

# BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

Amended Agenda

## WEDNESDAY, AUGUST 3, 2011

4:00 p.m.

-Convene

### CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders; and
- (b) Consider approval of acquisition of right-of-way for bridge replacement project No. 23C-4123-01; County Route 1057; Bridge No. 13.00N-19.00E (Keith Browning)

### REGULAR AGENDA

- (2) Consider Contract Award for Mailing Services (Jackie Waggoner)
- (3) Consider Request to Extend Banking Services Contract (Jackie Waggoner)
- (4) Executive Session for the purpose of consultation with the County Counselor on a matter which would be deemed privileged under the attorney-client relationship. The justification is to maintain attorney client privilege on a matter involving Douglas County
- (5) Other Business
  - (a) Consider approval of Accounts Payable (if necessary)
  - (b) Appointments:
  - (c) Miscellaneous
  - (d) Public Comment

### **RECESS**

Reconvene at 6:35 p.m.

- (6) **Z-3-9-11:** Consider a request to rezone approximately 209 acres from A (Agricultural) to R-T (Rural Tourism), located at 778 E 1300 Rd. Submitted by Grob Engineering Services, for Sadies Lake LC, property owner of record. (PC Item 5; approved 8-1 on 5/23/11) Mary Miller is the Planner.
- (7) Adjourn

## WEDNESDAY, AUGUST 10, 2011

4:00 p.m.

- Energy efficiency update and Sustainability Team initiatives – Eileen Horn (no backup);
- Consider approval of project agreement with KDOT for the reconstruction of the Route 6 curve at N 1150 Road, Project No. 23 C-0059-01 (Keith Browning);
- Consider approval to authorize the Board of County Commissioners Chair to sign a Waterline Utility Easement document and Temporary Construction Easement document granting the City of Lawrence permanent and temporary construction easement to construct and maintain a waterline main situated within Douglas County property at 711 E 23<sup>rd</sup> Street (Keith Browning);
- Determine 2012 Maintenance Budget for the Hesper Charter Road Improvement District (Keith Browning)

6:35 p.m. - Public Hearing for 2012 Budget;

- CUP-5-4-11:** Consider a Conditional Use Permit for a commercial greenhouse and nursery to permit accessory retail sales, for an ecological restoration business, located at 1271 N 222 Rd, Baldwin City. Submitted by Landplan Engineering, P.A., for Ronald E. Shouse, property owner of record. (PC Item 1; approved 9-0 on 7/25/11) Sandra Day is the Planner.

## WEDNESDAY, AUGUST 17, 2011 – CANCELLED

**WEDNESDAY, AUGUST 24, 2011**

Temporary Business Use Permits (Keith Dabney):

- Hamm Asphalt for portable asphalt plant at the Hamm's Eudora Quarry 1213 E 2400 Road, Eudora.
- Donna Wade Wingert – Sale of dried fruit & nuts, 693 E 1250 Road, Lawrence, KS 66044
- Steven Cates – Haunted Farm, 1029 N 1156 Road, Lawrence, KS 66047

**WEDNESDAY, AUGUST 31, 2011**

**WEDNESDAY, SEPTEMBER 7, 2011**

6:35 p.m.

- Presentation by AmeriCorps (Leah Noakes & Johnna Godinez)

**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.*

MEMORANDUM

TO : Douglas County Commission

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

DATE : August 1, 2011

RE : Project No. 23C-4123-01; County Route 1057; Bridge No. 13.00N – 19.00E  
Acquisition of Construction Easement

As you are aware a bridge replacement project has been designed for the Co. Rte. 1057 bridge over the Wakarusa River, located approximately a half mile south of K-10 Highway. The project is currently scheduled for the January 2012 KDOT bid letting.

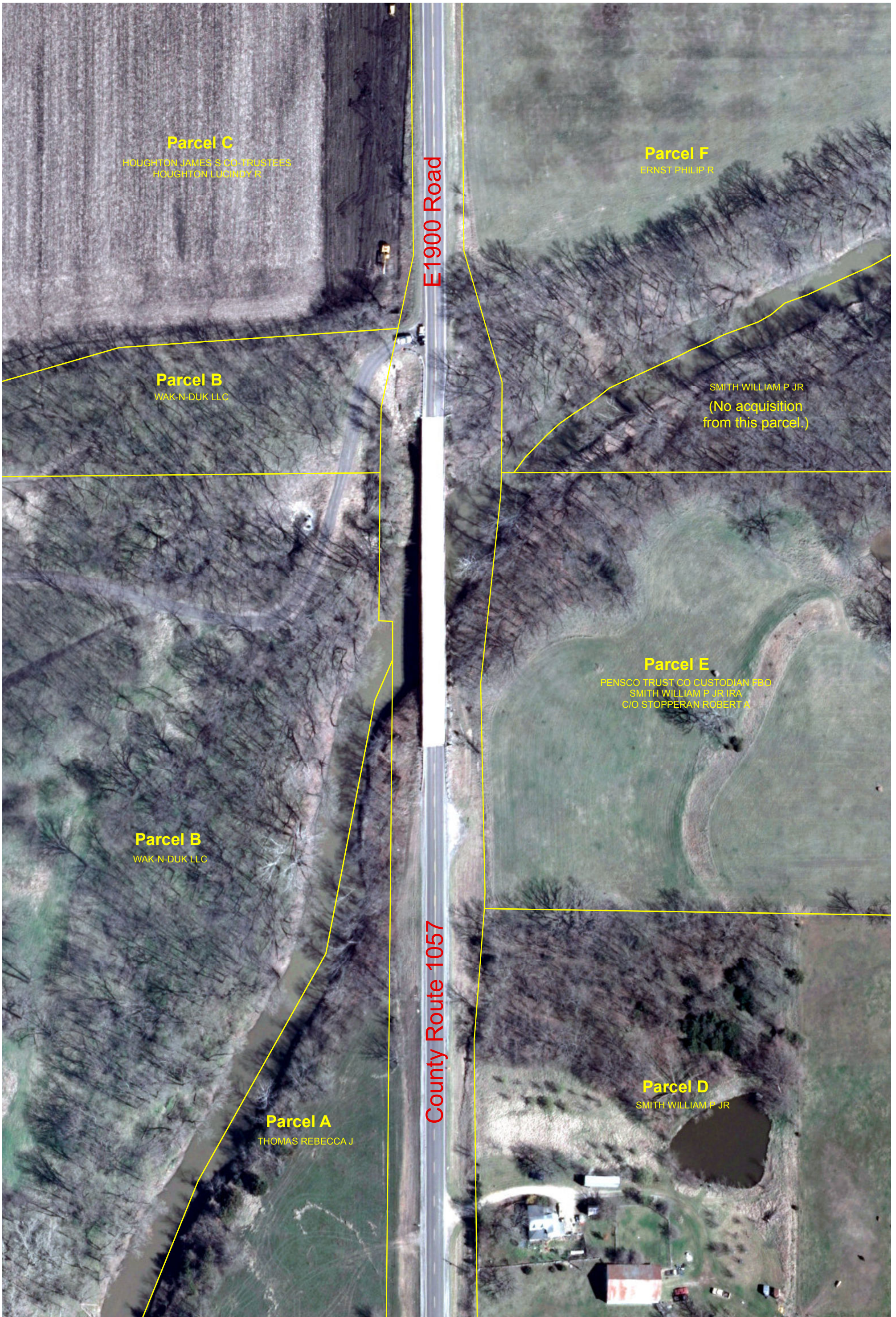
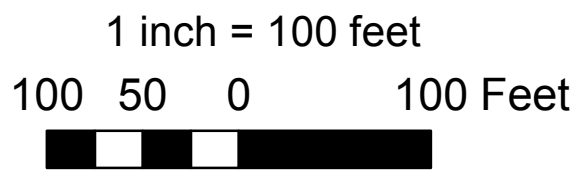
The project will utilize federal funding and, as such, requires any necessary construction easement be acquired using federal acquisition guidelines. To that end an independent appraiser was hired to ascertain appropriate offers for the required easement. In addition, also according to federal guidelines, review appraisals are required to verify the initial appraiser's compliance with accepted appraisal techniques. The review appraisals were conducted by County Appraisal staff. The offer to the property owners must be made in writing and may not be in an amount less than that determined through the appraisal process.

The appraisal work has been completed and written offers will be sent to the appropriate landowners. The total amount, as determined by the appraisal process, to be offered for the six (6) parcels is \$17,350.00. The amount included in the budget for acquisition was \$20,000.

If you wish to know details of the individual offers then we can discuss that information in executive session.

**ACTION REQUIRED: Approve the total amount to be offered to appropriate landowners for acquisition of various easement, including damages, for Project No. 23C-4123-01.**

# Project No. 23C-4123-01



W 1/4 Corner of the NW 1/4 Sec. 13, T13S, R20E = C Sta. 173+22.23  
= E Sta. 73+22.23

1. Found 5/8" bar 0.6' deep.
2. Found PK Nail in West face of Power Pole. 89.90' SE
3. Found PK Nail in Southwest face of Power Pole. 97.47' NNE
4. Found PK Nail in top North Gate Post. 100.39' SW
5. On Travel Way of North-South Roadway. 0.0 N
6. N. 8675.12 E. 9982.43
7. SPCS N. 227971.24 E. 2123364.46

NW Corner Sec. 13, T13S, R20E = C Sta. 186+44.23, 1.87' Rt.  
= E Sta. 86+44.23

1. 2" Alum. Disk with Douglas County PW cast into it, flush with Bridge Deck.
2. Found + Cut in I-Bolt on Top of Steel Bridge Rail. 20.54' NW
3. Found + Cut in I-Bolt on Top of Steel Bridge Rail. 21.06' SW
4. Found + Cut in I-Bolt on Top of Steel Bridge Rail. 19.42' NE
5. Found + Cut in I-Bolt on Top of Steel Bridge Rail. 19.81 SE
6. North End of Bridge. 86.3' N
7. On Travel Way of Bridge over Wakarusa River.
8. N. 10000.00 E. 10000.00
9. SPCS N. 229292.79 E. 2123333.65

P.O.T. 1 = C Sta. 178+00 = E Sta. 78+00

1. Set cotton spindle.
2. Set 1/2" x 24" rebar 6" deep in West gravel shoulder. 15.99' W
3. Set 1/2" x 24" rebar 6" deep in East gravel shoulder. 23.93' NE
4. North-South R/W fence in West road R/W. 46.76' W
5. Traveled way of bridge over Wakarusa River.
6. N. 9155.84 E. 9988.78
7. SPCS N. 228448.84 E. 2123353.32

N 1/4 Corner Sec. 14, T13S, R20E = C Sta. 186+33.66, 2678.53' Lt.  
= E Sta. 86+22.39, 2680.33' Lt.

1. Found 1/2" bar with Red Cap PLS 880.
2. Found Southeast Corner Concrete Low Water Bridge. 28.60' S
3. Found Northwest Corner Concrete Low Water Bridge. 16.82' WSW
4. Found Southwest Corner Concrete Low Water Bridge. 31.53' SW
5. N. 10013.78 E. 7319.62
6. SPCS N. 229208.48 E. 2120654.72

NW Corner Sec. 18, T13S, R21E = C Sta. 186+56.37, 5259.52' Rt.  
= E Sta. 86+44.23, 5257.66' Rt.

