduce the visual impact of the development on N 1800 Road.



The applicant indicated that any other rezoning would also not detrimentally affect the nearby properties. While other zoning districts have not been requested, additional retail or industrial uses could have possible negative impacts which may further alter the rural character of the area. (additional parking areas, lighting, buildings, and traffic) The staff report reviewing the I-2 rezoning request included the following statement: "The proposed location of the facility, approximately 1000 ft from Farmer's Turnpike, should minimize the visual impact from the road." Allowing additional development in this area, whether retail or industrial, would increase the visual impact from the road as well as generate increased traffic on N 1800 Road.

**Staff Finding** – The requested rezoning to A (Agriculture) would have the least effect on nearby property and may benefit nearby properties by minimizing the impact of the warehouse on the surrounding area. Other zoning districts may detrimentally impact nearby property as additional development could increase the visual impact of the development on N 1800 Road and result in increased traffic in this area.

## **VI. RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE PETITIONER'S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNERS**

Applicant's Response:

*"A less intense zoning district than what currently exists will not have negative impacts on the petitioner's property. If the rezoning were denied a hardship would not be placed on the landowner due to I-2 zoning providing some uses that could be placed on the 8 acres near North 1800 Road."*

Evaluation of these criteria includes weighing the benefits the denial of the rezoning request would provide for the public versus the hardship the denial would impose on the owner of the subject property. Benefits are measured based on the anticipated impacts of the rezoning request on the public health, safety and welfare.

This is a unique rezoning request in that a rezoning is requested to a less intense zoning district. If the rezoning request were denied, the area could be developed with commercial or industrial land uses. The approval of the rezoning request to the Agricultural District may help maintain the rural character of the area and minimize the impact of the approved developments.

As the list of uses which are permitted in the B-1 and B-2 Districts illustrate, these districts permit a wide range of uses which may not be compatible with the overall character of the area and were not intended at the time of the original rezoning to the I-2 District.

**Staff Finding** – There would be little gain to the public health, safety or welfare from the denial of the rezoning request since the rezoning is to a less intense zoning district. The general public could be negatively impacted with the denial as additional uses would be possible in this area than were originally considered when the property was rezoned to the I-2 District. Approval of the rezoning request could benefit the general public by maintaining the character of the area.

## **VII. CONFORMANCE WITH THE COMPREHENSIVE PLAN**

Applicant's Response:

*"The site is currently zoned I-2 and complies with Horizon 2020 regarding its location. Since the entire area zoned I-2 is not needed by the Berry Plastics facility, down zoning the remaining land to A would return the land to its original zoning designation which would comply with Horizon 2020. However, if B-2 is found to be an acceptable zoning for the area it would be appropriate and act as a buffer between I-2 and the surrounding 'A' uses and fit in well with the B-2 zoning to the east. In addition, the B-2 zoning would provide access to transportation since it's located on North 1800 Road and in close proximity to I-70 and K-10. With I-2 to the north and B-2 with conditions to the east it may be reasonable to zone this property somewhere between I-2 and A."*

The rezoning request to the A District is compliant with recommendations in *Horizon 2020* regarding development in the rural portions of the county. *"The Rural Area is the land that lies outside the designated Urban Growth Area of the incorporated cities. Lands in the Rural Area are not planned to develop or to support urban densities of development during the planning period."* (Page 4-4, *Horizon 2020*)

The applicant indicated that zoning to other industrial or commercial zoning districts may be appropriate for this site. The following excerpts from *Horizon 2020* list the locational criteria for industrial and commercial zoning districts:

## **COMMERCIAL**

### **Chapter Four, Growth Management.**

#### **Rural Area** (page 4-4)

Lands in the Rural Area are not planned to develop or to support urban densities of development during the planning period. There are a few locations, however, in the Rural Area which may be expected to receive some level of urban development consistent with the Plan. These include commercial areas to serve county residents and, potentially, to provide (i) conference and recreation facilities at Clinton Lake, and (ii) conference, recreation, or tourism facilities that benefit from or integrate with the rural setting, at such locations that substantially satisfy the following criteria: (a) direct access to an improved arterial roadway; (b) public water supply available; (c) separated from existing conference, recreation, or tourism facilities by at least 3 miles or other appropriate distance as determined by the Board of County Commissioners; and (d) designed to preserve and/or integrate natural resources and the rural environment through appropriate land use, site design, buffering, or other methods. Otherwise, urban uses are not planned within the Rural Area.

#### **Policy 3.12: Criteria for Commercial Development in Unincorporated Areas**

(page 6-38)

- A. Existing commercial areas that are located at the intersection of a hard surfaced County Route and a state or federally designated highway should be allowed to expand if the necessary infrastructure (water, road, approved wastewater treatment facility, etc.) is available.
- B. Encourage new commercial development at key access points on major corridors only if served by adequate infrastructure, community facilities and services.
- D. The only new commercial area shall be located at the intersection of either US-56 and K-33 or US-56 and County Route 1061.

#### **Staff Comments:**

The property is not located at the intersection of a hard surfaced County Route and a state or federally designated highway, or at a key access point on a major corridor, and this area is not one of the areas identified in *Horizon 2020* as a new commercial area. Based on the information above, the subject property does not meet the criteria for commercial zoning.

The adjacent property to the east was rezoned to the B-2 District with conditions in concurrence with development of a new commercial district, R-T, for rural tourism. The R-T District has been created and the locational criteria were noted in the Growth Management Chapter for Rural Areas. The property has direct access to an improved arterial roadway, public water supply is available; however, it would be immediately adjacent to another rural tourism use and given the shape of the property and the proximity of the warehouse it is unlikely that it could be designed to preserve and/or integrate natural resources and the rural environment. Commercial Zoning in this location would not be compliant with the recommendations in the Comprehensive Plan.

## **INDUSTRIAL**

**The following excerpts from *Horizon 2020* were used in the discussion of the original rezoning of the property to the I-2 District:**

**Goal 1. Policy 1.3.2.: Nonresidential Land Uses (page 4-7)**

- a) Require proponents of commercial and/or industrial development beyond the corporate limits to provide reasonable documentation to substantiate that similar competitive sites are not available within the municipalities.

**Strategies: Industrial and Employment-Related Land Use (page 7-2)**

“Continue to address the needs of existing businesses and industries to ensure their retention in the community and to help facilitate expansion plans of those businesses and industries for the future.”

**Goal 2: Criteria for Location of New Industrial and Employment-Related Development (page 7-13)**

**Policy 2.1:** “A given site, whether located within City limits, in the UGA, or in unincorporated areas of Douglas County, should *substantially* meet the following general locational criteria:

- a. Have feasible access to Federal and State transportation networks;
- b. Be of adequate parcel size, generally over forty acres;
- c. Lie primarily outside of the regulatory floodplain;
- d. Have minimal average slopes.”

After identifying a general location for potential industrial and employment park development, further site analysis and environmental suitability should be conducted considering site-specific criteria. Sites should *substantially* meet the following specific criteria on a site plan or development plan level:

- a. Preserve environmentally sensitive areas, including vegetative cover and wildlife habitat, to act as buffers and site amenities;
- b. Encourage natural stormwater management, including locations that permit direct discharge to the floodplain;
- c. Have available and adequate utilities, infrastructure and services (i.e. police and fire protection) for the proposed use;
- d. Be compatible with existing and future zoning/land use patterns, including the use of appropriate buffers between land uses;

- e. Be annexed before development if adjacent to municipal boundaries.

“Locations initiated through the planning process that are not on Map 7-2 will be weighted against the general locational criteria above.”

**Staff comments:**

The subject property is not shown on Map 7-2 as a future industrial development; therefore, the general locational criteria are used to evaluate the request. The property substantially meets the general locational criteria (3 out of 4). The criteria of ‘minimal average slopes’ (0% to 3%) is not met. (Figure 2) Industrial zoning in this area is generally compliant with locational criteria in Horizon 2020 with the exception of ‘minimal slopes’. However, the new lot would be available for development without a site search being conducted to confirm that there were no similar sites available within the municipality.

**Staff Finding** – The proposed rezoning request to the A District is compliant with *Horizon 2020* recommendations.

Rezoning to Commercial Districts mentioned in the applicant’s response would not be compliant with the locational criteria.

The original rezoning to the industrial district was determined to be compliant due to the fact that it was accommodating the expansion of an existing facility and a site search determined that there were no similar competitive sites available in the municipalities. These criteria have not been met if the I-2 zoning were maintained, although other locational criteria have been met.



**STAFF REVIEW**

The rezoning of the subject property to the I-2 District was recommended for approval by the Lecompton and Lawrence-Douglas County Planning Commissions in October of 2010. The purpose of the rezoning was to provide land for the expansion of an existing manufacturing/warehouse facility. The Comprehensive Plan encourages the retention, redevelopment, and expansion of established industrial and employment-related areas and permitted the location of industrial uses in the rural area if a site search indicated that similar competitive sites were not available within the municipalities. If the subject property were to retain industrial zoning, industrial uses which do not meet these criteria, as well as commercial uses permitted in the B-1 and B-2 Districts, could locate in this area.

During the previous rezoning the fact that the building was to be set back about 1000 ft from N 1800 Road and the grade change between the building site and the road were noted as positive factors to minimize the visual impact of the development on N 1800 Road.

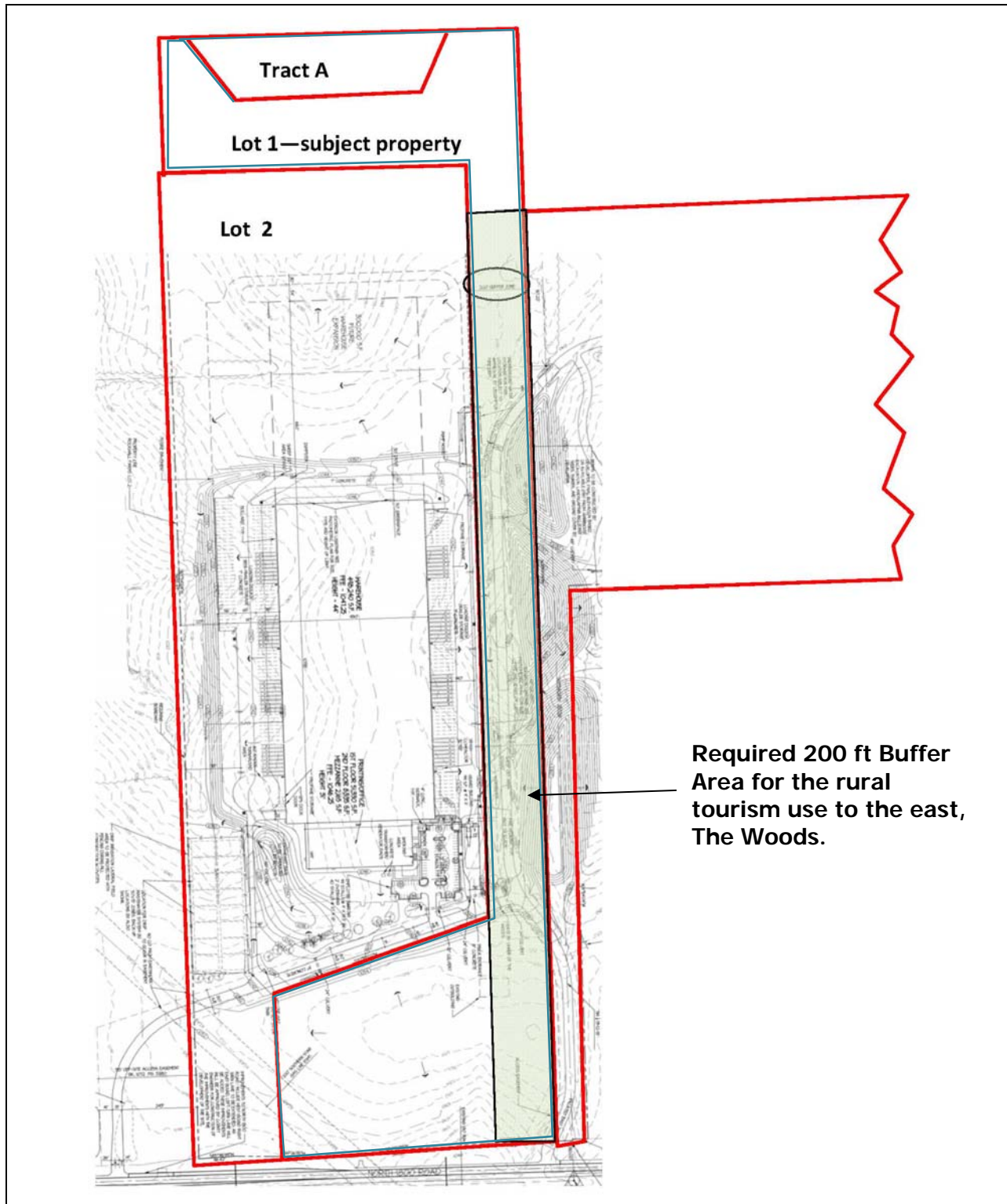
The property does not meet the locational criteria for the Commercial or Rural Tourism Districts. If the area necessary for the warehouse expansion had been known when the original rezoning were approved, this area would likely have remained A.

A portion of the buffer area for the R-T District extends into the subject property. The Agriculture Zoning District would help to insure that only low-impact uses would be located within the buffer area. (Figure 1)

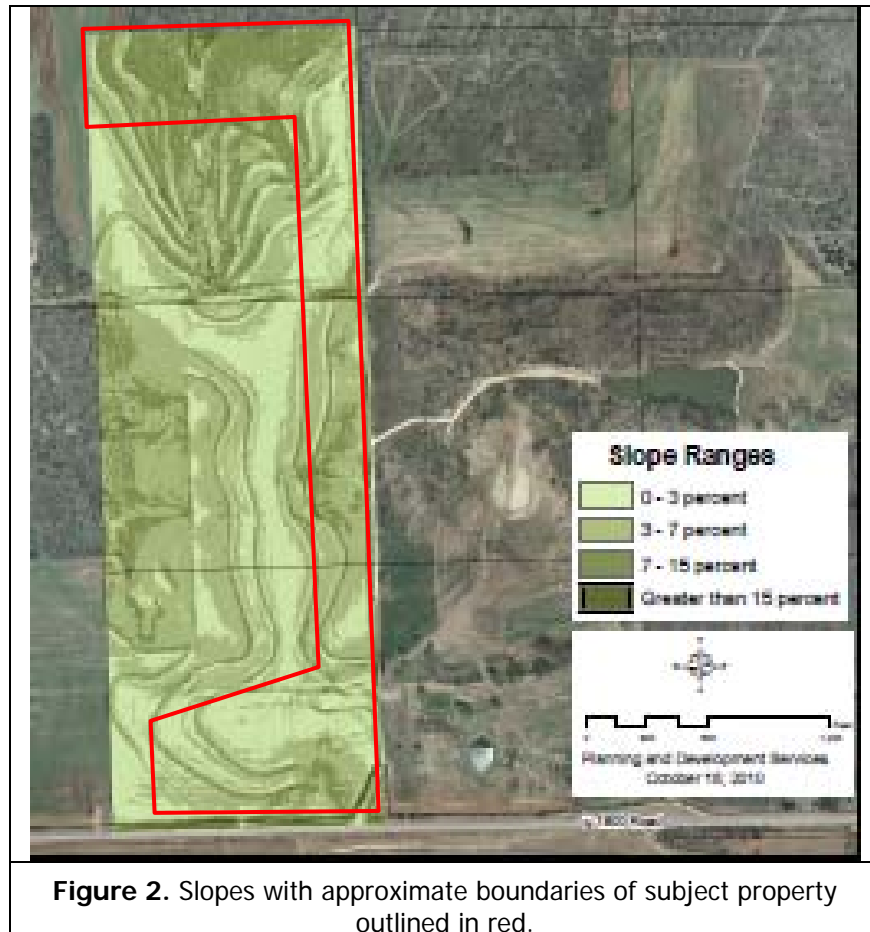
The minutes from the joint Planning Commission and County Commission meetings are attached. When the property was rezoned to the I-2 District, the proposed use was a warehouse and printing facility. Members of the public and some Commissioners asked if this rezoning would have a domino effect and industrial uses would proliferate along this corridor. At the Planning Commission meeting, the Planning Director stated that there was always the possibility of a request to do more industrial in the area and that it would be analyzed based on need in the community. The comments regarding the domino effect were related to new development resulting from industrial rezonings being requested for lots *outside* the proposed warehouse property. With the minor subdivision, additional development opportunities were created *within* the property originally designated for the warehouse development.

In staff's opinion, in the absence of a specific development proposal which has conducted a site search to determine if similar property within the municipalities was available, rezoning to the A District is appropriate.

If the Commission determines that industrial uses are appropriate in this location, Staff would recommend that the zoning be conditioned to remove the uses which are permitted in the commercial districts, B-1 and B-2.



**Figure 1.** Red outline identifies the lots created through the minor subdivision of Lot 2 Rockwall Farms Addition. The lot to the east is Lot 1 of Rockwall Farms Addition. It has been site planned for a corporate retreat and was not included in the minor subdivision. It is shown here for context.



**LEGAL DESCRIPTION**

LOT 2, ROCKWALL FARMS ADDITION, A SUBDIVISION IN DOUGLAS COUNTY, KANSAS.  
THE ABOVE DESCRIBED LOT CONTAINING 93.876 ACRES MORE OR LESS.

**SIGNATURE**

  
THOMAS FRITZELL  
MEMBER  
ROCKWALL FARMS L.C.


**ACKNOWLEDGEMENT**

STATE OF KANSAS  
COUNTY OF DOUGLAS  
BE IT REMEMBERED THAT ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2011, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC, IN AND FOR SAID COUNTY AND STATE, CAME THOMAS FRITZELL, MEMBER OF ROCKWALL FARMS L.C. WHO IS (ARE) PERSONALLY KNOWN TO ME TO BE THE SAME PERSON(S) WHO EXECUTED THE FOREGOING INSTRUMENT OF WRITING AND DULY ACKNOWLEDGED THE EXECUTION OF THE SAME.

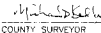
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY SEAL ON THE DAY AND YEAR LAST WRITTEN ABOVE.

**ENDORSEMENTS**

APPROVED AS A MINOR SUBDIVISION UNDER THE SUBDIVISION REGULATIONS OF THE CITY OF LAWRENCE AND THE UNINCORPORATED AREA OF DOUGLAS COUNTY.

 3/2/11  
PLANNING DIRECTOR  
SCOTT MCCULLOUGH

REVIEWED IN COMPLIANCE WITH K.S.A. 98-2005

 4-17-2011  
COUNTY SURVEYOR  
MICHAEL KELLY, P.L.S. #869

**FILING RECORD**

STATE OF KANSAS  
COUNTY OF DOUGLAS  
THIS IS TO CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD IN THE OFFICE OF THE DOUGLAS COUNTY REGISTER OF DEEDS ON THIS 27th DAY OF April, 2011 AND IS DULY RECORDED AT 1:23 PM PLAT BOOK 118 PAGE 4183.

  
KAY PESNELL  
REGISTER OF DEEDS

TRACT A  
TRACT 'A' CONTAINS STANDS OF MATURE TREES WHICH ARE DEFINED AS ENVIRONMENTALLY SENSITIVE LANDS IN SECTION 20-810(1) OF THE SUBDIVISION REGULATIONS. THERE SHALL BE NO BUILDING, LAND DISTURBANCE, OR CUTTING OR REMOVAL OF MATURE TREES IN TRACT 'A' EXCEPT AS NECESSARY TO INSTALL AND MAINTAIN FENCES, OR TO REMOVE DEAD OR DISEASED TREES.

**CERTIFICATION**

I HEREBY CERTIFY THAT THE PLATED AREA AND THE LOCATION MAP SHOWN HEREON ARE THE TRUE AND ACCURATE RESULTS OF A FIELD SURVEY PERFORMED UNDER MY DIRECT SUPERVISION IN NOVEMBER 2010 AND THAT THE PLAT IS A CLOSED TRAVERSE. THE SURVEY DOES NOT CERTIFY OWNERSHIP OR EASEMENTS.

STEVEN D. WILLIAMS, P.L.S.  
P.O. BOX 4444  
LAWRENCE, KS 66046  
(785)832-2121  
PLAT PREPARED JANUARY, 2011



**NOTE**

1. OFF-SITE PUBLIC ACCESS EASEMENT FROM N 1800 ROAD, BOOK: 1072, PAGE: 5280.
2. OFF-SITE DRAINAGE AGREEMENT, BOOK: 1072, PAGE: 5281.
3. OFF-SITE SANITARY SEWER FOR LOTS 1 AND 2 ALLOWED BY VARIANCE TO CITY OF LAWRENCE LAND DEVELOPMENT CODE SECTION 20-811(d)(3).
4. SANITARY SEWER FOR LOT 2 SHALL BE LOCATED ON-SITE, EXCEPT THAT AN EASEMENT SHALL BE PROVIDED AND RECORDED FOR ANY OFF-SITE SEWER PRIOR TO CONSTRUCTION.
5. BUILDING SETBACKS FOR THE ASSIGNED LOT LINES ON THIS PLAT SHALL BE AS DEFINED IN THE ZONING REGULATIONS FOR THE UNINCORPORATED TERRITORY OF DOUGLAS COUNTY, KANSAS DATED SEPTEMBER 2010.

**BASIS OF BEARINGS**

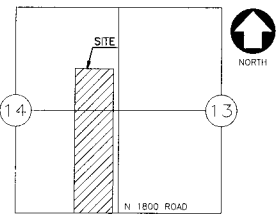
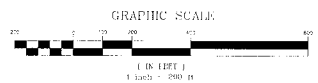
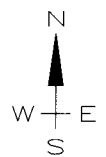
ASSUMED BEARING N 01°54'04" W FOR EAST LINE SE 1/4 14-12-18

**MONUMENTATION**

- SET: 1/2" x 24" REBAR W/CAP "APS1391"
- FOUND: STONE (ORIGIN UNKNOWN)
- FOUND: 1/2" x 24" REBAR W/CAP "APS1391"
- △ FOUND: 2" ALUMINUM CAP "CLS #2"

**LEGEND**

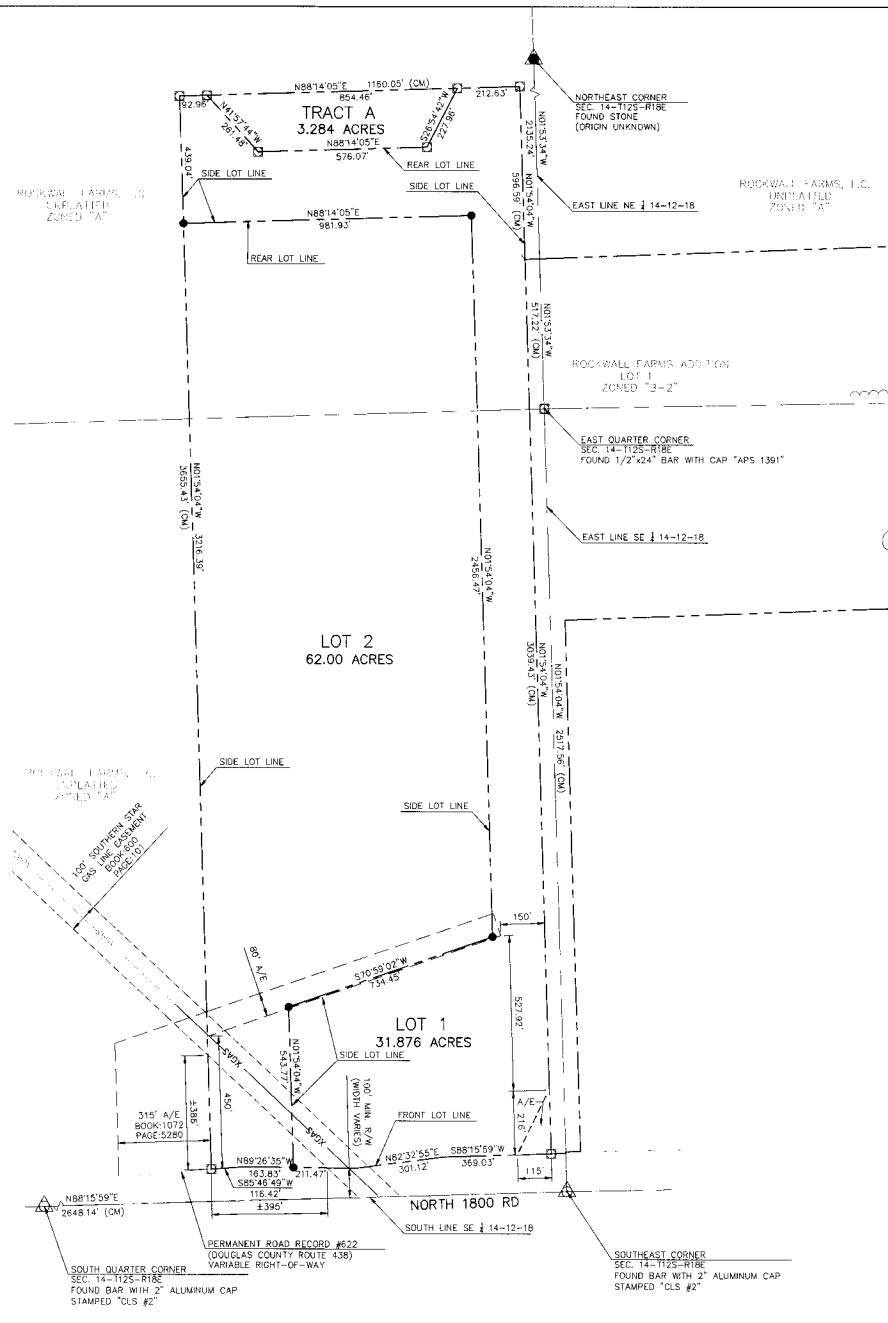
- R/W RIGHT-OF-WAY
- A/E ACCESS EASEMENT
- U/E UTILITY EASEMENT
- (CM) CALCULATED FROM MEASUREMENTS



LOCATION MAP  
N.T.S.

A MINOR SUBDIVISION  
**ROCKWALL FARMS ADDITION**  
**2nd PLAT**

A REPLAT OF LOT 2, ROCKWALL FARMS ADDITION, IN DOUGLAS COUNTY, KANSAS  
E 1/2, SEC. 14-T12S-R18E





**12-309 "B-1" NEIGHBORHOOD BUSINESS DISTRICT REGULATIONS**

**12-309-1.**

The regulations set forth in this section, or set forth elsewhere in this Resolution, when referred to in this section, are the regulations in the "B-1" Neighborhood Business District. This district provides primarily for retail shopping and personal service uses to be developed either as a unit or in individual parcels to serve the needs of nearby residential neighborhoods.

**12-309-2. USE REGULATIONS**

A building or premises shall be used only for the following purposes:

**12-309-2.01.** Any use permitted in the "R-1" Single-Family Residential District.

**12-309-2.02.** Automobile parking lots and storage garages.

**12-309-2.03.** Display room for merchandise to be sold on order where merchandise sold is stored elsewhere.

**12-309-2.04.** Dressmaking, tailoring, decorating, shoe repairing, repair of household appliances and bicycles, dry cleaning and pressing and bakery, with sale of bakery products on the premises and other uses of a similar character; provided that no use permitted in this item shall occupy more than 2,500 square feet of floor area.

**12-309-2.05.** Filling stations, so long as bulk storage of inflammable liquids is underground.

**12-309-2.06.** Frozen food lockers for individual or family use.

**12-309-2.07.** Hospital or clinic for large or small animals, such as cattle, horses, dogs, cats, birds and the like, provided that such hospital or clinic and any treatment rooms, cages, pens or kennels be maintained within a completely enclosed building with soundproof walls and that such hospital or clinic be operated in such a way as to produce no objectionable odors outside its walls and located on a sewer.

**12-309-2.08.** Offices and office buildings, including clinics.

**12-309-2.09.** Outdoor advertising structure or non-flashing sign pertaining only to a use conducted within the building, and any sign or display in excess of 30 square feet in area shall be attached flat against a wall of the building, and in no case shall any sign or display attached to a building project above the roof line. The permitted 30 square feet of sign area for projecting or free-standing signs may be in one sign or the aggregate area of several signs.

**12-309-2.10.** Personal service uses including barber shops, banks, beauty parlors, photographic or artists' studios, messengers, taxicabs, newspaper or telegraphic service stations, dry cleaning receiving stations, restaurants, (but not drive-in restaurants), taverns, undertaking establishments and other personal service uses of a similar character.

**12-309-2.11.** Retail stores, including florist shops and greenhouses in connection with such shops, but there shall be no slaughtering of animals or poultry on the premises of any retail store.

**12-309-2.12.** Self-service laundry or self-service dry cleaning establishment.

**12-309-2.13.** Accessory buildings and uses.

**12-309-2.14.** A retail fireworks stand only as authorized by permit issued and operated pursuant to applicable resolutions of the Board of County Commissioners.

**12-310 "B-2" GENERAL BUSINESS DISTRICT REGULATIONS**

**12-310-1.**

The regulations set forth in this section, or set forth elsewhere in this Resolution, when referred to in this section are the regulations in the "B-2" General Business District. The purpose of this district is to provide sufficient space in appropriate locations for a wide variety of business, commercial, and miscellaneous service activities, particularly along certain existing major thoroughfares where a general mixture of commercial and service activity now exists, but which uses are not characterized by extensive warehousing, frequent heavy trucking activity, open storage of material, or the nuisance factors of dust, odor, and noise associated with manufacturing.

**12-310-2. USE REGULATIONS**

A building or premises shall be used only for the following purposes:

**12-310-2.01.** Any use permitted in the "B-1" Neighborhood Business District.

**12-310-2.02.** Amusement place, skating rink, swimming pool or dance hall in a completely enclosed building, auditorium or theater, except open-air drive-in theaters. (See section 12-319-4)

**12-310-2.03.** Bottling works, dyeing and cleaning works or laundry, plumbing and heating shop, painting shop, upholstering shop not involving furniture manufacture, tinsmithing shop, tire sales and service including vulcanizing but no manufacturing, appliance repairs, and general service and repair establishments, similar in character to those listed in this item; provided that no outside storage of material is permitted, and further provided that no use permitted in this item shall occupy more than 6,000 square feet of floor area.