1. Found 1/2" rebar 0.5' deep.
2. Found Nail and Washer in West face of Power Pole. 22.50' N
3. Found Nail and Shiner in Southeast face of a Hedge Post. 52.71' ENE
4. Top Stem of Fire Hydrant. 55.51' NW
5. On Travel Way of North-South Roadway. 12.0' E
6. N. 9964.37 E. 15257.54
7. SPCS N. 229449.57 E. 2128588.63

P.I. 1 = C Sta. 182+00.00 = E Sta. 82+00.00

1. Set cotton spindle.
2. Set mag nail & washer in top wood guard rail post. 77.37' NNE
3. Set mag nail & washer in top wood guard rail post. 113.64' NNE
4. Set mag nail & washer in top wood guard rail post. 89.51' NNW
5. South end of concrete bridge deck. 137.86' N
6. Travel way of bridge over Wakarusa River. 1.00' E
7. N. 9555.80 E. 9994.10
8. SPCS N. 228848.71 E. 2123344.00

N 1/4 Corner Sec. 14, T13S, R20E

W 1/4 Corner Sec. 12, T13S, R20E = C Sta. 212+90.55 = E Sta. 112+90.56

1. Found 5/8" rebar with Alum. Douglas County PW Cap 0.8' deep.
  2. Found Spike and KDOT Washr. top of far East Guard Rail Post. 49.28' WSW
  3. Found Spike and KDOT Washr. top of Guard Rail Post. 84.41' WSW
  4. Near Face of Center Pier for E1900 Rd. Overpass Bridge. 132.2' WSW
  5. On Travel Way of Westbound Lanes K-10 Highway. 21.5' N
  6. N. 12646.33 E. 10000.00
  7. SPCS N. 231937.18 E. 2123236.81
- P.I. 2 = C Sta. 188+49.99 = E Sta. 88+50.00

1. Set cotton spindle.
2. Set mag nail & washer in top wood guard rail post. 57.31' SW
3. Set mag nail & washer in top wood guard rail post. 77.39' SSW
4. Set mag nail & washer in top wood guard rail post. 72.67' SSE
5. North end of concrete bridge deck. 119.49' S
6. Travel way of bridge over Wakarusa River. 1.00' W
7. N. 10205.77 E. 10000.00
8. SPCS N. 229498.41 E. 2123326.12

P.O.T. 2 = C Sta. 192+00.00 = E Sta. 92+00.01

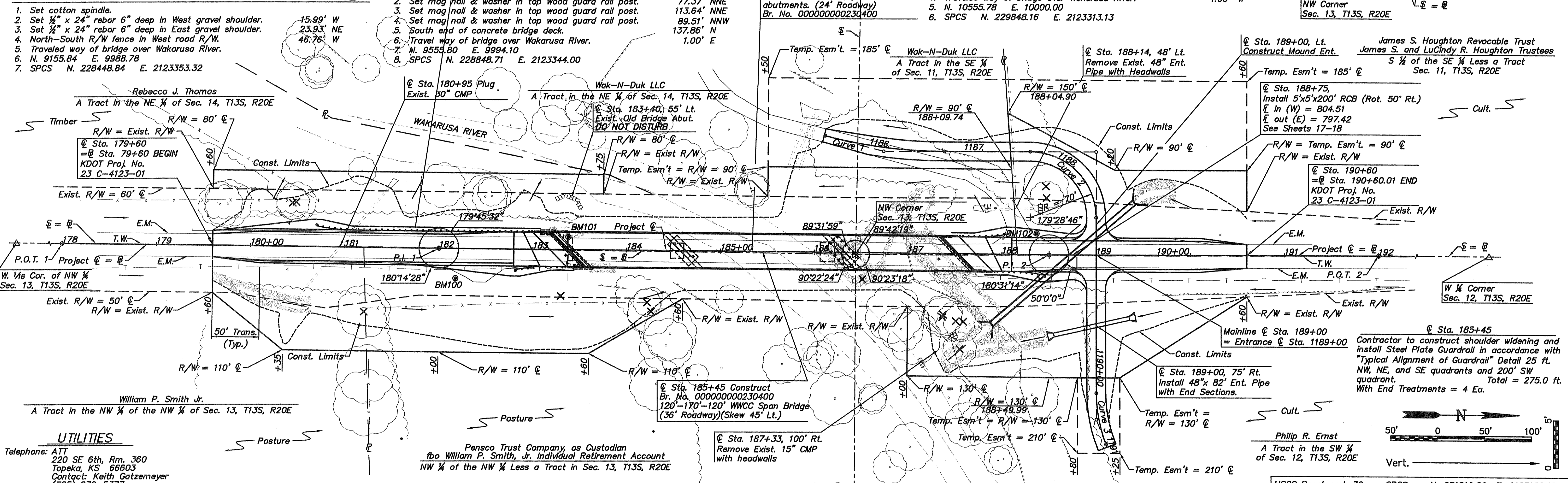
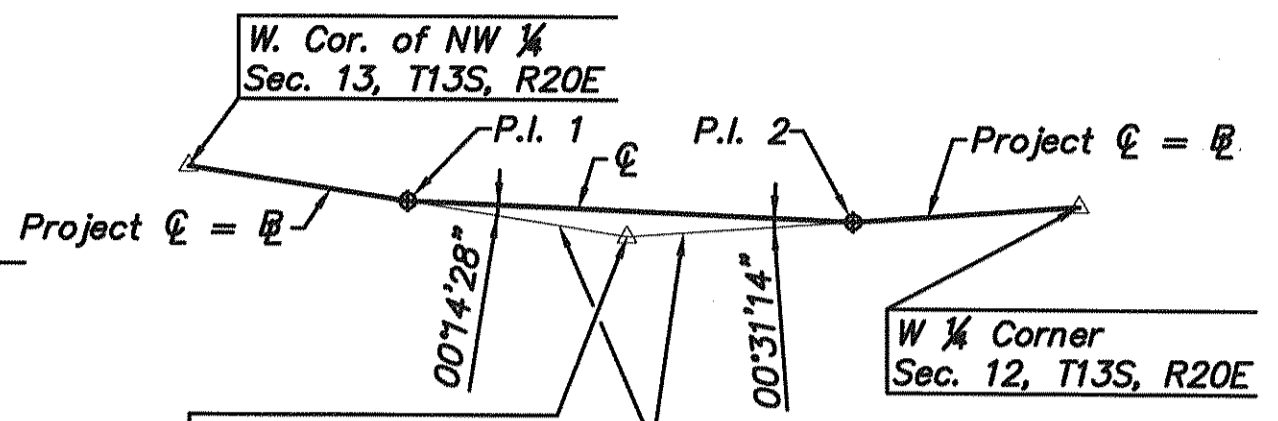
1. Set cotton spindle.
2. Set 1/2" x 24" rebar 6" deep in West gravel shoulder. 15.65' W
3. Set 1/2" x 24" rebar 6" deep in East gravel shoulder. 18.75' E
4. Traveled way of bridge over Wakarusa River. 1.00' W
5. N. 10555.78 E. 10000.00
6. SPCS N. 229848.16 E. 2123313.13

09-1169L	STATE	PROJECT NO.	YEAR	SHEET NO.	TOTAL SHEETS
	Kansas	23 C-4123-01	2012	3	89

\* Note: All materials obtained from removal of the existing structures shall become the property of Contractor and removed from site. This structure contains lead paint.

Note: Construction of embankment and channel widening at the bridge shall be completed by the Contractor before construction of bridge begins.

Note: Place Slope Protection (Shot Rock) to the limits and thicknesses shown on the plans or as directed by the Engineer.



**UTILITIES**  
Telephone: ATT  
220 SE 6th, Rm. 360  
Topeka, KS 66603  
Contact: Keith Gatzemeyer  
(785) 276-5377

Pensco Trust Company, as Custodian  
for William P. Smith, Jr. Individual Retirement Account  
NW 1/4 of the NW 1/4 Less a Tract in Sec. 13, T13S, R20E

Station	Right/Left	Offset	Project Coordinates		SPCS Coordinates	
			Northing	Easting	Northing	Easting
179+60.00	R	50.00	9315.17	10040.90	228609.96	2123399.58
179+60.00	L	80.00	9316.89	9910.91	228606.92	2123269.62
179+60.00	L	60.00	9316.62	9930.91	228607.39	2123289.62
180+35.00	R	110.00	9389.36	10101.89	228686.33	2123457.81
182+00.00	R	110.00	9554.81	10104.09	228851.73	2123453.95
183+60.00	R	110.00	9714.80	10105.54	229011.66	2123449.55
183+75.00	L	80.00	9731.52	9915.69	229021.42	2123259.22
183+75.00	L	59.26	9731.34	9936.42	229022.00	2123279.95
184+60.00	R	51.09	9815.33	10047.55	229110.00	2123387.92
185+50.00	L	90.00	9906.61	9907.28	229196.07	2123244.41
185+50.00	L	185.00	9907.47	9812.28	229193.45	2123149.45
185+50.00	L	58.53	9906.32	9938.75	229196.94	2123275.87
186+44.35	R	51.87	9999.66	10050.00	229294.28	2123383.62
186+44.36	R	56.87	9999.63	10055.00	229294.43	2123388.62

Station	Right/Left	Offset	Project Coordinates		SPCS Coordinates	
			Northing	Easting	Northing	Easting
187+00.00	R	56.36	10055.28	10055.00	229350.04	2123386.58
187+00.00	R	130.00	10054.61	10128.63	229352.07	2123460.19
188+04.90	L	150.00	10162.05	9849.60	229449.22	2123177.42
188+09.54	L	90.00	10166.14	9909.64	229455.50	2123237.27
188+49.99	R	130.00	10205.18	10130.00	229502.57	2123456.04
188+80.00	R	210.00	10235.78	10210.00	229536.08	2123534.87
188+80.00	R	130.00	10235.78	10130.00	229533.15	2123454.92
189+20.00	L	90.00	10275.78	9910.00	229565.07	2123233.63
189+25.00	R	130.00	10280.78	10130.00	229578.12	2123453.28
189+25.00	R	210.00	10280.78	10210.00	229581.05	2123533.22
190+60.00	R	43.87	10415.78	10043.87	229709.87	2123362.28
190+60.00	L	46.65	10415.78	9953.35	229706.56	2123271.82
190+60.00	L	90.00	10415.78	9910.00	229704.98	2123228.50
190+60.00	L	185.00	10415.78	9815.00	229701.50	2123133.57

P.C. Sta.	Curve 1			Curve 2			Curve 3		
	1185+31.13	1187+50.61	1190+46.14	1185+31.13	1187+50.61	1190+46.14	1185+31.13	1187+50.61	1190+46.14
N	9967.71	10185.78	10255.78	9967.71	10185.78	10255.78	9967.71	10185.78	10255.78
E	9874.14	9890.57	10146.14	9874.14	9890.57	10146.14	9874.14	9890.57	10146.14
P.I. Sta. (Back)	1185+95.75	1188+20.61	1190+74.31	1185+95.75	1188+20.61	1190+74.31	1185+95.75	1188+20.61	1190+74.31
N	10030.20	10255.78	10255.78	10030.20	10255.78	10255.78	10030.20	10255.78	10255.78
E	9890.57	9890.57	10174.31	9890.57	9890.57	10174.31	9890.57	9890.57	10174.31
P.T. Sta.	1186+59.65	1188+60.57	1191+01.82	1186+59.65	1188+60.57	1191+01.82	1186+59.65	1188+60.57	1191+01.82
N	10094.82	10255.78	10266.00	10094.82	10255.78	10266.00	10094.82	10255.78	10266.00
E	9890.57	9890.57	10200.56	9890.57	9890.57	10200.56	9890.57	9890.57	10200.56
Radius	500 ft.	70 ft.	150 ft.	500 ft.	70 ft.	150 ft.	500 ft.	70 ft.	150 ft.
Tangent	64.62	70.00	28.17	64.62	70.00	28.17	64.62	70.00	28.17
Length	128.52 ft	109.96 ft	55.68 ft	128.52 ft	109.96 ft	55.68 ft	128.52 ft	109.96 ft	55.68 ft
Δ	14°43'39"	90°00'00"	21°16'09"	14°43'39"	90°00'00"	21°16'09"	14°43'39"	90°00'00"	21°16'09"

Note: Contractor to construct shoulder widening and install Steel Plate Guardrail in accordance with "Typical Alignment of Guardrail" Detail 25 ft. NW, NE, and SE quadrants and 200' SW quadrant. Total = 275.0 ft. With End Treatments = 4 Ea.