**12-310-2.04.** Bowling alleys and billiard parlors.

**12-310-2.05.** Drive-in restaurants.

**12-310-2.06.** Food storage lockers.

**12-310-2.07.** Hotels, motels, or motor hotels.

**12-310-2.08.** Material storage yards, in connection with retail sales of products where storage is incidental to the approved occupancy of a store, provided all products and materials used or stored are in a completely enclosed building, or enclosed by a masonry wall, fence, or hedge, not less than six feet in height. Storage of all materials and equipment shall not exceed the height of the wall. Storage of cars and trucks used in connection with the permitted trade or business is permitted within the walls, but not including storage of heavy equipment, such as road-building or excavating equipment.

**12-310-2.09.** Outdoor advertising structure or sign and any sign or display in excess of 100 square feet in area shall be attached flat against a wall of a building. See section 12-306-2.18 for height and location of sign requirements.

**12-310-2.10.** Printing, publishing, and engraving establishments.

**12-310-2.11.** Public garage.

**12-310-2.12.** Wholesale establishment or warehouse in a completely enclosed building so long as floor area devoted to such uses shall not exceed 20,000 square feet.

**12-310-2.13.** Used car lot.

**12-310-2.14.** Accessory buildings and uses.

**12-312 "I-2" LIGHT INDUSTRIAL DISTRICT REGULATIONS**

**12-312-1.**

The regulations set forth in this section or set forth elsewhere in this Resolution when referred to in this section, are the regulations in the "I-2" Light Industrial District. This district is intended primarily for light manufacturing, fabricating, warehousing, and wholesale distributing in low buildings with off-street loading and off-street parking for employees and with access by major thoroughfares or railroads in either central or outlying locations.

**12-312-2. USE REGULATIONS**

A building or premises shall be used only for the following purposes:

**12-312-2.01.** Any use permitted in the "B-1" Neighborhood Business District or "B-2" General Business District, without limitation on floor area.

**12-312-2.02.** Hospital or clinic for large or small animals such as cattle, horses, dogs, cats and birds, provided that such hospital or clinic and any treatment rooms, cages and kennels be maintained in an enclosed building with soundproof walls, located on a sewer and that such hospital or clinic be operated in such a way as to produce no objectionable odors. Outside unloading pens will be permitted, provided that overnight housing shall be maintained for all animals.

**12-312-2.03.** The following uses and any similar uses which are not likely to create any more offensive noise, vibration, dust, heat, smoke, odors, glare, or other objectionable influences that the minimum amount normally resulting from other uses permitted, such permitted uses being generally wholesale and retail trade, service industries, and light industries that manufacture, process, store, and distribute goods and materials, and are, in general dependent on raw materials refined elsewhere, and manufacturing, compounding, processing, packaging, or treatment, as specified, or the following products or similar products:

CHEMICAL, PETROLEUM, COAL AND ALLIED PRODUCTS

- Cosmetics and toiletries
- Ice manufacture, including dry ice
- Ink manufacturing (mixing only)
- Insecticides, fungicides, disinfectants, and related industrial and household chemical compounds (blending only)
- Laboratories
- Perfumes and perfumed soap (compounding only)
- Pharmaceutical products
- Soap, washing or cleaning, powder or soda (compounding only)

CLAY, STONE, AND GLASS PRODUCTS

- Clay, stone and glass products
- Concrete products (except central mixing and proportioning plant)
- Pottery and porcelain products (electric or gas fired)

FOOD AND BEVERAGE

- Bakery products, wholesale (manufacturing permitted)
- Beverage, blending, bottling (all types)
- Candy, wholesale (manufacturing permitted)

Chewing gum  
Chocolate, cocoa, and cocoa products  
Coffee, tea, and spices, processing and packaging  
Condensed and evaporate milk processing and canning  
Creamery and dairy operations  
Dairy products  
Fish, shrimp, oysters, and other sea food, processing packing, and storing, except fish curing  
Flour, feed and grain (packaging, blending, and storage-only)  
Fruit and vegetable processing (including canning, preserving, drying, and freezing)  
Gelatin products  
Glucose and dextrin  
Grain blending and packaging, but not milling  
Ice cream, wholesale (manufacturing permitted)  
Macaroni and noodle manufacture  
Malt products, manufacture (except breweries)  
Meat products, packing and processing (no slaughtering)  
Oleomargarine (compounding and packaging only)  
Poultry packing and slaughtering (wholesale)  
Yeast

METALS AND METAL PRODUCTS

Agricultural or farm implements  
Aircraft and aircraft parts  
Aluminum extrusion, rolling, fabrication, and forming  
Automobile, truck trailer, mobile home, motorcycle, and bicycle assembly  
Blacksmith or welding shops  
Boat manufacture (vessels less than five tons)  
Bolts, nuts, screws, washers, and rivets  
Container (metal)  
Culvert  
Firearms  
Foundry products manufacture (electrical only)  
Heating, ventilating, cooking, and refrigeration supplies and appliances  
Iron (ornamental) fabrication  
Machinery, manufacture  
Nails, brads, tacks, spikes, and staples  
Needles and pins  
Plating, electrolytic process  
Plumbing supplies  
Scale and vault  
Sheetmetal products  
Silverware and plated ware  
Stove and range  
Structural iron and steel fabrication  
Tool, die, gauge, and machine shops  
Tools and hardware products  
Vitreous enameled products

TEXTILES, FIBERS, AND BEDDING

Bedding (mattress, pillow, and quilt)  
Carpet, rug and mat, including cleaning  
Hat bodies of fur and wool felt, (including men's hats)-manufacture  
Hosiery mill  
Knitting, weaving, printing, finishing of textiles and fibers into fabric goods  
Rubber and synthetic treated fabrics (excluding all rubber and synthetic processing)  
Yarn, threads, and cordage

WOOD AND PAPER PRODUCTS

Basket and hamper (wood, reed, rattan, etc.)  
Box and crate  
Cooperage works (except cooperage stock mill)  
Furniture (wood, reed, rattan, etc.)  
Lumber yard  
Pencils  
Planing and millwork  
Pulp goods, pressed or molded (including paper mache products)  
Shipping container (corrugated board, fiber, or wire bound)  
Trailer, carriage, and wagon  
Veneer  
Wood products

UNCLASSIFIED USES

Animal pound or hospital  
Animal, poultry and bird raising, commercial  
Building materials (cement, lime in bags, or containers, sand, gravel, shell, lumber and the like), storage and sales  
Bus garage and repair shop  
Button manufacture  
Carbon paper and inked ribbons manufacture  
Cigar and cigarette manufacture  
Circus grounds  
Cleaning and dyeing of garments, hats and rugs  
Coal and coke storage and sales  
Contractor's shop and storage yard  
Exposition building or center  
Fairgrounds  
Fur finishing  
Greenhouses, wholesale  
Industrial vocational training school, including internal combustion engines  
Kennels, commercial  
Laboratories, research, experimental, including combustion type motor testing  
Leather goods manufacture, but not including tanning operations  
Laundries  
Livery stables and riding academy  
Market, wholesale  
Moving, transfer or storage  
Outdoor advertising structure or sign subject to section 12-306-2.17  
Printing, publishing, and engraving  
Produce and storage warehouse

Railroad switching yard, primarily for railroad service in the district  
Sign painting or fabrication  
Theater, including a drive-in or outdoor theater  
Tire re-treading and vulcanizing shop  
Truck or transfer terminal, freight  
Wholesale houses and distributors  
Accessory uses

**12-312-3. PARKING REGULATIONS**

The parking regulations for permitted uses are contained in section 12-316 of this Resolution.

**12-312-4. OFF-STREET LOADING REGULATIONS**

The off-street loading regulations for permitted uses are contained in section 12-317.

**12-312-5. HEIGHT AND AREA REGULATIONS**

Height, area, and bulk requirements shall be as set forth in the chart of section 12-318, and, in addition, the following regulations shall apply:

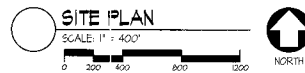
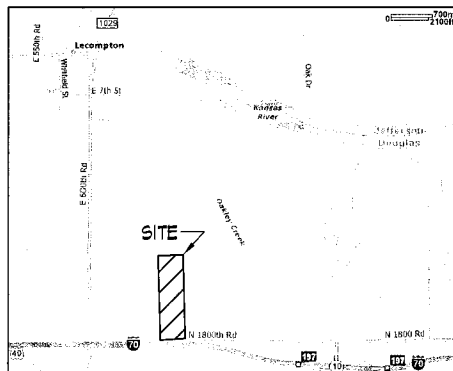
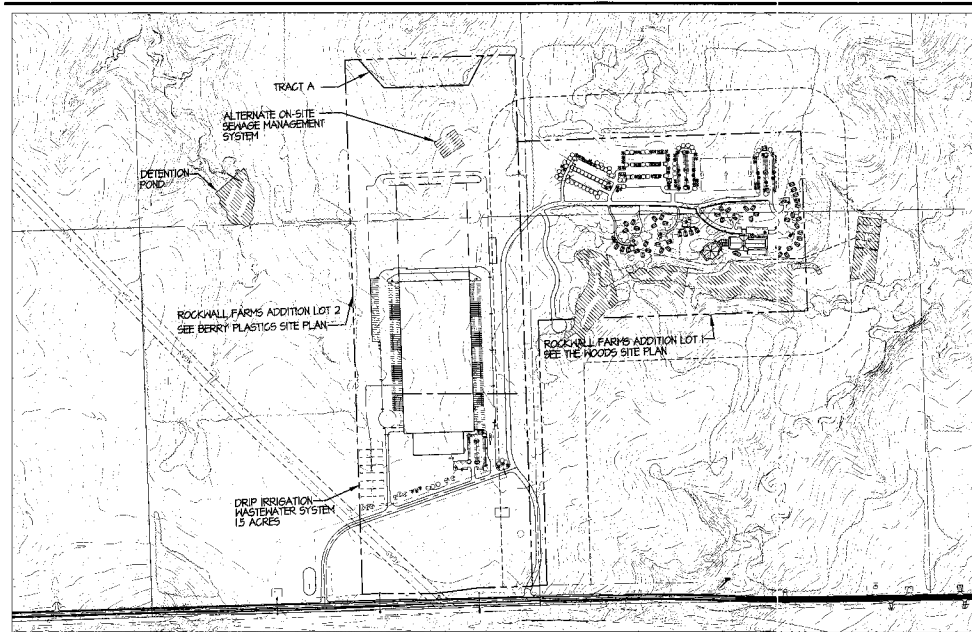
**12-312-5.01.** Whenever any building in the "I-2" Light Industrial District adjoins or abuts upon a residential district such building shall not exceed two stories or 35 feet in height, unless it is set back one foot from all required yard lines for each foot of additional height above 35 feet.

**12-312-6.** Supplementary use regulations are contained in section 12-319.

**12-312-7.** Supplementary height, area, and bulk regulations are contained in section 12-321.



# BERRY PLASTICS FACILITY



## LEGAL DESCRIPTION

LOT 2, ROCKWALL FARMS ADDITION, DOUGLAS COUNTY, KS, CONTAINS 47.8 ACRES MORE OR LESS LOCATED IN SECTION 14, TOWNSHIP 12 SOUTH, RANGE 18 EAST.

## GENERAL NOTES:

- PROPOSED USE: LIGHT MANUFACTURING, PRINTING, WAREHOUSE FACILITY.
- SITE PLAN HAS BEEN DESIGNED TO COMPLY WITH THE MINIMUM PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES (ADAAS) FOR BUILDINGS AND FACILITIES, APPENDIX A TO 28CFR PART 36.
- TRASH COMPACTOR WILL BE LOCATED NEXT TO THE FACILITY.
- MINING IS PROHIBITED ON LOTS 1 AND 2 IN ROCKWALL FARMS ADDITION.
- ACCESSORY IDENTIFICATION SIGN TO BE INSTALLED PER DOUGLAS COUNTY ZONING REGULATIONS SECTION 12-30-204. SIGN LOCATION TO BE COORDINATED WITH THE COUNTY.
- SITE LIGHTING TO BE LOCATED AT THE PERIMETER OF SITE FACING INWARD TO REDUCE GLARE AND LIGHT ON ADJACENT PROPERTIES. IN THE EVENT THAT THE TREES ALONG THE WEST PROPERTY LINE ARE REMOVED OR REDUCED TO THE DEGREE THAT GLARE OCCURS TO NEIGHBORING PROPERTIES, THE LIGHTING FIXTURES SHALL BE REDUCED TO A GUT OFF FURNISH IN THE NORTH PARKING LOT OR OTHER MEANS SHALL BE UTILIZED TO PREVENT GLARE AND LIGHT TRESPASS TO ADJACENT PROPERTIES.
- THE BOARD OF COUNTY COMMISSIONERS APPROVED A VARIANCE FROM THE REQUIREMENT TO HAVE AN ON-SITE SEWAGE SYSTEM FOR PLATTED LOTS (SECTION 20-3102), SUBORDINATE REGULATIONS AT THEIR DECRETION 22, 2000 FEET TO PERMIT THE DEVELOPMENT TO UTILIZE AN OFF-SITE SEWAGE MANAGEMENT SYSTEM SUBJECT TO THE CONDITION THAT EASEMENTS, OR OTHER MECHANISMS ACCEPTABLE TO THE LAWRENCE-DOUGLAS COUNTY HEALTH DEPARTMENT AND COUNTY COMMISSIONER, FOR PROPERTY CONTAINING THE OFF-SITE SEWAGE MANAGEMENT SYSTEMS AND ITS CONNECTION TO THE PLATTED LOT SHALL BE INDICATED BY SEPARATE INSTRUMENT OR RECORDED WITH THE REGISTER OF DEEDS.
- OFF-SITE DRAINAGE AGREEMENT RECORDED IN BK. 1072 PG. 5271
- OFF-SITE PUBLIC ACCESS EASEMENT FROM NORTH 1800 ROAD RECORDED IN BK. 1072 PG. 5250
- A REVISED SITE PLAN SHALL BE SUBMITTED TO THE PLANNING OFFICE AND APPROVED BY THE COUNTY COMMISSION PRIOR TO DEVELOPMENT OCCURRING IN PHASE 2.
- TRACT 'A' CONTAINS STRIPS OF NATIVE TREES WHICH ARE DEFINED AS ENVIRONMENTALLY SENSITIVE LANDS IN SECTION 20-3102 OF THE SUBDIVISION REGULATIONS. THERE SHALL BE NO REMOVAL, LAND DISTURBANCE OR CUTTING OR REMOVAL OF NATIVE TREES IN TRACT 'A' EXCEPT AS NECESSARY TO INSTALL AND MAINTAIN FENCES, OR TO REMOVE DEAD OR DISEASED TREES.
- NO CONSTRUCTION MAY OCCUR WITHIN THE SOUTHERN STAR EASEMENT UNTIL THEY'VE PROVIDED THE LAWRENCE DOUGLAS COUNTY PLANNING OFFICE WITH APPROVAL OF THE LOAD ANALYSIS AND DESIGN OF THE ACCESS DRIVE WHICH CROSSES THEIR EASEMENT.