Philip R. Ernst  
A Tract in the SW 1/4 of Sec. 12, T13S, R20E

William P. Smith Jr.  
Part of the S 1/4 of the SW 1/4 lying S of River Sec. 12, T13S, R20E

Bridge Ct. Road Quantities

Q Sta. 179+60 to Q Sta. 180+65, Rt. Construct 18" Slope Protection (Shot Rock). Total = 100.9 cu. yd.

Q Sta. 186+08 to Q Sta. 186+94, Construct 24" Slope Protection (Shot Rock). Total = 308.7 cu. yd.

Q Sta. 187+36 to Q Sta. 188+51 Rt., Construct 24" Slope Protection (Shot Rock). Total = 229.0 cu. yd.

Q Sta. 189+39 to Q Sta. 189+85 Lt., Construct 24" Slope Protection (Shot Rock). Total = 85.8 cu. yd.

Q Sta. 186+94 to Q Sta. 188+00, Construct 24" Slope Protection (Shot Rock). Total = 421.0 cu. yd.

Q Sta. 183+14.5 to Q Sta. 183+92, Construct 24" Slope Protection (Shot Rock). Total = 48.6 cu. yd.

Geotextile fabric is to be installed beneath the shot rock in this location. See Contour Map for limits. The materials and labor required for this work shall be subsidiary to the bid item Slope Protection (Shot Rock)

USGS Benchmark 30 SPCS N. 231810.80 E. 2123182.10 8.3 miles east from Lawrence. 2.1 miles south along US Highway 59 from its junction with State Highway 10, set vertically in the north face of the first pier north of the south abutment of County Road 1057 overpass of the highway, and 41.7' south of the centerline of the east bound lanes of the highway. The marks is 5.25' above the ground. A bench mark disk stamped "P 368 1986". NAVD Elev. = 824.86

BM100 Metal "T" post set 6" deep. 31.57' Rt. of Sta. 182+17.69 Elev. = 820.44 (NAVD88) N. 9573.20 E. 10025.83 SPCS N. 228867.30 E. 2123375.10

BM101 Chiseled "a" cut on SW corner of bridge handrail. 13.33' Lt. of Sta. 183+37.72 Elev. = 823.88 (NAVD88) N. 9693.64 E. 9982.01 SPCS N. 228985.80 E. 2123326.30

BM102 Metal "T" post set 1' deep. 22.51' Lt. of Sta. 188+36.61 Elev. = 817.55 (NAVD88) N. 10192.59 E. 9977.37 SPCS N. 229484.40 E. 2123304.00

SPCS = Kansas Coordinate System of 1983 North Zone Coordinates in U.S. Survey Feet, Having a Conversation Factor of 1 Meter = 39.37 Inches Exactly. All Coordinates Shown and not Preceded by SPCS are Project Coordinates in U.S. Survey Feet at Ground Elevation.

MEMO TO: The Board of County Commissioners  
Craig Weinaug, County Administrator

FROM: Jackie Waggoner, Purchasing Director  
Division of Purchasing

SUBJECT: Consider Contract Award for Mailing Services

DATE: July 28, 2011

Over six years ago, Douglas County evaluated processes and expenses for outgoing mail. The City and County solicited bids to outsource its mail services which provided us lower rates. This also resulted in removing all of the postage equipment (leased and purchased) except one backup, eliminating maintenance and meter fees, and reducing staff's time significantly to prepare and process mail.

Our current contract expired and has been on a month-month basis during the bidding process. The City and County asked other agencies if they wanted to participate in a cooperative bid to increase the volumes. The University of Kansas, Lawrence Memorial Hospital, Bert Nash Community Mental Health Center, Lawrence-Douglas County Health Department, and Douglas County Visiting Nurses joined the City and County in a joint bid. The terms of this contract would be for one year with the option to renew annually for an additional four years, and includes a six month trial period. The only increase/decrease allowable over the term of the contract will be documented changes made by the United States Postal Service.

The first attached table summarizes proposed costs, including negotiated costs from two suppliers, from Stampede Mailing Services, Straham Automation and Mailing Services, and KC Presort. Staff from each participating agency served on the evaluation committee. Following the initial review, the committee invited KC Presorting and Stampede in to discuss and negotiate their proposals. The overall consensus was Stampede provided a more competitive proposal, and offered an easier transition as three agencies (City, County, and KU) are currently under a contract with Stampede. The committee believes the cost to transition to another firm has a monetary value.

The second table compares current costs with Stampede with their negotiated cost. To try and quantify the cost savings, I provided an annual cost based on one week's volumes. As you can see, under the new contract there would be an estimated savings of \$5,450 annually just for the County.

I will be available at the commission meeting to answer any questions you may have.

**RECOMMENDATION:** The Board of County Commissioners accepts the negotiated proposal for mail services and awards the contract to Stampede Mailing Services.

DESCRIPTION	MAIL SERVICES COST – TABLE # 1		
	KC Presort	Strahm Automation	Stampede Mailing Services
First Class Mail (1 oz.)	\$0.390 County, City, LMH \$0.414 HD, VNA, BN, KU <b>\$0.404 (all entities)</b>	\$0.414 includes metering/ sealing	\$0.390 postage + \$0.02 = \$0.410 <b>\$0.388 postage + \$0.02 = \$0.408</b>
First Class Mail (addl. cost per ounce)	\$0.125	\$0.008	\$0.125
Flat Mail (1 oz.)	\$0.757	\$0.725	\$0.811 <b>\$0.757</b>
Flat Mail (addl. cost per ounce)	\$0.170	\$0.170	\$0.20 <b>\$0.170</b>
Certificate of Mailing	\$1.40	\$1.150	\$1.15
Delivery Confirmation	\$1.05	\$0.800	\$0.80
Signature Confirmation	\$2.70	\$2.45 w/ receipt, \$2.05 electronic + postage	\$2.45
Certified Mail (without return receipt)	\$3.10	\$2.85 + postage	\$3.85 <b>\$2.85</b>
Certified Mail (with return receipt)	\$5.40	\$4.00 electronic receipt, \$5.15 w/ mailed receipt	\$6.15 <b>\$5.15</b>
Certified Mail (with return receipt & restrictive delivery requirements)	\$9.90	\$7.35 + postage	\$10.65 <b>\$9.65</b>
International Mail Metering Fee	NC	\$0.020	\$0.07 per piece <b>\$0.02</b>
Mail Seal (cost per piece)	NC	\$0.02 for standalone projects, FC postage includes metering/sealing	Included with metering
Folding (cost per piece)	\$0.01	\$0.025	\$0.006 <b>\$0.005</b>
Inserting (cost per piece)	\$0.01	\$0.025	\$0.02 <b>\$0.015</b>
Pickup Fee (cost by location)	NC	\$10.00	All 25 stops shown in RFP are included. New stops are \$2.00 per day. <b>New stops have 50 mail piece minimum for NC.</b>
Additional Pickup/Delivery Fee (special projects)	\$30.00	\$25.00 std. van; \$125 large truck	\$5.00
Other	Reserve the right to decrease pricing on letters for KU once we are afforded an opportunity to review mail mix. All flats and International will be permitted, not metered. All addl. postal products are priced in addition to full rate postage. All flats must be sealed prior to pickup or \$0.05 sealing fee will apply.	All reporting, providing electronic change of address from FastForward, Lunch N Learns, seminars or special training classes, custom presort ticket are provided for each entity and/or dept. at no charge.	

Red Identifies: **NEGOTIATED ITEMS**

<b>STAMPEDE COMPARISON – TABLE # 2</b>		
	<b>Current (Stampede)</b>	<b>Stampede (Negotiated)</b>
First Class Mail (1 oz.)	\$0.438	\$0.408
First Class Mail (addl. cost per ounce)	\$0.125	\$0.125
Flat Mail 1 oz	\$0.88	\$0.757
Flat Mail (addl. cost per ounce)	\$0.20	\$0.17
Certificate of Mailing	NA	\$1.15
Delivery Confirmation	\$1.15	\$0.80
Signature Confirmation	NA	\$2.45
Certified Mail (w/o return receipt)	\$2.85	\$2.85
Certified Mail (w/ return receipt)	\$5.15	\$5.15
Certified Mail (with return receipt & restrictive delivery requirements)	\$10.09	\$9.65
International Mail Metering Fee	\$0.05	\$0.02
Mail Seal	NC	NC
Folding Cost (cost per piece)	\$0.005	\$0.005
Inserting Cost (cost per piece)	\$0.02	\$0.015
Pick Up Fee (cost by location)	\$1.50 (only 1 added stop)	NC - 25 stops New stops have 50 mail piece minimum for NC.
<b>Estimated Annual Cost (based on 1 week's volumes)</b>	<b>\$81,843.32 (\$1,573.91 x 52 weeks)</b>	<b>\$76,393.20 (\$1,469.10 x 52 weeks)</b>



MEMO TO: The Board of County Commissioners  
Craig Weinaug, County Administrator

FROM: Jackie Waggoner, Purchasing Director  
Division of Purchasing

SUBJECT: Consider Extending Banking Services Contract

DATE: July 28, 2011

In 2007, Douglas County established a contract with UMB Bank for depository and banking services of active funds. The term of the contract was one year with the option to renew for four additional years; concluding January 31, 2012.

After reviewing the contract with the Treasurer, staff is seeking commission approval to extend the current contract up to two additional years. The reasons for this decision is due to issues with the implementation of their new tax system (Manatron), and a State change to replace their motor vehicle system scheduled for the end of this year. The bidding process and changing banks are both time consuming and labor intensive. The extension would allow staff the time needed for their projects and to participate in our bidding process.

UMB Bank has agreed to continue for the first extension (February 1, 2012 – January 31, 2013) at the same terms and conditions of our current contract with the exception of courier service charges. UMB is asking the County to agree to incur half of the courier cost (\$89) monthly for the Treasurer's lockbox service. This expense would only be applicable a maximum of 3 months per year. Interest will continue to accrue at a rate of 5 points above the 91-day T-Bill weekly auction rate (adjusted weekly), and billed a fixed monthly cost for fees of \$1,326.36/\$15,916.32 annually.

Prior to the second year extension (February 1, 2013 – January 31, 2014) staff will review volumes and activity to determine if any changes would need to be made. I would like to request administrative approval if there are any minor changes for the second year extension. During this year, staff would solicit proposals for a new contract and bring a recommendation back to the Board.

Paula Gilchrist and I will be available at the meeting to discuss this request.

**SUGGESTED MOTION:** The Board of County Commissioners extends the banking services contract up to two additional years with UMB Bank, and provides administrative approval for minor changes to the second year extension.

## MEMORANDUM

To : Board of County Commissioners

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

Date : July 15, 2011

Re : Consider City of Lawrence permanent & temporary waterline utility easements  
23<sup>rd</sup> Street bridge replacement project near Operations Division facility  
KDOT Project No. 10-23 KA 0685-01

Due to KDOT's upcoming 23<sup>rd</sup> Street bridge replacement project, the City of Lawrence Utilities Department must relocate waterlines near our Operations Division (Shop) facility. In order to relocate waterlines, the City needs permanent and temporary easements from Douglas County.

There is currently a service waterline situated within our Shop property that serves the Household Hazardous Waste (HHW) facility. The service waterline is located within the proposed permanent easement. The City wishes to replace this service line with a larger waterline main. In addition to servicing the Shop property, this waterline main would then be used to service properties east of the Shop.

The attached Waterline Utility Easement provides a permanent easement to the City to locate and operate a waterline main effectively through the center of the Shop property. While this would be a "permanent" easement, the document allows Douglas County to relocate the permanent easement to the north 15' of the property upon redevelopment of the property. The waterline main would then be relocated at City expense. This provision is included so that Douglas County is not encumbered with a permanent easement through the center of the property if or when the County decides to sell the property. The waterline main cannot be located in the north 15' of the property under current conditions since buildings are currently situated in this area.

The attached Temporary Construction Easement provides for five relatively small temporary easement areas adjacent to the permanent easement. These are needed to facilitate construction, and will terminate 90 days following waterline relocation activities.

Action Required: Authorize the BOCC Chair to sign a Waterline Utility Easement document and Temporary Construction Easement document granting the City of Lawrence permanent and temporary construction easements to construct and maintain a waterline main situated within Douglas County property at 711 E 23<sup>rd</sup> Street.

## TEMPORARY CONSTRUCTION EASEMENT

**THE UNDERSIGNED**, for and in consideration of the sum of One Dollar (\$1.00) and other valuable considerations, receipt of which is hereby acknowledged, hereby grants, sells, conveys, and delivers unto the City of Lawrence, Kansas, a municipal corporation, a Temporary Construction Easement for the construction of a municipal waterline, water utilities, and other appurtenances thereto, in, over, under, and through the following described tracts of real estate situated in Douglas County, Kansas, to-wit:

### LEGAL DESCRIPTION

(4T-1)

That part of the Southeast Lawrence Suburban Acres subdivision in the Northeast Quarter of Section 7, Township 13 South, Range 20 East of the Sixth Principal Meridian, City of Lawrence, Douglas County, Kansas described as follows:

Commencing at the Northeast Corner of the Northeast Quarter of said Section 7; thence, along the north line of said Northeast Quarter on an assumed bearing of S89°01'32"W, 1197.51 feet; thence, S01°37'57"E, 118.59 feet to the south line of the 23rd Street right-of-way; thence, along said right-of-way, S88°36'08"W, 15.00 feet to the Point of Beginning; thence, S01°37'57"E, 44.00 feet; thence, S88°36'08"W, 65.00 feet to the east line of said 23<sup>rd</sup> Street right-of-way; thence, along said right-of-way, N01°37'57"W, 10.00 feet; thence, departing said right-of-way, N88°36'08"E, 30.00 feet; thence, N01°37'57"W, 34.00 feet to the south line of said 23<sup>rd</sup> Street right-of-way; thence, along said right-of-way, N88°36'08"E, 35.00 feet, to the point of beginning.

The above described contains 1,840 square feet, more or less.

TOGETHER WITH:

(4T-2)

That part of the Southeast Lawrence Suburban Acres subdivision in the Northeast Quarter of Section 7, Township 13 South, Range 20 East of the Sixth Principal Meridian, City of Lawrence, Douglas County, Kansas described as follows:

Commencing at the Northeast Corner of the Northeast Quarter of said Section 7; thence, along the north line of said Northeast Quarter on an assumed bearing of S89°01'32"W, 1197.51 feet; thence, S01°37'57"E, 118.59 feet to the south line of the 23rd Street right-of-way and being the Point of Beginning; thence, along said right-of-way, N88°36'08"E, 10.00 feet; thence, S01°37'57"E, 64.00 feet; thence, S88°36'08"W, 10.00 feet; thence, N01°37'57"W, 64.00 feet, to the point of beginning.

The above described contains 640 square feet, more or less.

TOGETHER WITH:

(4T-3)

That part of the Southeast Lawrence Suburban Acres subdivision in the Northeast Quarter of Section 7, Township 13 South, Range 20 East of the Sixth Principal Meridian, City of Lawrence, Douglas County, Kansas described as follows:

Commencing at the Northeast Corner of the Northeast Quarter of said Section 7; thence, along the north line of said Northeast Quarter on an assumed bearing of S89°01'32"W, 1197.51 feet; thence, S01°37'57"E, 118.59 feet to the south line of the 23rd Street right-of-way; thence, continuing, S01°37'57"E, 59.00 feet; thence S88°36'08"W, 15.00 feet to the Point of Beginning; thence, S01°37'57"E, 5.00 feet; thence, S88°36'08"W, 65.00 feet to the east line of said 23rd Street right-of-way; thence, along said right-of-way, N01°37'57"W, 5.00 feet; thence, departing said right-of-way, N88°36'08"E, 65.00 feet, to the point of beginning.

The above described contains 325 square feet, more or less.

TOGETHER WITH:

(4T-4) Revised

That part of the Southeast Lawrence Suburban Acres subdivision in the Northeast Quarter of Section 7, Township 13 South, Range 20 East of the Sixth Principal Meridian, City of Lawrence, Douglas County, Kansas described as follows:

Commencing at the Northwest Corner of Lot 4, StorGard Addition No.2; thence, along the west line of said Lot 4 on an assumed bearing of S01°28'46"E, 15.01 feet, to the Point of Beginning; thence, continuing, S01°28'46"E, 5.00 feet; thence, S88°38'03"W, 22.50 feet; thence S01°28'46"E, 141.92 feet; thence, S88°14'36"W, 20.00 feet; thence, N01°28'46"W, 147.05 feet; thence, N88°38'03"E, 42.50 feet, to the point of beginning.

The above described contains 3,052 square feet, more or less.

TOGETHER WITH:

(4T-5)

That part of the Southeast Lawrence Suburban Acres subdivision in the Northeast Quarter of Section 7, Township 13 South, Range 20 East of the Sixth Principal Meridian, City of Lawrence, Douglas County, Kansas described as follows:

Commencing at the Northwest Corner of Lot 4, StorGard Addition No.2; thence, along the west line of said Lot 4 on an assumed bearing of S01°28'46"E, 35.01 feet, to the Point of Beginning; thence, continuing, S01°28'46"E, 10.02 feet; thence, S88°38'03"W, 7.50 feet; thence, N01°28'46"W, 10.02 feet; thence, N88°38'03"E, 7.50 feet, to the point of beginning.

The above described contains 75 square feet, more or less.

Within reasonable time following the termination of the temporary easement, Grantee shall leave the area thereof free of litter and debris; shall cause such area to be of a level and grade compatible with that of the area around said temporary easement; and shall re-seed the area disturbed at the earliest practical time.

This temporary easement shall terminate and be of no further force and effect ninety (90) days after the completion of the said improvements or July 31, 2012, whichever shall first occur.

Grantor shall do or cause nothing to be done to interfere with the Grantee's right of use of said Easement for the purposes herein stated.

THE UNDERSIGNED FURTHER WARRANTS that it has good and lawful right to convey said easement, and will forever defend the title thereto.

THIS AGREEMENT is and shall be binding and obligatory upon the heirs, administrators, executors, personal representatives, successors, and assigns of the parties hereto.

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Board of County Commissioners of Douglas County Kansas by Jim Flory (chair)

STATE OF KANSAS        )  
                                      :SS  
COUNTY OF DOUGLAS    )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned, a Notary Public in and for the County and State aforesaid came Jim Flory, acting on behalf of the Board of County Commissioners of Douglas County Kansas, who is personally known to me to be the same person who executed the within and foregoing instrument of writing, and duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## TEMPORARY CONSTRUCTION EASEMENT

**THE UNDERSIGNED**, for and in consideration of the sum of One Dollar (\$1.00) and other valuable considerations, receipt of which is hereby acknowledged, hereby grants, sells, conveys, and delivers unto the City of Lawrence, Kansas, a municipal corporation, a Temporary Construction Easement for the construction of a municipal waterline, water utilities, and other appurtenances thereto, in, over, under, and through the following described tracts of real estate situated in Douglas County, Kansas, to-wit:

### LEGAL DESCRIPTION

(4T-1)

That part of the Southeast Lawrence Suburban Acres subdivision in the Northeast Quarter of Section 7, Township 13 South, Range 20 East of the Sixth Principal Meridian, City of Lawrence, Douglas County, Kansas described as follows:

Commencing at the Northeast Corner of the Northeast Quarter of said Section 7; thence, along the north line of said Northeast Quarter on an assumed bearing of S89°01'32"W, 1197.51 feet; thence, S01°37'57"E, 118.59 feet to the south line of the 23rd Street right-of-way; thence, along said right-of-way, S88°36'08"W, 15.00 feet to the Point of Beginning; thence, S01°37'57"E, 44.00 feet; thence, S88°36'08"W, 65.00 feet to the east line of said 23<sup>rd</sup> Street right-of-way; thence, along said right-of-way, N01°37'57"W, 10.00 feet; thence, departing said right-of-way, N88°36'08"E, 30.00 feet; thence, N01°37'57"W, 34.00 feet to the south line of said 23<sup>rd</sup> Street right-of-way; thence, along said right-of-way, N88°36'08"E, 35.00 feet, to the point of beginning.

The above described contains 1,840 square feet, more or less.

TOGETHER WITH:

(4T-2)

That part of the Southeast Lawrence Suburban Acres subdivision in the Northeast Quarter of Section 7, Township 13 South, Range 20 East of the Sixth Principal Meridian, City of Lawrence, Douglas County, Kansas described as follows:

Commencing at the Northeast Corner of the Northeast Quarter of said Section 7; thence, along the north line of said Northeast Quarter on an assumed bearing of S89°01'32"W, 1197.51 feet; thence, S01°37'57"E, 118.59 feet to the south line of the 23rd Street right-of-way and being the Point of Beginning; thence, along said right-of-way, N88°36'08"E, 10.00 feet; thence, S01°37'57"E, 64.00 feet; thence, S88°36'08"W, 10.00 feet; thence, N01°37'57"W, 64.00 feet, to the point of beginning.

The above described contains 640 square feet, more or less.

TOGETHER WITH:

(4T-3)

That part of the Southeast Lawrence Suburban Acres subdivision in the Northeast Quarter of Section 7, Township 13 South, Range 20 East of the Sixth Principal Meridian, City of Lawrence, Douglas County, Kansas described as follows:

Commencing at the Northeast Corner of the Northeast Quarter of said Section 7; thence, along the north line of said Northeast Quarter on an assumed bearing of S89°01'32"W, 1197.51 feet; thence, S01°37'57"E, 118.59 feet to the south line of the 23rd Street right-of-way; thence, continuing, S01°37'57"E, 59.00 feet; thence S88°36'08"W, 15.00 feet to the Point of Beginning; thence, S01°37'57"E, 5.00 feet; thence, S88°36'08"W, 65.00 feet to the east line of said 23rd Street right-of-way; thence, along said right-of-way, N01°37'57"W, 5.00 feet; thence, departing said right-of-way, N88°36'08"E, 65.00 feet, to the point of beginning.

The above described contains 325 square feet, more or less.

TOGETHER WITH:

(4T-4) Revised

That part of the Southeast Lawrence Suburban Acres subdivision in the Northeast Quarter of Section 7, Township 13 South, Range 20 East of the Sixth Principal Meridian, City of Lawrence, Douglas County, Kansas described as follows:

Commencing at the Northwest Corner of Lot 4, StorGard Addition No.2; thence, along the west line of said Lot 4 on an assumed bearing of S01°28'46"E, 15.01 feet, to the Point of Beginning; thence, continuing, S01°28'46"E, 5.00 feet; thence, S88°38'03"W, 22.50 feet; thence S01°28'46"E, 141.92 feet; thence, S88°14'36"W, 20.00 feet; thence, N01°28'46"W, 147.05 feet; thence, N88°38'03"E, 42.50 feet, to the point of beginning.

The above described contains 3,052 square feet, more or less.

TOGETHER WITH:

(4T-5)

That part of the Southeast Lawrence Suburban Acres subdivision in the Northeast Quarter of Section 7, Township 13 South, Range 20 East of the Sixth Principal Meridian, City of Lawrence, Douglas County, Kansas described as follows:

Commencing at the Northwest Corner of Lot 4, StorGard Addition No.2; thence, along the west line of said Lot 4 on an assumed bearing of S01°28'46"E, 35.01 feet, to the Point of Beginning; thence, continuing, S01°28'46"E, 10.02 feet; thence, S88°38'03"W, 7.50 feet; thence, N01°28'46"W, 10.02 feet; thence, N88°38'03"E, 7.50 feet, to the point of beginning.

The above described contains 75 square feet, more or less.

Within reasonable time following the termination of the temporary easement, Grantee shall leave the area thereof free of litter and debris; shall cause such area to be of a level and grade compatible with that of the area around said temporary easement; and shall re-seed the area disturbed at the earliest practical time.

This temporary easement shall terminate and be of no further force and effect ninety (90) days after the completion of the said improvements or July 31, 2012, whichever shall first occur.

Grantor shall do or cause nothing to be done to interfere with the Grantee's right of use of said Easement for the purposes herein stated.