## PROPERTY INFORMATION:

21. LOCATION:	DOUGLAS COUNTY, LECOMPTON TOWNSHIP, NW 1/4 OF N 1800 RD & VACATED E. 100 RD
22. CURRENT ZONING:	L-2
23. LAND AREA:	47.8 ACRES (42292204 S.F.) ROCKWALL FARMS ADDITION LOT 2
23. SURFACE AREA:	PHASE 1 PHASE 2
BUILDING AREA:	551,490 S.F. BUILDING AREA: 65,490 S.F.
PAVEMENT AREA:	849,628 S.F. PAVEMENT AREA: 628,915 S.F.
PERVIOUS AREA:	3,061,083 S.F. PERVIOUS AREA: 2,252,206 S.F.

NOTE: DRAINAGE STUDY DATED DECEMBER 2000 APPROVED WITH MINIMUM PERVIOUS AREA OF 2102008 SF.

## UTILITY INFORMATION:

- GAS: GAS SERVICE SHALL BE PROVIDED BY ATKINS ENERGY OR PROPANE SERVICE.
- SANITATION: LAWSOM SYSTEM TO BE APPROVED BY KCMU, OR DRIP IRRIGATION WASTEWATER SYSTEM APPROVED BY DOUGLAS COUNTY HEALTH DEPARTMENT. A PERMIT FROM THE APPROPRIATE REGULATORY AGENCY MUST BE OBTAINED PRIOR TO BUILDING PERMITS BEING ISSUED.
- ELECTRICITY: SERVICE PROVIDED BY KAN VALLEY ELECTRIC AND/OR MHS&M EASEMENTS TO BE DETERMINED.
- WATER: PROVIDED BY RURAL WATER DISTRICT #6. A PRIVATE WATER LINE SHALL BE EXTENDED INTO THE SITE PER RWD AGREEMENTS.

## DRIVES AND PARKING INFORMATION:

41. MAIN DRIVES:	6" CONCRETE PAVEMENT MINIMUM WITH A SUBGRADE OF 6" COMPACTED AB-3
42. ACCESS DRIVES:	6" CONCRETE PAVEMENT MINIMUM WITH A SUBGRADE OF 6" COMPACTED AB-3
43. PARKING SURFACES:	5" CONCRETE PAVEMENT MINIMUM WITH A SUBGRADE OF 6" COMPACTED AB-3
44. ADA PARKING SPACES:	5" CONCRETE PAVEMENT MINIMUM WITH A SUBGRADE OF 6" COMPACTED AB-3
45. PAVEMENT AREAS:	4" CONCRETE PAVEMENT MINIMUM WITH COMPACTED SUBGRADE
46. PARKING REQUIREMENTS:	USE: SPACES REQ'D FOR: # REQ'D: # PROVIDED:
INDUSTRIAL ESTABLISHMENT/ WAREHOUSE:	1 PER 2 EMPLOYEES ON MAXIMUM WORKING SHIFT: 70 EMPLOYEES: 35: 00

## LANDSCAPING NOTES:

SYM	DESCRIPTION	NUMBER	APPROVED TYPES	BOTANICAL NAME(S)	SIZE	COND.
☐	SHADE TREES	12	NORTHERN RED OAK NORWAY MAPLE HOPBURN HONEY LOCUST PACIFIC SIBIRIAN MAPLE GOLDBENTH TREES JUNIPER EASTRIVER DYNASTY NORWAY MAPLE	QUERCUS RUBRA ACER FLATLANDS QUERCUS TRICOLOR ACER TRICOLOR FRAXINUS NARRBORNS QUERCUS LAEVOGATA LARIX PRINCEOLINA DYNASTY ACER FLATLANDS	1 1/2'-2' CAL.	B & B
○	ORNAMENTAL TREES	4	CLEVELAND SELECT PEAR KOSGA DOORHOO CORAL BLOSSOM COUNTRYP EASTERN REDBUD	PYRUS CALLERYANA CHANTICLEER CORNUS KOUSA MALUS CORALBLOSSOM CERCIS CANADENSIS	1 1/2'-2' CAL.	B & B
☼	CONIFERUS TREES	4	WHITE PINE BLUE SPRUCE	PINUS STROBUS PICEA MARMIANA	6'-8' HT.	B & B

- ALL DISTURBED AREAS WILL BE SEEDED, SODDED, OR PROVIDED WITH A GROUND COVER.
- ANY PART OF THE SITE PLAN AREA NOT USED FOR BUILDING, STRUCTURES, PARKING OR ACCESSWAYS SHALL BE LANDSCAPED WITH A MIXTURE OF GRASS INCLUDING NATIVE GRASS, BROUZE OR OTHER EQUAL, TREES, AND SHRUBS.

FILE COPY

Administrative Approval  
 Case No. 20-11-158-10 Date: 1/24/10  
 CC/CPC approved original of  
 Director: Scott Miller  
 Released to Div. Inspector: shln

RECEIVED  
 paulwerner ARCHITECTS  
 1223 W. 8TH STREET  
 SUITE B2  
 LAWRENCE, KS 66044  
 OFFICE: 785.832.0804  
 FAX: 785.832.0890  
 INFO@PAULWERNERARCHITECTS.COM

DEVELOPER:  
 DMC OF LAWRENCE  
 640 MASACHUSETTS  
 SUITE 300  
 LAWRENCE, KS 66044  
 OFFICE: 785.846.9496  
 FAX: 785.846.6342

BUILDER:  
 DMC OF LAWRENCE  
 640 MASACHUSETTS  
 SUITE 300  
 LAWRENCE, KS 66044  
 OFFICE: 785.846.9496  
 FAX: 785.846.6342

A SITE PLAN FOR  
 BERRY PLASTICS FACILITY  
 DOUGLAS COUNTY, KANSAS

PROJECT # 210-610  
 NOVEMBER 4, 2010

RELEASE:	DATE:
1.0	11.6.10
2.0	12.8.10
3.0	12.10.10
4.0	2.11.11
5.0	3.14.11
6.0	3.29.11
7.0	4.6.11

SP-1



PC Minutes 10/25/10

**ITEM NO. 1 COUNTY A TO COUNTY I-2; 120 ACRES; E 700 RD & N 1800 RD (MKM)**

**Z-9-14-10:** Consider a request to rezone approximately 120 acres from County A (Agricultural) to County I-2 (Light Industrial), located west of E 700 Road and north of N 1800 Road (Farmer's Turnpike). Submitted by Paul Werner Architects for Rockwall Farms L.C., property owner of record. *Joint meeting with Lecompton Planning Commission.*

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

Lecompton Planning Commissioners Jeff Robertson (Chair), Mary Jane Hoffer (Vice-Chair), Kathy Paslay, Brenda Hastert, and Elsie Middleton were present.

Commissioner Harris asked for more detail about competitive sites not available within the city.

Ms. Miller said the applicant could probably explain it better but the criteria she was aware of was it needed to be located along the I-70 corridor, close proximity to the existing site, and enough land area to accommodate their building and future proposed expansion. She said when they looked at sites within the city of Lawrence one was identified but there was not adequate access.

Commissioner Harris asked if police and fire services would be provided by the City of Lawrence.

Ms. Miller said the applicant asked for fire protection.

Mr. McCullough said the applicant asked for an agreement with the City Fire Department which was currently in the works and would go through City Commission. He said Staff anticipates an agreement will be reached. He said the Sheriff Department would respond to any calls.

Commissioner Harris asked if annexation was required when city services are provided.

Mr. McCullough said no, the fire department agreement could be done through a type of mutual aide/ first responder type agreement. He said it was common to do that for an unincorporated site that is in need of that service.

**APPLICANT PRESENTATION**

Mr. Paul Werner, Paul Werner Architects, thanked staff for their work. He said the Preliminary Plat would be heard next month if the rezoning was approved. He said a Site Plan would be submitted this week and would go on to the Board of County Commissioners. He thanked city and county staff for their helpful work.

Mr. Ross Freese, Berry Plastics, gave the history of Berry Plastics. He said the company had been in community for 43 years and during most of that time they had been in the injection molding business. He said approximately four years ago they started a new thermoform process. At that time they converted existing warehouse space to manufacturing and hired additional employees. He said they were proud of their growth and excited about this project. He said in order to accommodate their warehousing needs they currently lease storage space in southeast Lawrence and south Topeka. In addition to those two leased locations they also have several hundred trailers that they use as flexible warehousing. He stated future plans would be to consolidate the existing leased warehouses into a single site location. He said they plan include in the new facility some of the existing injection printing presses. He said they did evaluate a number of different sites and after an

exhaustive analysis this location was their preference for a number of different reasons. He estimated there would be about 55 warehouse employees and 150 printing employees. He stated the number one benefit of the project was the competitive advantage because Berry Plastics has about 65 other plants across the United States and they compete with those other plants when it comes time to determine where new business will be located. He said they currently incur a lot of additional cost with the movement of product from location to location and as new business opportunities present themselves the total operating costs are compared against those other Berry Plastic sites. He stated another benefit would be that moving the printing would free up approximately 35,000 square feet of existing space at the main plant on Packer Road and that would allow headroom to create additional room for additional manufacturing equipment on site.

Mr. Werner displayed the plan on the overhead. He stated it would not be a manufacturing facility and that it was not even a possibility. He said it would only be a warehouse and small printing area. He stated it was a relatively flat site so there would be minimal dirt moving costs compared with other sites. He pointed out that it would have a 1,000' setback from the road and that the grade would help shield the building. He said the building would be centered between tree lines. He said the class II soils were not contiguous with anything else and that there was not enough of it. He also felt the class II soil was outweighed by keeping existing trees for buffering. He advised the Traffic Impact Study consultant was present for questioning, as well as Mr. Keith Browning, County Public Works Director. He said currently Farmer's Turnpike runs 4,300-4,500 vehicles per day but was designed for 10,000-11,000 cars a day. He stated even though they would be adding traffic the road would still only be working at about 50% of its capacity. He recommended putting a warning sign to the west of the property noting that an intersection was coming to warn drivers. He said they would be extending the westbound right turn deceleration lane by 25' but would not get into the existing berm. He said they would provide an eastbound left turn center lane into the site even though it was not required. He said it would also help for when something happens with The Woods and would provide another entrance into the site. He said there would also be two existing lanes from the site onto Farmer's Turnpike. He discussed sewer and said they were looking at two different systems; either a lagoon or a drip irrigation system. He said Rural Water District #6 would provide another meter for the site and have plenty of water. He said regarding fire they would not be using the Rural Water Districts line at all and that they would use a similar system to what exists at the current plant; a cistern and an Early Suppression Fast Response (ESFR). He said the fire suppression system was a specific sprinkler made to put fires out quickly by flooding the fire with a massive amount of water immediately. He said instead of using a cistern they would build a new pond and use the first pond to the east of the building as the water source. He said the fire pump would run on a generator. He said they would not be using the Rural Water District lines for fire response. He also said that the pond could be used for fire response for others in the area. He stated that an ambulance or Hazmat call would be responded by the City of Lawrence. He said stormwater detention would be through the ponds to the east on The Woods site and that water to the west side would work its way to the north toward the river. He said they met with several neighbors and the Rural Water District. He stated they mailed 52 letters notifying property owners and held a meeting at the Oread Hotel. He said traffic was the main concern of neighbors and they requested a warning sign be posted to warn drivers. He said regarding the League of Women Voters letter about whether or not it complies with Horizon 2020, he felt it did because it was not an industrial park, it was an industrial site.

Commissioner Harris asked if the fire suppression pond area was on the same property or adjacent property.

Mr. Werner said it was on the adjacent property but that the property owner owns both properties and there would be an agreement. He said the same system would be used for The Woods on the lower pond.

Commissioner Harris asked what would happen if the property was not owned by the same person.

Mr. Werner said there would be an agreement.

Commissioner Harris asked if it was possible to develop the front vacant portion of the property.

Mr. Werner said there was an existing shed building with water and gas. He said it was possible but that there would be some grade changes and that was not what they were thinking of doing.

Commissioner Rasmussen asked Mr. Werner to show on the map the anticipated route for trucks entering and exiting the site.

Mr. Werner pointed on the map and said all trucks would come from the east. He said there were two different types of trucks, shuttle trucks and over the road trucks. He said the shuttle trucks would go back and forth from Berry Plastics and would exit the site on the west side.

Commissioner Rasmussen asked when the over the road trucks leave the site and head back east was there a lane for them to turn into or would they turn into main traffic.

Mr. Werner said that was analyzed and they looked into an acceleration lane. He said there was excellent visibility in both directions. He said there was some concern about an acceleration lane causing truckers to be more willing to turn left into the center lane and not worry about oncoming traffic because they might see it as a 'safe' lane. He also pointed out that the trucks would be light because they would be carrying plastic cups so they would be able to speed up more quickly than normal semi trucks.

Commissioner Liese asked how many community members attended the meeting at the Oread Hotel.

Mr. Werner said 11 people attended the meeting he held at the Oread Hotel.

Commissioner Liese asked where he thought the opposition came from in the letters.

Mr. Werner said people were worried about a domino effect with what would happen after this. He said there was also concern about traffic but that one or two shuttle trucks an hour was not that much. He said one of the letters had comments about damage to the road but these would be light semi trucks. He said a semi truck would have better visibility since it sits up higher and would be able to see cars and be able to slow down better with their lighter loads.

Commissioner Liese asked if Mr. Werner knew what kind of opposition or support he would receive tonight.

Mr. Werner said they had a positive meeting in the City of Lecompton.

Commissioner Liese asked Mr. Werner if Lecompton Planning Commission was in favor of the rezoning.

Mr. Werner said if he had to guess he would say they were in favor of it.

Commissioner Liese asked what kinds of concessions have been made so far and what else could be done to address concerns.

Mr. Werner said they have done everything they have been asked to do but he wanted to hear concerns this evening and try to address them. He said so far the main concern has been traffic.

### **Questions from Lecompton Planning Commission**

Lecompton Commissioner Kathy Paslay said adding 25' to the off ramp was not even the length of a truck. She also wondered about the water to the west and where it would go on its path to the river.

Mr. Werner said the right turn deceleration lane was already partially constructed, 620' long, so the recommendation was to extend it an additional 25'. He showed the basin and discharge map on the overhead and discussed stormwater. He said rainwater going to the west would go through creek channels and discharge into 328 acres. He said because it is such a large area it would be a 3-4% increase for a 100 year storm. He said the property was all owned by this owner before leaving the site.

Lecompton Commissioner Paslay inquired about the distance to the river.

Mr. Werner said he would have to find another map.

Lecompton Commissioner Jeff Robertson said a few miles.

Lecompton Commissioner Elsie Middleton asked how many trucks a day would be generated.

Mr. Werner said there are two different types of trucks, shuttle trucks and over the road trucks. The shuttle trucks would run about 20 a day with 30 as the maximum. Over the road trucks would run 30 per day but during peak seasons, about 3-4 times a year, there would be 100 a day. He said the average day would be 50 trucks in and out.

Commissioner Liese inquired about a letter from Mr. John Lewis regarding his comments about the daily truck numbers.

Mr. Werner said when the Traffic Impact Study was started they used the worst case scenario and then realized shuttle trucks do not run as often as they were guessing. He said after they threw out those numbers they went and verified them.

Commissioner Liese asked what would happen if the community approves this based on one truck an hour and Berry Plastics figures out they can run 20 trucks an hour.