THE UNDERSIGNED FURTHER WARRANTS that it has good and lawful right to convey said easement, and will forever defend the title thereto.

THIS AGREEMENT is and shall be binding and obligatory upon the heirs, administrators, executors, personal representatives, successors, and assigns of the parties hereto.

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Board of County Commissioners of Douglas County Kansas by Jim Flory (chair)

STATE OF KANSAS        )  
                                      :SS  
COUNTY OF DOUGLAS    )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned, a Notary Public in and for the County and State aforesaid came Jim Flory, acting on behalf of the Board of County Commissioners of Douglas County Kansas, who is personally known to me to be the same person who executed the within and foregoing instrument of writing, and duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



Memorandum  
City of Lawrence  
Planning & Development Services

**TO: Board of County Commissioners**  
**FROM: Mary Miller, AICP**  
**CC: Craig Weinaug, County Administrator**  
**Scott McCullough, Director of Planning & Development Services**  
**Date: For August 3, 2011 meeting**  
**RE: Z-3-9-11, Rezoning request for approximately 208 acres at 778 E 1300 Road from A to R-T District and court's ruling on *Hunting, commercial or private* as an agricultural use**

- **Attachment:** *Corbert vs the Shawnee County Board of Commissioners*

Section 12-319-4.11 of the Zoning Regulations for the Unincorporated Territory of Douglas County notes that a recreation facility requires approval through a Conditional Use Permit in districts in which it is not a permitted use. This section describes 'recreation facility' as: "*privately or commercially operated, such as a fishing or boating lake, picnic grounds, ski lodge and ski slope, commercial hunting or shooting area, or dude ranch, and accessory facilities, including sale of food, beverages, bait, incidentals, supplies and equipment.*"

The Zoning Regulations, specifically Section 12-304-6.01 and Kansas Zoning Statues, specifically KSA 12-758, both state that zoning regulations shall not apply "to the use of land for agricultural purposes." It had been the County's position that commercial hunting was not an agricultural activity and approval for commercial hunting activities in any zoning district was required through a Conditional Use Permit.

Staff recently became aware of the Corbert vs the Shawnee County Board of Commissioners court case which defines *commercial hunting* as an agricultural use.

In 1989, the Court of Appeals of Kansas considered the case of Corbet vs. Board of Shawnee County Commissioners. The County Commissioners, the Zoning Administrator, and members of the Board of Zoning Appeals appealed a district court's summary judgment entered in favor of the Corbets which reversed the Zoning Board's decision to require a Special Use Permit for operation of a wildlife hunting preserve. The appeal court affirmed the district court's ruling and concluded that a hunting preserve is an agricultural use which does not require a Special Use Permit.

As the courts have ruled that *hunting*, whether private or commercial, is an agricultural use, the zoning regulations do not apply to this use. Therefore, for properties whose

zoning permits agricultural uses, *hunting* (private or commercial) does not require approval through the Conditional Use Permit process.

*Commercial hunting* at the Sadie's Lake property is currently permitted as an agricultural use as the property is zoned A (Agricultural). Rezoning to the R-T (Rural Tourism) District would not alter this, as the R-T District also permits agricultural uses.

Public comment provided at the Planning Commission meeting expressed opposition to the rezoning request on the grounds that hunting activities would increase. It is difficult to say if the rezoning to the R-T District and development of the property with cabins and a lodge/conference center would increase or decrease the hunting activities, but it is important to note that private and commercial hunting is permitted as an agricultural use in both the A and R-T Districts.

[Home](#) / [Our Sources](#) / [About Us](#) / [FAQs](#) / [Advanced Search](#)

Q GO!

Not what you're looking for? Try an advanced search.

## CORBET v. BOARD OF SHAWNEE COUNTY COMM'RS.

Court of Appeals of Kansas

Footnotes, docket and citations numbers available with purchase.

Buy case for \$4.95

December 15, 1989.

**MARGARET K. CORBET AND KENNETH CORBET, Appellees,**  
**v.**  
**THE BOARD OF SHAWNEE COUNTY COMMISSIONERS, et al., Appellants.**

Defendants Board of Shawnee County Commissioners (Commissioners), Shawnee County Zoning Administrator (Zoning Administrator), and members of the Shawnee County Board of Zoning Appeals (Zoning Board) appeal from a summary judgment entered in favor of plaintiffs, Margaret and Kenneth Corbet, which reversed the Zoning Board's decision to require a special use permit for operation of a wildlife hunting preserve. We affirm the district court's ruling and conclude the Corbets' proposed use of their land as a hunting preserve is an agricultural use which does not require a special use permit.

Margaret is the owner of 95 acres in rural Shawnee County. Her son, Kenneth, is a purchaser of the real estate under a contract for deed. The real estate is located outside the three-mile limit of the city limits of Topeka and is zoned "RA-1" agricultural. The Corbets filed an application for a special use permit

### [14 Kan. App. 2d 124]

to operate a wildlife hunting preserve and the Topeka-Shawnee County Metropolitan Planning Commission (Planning Commission) recommended disapproval. On advice of counsel, the Corbets withdrew the application prior to formal action by the Commissioners and continued operation of the preserve. After an adjoining landowner complained, the Commissioners began an investigation and sought the opinions of the Planning Commission staff, the Zoning Administrator, and the Shawnee County Counselor (Counselor). The Planning Commission and the Zoning Administrator concluded the zoning regulations require that a landowner first obtain a special use permit to operate a hunting preserve on RA-1 agricultural property. The Counselor concluded a special use permit is not required.

The Zoning Administrator issued a violation notice advising the Corbets to cease operation of their hunting preserve until a special use permit was approved. The Zoning Board, upon review of the Zoning Administrator's action, concluded a special use permit was required. The Corbets challenged this decision by filing suit in district court pursuant to K.S.A. 19-2926. The district court reversed the Zoning Board's decision and it is from that decision defendants appeal.

The issue presented is whether the Corbets' proposed use of their land as a wildlife hunting preserve is an "agricultural purpose" which would exempt them from county zoning regulations.

The parties have stipulated that fishing; hunting of upland birds, migratory birds, and waterfowl; dog training; and clay target shooting are activities which could lawfully be

conducted on the subject property by the landowners and their guests, without the payment of a fee. The parties also stipulated that the Zoning Administrator determined said activities are in violation of the Shawnee County zoning regulations only if a fee is charged.

The Corbets propose to use their land to provide hunting, fishing, clay target shooting, and dog training to the public on a fee basis. Hunting and fishing would be restricted to comply with the Kansas Fish and Game Commission rules and regulations. Kenneth testified that he had spent a good deal of time and money developing the acreage as a wildlife habitat, including the provision of food, water, and ground cover beyond that which naturally occurs. He has planted crops such as milo and soybeans

**[14 Kan. App. 2d 125]**

for the specific purpose of providing sources of food for wildlife. The subject property contains a mixture of trees and brush, and cultivated crops. The acreage also contains Kenneth's residence and one or more ponds.

Kenneth stated the primary uses of the hunting preserve would be hunting and fishing, but ancillary uses would include providing hunters with dogs if requested, clay target practice, and providing coffee or snacks to the hunters. The ancillary services were described only as an accommodation to the hunting and fishing activity. The Planning Commission and the Zoning Administrator made repeated reference to the operation of a snack bar on the premises. The Corbets stated in response that there is no snack bar or shop operated on the premises. Those who hunt and fish on the preserve are offered coffee from a thermos and occasionally a cupcake or snack, but these items are not sold.

K.S.A. 19-2901 et seq. authorizes the rezoning of county property. The present issue centers around the interpretation of K.S.A. 19-2921, which states in part:

"[N]o determination nor rule nor regulation shall be held to apply to the use of land for agricultural purposes, nor for the erection or maintenance of buildings thereon for such purposes so long as such land and buildings erected thereon are used for agricultural purposes and not otherwise."

Pursuant to these statutes, Shawnee County adopted zoning regulations for the "RA-1" agricultural district. Section 6 provides that the premises shall be used only for the following purposes:

"1. Agricultural uses including the raising of crops, livestock, poultry or animals for the production of food or any activity connected therewith normally found to be necessary and essential to this purpose.

"2. Any activity deemed essential to the utilization and conservation of natural resources."

The Corbets argue that 19-2921 and the RA-1 agricultural district regulations exempt them from the county zoning requirements and, therefore, a special use permit is not required. The district court agreed.

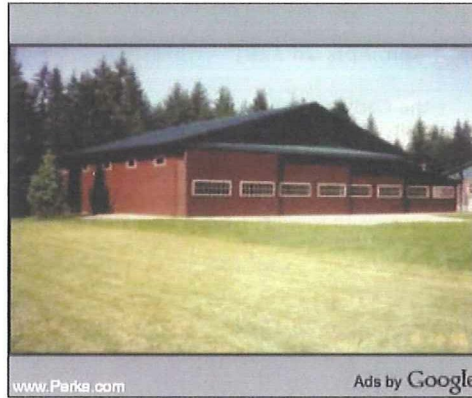
No Kansas case has specifically defined what an "agricultural purpose" is under 19-2921. Several cases have considered whether certain activities fall within that term. See *Fields v. Anderson Cattle Co.*, 193 Kan. 558, 563-64, 396 P.2d 276 (1964) (agricultural purpose includes operation of livestock feed lots); *Carp v. Board*

**[14 Kan. App. 2d 126]**

of County Commissioners, 190 Kan. 177, 373 P.2d 153 (1962) (agricultural purpose includes a hog feeding operation); *Board of County Commissioners v. Brown*, 183 Kan. 19, 325 P.2d 382 (1958) (raising canaries for sale is consistent with an agricultural purpose, but operation of an automobile garage and body repair shop is not).

In a more recent case, *Blauvelt v. Board of Leavenworth County Comm'rs*, 227 Kan. 110, 605 P.2d 132 (1980), the issue centered around the construction of a farmhouse which did not meet zoning regulation requirements. The court found:

"The obvious purpose of the proviso in K.S.A. 19-2921 was to favor agricultural uses and farmers. Since this state's economy is based largely on the family farm it would appear the intent of the legislature was to spare the farmer from more governmental regulation and not to discourage the development of this state's farm industry." 227 Kan. at 113.



There is no Kansas case law specifically addressing the issue of whether a hunting preserve is an agricultural use. The Court of Civil Appeals of Texas has found that a farm which is also leased for deer hunting constitutes an "agricultural use" of land for tax purposes. *Klitgaard v. Gaines*, 479 S.W.2d 765 (Tex. Civ. App. 1972). The statute at issue defined "agricultural use" as "the raising of livestock or growing of crops, fruit, flowers, and other products of the soil under natural conditions as a business venture for profit, which business is the primary occupation and source of income of the owner." 479 S.W.2d at 766-67. In *Klitgaard*, the court concluded that "deer leases and grass leases involve the utilization of the resources of the land for profit, and that both constitute 'agricultural uses' of the land." 479 S.W.2d at 769-70. Other cases have held that, in the final analysis, the nature of the use made and not the identity of the user of the land determines whether the activity may be permitted. See *Tuftee v. County of Kane*, 76 Ill. App.3d 128, 394 N.E.2d 896 (1979) (boarding and training show horses constitute an agricultural use of the land); *Barnhart v. Z.H.B. of Nottingham Twp.*, 49 Pa. Commw. 481, 411 A.2d 1266 (1980) (boarding horses is an agricultural use). In the present case, the Corbets are cultivating the land to provide food for wildlife. The nature of this activity relates to agriculture as it involves utilization of the resources

**[14 Kan. App. 2d 127]**

of the land for production of plants and animals useful to man. 3 C.J.S., Agriculture ? 2.

It is a well-established principle that zoning ordinances must be liberally construed in favor of the property owner. *Koppel v. City of Fairway*, 189 Kan. 710, 713, 371 P.2d 113 (1962). "Zoning ordinances, being in derogation of the right of private property, should be liberally construed in the property owner's favor, and where exceptions appear they are liberally construed in favor of the property owner." *Koppel*, 189 Kan. at 713.