Mr. McCullough said change was inevitable. He said there had been revisions to the Traffic Impact Study. He stated if there was need to make improvements on the arterial roadway system then the governing bodies and staff would go about making those changes.

Mr. Werner said part of Traffic Impact Study looks at what will happen in the year 2030.

Commissioner Liese said that the letter from Mr. Lewis mentioned the project only creating 11 new jobs. Commissioner Liese asked if that was based on data from Berry Plastics.

Mr. Werner said he would let Mr. Freese answer that. He said it was a big building that would create construction jobs for a year and would free up more space at the existing manufacturing plant in the city. He said he would venture to say that the comment from Mr. Lewis was vastly underrated.

Mr. Keith Browning, Douglas County Public Works Director, agreed with the three recommendations in the Traffic Impact Study addendum. He stated it was a county road, not state or federal highway so it was designed for 55 miles per hour not 65 miles per hour.

Commissioner Burger asked if any of the changes would impact the fact that right now the bicycle route was a green route.

Mr. Browning said there are 8' paved shoulders.

Commissioner Burger asked if there were adequate setbacks in the event that 20 years from now the road was utilized as a divided highway.

Mr. Browning said no, there was not adequate right of way and that they could not afford to acquire enough right of way to do that. He said the analysis shows that in 2030 the road will be  $\frac{3}{4}$  of its capacity.

Commissioner Harris asked if the road was designed to handle this much truck traffic and more in the future.

Mr. Browning said yes it was. He said the trucks they were using were very light and that was a significant part of the damage from trucks. He stated the reconstructed roads portions have 10" full depth asphalt so they are pretty stout for a county road.

## **PUBLIC HEARING**

Mr. John Lewis, thanked Mr. Werner for inviting more people than necessary to the public meetings and said he appreciated the applicants honesty and forthrightness. He said he realized the trucks may not be heavy but that they are still about 20,000 pounds. He said the typical car was 3,000 pounds and that more wear and tear on the road would add up to taxpayers to maintain. He said none of their decisions were in a vacuum and their decision was not based on that one parcel, it was based on the entire area. He said Commissioner Harris brought up good point about the ponds being on adjacent property. He did not think that the pond would be an issue because there was a lot of property owned by Rockwall Farms, roughly 1,000 acres, in that area. He said he didn't believe someone would want to build a house in that area which lead him to believe that another industrial site would be on its way.

Commissioner Liese asked if there was any kind of development he would support other than residential.

Mr. Lewis said he was aware of The Woods project and thought it was an excellent project and did not have a problem with that type of development but was concerned about the entire corner turning into an industrial park.

Ms. Marguerite Ermeling thanked Mr. Werner for talking to the community. She said this was a multi-use road and that it should include safety for all those entities to be there. She wondered about the possibility of conditioning the rezoning with approval of the Site Plan so that it could only be Berry Plastics. She expressed concern about drainage to the west and if the pond would be large enough for fire protection during drought.

Commissioner Liese asked if she supported the rezoning only if it was for Berry Plastics.

Ms. Ermeling said if this was the final site settlement for Berry Plastics that she would be the last one to stand in the way of that, but that if it opens the site up to be anything with I-2 zoning that would be problematic for her.

Mr. McCullough said conditional zoning was an option. Printing and storage warehouse are allowed uses in the I-2 district and could be conditioned to those two uses. He said if Berry Plastics would want to do any kind of manufacturing at the facility they would need to come back and rezone to add that use to the table. He said it was his understanding that Berry Plastics did not want to do any type of manufacturing. He said in part this was about retaining the largest manufacturer in the county and help them grow. He said they recognize that Berry Plastics has put their name to this project and request and the two uses, printing and storage, would be too specific for someone else to use. He stated Berry Plastics has been looking at different sites and this was the one they have brought forth.

Commissioner Rasmussen asked Ms. Ermeling what aspects of this proposal would change the road from being a multi use road.

Ms. Ermeling said nothing except for the significance of additional truck traffic at a fast speed. She said there was a lot of bike traffic there.

Mr. Martin Hirder inquired about the pond drying up. He also wondered about the safety issue associated with more traffic during peak hours of morning and evening.

Mr. Browning said peak hours were looked at as well as the hours of operation and the hours trucks would be traveling on the road.

Commissioner Liese asked if it was possible to get traffic lights or turning lanes that are off limits at certain times of the day.

Mr. Browning said a traffic signal was possible but he did not think it was a good idea or safe since the speed on the road was 55 miles per hour. He said the gaps in traffic should be such that traffic should not be an issue.

Mr. Werner said regarding filling the pond, there might be two pumps. He said about 1" of rain would fill the first pond so as long as it rains 1" every two months it should be okay.

Mr. Greg Burger expressed concerns about traffic and sight distance. He was concerned about an industrial park and said the area just annexed 155 acres. He was shocked the deceleration lane was already in place like it was a done deal. He said there was no shoulder on the deceleration lane for bikers.

Ms. Charlene Winter thanked Berry Plastics and the applicant for their consideration of the neighbors. She was opposed to the serving of alcohol and shooting guns at The Woods which Berry Plastics would not have. She said it would be a safer route for trucks to exit at E 700 Road, farther from the high spot on the road. She felt that Berry Plastics was a benefit to the community.



Mr. Paul Bahnmaier said he was thrilled about Berry Plastics being within 3 miles of Lecompton and would greet visitors positively. He felt they should encourage local companies to expand and stay in Douglas County. He said Berry Plastics had been very informative about their plans.

Ms. Kim Ens expressed concerns about traffic. She said at the neighborhood meeting at The Oread Hotel it was stated that there would be about 130 trucks a day. She was also concerned about the domino effect and what would happen next with development in the area.

Mr. Tom Kern, President of Lawrence Chamber of Commerce, gave strong support for Berry Plastics. He stated that 80% of all job growth in Douglas County and Lawrence would come from existing employers.

Ms. Beth Johnson, Lawrence Chamber of Commerce, said one of the things discussed during the annexation of 155 acres was the fact that there were a limited number of industrial sites along I-70 and in Lawrence in general. She stated that still remains a fact. She said when a prospective business looks for a piece of property they are looking for a willing land owner, access, and infrastructure.

#### **APPLICANT CLOSING COMMENTS**

Mr. Freese said he gave some bad numbers when they had the meeting at the Oread Hotel. He said he gave the maximum figures and that the truck numbers Mr. Werner referred to earlier were the average numbers.

Commissioner Finkeldei asked where the current trucks travel.

Mr. Freese said it was a mix. He said anything that goes to Topeka travels down Farmer's Turnpike and gets on I-70 so some of the traffic they were talking about was already in play. He said many trucks also go directly through town from Packer Road to the intersection of 29<sup>th</sup> and Haskell Ave.

Mr. Werner said traffic in the year 2030 would be at 75% capacity. He said regarding Ms. Winter's comments about the exit point, they analyzed both entrances and both would work for inbound and outbound traffic. He said there was a desire to separate car and truck traffic and that the other access may be used for The Woods in the future. He said there was already a deceleration lane in place. He said he understood Ms. Ermeling's comment about conditional zoning.

Commissioner Finkeldei inquired about future plans for the Rockwall Farm property.

Mr. Werner said there's a Southern Star gas line with a 100' wide easement that makes it tough to do anything on one side. He said E 700 Road was vacated a few years ago. He said The Woods was the only project he was aware of. He said he could never say never but that he did not know of any immediate plans.

Commissioner Harris asked for more information about the other site that was considered and what the exact issue was with not having Berry Plastics there.

Mr. Freese said it was difficult to respond to without getting into all the various factors that were taken into consideration when evaluating the sites. He said Berry Plastics was essentially landlocked at 2330 Packer Road with no ability to go beyond what they have at that location. One of the big factors taken into account was the ability for the site to accommodate a 675,000 square foot building and still have the ability to expand. He said there were certain economies they looked at

and there has to be two people that are willing to participate in the process and they encountered some challenges with the other site referenced.

Commissioner Harris asked if he was referring to money or logistical concerns.

Mr. Freese said it was the cost of the site and the cost to develop the site. He said they were excited about this project because it creates the opportunity to free up 35,000 square feet at the main plant.

Commissioner Singleton said there had been comments about conditional zoning. She asked Mr. Freese how committed Berry Plastics was to this location and site.

Mr. Freese said he would not be present tonight if they were not committed to this project and site.

Commissioner Harris inquired about them not seeking a conservation easement.

Mr. Werner said it applied more toward The Woods. He said the Site Plan would include buffer areas and the owners are committed to not developing. He said it was not off the table but not what they were thinking about right now.

Commissioner Harris said she hated to lose any high quality soil and asked if it was possible to design the site to save the soil so it could be farmed.

Mr. Werner said no it really was not possible. He said about 18% of the class II soils would be encroached upon.

Commissioner Burger asked for clarification on an earlier comment about no eastbound paved bike lane.

Mr. Browning said that comment was correct. He did not remember that earlier when he spoke. He said the right turn lane only had a 2-4' shoulder.

Commissioner Burger asked if the eastbound road had a paved shoulder.

Mr. Browning said the eastbound shoulder was 8'.

Commissioner Harris inquired about the impact to the City for fire service and if they would be paid for that service.

Mr. McCullough said that would be part of the agreement negotiated with the City Manager and Fire Chief.

Commissioner Harris asked if City Commission would approve that.

Mr. McCullough said he was not sure.

Commissioner Liese asked Ms. Johnson to repeat the three factors she said perspective businesses look at.

Ms. Johnson said there are many factors that businesses look at but that access, infrastructure, and a willing property owner were the ones she mentioned earlier.

Mr. McCullough addressed Mr. Burger's earlier comment about a deceleration lane already in place now. He said the timing was correct when the County did the improvements to Farmer's Turnpike and when The Woods was going through their development process they saw an opportunity to put the turn lane in for The Woods project. He said the reason it was shorter than it needed to be for trucks was because it was designed for vehicles not semi trucks, so the recommendation to extend it an additional 25' was because this project was coming forward now and there was no predetermined idea of a warehouse at this location.

Commissioner Harris asked if there was anything to prevent or encourage more industrial development in that area to create an industrial park as suggested.

Mr. McCullough said staff analyzes requests to the Comprehensive Plan which could include Sector Plans. He said this was a county request so staff looked at Chapter 7 in terms of industrial projects in the unincorporated area. He said there was nothing preventing any request from coming in. He said this request was for a specific user and staff was confident that it was too big of a project for the owner to build and then hope to get a tenant.

### **JOINT COMMISSION DISCUSSION**

Lecompton Commissioner Robertson said at their meeting there were about 20 people present and none were opposed to the project.

Commissioner Harris said it was still not clear about what could happen out there. She said it sounded like if there was access, flat land, and a willing land owner there could be more industrial development out there.

Mr. McCullough said there was always the possibility of a request to do more industrial out there and that it would be analyzed based on need in the community. He said the City was working toward creating large scale industrial areas, either in the southeast part of Lawrence with Farmland acquisition, Farmer's Turnpike, or Airport Industrial uses. The City is trying to get more baskets of eggs to land industrial projects in the community for primary jobs. He said this request would not be on the table if Berry Plastics did not exhaust the inventory they had to work and their timeline. He said he did not know what the future holds and that three months ago this site was not being looked at or even presented. He said Berry Plastics had very special needs in terms of where they need to locate, how large a parcel, and access to I-70, which created the opportunity to look at this site.

Commissioner Rasmussen said based on the staff report and what he has heard tonight he did not think this was inconsistent with the existing character of the area and it conforms with Horizon 2020. He said while it was not in the K-10 and Farmer's Turnpike Plan Sector Plan, it was near that and was generally what was anticipated in that plan. He said regarding the traffic safety the Traffic Impact Study says it would be a minimal addition to traffic counts. He stated given the proximity to I-70 access they should not be surprised about development in the area along the Farmer's Turnpike and K-10 corridor and that they should be expecting it. He suggested staff consider expanding the Sector Plan for that area. He felt it was the natural evolution of the area and that it was going to be great potential for this type of development. He said he would support the application because it was good for the county and community.

Commissioner Singleton agreed with Commission Rasmussen's comments. She felt this was an excellent plan for this location and this development and for as close as it was to I-70 it would be great for getting trucks in and out. She felt that for Douglas County it was better for truck traffic to be out there instead of going through town. She understood the concept of conditional zoning but did not think it was appropriate at this location with this use. She said the only concern she had

originally was whether or not it would fit in the neighborhood but after hearing the presentations this evening she felt it was a great location for this plan and a good benefit to the community. She said she would vote in favor of the project.

Commissioner Hird agreed with Commissioner Rasmussen and Singleton's comments. He said two issues that seemed to be of concern by the neighbors were the traffic and the domino effect of development. He said Planning Commission relies on experts to provide good information, such as staff reports and traffic studies, and he felt confident in that. He said their role as professionals was to make sure they have safe development. He said as far as the domino effect he felt they were getting ahead of themselves. He said it was likely that there would be more applications in the future. He said part of what bothered him about the domino effect was that it presumes that Planning Commission was not capable of making good decisions in the future and he did not think that was fair. He said every application was judged on its own merits. He said there may be more applications for the area but that does not mean Planning Commission and the governing bodies cannot protect the citizens in the area. He said he would support the project. He said Berry Plastics went above and beyond to reach out to the neighbors and that was exactly the kind of outreach Planning Commission liked to see.

Commissioner Liese said he would support the item.

Commissioner Blaser said he would support the item and that Berry Plastics did an excellent job of presenting their project to everyone. He did have concerns initially about traffic but after reading the studies and hearing from the experts he did not feel it was an issue.

Commissioner Harris had concerns initially about traffic so she was glad they discussed it. She said she would vote in favor of the item and that her concerns had been addressed. She thanked Mr. Werner and Berry Plastics working with the neighbors. She said she was concerned about losing class II soils.

Commissioner Burger said she would support this item. She said staff did a wonderful job on providing a lot of information. She was excited about the blending of industrial with a rural retreat (The Woods). She said they had done a wonderful job of ensuring green space. She was still hesitant about traffic and would like to see the speed limit reduced.

Commissioner Finkeldei said he would support the project. He said they need to remember the issue of expansion or encroachment when they have their discussion on Wednesday night because one of the issues was having available land to choose from. He said he does trust the traffic studies and the County Staff. The County has control over the speed limit and signage and they can watch those concerns. He agreed with Commissioner Singleton and said although there would be some negative impact along this stretch of road, taking those trucks out of the city would benefit the community so that offsets the cost. He thanked Lecompton Planning Commission for being present tonight. He said Ms. Winter was the closest neighbor and her support was beneficial.

### **Action taken by Lecompton Planning Commission**

Motioned by Lecompton Commissioner Hoffer, seconded by Lecompton Commissioner Middleton, to approve the rezoning of approximately 96 acres from A (Agricultural) to I-2 (Light Industrial) District.

Unanimously approved 5-0.

### **ACTION TAKEN**

Motioned by Commissioner Liese, seconded by Commissioner Hird, to approve the rezoning of approximately 96 acres from A (Agricultural) to I-2 (Light Industrial) District and forwarding it to the Board of County Commissioners with a recommendation for approval based on the findings of fact found in the body of the staff report.