Considering the legislative policy of favoring agricultural uses and promoting the development of the farm industry, together with the liberal construction given zoning ordinances in favor of property owners, the operation of a wildlife hunting preserve, under the facts of this case, is an "agricultural purpose" as contemplated by 19-2921 and is exempt from county zoning regulations.

Defendants contend the district court erred in failing to give sufficient weight to the ruling of the Zoning Board.

Any action of the Zoning Board is subject to judicial review pursuant to K.S.A. 77-621. The scope of judicial review under the statute relevant to this issue is limited to whether the board erroneously interpreted or applied the law. Courts> give great weight under the doctrine of operative construction to statutory interpretation of a statute by the administrative body charged with enforcing the statute. *National Gypsum Co. v. Kansas Employment Security Bd. of Review*, 244 Kan. 678, 682, 772 P.2d 786 (1989). Although the administrative interpretation of a statute should be given consideration and weight where the statute is ambiguous, the final construction of a statute rests with the courts>. *Amoco Production Co. v. Arnold, Director of Taxation*, 213 Kan. 636, 647-48, 518 P.2d 453 (1974). The issue on appeal is whether a wildlife hunting preserve is an "agricultural purpose" within 19-2921 and the zoning regulations adopted pursuant to 19-2901 et seq. The question raised is one of law and not of fact. Therefore, it is the function of both the district court and this court to interpret the statute.

In its decision, the district court held the hunting preserve is an agricultural use of the land.

The court stated the proposed use fits within the policy underlying 19-2921, that is, to allow

**[14 Kan. App. 2d 128]**

the Corbets to use their land profitably without governmental hindrance. As stated in *Blauvelt*, 227 Kan. at 113, the obvious purpose of the statute is to favor agricultural uses and farmers and not to "discourage the development of this state's farm industry." The district court also held in the present case: "This is in the tradition of the liberalized use of real estate and the narrow interpretation of any restrictions placed thereon." See *Koppel*, 189 Kan. 710. We agree with the district court's conclusion.

Affirmed.

**[14 Kan. App. 2d 129]**

19891215

© 1992-2004 VersusLaw Inc.

---

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

PC Staff Report  
5/23/11

**ITEM NO. 5: A TO R-T; 209 ACRES; 778 E 1300 RD (MKM)**

**Z-3-9-11:** Consider a request to rezone approximately 209 acres from A (Agricultural) to R-T (Rural Tourism), located at 778 E 1300 Rd. Submitted by Grob Engineering Services, for Sadies Lake LC, property owner of record.

**STAFF RECOMMENDATION:** Staff recommends approval of the rezoning request for approximately 209 acres from A (Agricultural) District to R-T (Rural Tourism), with a reduced buffer width of 150 ft along the west property line 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 subject to the following condition:

1. The rezoning will not be placed on the Board of County Commission's agenda for consideration until the Rural Water District has determined adequate water capacity is, or can be made, available to serve the facility.

Applicant's reason for request:

*"The property ownership group would like to rezone to 'R-T' Rural Tourism to allow for construction of additional lake cabins and future lodge/conference center. Property includes a large lake for fishing and swimming, large wooded areas and pastures with hiking trails and hilltop views of Lawrence. Ownership group would like to provide a recreational retreat for guests."*

**ATTACHMENTS**

Attachment A: Section 12-309-B of the Zoning Regulations of the Unincorporated Territory of Douglas County

Attachment B: Conceptual site plan

Attachment D: Traffic information and Exhibit of US Hwy 59 realignment and access

Attachment C: Detail of west buffer area.

**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**

- Bill Mitchell, adjacent property owner, visited the Planning Office and reviewed the plans. He was concerned that the minimum maintenance designation for the road adjacent to his property might be removed and he did not want to be responsible for the cost of improving the road. He questioned the reasoning behind the need for the reduced buffer along the west side of the property.
- Douglas Beene, adjacent property owner, also visited the Planning Office and reviewed the plans. He indicated that dust from the additional traffic was not a concern for him given the prevailing winds and the location of his house. He felt the change in elevation and trees along the west property line would provide an adequate buffer, even with the reduced width.

## GENERAL INFORMATION

Current Zoning and Land Use:	A (Agricultural) District and F-F (Floodway Fringe) Overlay District; grassland, open space included woods, a watershed lake and a cabin. A house is currently located on the property, but this will be divided through a homestead exemption survey and will retain the A Zoning.
Surrounding Zoning and Land Use:	A (Agricultural) District in all directions, F-F (Regulatory Floodway Fringe) and F-W (Regulatory Floodway) Overlay Districts located to the northwest along the Pleasant Grove West Tributary; agriculture, open space and rural residences. (Figure 1)

## Project Summary

Rezoning is requested to the R-T District for approximately 208 acres to facilitate the development of a rural tourism use on this property. The use would include a horse stable, riding and walking trails, cabins, an existing watershed lake, open space in the form of woodland and grassland, and a lodge which could be used for guests and also as a conference or reception facility.

## I. ZONING AND LAND USES OF SURROUNDING PROPERTIES

The surrounding area is zoned A (Agricultural) with Floodway and Floodway Fringe overlay zoning located to the northwest along the stream corridor. Land uses of surrounding property include agriculture, woodlands and rural residences. The realigned Hwy 59 will be approximately 1500 ft to the west of the subject property.

**Staff Finding** – This is a rural area that is zoned for, and primarily used for, agricultural uses. Rural residences and woodlands are also present. The R-T Zoning and rural tourism use would be compatible with the zoning and land uses of surrounding property.

## II. CHARACTER OF THE AREA

This is a rural area with agricultural uses, scattered rural residences and large contiguous areas of woodlands. The topography of the area includes slopes, which contain most of the woodlands. High quality soils, as defined in *Horizon 2020*, are located in the area, and the northeast portion of this property contains high quality soils. The area contains environmentally sensitive lands in the form of stream corridors, regulatory floodway and floodway fringe, and stands of mature trees. (Figures 2-4)

The property is near a major transportation corridor as the realigned Hwy 59 will be located approximately 1500 ft to the west; however, access will not be permitted onto Hwy 59 at this location, but is available about 2 miles to the north at the N 1000 and Hwy 59 intersection.

**Staff Finding** – This is a rural area with the following features which are defined as environmentally sensitive lands in the Subdivision Regulations: stream corridors, regulatory floodway and floodway fringe, and stands of mature trees which are part of a larger contiguous network. In addition to these features, steep slopes and high quality soils are also located in the area. The R-T Zoning and rural tourism use is intended to preserve these resources which would serve to maintain the rural character of the area. The R-T Zoning is compatible with the character of the area and should serve to maintain and enhance it.



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

Applicant's Response:

*"The property is zoned 'A' Agriculture and is suitable for use. Due to the extensive wooded areas, sloping terrain, and the watershed lake the remaining open areas are generally only suitable for pastures, residential, and recreation uses. With the amenities the property exhibits and as illustrated on the conceptual site plan, rural tourism would be a suitable low impact use."*

The subject property is developed with a house and a cabin. The house will be separated from the property being zoned R-T with a homestead exemption survey and is not included in the rezoning request. The following criteria listed in Section 20-801(d)(ix) of the Subdivision Regulations will apply to the area divided with the homestead exemption survey: the on-site sewage management system shall be located entirely on the parcel with the residence, the new parcel will meet the access management standard frontage and entrance spacing requirements, and the minimum size of the new parcel will meet the County's Sanitary Code as well as the Height, Area and Bulk Requirements in Article 18 of the Douglas County Zoning Regulations. The Sanitary Code requires 3 acres outside of the floodplain for properties which are serviced by a Rural Water District and 5 acres outside of the floodplain for properties which are served with a water well. The legal description for the rezoning will be finalized when the residence has been divided through the homestead exemption survey.

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 property is suited for agricultural uses, with some limitations due to the topography and tree cover of the site.

Per Section 20-309B-2 of the Zoning Regulations, the following uses are permitted in the R-T District: outdoor recreation, open air theatre, places of social assembly, lodging, cultural centers or museums or similar uses and agricultural uses. Uses noted in Section 20-309B-3 are permitted as accessory uses to Rural Tourism uses. These sections are included with the staff report as Attachment A. Based on the conceptual site plan, Attachment B, the proposed rural tourism use would include hiking trails, wildlife areas, cabins, and a lodge, which could be used for meetings as well as for guests. The property is suited to these rural tourism uses.

**Staff Finding** – The property is suited for uses permitted in the Agricultural zoning district with some limitations due to the topography and tree cover. The property is suited for uses allowed within the Rural Tourism District as the purpose of the district is to permit uses that integrate with and maintain the rural character of the property.

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

**Staff Finding** – The property is currently developed with a residence and an accessory cabin. The residence will be divided from this parcel with a homestead exemption survey and is not a part of this rezoning request.

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

Applicant's response:

*"The ownership group believes the rezoning will have no detrimental effects to the nearby property. The extensive wooded areas and valley effect created by the topography provides natural spatial buffers to the adjoining neighbors. There will be little increased traffic by rezoning and the majority of the local access road was reconstructed by KDOT. The site is 1.7 miles from Highway 59."*

Possible impacts from development include lighting, noise, and traffic. Per the conceptual site plan, the lodge is proposed to be located within the interior of the site. This area is separated from nearby residences by distance, change of elevation, and tree cover. Exterior lighting will be reviewed at the site planning stage to insure no light trespass or glare to the neighboring properties. The proposed use should not be noise intensive, as no outdoor activity areas are shown except for trails. The applicant provided a narrative in which they explained the amount of traffic they anticipate with the proposed use as well as a graphic showing the route from US Hwy 59 (Attachment C) The access road is a rock road and typically dust palliative is recommended to minimize the impact of the increased traffic on adjacent residences. (Figure 6) In this case, the road ends shortly after the drive to the facility, so traffic should be travelling at low speeds in this area. The use of dust palliative would be considered during the site planning stage.

The applicant has requested a reduced buffer width on the west side of the property, adjacent to the residences and E 1300 Road. The applicant explained that this reduction is necessary due to the location of the floodplain and the need to provide some flexibility for the location of the cabins in this area. The conceptual site plan shows the existing cabin and 3 new cabins along the west side of the property, out of the buffer area. The applicant indicated that the elevations at the 150 ft buffer line are approximately 20 ft, 18 ft and 29 ft lower than at the property line. In addition, this area is heavily wooded. The 150 ft buffer should be effective in buffering nearby properties from the Rural-Tourism use, given this grade change and the wooded nature of the buffer. Attachment D contains a graphic the applicant provided illustrating the west buffer area and proposed uses. Figure 7 shows the vegetation in the buffer area and Figure 8 illustrates the change in elevation on the west side of the property.

The applicant indicated that trails may be constructed in the wooded areas, but the intent is to maintain the woods in the buffer. The conceptual site plan also shows a 50 ft x 100 ft maintenance shed located within the buffer area. The area proposed for the shed is not within the wooded portion of the buffer (Figure 5). The shed is a low-impact use which should have minimal impact on the area.

**Staff Finding** – The use should have minimal impact on nearby properties. The most intense use being proposed, the lodge, will be located within the interior of the site, on the east side of the pond, so it should have minimal impact on nearby properties. Exterior lighting will be reviewed at the site-planning stage to protect nearby properties from light-trespass or glare. The buffer should adequately buffer the adjacent properties from the use, even with the reduced width of 150 ft on the west due to the grade change and wooded nature of the buffer. The road used to access the facility is a rock road. If it is determined that the generation of dust by traffic accessing the site may have a negative impact on nearby residences at the site

planning stage, the applicant should participate in a dust palliative program for the residences on E 1300 Road.

#### **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 property would maintain its Agricultural zoning classification and could be used for agricultural purposes, developed with a use that is permitted within the A District, or be divided through the Certificate of Survey process for residential development. The approval of the rezoning would limit the permitted uses to those which are permitted in the R-T District with the intent to maintain and enhance the rural character of the area. The proposed use would be possible under the A Zoning with a Conditional Use Permit; however, the R-T Zoning offers a more permanent approval for the use.