Commissioner Harris asked if that included the three additional recommendations in the Traffic Impact Study addendum.

Mr. McCullough said as this was just the rezoning request those would be with Site Plan and Platting process.

Unanimously approved 8-0. Student Commission Davis voted in the affirmative.

**PLANNING 11-10-10**

The Board considered a request to rezone (Z-9-14-10) approximately 120 acres from County A (Agricultural) to County I-2 (Light Industrial), located west of E 700 Road and north of N 1800 Road (Farmer's Turnpike). The application was submitted by Paul Werner Architects for Rockwall Farms L.C., property owner of record. Mary Miller, Lawrence-Douglas County Metropolitan Planning Staff, presented the item. The subject property is located within three miles of the Lecompton city limits. The rezoning request was considered at a joint meeting of the Lawrence-Douglas County Metropolitan and Lecompton Planning Commissions. The property has immediate access to an improved arterial street (N 1800 Rd) and is in close proximity to the I-70/K10 Lecompton Interchange. A request [Z-11-19-08] was approved by the Board of County Commissioners on June 24, 2009 (pending the recording of a final plat) for a rezoning of the property east of the subject property to B-2 District with conditions for a rural conference center. The applicant intends to masterplan the two developments to ensure compatibility and will include both lots in the same plat.

The rezoning request was approved by the Lawrence-Douglas County Metropolitan Planning Commission with a 8-0 vote and the Lecompton Planning Commission with a 5-0 vote to recommend for approval on by the BOCC on October 25, 2010. Staff recommends approval of the rezoning request for approximately 96 acres from A (Agricultural) to I-2 (Light Industrial) District based on the following findings of fact:

I. Zoning and land uses of surrounding properties. The surrounding property is zoned A (Agricultural) with a rezoning to the B-2 District pending for a portion of the property to the east. Agriculture and rural residences are the primary land uses in the area, though a corporate retreat is approved immediately east of the subject property. The I-70 Kansas Turnpike and N 1800 Road, which is commonly referred to as the 'Farmer's Turnpike' are adjacent to the southern property line of the subject property.

II. Character of the area. The area is a rural area containing woodland, farmland and rural residences in close proximity to a major transportation corridor.

III. Suitability of subject property for the uses to which it has been restricted. The property as zoned would allow for agricultural uses, rural residences, animal hospitals, dog kennels, schools, country clubs and churches. The subject property is well suited for the uses to which it has been restricted and is also suited to industrial uses, including warehousing and light manufacturing.

IV. Length of time subject property has remained vacant as zoned. The property has never been developed but has been used for agricultural purposes.

V. Extent to which removal of restrictions will detrimentally affect nearby property. Detrimental effects on nearby properties could be prevented or minimized through the appropriate site design and buffering of the new facility and any changes to N 1800 Road that are recommended by the County Engineer.

VI. Relative gain to the public health, safety and welfare by the destruction of the value of the petitioner's property as compared to the hardship imposed upon the individual landowners. There would be little gain to the public health, safety or welfare from the denial of the rezoning request since its impact to surrounding properties will be negligible with proper site design. The general public and the applicant could be negatively impacted by the denial of the rezoning request as the applicant may be unable to find a suitable location for the expansion of their facility in Douglas County. With proper site planning of the subject property, the negative impacts from denial of the rezoning request would outweigh the limited positive benefits.

VII. Conformance with the comprehensive plan. The proposed rezoning request is generally compliant with Horizon 2020 policies related to industrial development within the rural area of the county.

Miller added the location fits the general locational criteria for new industrial development within the exception of the requirement that the site consist of primarily minimum slopes. The goal of protection of Class II soils in this location is balanced by the transportation system and the criteria that supports industrial land use. In addition, Miller stated one of the requirements of the comprehensive plan is the applicant provide documentation that similar competitive sites were not available within the municipalities. The applicant did work with the City of Lawrence and looked at several other sites. There were no other sites available that met the applicant's needs or met their time table.

Flory asked if the Board will have the opportunity to review the site plan to ensure any issues are addressed, prior to further development. Miller responded that is correct and a site plan has been submitted and will come to the BOCC in a few weeks.

Gaughan asked what other industrial zonings we have in the County. Linda Finger, Planning Resource Coordinator, stated the major areas are along North 2nd Street, 24/40 Highway, 23rd Street and K-10.

Thellman asked for clarification regarding the locations on the "snowflake" map as potential sites for industrial parks. Scott McCullough, Planning Director, stated Chapter 7 gives details about the areas listed on the "snowflake" map as being areas of interest for industrial use, with transportation and proximity to urban services. However, under Chapter 7, we have the ability to consider other sites not on the map and use the general criteria to analyze a request.

Paul Werner, Paul Werner Architects, stated the proposal tonight is the I-2 zoning of approximately 96 acres. We have already submitted a preliminary plat that goes to the Planning Commission on Monday, November 15. Site plans have been submitted for the Berry Plastics lot and for The Woods.

Ross Freese, Berry Plastics, stated the expansion project started approximately four years ago with 460 employees. The commitment was made to add 154 employees. Today there are approximately 800 employees. That number could grow to 900 during peak production times. Berry currently has 304,000 square feet of leased space, and 233,000 square feet of space in Topeka. Beyond that, they have approximately 100 trailers used to provide temporary storage. The main facility is landlocked with little or no room to accommodate and add on. The reason Berry chose this site is the layout of the topography, access to I-70 and the fact the site can accommodate future expansion. He also indicated that Berry Plastics had not yet made a decision on the use of the recovery zone bonds. Freese stated the new warehouse will open up more space at their production site, expanding manufacturing and possibly creating more jobs. It will also allow them to better compete with other Berry Plastics plants across the country, whenever new lines of production are added.

Thellman asked Freese if Berry plans to manufacture in the new location in the future. Freese responded "no" that he does not plan to. The main plant is the lifeline of the company because of modeling and thermal processes. The new location is not served by rail and that will probably not change. Thellman asked if there are plans to expand further. Freese replied any expansion would be for more warehousing.

Thellman stated staff had mentioned at the Planning Commission meeting the possibility of conditioning this zoning to what Berry is planning to use the facility for. McCullough responded that the Planning Commission also discussed that possibility, but finally concluded to concur with the staff recommendation not to limit the conditional uses because the facility met the criteria for industrial property.

Thellman asked if the property was vacated by Berry and someone else took ownership, would the limited fire protection be a concern. McCullough responded that part of the reason we have limited amount of industrial zoning in the unincorporated area is because it takes a certain level of service to intensify the use much past warehousing. Warehousing is a low impact use in terms of a need for water, sewer capacity, and response to hazardous chemicals. So it is a bit self regulating. McCullough added with each submittal, staff will determine if the services and the infrastructure can be supported.

Gaughan asked if the uses with I-2 can be self regulating. McCullough responded they could be. For example, some manufacturing processes can be very water intense, demanding much greater volumes of water than the rural water districts can provide.

Gaughan asked for a description of the 16-18 dry presses that will be used on site. Freese stated the manufacturing process used is essentially printing on blank cups. The process used does not use any significant amount of water.

Gaughan asked the applicant to discuss traffic. Werner stated currently there are 4300-4400 vehicles a day on Farmer's Turnpike. Truck traffic would be about 1 per hour or 20 trucks per day. Farmer's Turnpike is rated to run 10,000-11,000 vehicles per day. Today it is at about 50% capacity. The traffic study shows in 2030 the capacity will only be at about 75%. The west entrance has been improved. The existing west bound decel lane will be extended 25 ft. An east bound left turn lane into the facility will also be provided. There will be two lanes, a right and left turn, and a third lane for entering the site. Where E 700 Road was, another right decel lane will be added for entrance to The Woods. Also sewer will either be a lagoon system or drip irrigation system. The owners have made arrangements to obtain a water meter from RWD#6, with a maximum allowance of 1.6 million gallons per year. The city is prepared to sell RWD#6 an additional 10 million gallons a year, if requested. They are looking at an underground storage tank for fire protection. Ponds will provide detention and added amenities for The Woods.

Flory asked Keith Browning, Public Works Director, to address the traffic issues. Browning stated this is adding

trucks to the road, but it is well within the capacity of the road. Currently there are about 450 trucks on the road per day and Berry would be adding approximately 50. Browning agrees with the proposed improvements to the road. The E700 Road was designed to meet minimum standards for 55 mph, which is what the road is posted at. Since traffic is averaging 63 mph, a sign will be put up regarding site distance.

Thellman opened item for public comment.

Paul Bahnmaier, 393 N 1900 Road, stated he endorses the facility as it will positively affect the community. The manner, in which the landscaping has been addressed, will favorably impress the tourists who visit Lecompton. This shows how history and economic development can work together. He stated this represents an example of how the County, City and Chamber of Commerce have always encouraged local companies to expand rather than spend thousands on trying to draw in outside companies.

Charlene Winter, 638 N 1800 Road, stated she is the closest neighbor to the proposed warehouse. She stated she wants to thank Berry Plastics and Tom Fritzel for working with the community on this project. She would like to see the speed limit on N 1800 Road lowered because the road has been improved and people are driving faster. She also stated a concern about site distance when turning out of the location on to the township road to the east. However, Winter said she does hope the project goes in.

Tom Kern, President of the Chamber, stated this is a critical project to Lawrence and Douglas County. Berry is now the largest private employer in Lawrence, surpassing Hallmark. He commended Berry and the Fritzels for their efforts to include the neighbors and property owners in the process in such a way most of the neighbors' questions were handled upfront. Kern also stated the applicant examined many sites, but this one fits for Berry.

Thellman closed the public comment.

Gaughan stated a lot of the concerns were addressed along the way. He appreciates the time the applicant has taken to listen to concerns about storm water and traffic. Gaughan stated he is impressed with the storm water management plan. He is looking forward to seeing the next vision for the adjacent property. He stated he supports this project.

Flory stated he also supports this request. It is highly supported by the people of Lecompton Township and he feels this will be a long-term benefit to that part of the county. Berry has been an excellent corporate citizen for Lawrence and he realizes the benefit it will have to Douglas County. Flory stated he is not concerned about setting a precedence of allowing industrial zoning in the unincorporated area of the county because each request has to come before the Board on its own merits. It is our responsibility along the Planning Commission and staff to exercise judgment.

Thellman stated she still has some concerns. The Board and staff have spent a long time on the Comprehensive Planning setting out principles to discourage sprawl and to be thoughtful about our natural resources and infrastructure dollars. It's been tough to think about this project. In this moment given, given work that's been done to alleviate people's concerns on traffic, fire protection and use of site, along with the potential for building for a local manufacturer in our community and for the thoughtful consideration soil of concerns, she is ready to be supportive. Thellman feels the applicant has worked hard with the neighbors and township and in the best interests of the community. This shows Berry will be a good neighbor. With some reservation, Thellman supports this project.

Flory moved to approve Resolution 10-28 related to and amending a regulated planning and zoning district classification of 97.16 acres within the unincorporated territory of Douglas County from "A" (Agricultural District) to "I-2" (Light Industrial District), referencing rezoning request Z-09-14-10. Motion was seconded by Gaughan and carried 3-0.



**ITEM NO. 1 I-2 TO A; 32 ACRES; 670 N 1800 RD (MKM)**

**Z-3-10-11:** Consider a request to rezone approximately 32 acres from I-2 (Light Industrial) to A (Agricultural), located at 670 N 1800 Rd. Submitted by Paul Werner Architects, for Rockwall Farms L.C., property owner of record. *Joint meeting with Lecompton Planning Commission.*

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

**APPLICANT PRESENTATION**

Mr. Paul Werner, Paul Werner Architects, said this was a clean-up item for Berry Plastics and that they agreed with the staff report.

**PUBLIC HEARING**

Mr. Walt Spencer, lives south of Berry Plastics, said there were very few places in Douglas County with I-2 zoning. He wondered what the purpose of the rezoning was.

Mr. Scott McCullough said the staff report articulated the purpose for the rezoning and that it grew out of concern for the representation that was made to accommodate Berry Plastics at the location. He stated if you took Berry Plastics away from the property and put the test of the Comprehensive Plan to it there were factors that supported I-2 zoning and factors that may not support I-2 zoning. He said there seemed to be agreement between the applicant and staff that reverting back to agriculture right now would address a lot of the potential concerns for uses in the Commercial districts that would remain with I-2 unless it was rezoned or zoned and maintained I-2 with conditions. He said the purpose of the Berry Plastics and the consequence of a second lot was to accommodate Industrial uses, not the gamut of uses that includes Commercial uses found in the County Code. He said if I-2 zoning was maintained staff would recommend some of the Commercial uses be conditioned away. He said there was an argument that there was value in having a little bit of Industrial inventory there but the Commercial components of that did not come into the discussion before.

Commissioner Rasmussen asked if this would create an unusually shaped lot with a narrow corridor. He asked if it would be a useable lot in the future.

Mr. McCullough said it was useable for some of the infrastructure to the Woods development and Berry Plastics. He said even if it was maintained at I-2 it would most likely be used for agricultural purposes until development occurred.

Commissioner Rasmussen asked if the property could be used for anything other than agriculture given its size and shape constraints.

Mr. McCullough said it could be used for development. He said staff would not assume a house would be built there. He said it acted as a holding pattern until there was a user identified and analyzed that specific user and development.

The two Lecompton Planning Commissioners present, Amber Nickel and Leigh Ann Woody, were satisfied with the staff report.

**COMMISSION DISCUSSION**

Commissioner Burger asked if any communication was received from the Lawrence Chamber of Commerce.

Mr. McCullough said no.

Commissioner Hird asked if the applicant would agree to conditional zoning if the land remained I-2.

Mr. Werner said the applicant would agree with that. He said the 32 acres was deceiving because only about 8 acres at the front was useable. He said the narrow strip going to the north was shared access and not usable. He said I-2 was appropriate but they would agree to just about anything to keep Berry Plastics on task. He suggested publishing it differently when it was heard by County Commission.

Commissioner Harris asked if the item could be advertised differently to avoid confusion.

Mr. McCullough said staff would have to look at that. He said procedurally denying the rezoning request or maintaining I-2 with conditions was accurate and within the Planning Commissioners range. He said one of the concerns was because there was significant representation that the 1000' setback from the road would be beneficial in maintaining the rural character. He said upon County Commission receiving knowledge of the lot split they required the applicant to at least go through the process and learn from the public if there were issues with that.

Commissioner Harris inquired about the original notification for the rezoning.

Mr. McCullough said it would have been a 1000' buffer area.