**Staff Finding** –There would be little, if any, gain to the public health, safety or welfare from the denial of the rezoning request. The use would be possible under the A Zoning but would require the approval of a Conditional Use Permit. The rezoning benefits the applicant by providing a longer term approval for the proposed use. The rezoning benefits the general public as well by limiting the permitted uses to those which would maintain and enhance the character of the area, which includes environmentally sensitive lands and high quality soils.

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

Applicant's Response:

*"The R-T zoning and development illustrated on the conceptual site plan would conform to the Comprehensive Plan. The non-farm residential/business development preserves the agricultural, natural and environmentally sensitive areas while maintaining the rural character."*

#### **CHAPTER FOUR. GROWTH MANAGEMENT** (page 4-4, *Horizon 2020*)

"There are a few locations, however, in the Rural Area which may be expected to receive some significant 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 other 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."

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

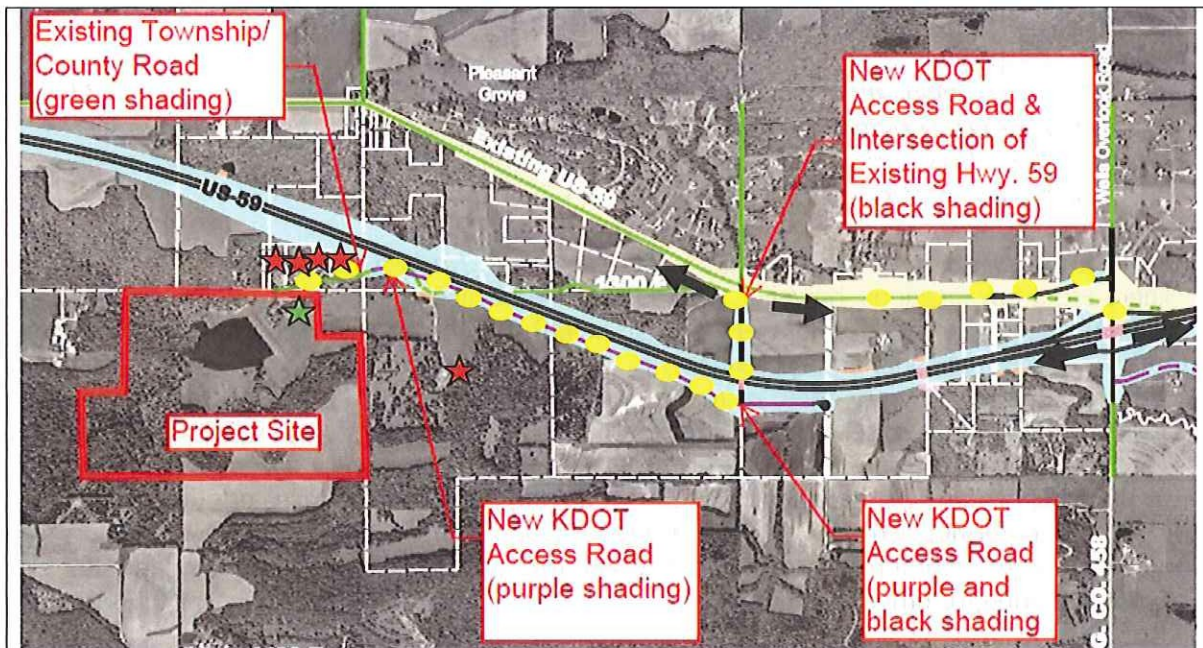
**UNINCORPORATED DOUGLAS COUNTY-NEW COMMERCIAL AREAS** (page 6-23, *Horizon 2020*)

“Conference, recreational, or tourism uses located in the Rural Area, and which include some significant level of urban development, shall satisfy the criteria listed in Chapter Four. Such uses shall also include a mandatory minimum 200’ natural buffer area or other appropriate distance as determined by the Board of County Commissioners. Proposed conference, recreational, or tourism facilities shall include a site specific site plan with rezoning applications to demonstrate that the criteria listed in Chapter 4, and the 200’ buffer area, have been met.”

**Staff Comments:**

The proposed rural tourism use will integrate natural resources and the rural environment, which include woodlands, floodplain, and high-quality soils. The proposed use is designed to minimize the impact on these areas while incorporating them into the use. The tourism use will utilize public water, is located at least 3 miles from other rural tourism use, and will maintain the 200 ft buffer area around the perimeter with a 150 ft buffer along the west side if the County Commission approves this width. However, the proposed use does not take direct access from an improved arterial roadway.

As the exhibit in Attachment D illustrates the property is located within 1500 ft of the realigned Hwy 59; however, access to Hwy 59 is available approximately 2 miles away. As shown on the following graphic, vehicles would travel north on the access road (E 1300 Rd) to N 900 Road to access the realigned Hwy 59. N 900 Road crosses realigned Hwy 59 and connects with the old highway. Vehicles may then travel north or south to access the realigned highway. The access to realigned Hwy 59 is one mile to the north, so this would be the quickest route. The access road (E 1300 Rd) will be maintained by KDOT up a point near the facility and the nearby residences, marked with green shading on the figure below. There are very few residences in this area, with 4 residences being directly across the subject property, one on the property and one located to the north.



Route from subject property to realigned Hwy 59 shown in yellow. Residences on the access road are marked with stars, the green star is the residence that is on the subject property, but will be divided through the Homestead Exemption Survey.

The nature of some tourism uses, in this case a secluded natural area, would prevent their location on an arterial road.

Some rural tourism uses would require direct access to an arterial road, to alleviate traffic issues on rural roads. The traffic information the applicant submitted indicated that the maximum trips per day anticipated with this use when fully developed would be between 25 and 100 trips. This amount of traffic could be accommodated by a rock road. The intensity and nature of the use being proposed would not require placement along an arterial roadway. Dust palliative treatment may be required at the site planning stage to alleviate negative impacts to nearby residences. Based on the information above, the subject property substantially meets the criteria for Rural-Tourism commercial zoning.

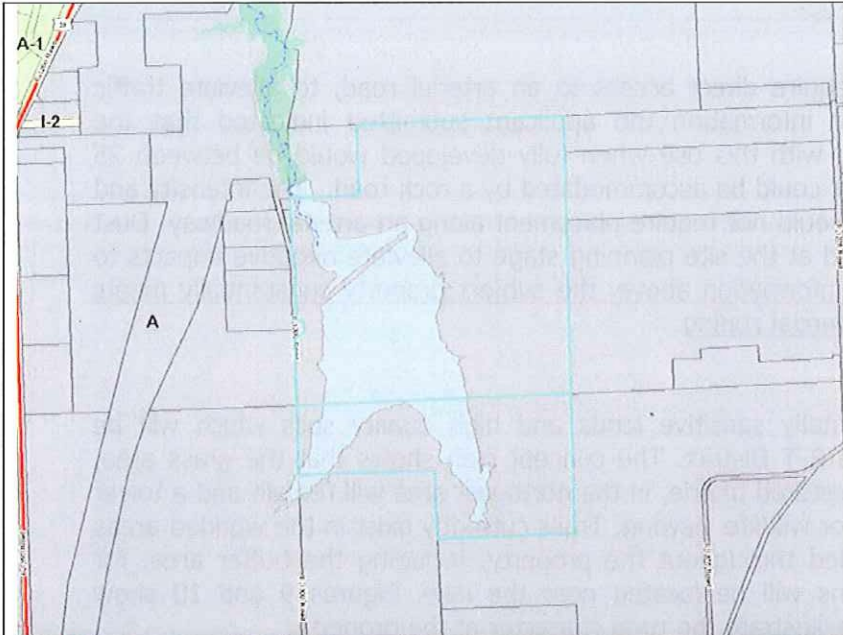
#### **STAFF REVIEW**

The property contains environmentally sensitive lands and high quality soils which will be protected with the rezoning to the R-T District. The concept plan shows that the grass area, which the applicant indicated is a restored prairie, in the northeast area will remain and a tower may be installed for bird-watching or wildlife viewing. Trails currently exist in the wooded areas and additional trails will be provided throughout the property, including the buffer area, for walking or horse-riding. The cabins will be located near the lake. Figures 9 and 10 show different portions of the property to illustrate the rural character of the property.

The Lawrence-Douglas County Health Department indicated that an exhibit illustrating that there are 3 acres available for septic system facilities for each cabin would be necessary at the site planning phase if septic systems are utilized. The Rural Water District indicated that water meters were available, but they would like more time to review the proposed use to determine if capacity is available or if upgrades are necessary. The Rural Water District indicated they would discuss this issue at their May Board meeting. The rezoning request should not be placed on the Board of County Commissioner's agenda for consideration until the determination on the availability of water has been made.

One neighbor commented that they did not want to be responsible for improvements to the minimum maintenance road which they use to access their property, if that designation is removed. The County Engineer explained that when a minimum maintenance road is change to full maintenance, the party requesting the change is responsible for the improvements. No requests have been made at this point to revise the minimum maintenance designation or to extend E 1300 Road to the south.

The proposed use and the proposed site layout are compatible with the rural character of the area.



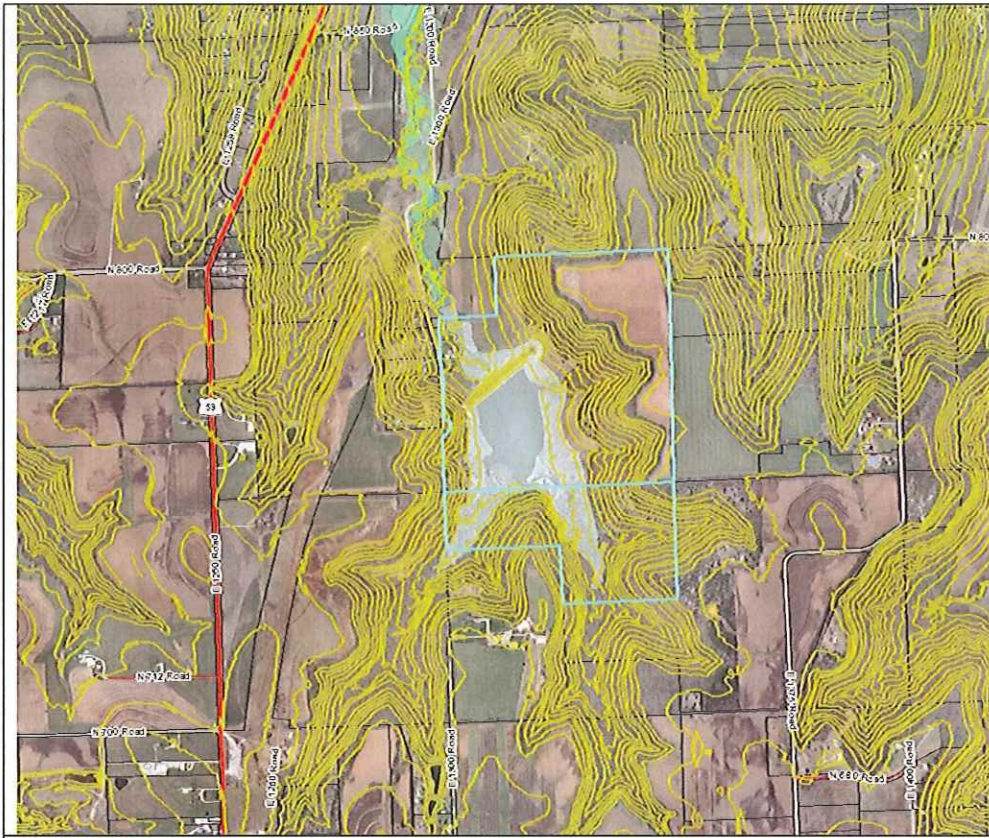
**Figure 1a. Zoning of Area.**

- A** (dark blue) Agricultural District
- A-1** (green) Suburban Home District
- I-2** (tan) Light-Industrial District
- F-W** (turquoise) Floodway Overlay District.
- F-F** (Light green or blue) Floodway Fringe Overlay District.