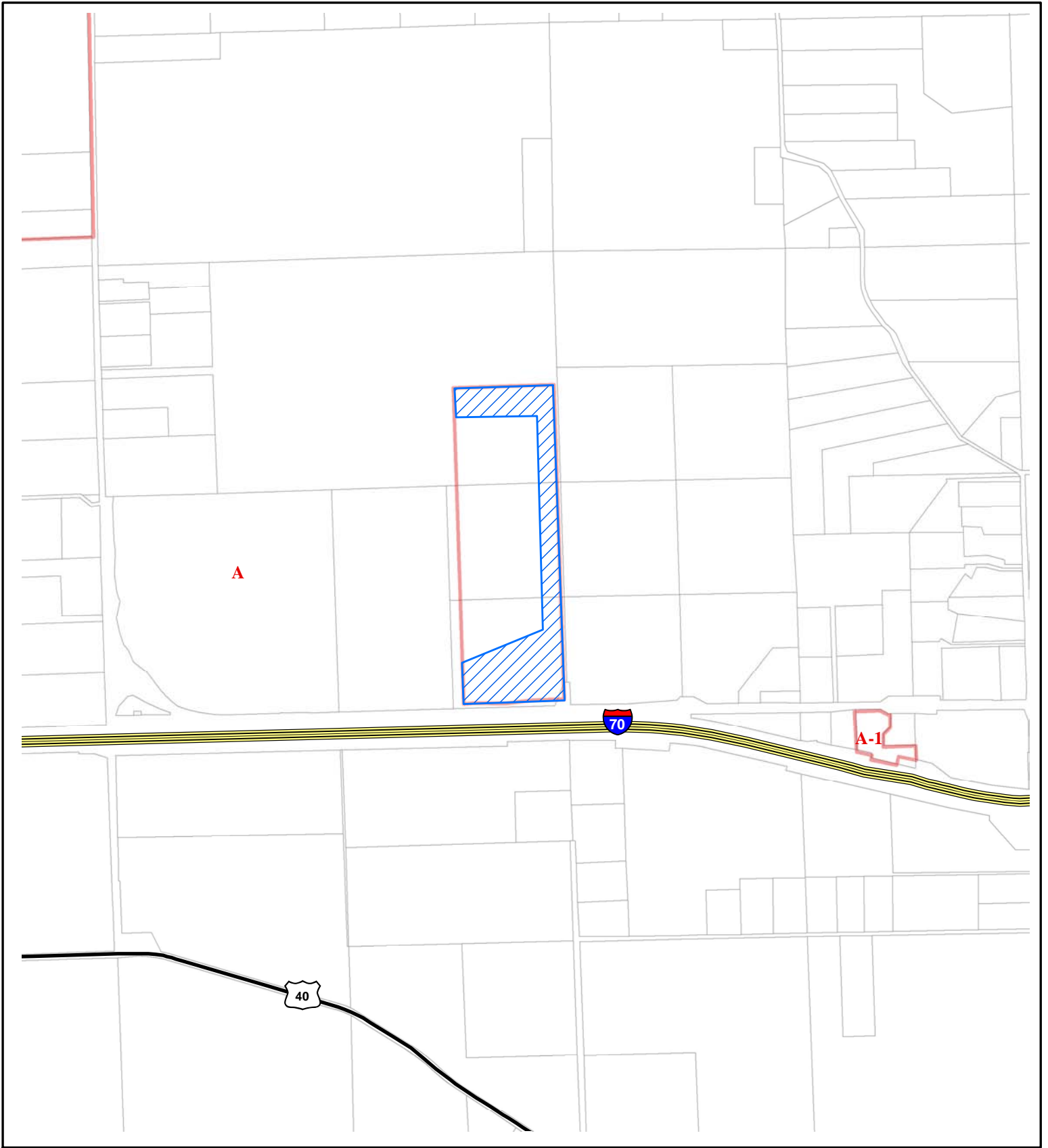
Commissioner Harris asked if the people who were notified previously were notified again for this rezoning.

Mr. McCullough said yes, if they fell within the 1000' notification boundary.

#### **ACTION TAKEN**

Motioned by Commissioner Harris, seconded by Commissioner Singleton, to approve the rezoning request for approximately 32 acres from I-2 (Light Industrial) to A (Agricultural) District and forward it to the Board of County Commissioners with a recommendation for approval based on the findings of fact found in the body of the staff report.

Unanimously approved 9-0.



**Z-03-10-11: Rezoning of 32 acres from I-2 to A  
670 N 1800 Road**

Lawrence-Douglas County Planning Office  
May 1 2011



 Area Requested

Scale: 1 Inch = 1500 Feet

**PLANNING COMMISSION REPORT**  
**Regular Agenda – Public Hearing Item**

PC Staff Report  
5/23/11

**ITEM NO. 4: A & B-2 TO B-2; 6 ACRES; 751 HWY 40 (MKM)**

**Z-3-7-11:** Consider a request to rezone approximately 6 acres from A (Agricultural) and B-2 (General Business) to B-2 (General Business), located at 751 Hwy 40. Submitted by Kathleen Baker Wolfe, property owner of record.

**STAFF RECOMMENDATION:** Staff recommends approval of the rezoning request for approximately 6 acres from A (Agricultural) District and B-2 (General Business) to B-2 (General Business) and forwarding it to the Board of County Commissioners with a recommendation for approval based on the findings of fact found in the body of the staff report.

Applicant's reason for request: *"Plans to sell the property."*

**KEY POINTS**

- The subject property is located on Hwy 40 and is adjacent to other B-2 zoned property.

**ATTACHMENTS**

Attachment A: Public Communications

Attachment B: Sections 12-309-2 and 12-310-2 of the Zoning Regulations for the Unincorporated Territory of Douglas County with permitted uses in the B-1 and B-2 Districts.

**OTHER ACTION REQUIRED**

- Approval of rezoning by Board of County Commissioners and publication of resolution.
- Platting and site-planning are required prior to development.

**PUBLIC COMMENT RECEIVED PRIOR TO PRINTING**

- Letter from David R and Carole J Barry, 1609 E 686<sup>th</sup> Road in opposition to the rezoning based in part on the condition of the existing commercial uses at that location and the additional traffic the commercial use may generate.

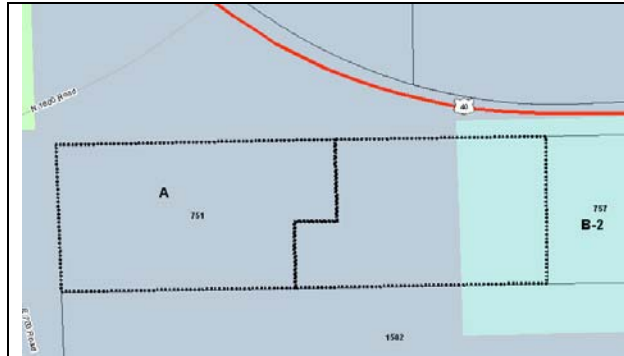
**GENERAL INFORMATION**

Current Zoning and Land Use: A (Agricultural) and B-2 (General Business) Districts; Residential and agricultural uses. (Figure 1)

Surrounding Zoning and Land Use: To the northwest: A-1 (Suburban Home) District; rural residential subdivision.

To the north, west and south: A (Agricultural) District; agricultural uses, rural residences and right-of-way for Hwy 40 and County Route 442.

To the east: B-2 (General Business) District; 2 lots with service and auto related businesses.



**Figure 1a.** Subject property zoning (A and B-2)



**Figure 1b.** Subject property land use (Residential and Agricultural)



**Figure 2.** Zoning and land use of area. A-1 (Suburban Home) platted residential subdivision to northwest, B-2 (General Business) with service and auto-related uses to the east and the remainder A (Agricultural) with rural residences and agriculture.

### **I. ZONING AND LAND USES OF SURROUNDING PROPERTIES**

The surrounding area is zoned A (Agricultural) and contains agricultural and rural residential uses with two areas being zoned for more intense uses. A rural subdivision is located to the northwest of the subject property within the A-1 (Suburban Home) District and service businesses are located to the east of the subject property on approximately 2.5 acres zoned B-2 (General Business). The area is divided by the intersection of County Route 442 and US Hwy 40, with the commercial and proposed commercial properties being located adjacent to US Hwy 40 on the southeastern corner of the intersection.

**Staff Finding** –The area contains a major transportation network with the intersection of US Hwy 40 and County Route 442. The predominate zoning in the area is Agricultural and agriculture and rural residences are the principal land uses. A-1 Zoning and a rural residential subdivision is located on the northwest corner of the intersection and B-2 Zoning is located east

of and on a portion of the subject property. The proposed rezoning to the B-2 District would be compatible with the surrounding land uses and zonings.

## **II. CHARACTER OF THE AREA**

This is a rural residential and agricultural area with a limited amount of commercial uses in the vicinity of the subject property. A US Highway and County Route intersect in this area. The subject property is located approximately 2 miles west of the K-10 bypass and is within Service Area 4 of the City of Lawrence UGA.

**Staff Finding** -- This is predominately a rural residential and agricultural area with limited commercial uses. The subject property is located on a major transportation corridor within the Lawrence Urban Growth Area. Commercial uses in this location could be compatible with the character of the area.

## **III. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED**

Applicant's Response:

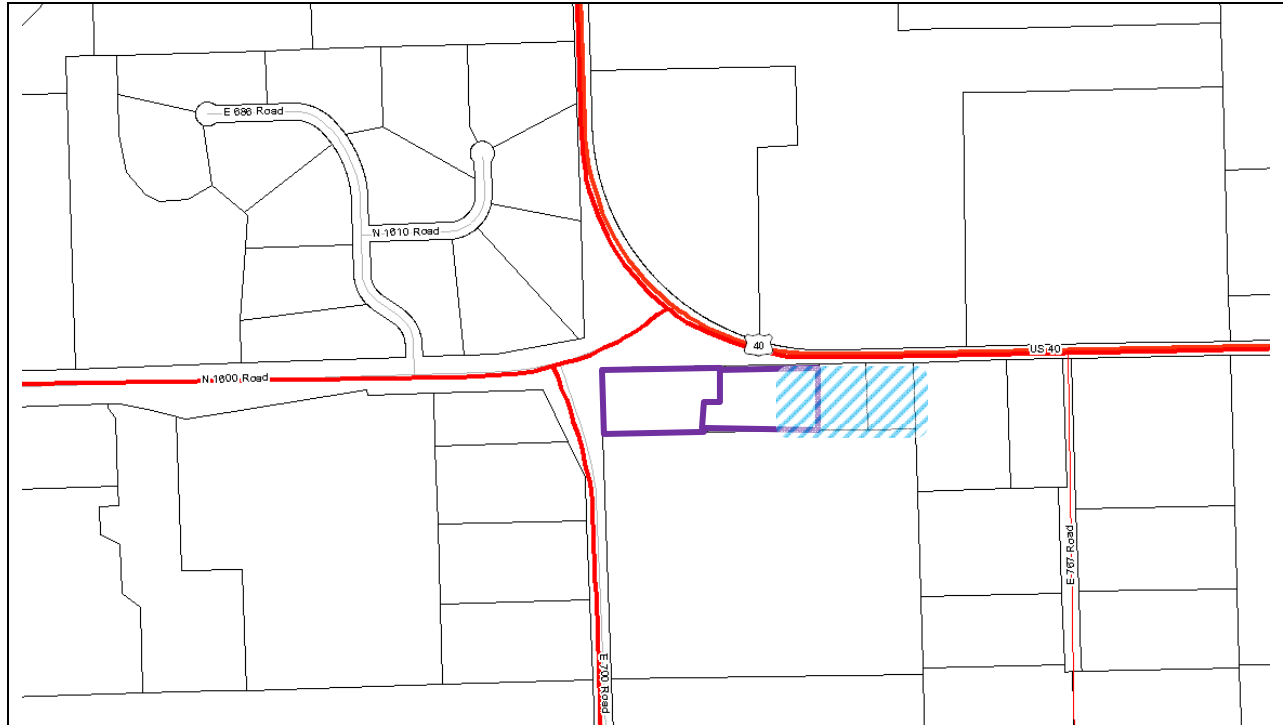
*"It is suitable for residential, agriculture, or B-2."*

The property contains two parcels which are currently zoned A (Agricultural) and B-2 (General Business) Districts. Per Section 12-306-2 of the Zoning Regulations for the Unincorporated Territory of Douglas County permitted uses in the A District include agricultural uses; animal hospital or clinic; commercial dog kennel; commercial greenhouse; commercial riding stable; detached dwelling; churches, parish halls, etc; schools; and country clubs. The west parcel is zoned A, and is restricted to these uses.

The east parcel has split zoning, with A (Agricultural) on the west portion and B-2 (General Commercial) on the east portion. The B-2 District permits any use listed in Section 12-310-2 of the Zoning Regulations as well as the uses permitted in the B-1 District. Permitted uses include an amusement place in a completely enclosed building, general repair and service establishments, restaurants, motels, offices, and used car lots. Sections 20-309-2 (B-1 permitted uses) and 20-310-2 (B-2 permitted uses) are included with this report as Attachment B.

The property is developed with a house and is suitable for the uses permitted within the A District. However, as the two parcels are located at the intersection Hwy 40, County Route 442 and E 700 Road, which are all designated as 'principal arterials' on the Major Thoroughfares Map (Figure 3), the property is suited for commercial uses as well. The property is served by Rural Water District #1. The RWD indicated that meters are available; however, water intensive commercial uses may require the use of a holding vault. This would be determined at the site-planning stage when a specific use is known.

**Staff Finding** –The property is suited to the uses which are permitted in the A and the B-2 District.



**Figure 3.** Subject property contains two parcels, outlined in purple. The east half of the eastern parcel is included in the commercial zoning district (shown in blue stripes). The remainder of the property is zoned for agricultural uses.

#### IV. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED

**Staff Finding** – The property contains two parcels. The parcel on the west is developed with a residence. The parcel on the east has never been developed.

#### V. EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY

Applicant's response:

*"I don't believe it will."*

The property is located at the intersection of three roads which are classified as 'principal arterials' on the Future Thoroughfares Map and is adjacent to US Hwy 40. Given this transportation network, the additional traffic generated by commercial uses at this location should have no negative impact on nearby properties.

The subject property is adjacent to commercial property on the east, and is separated from other properties to the north and west by right-of-way which ranges from approximately 150 ft to 450 ft in width. The right-of-way width and road will serve to buffer the nearby properties from the commercial use. A 30 acre parcel with a rural residence is adjacent to the subject property on the south. The residence is located approximately 600 ft south of the property line. Impacts related to increased traffic and access points would be evaluated with a specific development proposal. With appropriate landscaping and site design, a commercial development in this location should have minimal impact on nearby properties.

**Staff Finding** – With appropriate landscaping and site design, the requested zoning B-2 (General Business) should have minimal detrimental effect on nearby properties.

#### **VI. RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE PETITIONER'S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNERS**

Evaluation of these criteria includes weighing the benefits the denial of the rezoning request would provide for the public versus the hardship the denial would impose on the owner of the subject property. Benefits are measured based on the anticipated impacts of the rezoning request on the public health, safety and welfare.

If the rezoning were denied, the use of the property would remain limited to uses which are permitted in the Agricultural District, with the exception of the eastern portion of the east parcel. Approximately one acre of the 2.7 acre parcel is zoned for commercial uses. Approving the rezoning request would align the zoning district with the parcel boundaries. Given the separation between the subject property and residential uses, and the arterial transportation network that is available, denying the rezoning request would provide little if any gain to the public health, safety and welfare. If the rezoning were denied, the parcels could be used for uses permitted within the Agricultural District, but it would be difficult to develop any commercial uses on the portion that is zoned commercially, especially considering acreage requirements in the County Sanitary Code.

**Staff Finding** –There would be little, if any, gain to the public health, safety or welfare from the denial of the rezoning request given the separation between the subject property and residential uses and the type of transportation network the property is adjacent to. If the rezoning were denied, the development of the property would be limited to uses permitted within the Agricultural District.

#### **VII. CONFORMANCE WITH THE COMPREHENSIVE PLAN**

Applicant's Response:

*"No conflict."*

#### **CHAPTER SIX. COMMERCIAL**

**Policy 3.12: Criteria for Commercial Development in Unincorporated Areas** (page 6-38)

"Existing commercial areas that are located at the intersection of a hard surfaced County Route and a state or federally designated highway should be allowed to expand if the necessary infrastructure (water, road, approved wastewater treatment facility, etc.) is available."

#### **Staff Comments:**

The property is located at the intersection of County Route 442 and US Hwy 40. The rural water district indicated that water meters were available to serve a commercial development at this location. The property contains nearly 5.7 acres outside of the regulatory floodplain; therefore an on-site sewage management system should be possible. A permit for an on-site sewage management system must be obtained prior to obtaining building permits for any commercial development. Based on the information above, the subject property meets the criteria for commercial zoning.



### **STAFF REVIEW**

The subject property consists of two parcels. The west parcel is zoned for agricultural uses and the east parcel has split Agricultural/Commercial zoning. The applicant proposes to rezone both parcels to the B-2 (General Business) District. Principal considerations with commercial rezonings in the unincorporated portions of the county are the capacity of the transportation network, the availability of publicly treated water, sewage management, and the impact the future development may have on nearby properties. The property is located at the intersection of a hard surfaced County Route and a federal highway and a meter is available from Rural Water District 1. The property contains adequate area for an on-site sewage management system. A minimum of 3 acres is required when a public water supply is used.

Public comment indicated a concern with the appearance of the existing development at this location. This property will require platting and site planning prior to commercial development. Measures such as landscaping and screening of parking lots which are required in the site planning process would help achieve an aesthetically pleasing development.

David R. Barry & Carole J. Barry

1609 E. 686th Road

Lawrence, Ks 66049

May 7, 2011



City of Lawrence, Douglas County

Planning and Development Services

Attn: Mary Miller, AICP

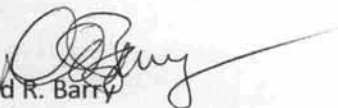
We recently were notified of a rezoning request for approximately 6 acres from Agricultural to General Business, located at 751 Hwy 40, submitted by Kathleen Baker Wolfe, property owner.

We strongly recommend that the property remain Agricultural. Between the auto junkyard that is open for the world to gaze upon to the multiple Duct Cleaning trucks next door, this area is already tacky looking. To make it further so, would not in the best interest of adjacent areas and will reduce property values further. Highway 40 is increasing busy and with the increased traffic an additional business may possibly create (if not now, then possibly later with a different tenant), county services will be stretched even further. Most people did not move to the County for more congestion but rather less.

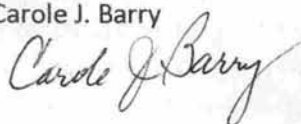
Maintaining the remaining integrity of the area is essential if the County desires to protect their current residents who predate this rezoning request.

As regards the auto junkyard, is there any way the County can mandate an 8' privacy fence around it? I know of no other area in Douglas County that is on a main highway that is the size of this most unattractive eyesore.

Sincerely,

  
David R. Barry

Carole J. Barry



**12-309 "B-1" NEIGHBORHOOD BUSINESS DISTRICT REGULATIONS**

**12-309-1.**

The regulations set forth in this section, or set forth elsewhere in this Resolution, when referred to in this section, are the regulations in the "B-1" Neighborhood Business District. This district provides primarily for retail shopping and personal service uses to be developed either as a unit or in individual parcels to serve the needs of nearby residential neighborhoods.

**12-309-2. USE REGULATIONS**

A building or premises shall be used only for the following purposes:

**12-309-2.01.** Any use permitted in the "R-1" Single-Family Residential District.

**12-309-2.02.** Automobile parking lots and storage garages.

**12-309-2.03.** Display room for merchandise to be sold on order where merchandise sold is stored elsewhere.

**12-309-2.04.** Dressmaking, tailoring, decorating, shoe repairing, repair of household appliances and bicycles, dry cleaning and pressing and bakery, with sale of bakery products on the premises and other uses of a similar character; provided that no use permitted in this item shall occupy more than 2,500 square feet of floor area.

**12-309-2.05.** Filling stations, so long as bulk storage of inflammable liquids is underground.

**12-309-2.06.** Frozen food lockers for individual or family use.

**12-309-2.07.** Hospital or clinic for large or small animals, such as cattle, horses, dogs, cats, birds and the like, provided that such hospital or clinic and any treatment rooms, cages, pens or kennels be maintained within a completely enclosed building with soundproof walls and that such hospital or clinic be operated in such a way as to produce no objectionable odors outside its walls and located on a sewer.

**12-309-2.08.** Offices and office buildings, including clinics.

**12-309-2.09.** Outdoor advertising structure or non-flashing sign pertaining only to a use conducted within the building, and any sign or display in excess of 30 square feet in area shall be attached flat against a wall of the building, and in no case shall any sign or display attached to a building project above the roof line. The permitted 30 square feet of sign area for projecting or free-standing signs may be in one sign or the aggregate area of several signs.

**12-309-2.10.** Personal service uses including barber shops, banks, beauty parlors, photographic or artists' studios, messengers, taxicabs, newspaper or telegraphic service stations, dry cleaning receiving stations, restaurants, (but not drive-in restaurants), taverns, undertaking establishments and other personal service uses of a similar character.

**12-309-2.11.** Retail stores, including florist shops and greenhouses in connection with such shops, but there shall be no slaughtering of animals or poultry on the premises of any retail store.

**12-309-2.12.** Self-service laundry or self-service dry cleaning establishment.

**12-309-2.13.** Accessory buildings and uses.

**12-309-2.14.** A retail fireworks stand only as authorized by permit issued and operated pursuant to applicable resolutions of the Board of County Commissioners.

**12-310 "B-2" GENERAL BUSINESS DISTRICT REGULATIONS****12-310-1.**

The regulations set forth in this section, or set forth elsewhere in this Resolution, when referred to in this section are the regulations in the "B-2" General Business District. The purpose of this district is to provide sufficient space in appropriate locations for a wide variety of business, commercial, and miscellaneous service activities, particularly along certain existing major thoroughfares where a general mixture of commercial and service activity now exists, but which uses are not characterized by extensive warehousing, frequent heavy trucking activity, open storage of material, or the nuisance factors of dust, odor, and noise associated with manufacturing.

**12-310-2. USE REGULATIONS**

A building or premises shall be used only for the following purposes:

**12-310-2.01.** Any use permitted in the "B-1" Neighborhood Business District.

**12-310-2.02.** Amusement place, skating rink, swimming pool or dance hall in a completely enclosed building, auditorium or theater, except open-air drive-in theaters. (See section 12-319-4)

**12-310-2.03.** Bottling works, dyeing and cleaning works or laundry, plumbing and heating shop, painting shop, upholstering shop not involving furniture manufacture, tinsmithing shop, tire sales and service including vulcanizing but no manufacturing, appliance repairs, and general service and repair establishments, similar in character to those listed in this item; provided that no outside storage of material is permitted, and further provided that no use permitted in this item shall occupy more than 6,000 square feet of floor area.

**12-310-2.04.** Bowling alleys and billiard parlors.

**12-310-2.05.** Drive-in restaurants.

**12-310-2.06.** Food storage lockers.

**12-310-2.07.** Hotels, motels, or motor hotels.

**12-310-2.08.** Material storage yards, in connection with retail sales of products where storage is incidental to the approved occupancy of a store, provided all products and materials used or stored are in a completely enclosed building, or enclosed by a masonry wall, fence, or hedge, not less than six feet in height. Storage of all materials and equipment shall not exceed the height of the wall. Storage of cars and trucks used in connection with the permitted trade or business is permitted within the walls, but not including storage of heavy equipment, such as road-building or excavating equipment.

**12-310-2.09.** Outdoor advertising structure or sign and any sign or display in excess of 100 square feet in area shall be attached flat against a wall of a building. See section 12-306-2.18 for height and location of sign requirements.

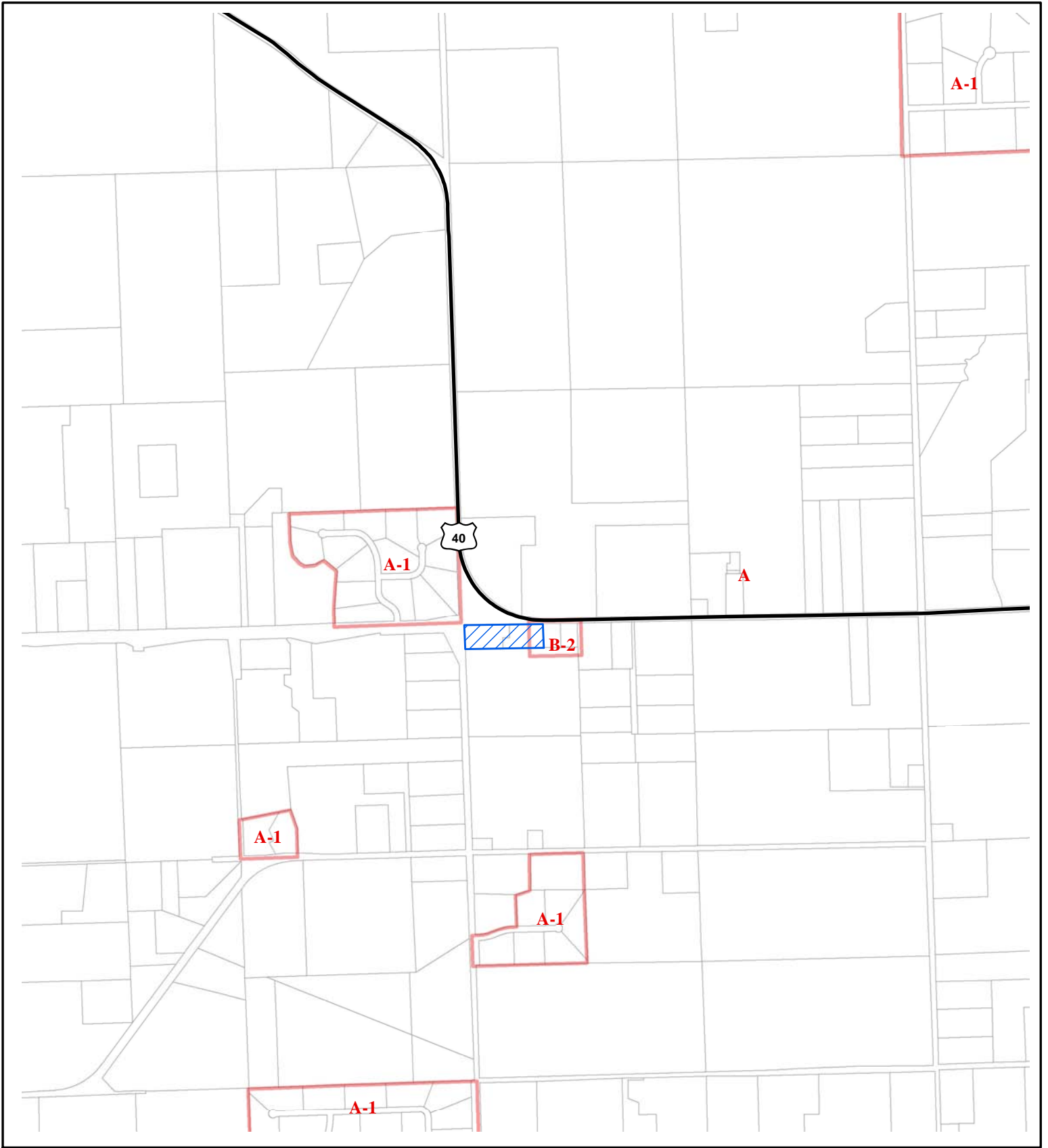
**12-310-2.10.** Printing, publishing, and engraving establishments.

**12-310-2.11.** Public garage.

**12-310-2.12.** Wholesale establishment or warehouse in a completely enclosed building so long as floor area devoted to such uses shall not exceed 20,000 square feet.

**12-310-2.13.** Used car lot.

**12-310-2.14.** Accessory buildings and uses.



**Z-03-07-11: Rezoning of 6 acres from A & B2 to B2  
751 Highway 40**

Lawrence-Douglas County Planning Office  
May 1 2011



 Area Requested

Scale: 1 Inch = 1500 Feet

**ITEM NO. 4 A & B2 TO B2; 6 ACRES; 751 HWY 40 (MKM)**

**Z-3-7-11:** Consider a request to rezone approximately 6 acres from A (Agricultural) and B2 (General Business) to B2 (General Business), located at 751 Hwy 40. Submitted by Kathleen Baker Wolfe, property owner of record.

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

Commissioner Finkeldei inquired about additional access off of Hwy 40.

Ms. Miller said that would be determined by KDOT.

Commissioner Finkeldei inquired about the distance for entrances from other roads.

Ms. Miller said the County Access Management Standards were different in the county and would be determined by the county engineer.

Commissioner Harris asked if there was an existing business in that area that wanted to expand.

Ms. Miller said not that she knew of. She did not know who would be using the location. She said she received a phone call from a neighbor to the south concerned with the aesthetics of a commercial use. She said the County Zoning Regulations would require the same condition that new uses be reviewed for compatibility with adjacent properties. She said when the Site Plan was reviewed by staff they would look at buffering, landscaping, orientation of the building, and parking lots to make sure it was compatible.

Commissioner Harris inquired about the interpretation of the language for allowing the use there. She thought it was saying an existing business could be expanded but not allowed to add a new business.

Ms. Miller said that language was referring to commercial areas, not commercial uses. She said a commercial area could expand to accommodate an existing or new business.

**APPLICANT PRESENTATION**

Ms. Kay Wolfe said when she purchased the property she was told by her real estate agent that the property was zoned commercial, which was not true. She felt the area would be perfect for a small business such as a gas station. She said she was moving and would like to sell the property before moving.

**PUBLIC HEARING**

No public comment.

**COMMISSION DISCUSSION**

Commissioner Harris asked where the language she mentioned earlier.

Mr. McCullough directed her to where the language was located in the staff report. *"Existing commercial areas that are located at the intersection of a hard surfaced County Route and a state or federally designated highway should be allowed to expand if the necessary infrastructure (water, road, approved wastewater treatment facility, etc.) is available."*

Commissioner Harris inquired about notification.

Mr. McCullough said the notification radius was 1000'.

Commissioner Harris asked how many households that included.



Ms. Miller said 16.

Commissioner Culver asked how long the section of B2 zoned land had been zoned that way.

Ms. Miller said since 1966.

Commissioner Liese inquired about a letter included in the packet that raised concerns about the auto junkyard.

Mr. McCullough said staff could pursue that with the County Zoning office to see if it was a compliance matter.

Ms. Miller said she believed the auto use was installed before site planning was required. She said anything new would need to be site planned and reviewed for buffering and landscaping.

**ACTION TAKEN**

Motioned by Commissioner Singleton, seconded by Commissioner Liese, to approve the rezoning request for approximately 6 acres from A (Agricultural) District and B-2 (General Business) to B-2 (General Business) and forwarding it to the Board of County Commissioners with a recommendation for approval based on the findings of fact found in the body of the staff report

Unanimously approved 9-0.