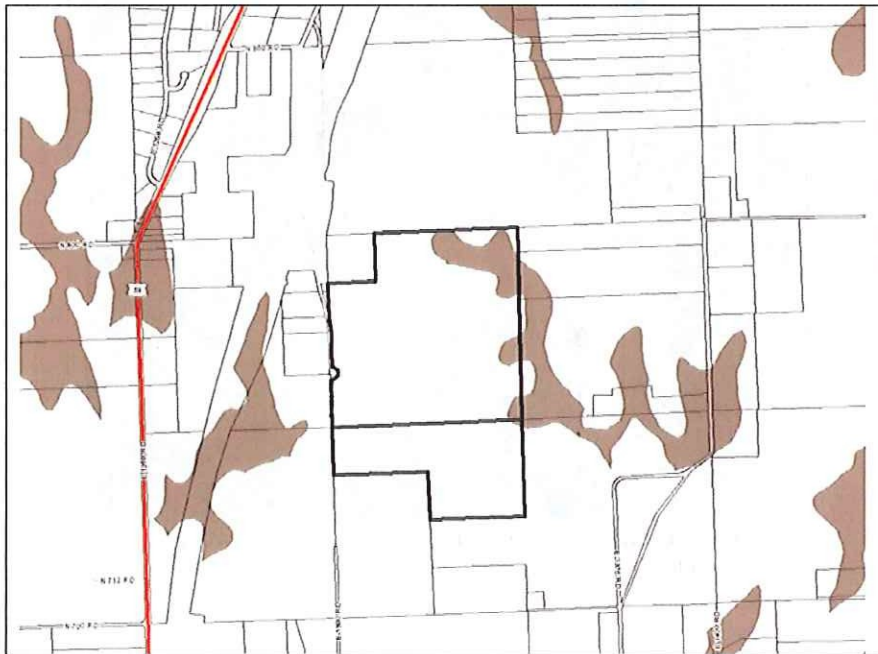
(Subject property outlined in bright blue.)



**Figure 1b. Land use in area.**



**Figure 2.** Topography of the area.



**Figure 3.** High quality soils in area.



**Figure 4.** Environmentally sensitive lands taken from the Environmental Baseline Map. The property contains regulatory floodway fringe, stream corridor and stands of mature trees. The map shows the contiguous woodlands in the area.



**Figure 5.** Detail of west side buffer area. Red dot marks proposed location of maintenance shed.





**Figure 6.** E 1300 Road accessing the facility.



**Figure 7.** West buffer area at driveway.



**Figure 8.** West buffer area behind existing cabin, showing the change in elevation.



**Figure 9.** View of property from existing cabin.



**Figure 10** Views of the subject property.

12-309 "B-1" NEIGHBORHOOD BUSINESS DISTRICT REGULATIONS  
12-309A "B-3" LIMITED BUSINESS DISTRICT REGULATIONS

**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.

**12-309-3. PARKING REGULATIONS**

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

**12-309-4. OFF-STREET LOADING REGULATIONS**

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

**12-309-5. HEIGHT AND AREA REGULATIONS**

Height and area requirements shall be as set forth in the chart of section 12-318.

**12-309-6.** Supplementary use regulations are contained in section 12-319.

**12-309-7.** Supplementary height and area regulations are contained in section 12-321.

**Section 309A "B-3" LIMITED BUSINESS DISTRICT REGULATIONS**

**12-309A-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-3", Limited Business District. This district is designed to permit and encourage the grouping, in areas defined by comprehensive plans, of certain retail activities and services intended primarily to serve, and dependent upon, the motoring public.

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

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

**12-309A-2.01.** Automobile Service Stations, excluding bodywork, painting or major engine repair.

**12-309A-2.02.** Antique Sales.

**12-309A-2.03.** Art Supplies.

**12-309A-2.04.** Bicycle Sales, Rental, or Repair.

**12-309A-2.05.** Boat and Equipment Sales and Repair.

**12-309A-2.06.** Boat Storage, open or enclosed.

**12-309A-2.07.** Camera or Photographic Supply Sales.

**12-309A-2.08.** Drug Store.

**12-309A-2.09.** Equestrian Equipment Sales.

12-309 "B-1" NEIGHBORHOOD BUSINESS DISTRICT REGULATIONS  
12-309A "B-3" LIMITED BUSINESS DISTRICT REGULATIONS

- 12-309A-2.10.** Fishing and Camping Equipment and Supplies.
- 12-309A-2.11.** Florist Shop, Greenhouse, and Garden Supplies.
- 12-309A-2.12.** Gift, Novelty, and Souvenir Sales.
- 12-309A-2.13.** Grocery Store.
- 12-309A-2.14.** Hardware, excluding lumber and industrial hardware.
- 12-309A-2.15.** Restaurant, not providing service in automobiles.
- 12-309A-2.16.** Accessory buildings and uses to include accessory residential uses.
- 12-309A-2.17.** Open storage must meet the minimum front, side, and rear yard requirements, and be screened by a view reducing wall, fence, or landscaping material from adjacent public roads or residentially zoned property.
- 12-309A-2.18.** Motels and motor hotels.
- 12-309A-2.19.** Overnight camper trailer grounds.

**12-309A-3. PARKING REGULATIONS**

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

**12-309A-4. OFF-STREET LOADING REGULATIONS**

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

**12-309A-5. HEIGHT AND AREA REGULATIONS**

Height and area regulations shall be set forth in the chart of section 12-318.

**12-309A-6.** Supplementary use regulations are contained in section 12-319.

**12-309A-7.** Supplementary height, area, and bulk requirements are contained in section 12-321.

**12-309A-8. SIGN REGULATIONS**

**12-309A-8.01.** Only one non-flashing unanimated area marker designating or identifying a commercial development area is permitted. The area marker shall not exceed four feet in height from the ground and shall be limited to 15 sq. ft. in area. It shall be located a minimum of ten feet from a road right-of-way unless along a Federal or State Highway for which it will then comply with the conditions set forth by the Kansas Department of Transportation, but in no case shall it be less than the conditions set forth herein.

**12-309A-8.02** Each business may have one non-flashing unanimated sign attached flat to the face of the building. The sign shall not exceed 30 sq. ft.

**Section 309B 'R-T' RURAL-TOURISM BUSINESS DISTRICT REGULATIONS**

**12-309B-1.** The regulations set forth in this section, or elsewhere in these Regulations, when referred to in this section, are the regulations in the 'R-T' Rural-Tourism Business District. This district is designed to provide a suitable zoning exclusively for uses associated with Rural-Tourism, such as recreation and conference uses. These uses are typically more intense and larger in scale than similar uses that may be permitted by right or with a Conditional Use Permit in the Agricultural Zoning District.

**12-309B-2. DEFINITION OF RURAL-TOURISM**

Rural-Tourism showcases the rural life and heritage at rural locations. Rural-Tourism can take many forms including: nature; adventure; historical; cultural; agricultural; and, ecological (eco-) tourism. Rural-Tourism is typically experience-oriented; is located predominantly in a natural environment in areas of low population; and, contributes to the preservation of the character of the area.

**12-309B-3. CRITERIA THAT APPLY TO RURAL-TOURISM USES**

**12-309B-3.01** Rural-Tourism uses may exist alone, may be several uses combined and may include accessory uses. For instance, a corporate retreat may have meeting rooms, recreational facilities and a restaurant. Uses that are associated with the Rural-Tourism use but do not constitute a Rural-Tourism use themselves, are permitted as accessory uses and may be located (operate) on the site only when the Rural-Tourism use is present and active.

**12-309B-3.02** The following site design criteria apply to Rural-Tourism uses:

- a. Rural-Tourism uses shall integrate with and maintain or enhance the rural character of the area;
- b. Facilities shall be designed to preserve natural resources and integrate with the rural environment through appropriate land use, site design, buffering, or other methods; and
- c. A site-specific site plan shall be submitted with rezoning applications to demonstrate that the site design criteria noted above have been met. The following items are required on all site plans for Rural-Tourism areas:
  - 1) A minimum 200 ft buffer area provided around the perimeter of the site; and,
  - 2) Uses permitted within this buffer area shall be limited to agriculture or other low-impact uses. These uses shall be noted on the site plan along with the party or entity responsible for maintenance of the buffer area.

**12-309B-4 USE REGULATIONS**

The only uses permitted in the R-T District are uses that have been determined to constitute Rural-Tourism Uses as defined in Section 12-309B-2 and their accessory uses.

The site plans submitted for the project, including the concept plan submitted with the rezoning request, must identify clearly uses that are Accessory uses and those uses that constitute the 'Rural-Tourism' as defined in Section 12-309B-2.

Accessory uses may occur on the property only when the 'Rural-Tourism' use is active.

12-309B "R-T" RURAL-TOURISM BUSINESS DISTRICT REGULATIONS

The following list has been divided into two categories: those that are typically considered 'Rural-Tourism'; and, those that are typically considered 'Accessory uses'.

Typical Rural-Tourism uses:

- 12-309B-4.01** Primary outdoor recreation, including parks, areas for picnicking, camping in tents, bike paths, hiking trails and other similar uses.
- 12-309B-4.02** Open air theatre (excluding drive-ins).
- 12-309B-4.03** Reception hall, conference center, or other places of social assembly.
- 12-309B-4.04** Lodging that includes hotels, motels, bed and breakfasts, or campgrounds.
- 12-309B-4.05** Libraries, cultural center, exhibit hall, museums, art galleries and other similar uses.
- 12-309B-4.06** Agricultural uses.

Typical Rural-Tourism Accessory uses:

- 12-309B-4.07** Secondary outdoor recreational uses such as playgrounds, swimming pools, skating rinks, and other similar uses.
- 12-309B-4.08** Personal service uses including barber shops, beauty parlors, spas, photographic or artists' studios, and other personal service uses of a similar character.
- 12-309B-4.09** Restaurants, (excluding drive-in or drive-thru restaurants), and taverns.
- 12-309B-4.10** Retail stores, but there shall be no slaughtering of animals or poultry on the premises of any retail store. Retail stores are limited individually to a maximum area of 10,000 sq ft.
- 12-309B-4.11** Amusement places, skating rinks, and dance halls; all in a completely enclosed building, auditorium or theater.
- 12-309B-4.12** Indoor sports or recreation, including bowling alleys, billiard parlors, swimming pools, physical fitness centers, and other similar uses.
- 12-309B-4.13** Commercial riding stable.
- 12-309B-4.14** Commercial greenhouse.
- 12-309B-4.15** Residential dwellings when associated with the tourism use as caretaker, manager, or as part of a living museum.
- 12-309B-4.16** Religious institutions such as a convent, church, temple or mosque.
- 12-309B-4.17** Community buildings.
- 12-309B-4.18** Child care center
- 12-309B-4.19** Animal hospital or clinic when accessory to a tourism use; 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 (have it's own sewage management system). Accessory buildings and uses.

- 12-309B-4.20** Outdoor advertising signage, with the requirement than any outdoor advertising structure or sign in excess of 100 square feet in area shall be attached flat against a wall or building. See Section 12-306-2.18 for requirements pertaining to the height and location of signage.
- 12-309B-4.21** Temporary signs pertaining to the lease, hire, or sale of a building or premises on which such sign is located.
- 12-309B-4.22** Utility installations for sewer, water, gas, electric and telephone mains and incidental appurtenances.
- 12-309B-4.23** Railroad rights-of-way, including a strip of land with tracks and auxiliary facilities for track operations and passenger stations.
- 12-309B-4.24** Temporary buildings, the uses of that are incidental to construction operations and that shall be removed upon completion or abandonment of such construction, or upon the expiration of a period of two years from the time of erection of such temporary buildings, whichever is sooner.

**12-309B-5. PARKING REGULATIONS**

The parking regulations for permitted uses are contained in Section 12-316.

**12-309B-6. OFF-STREET LOADING REGULATIONS**

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

**12-309B-7. HEIGHT, AREA AND BULK REGULATIONS**

Height and area regulations shall be as set forth in the chart of Section 12-318.

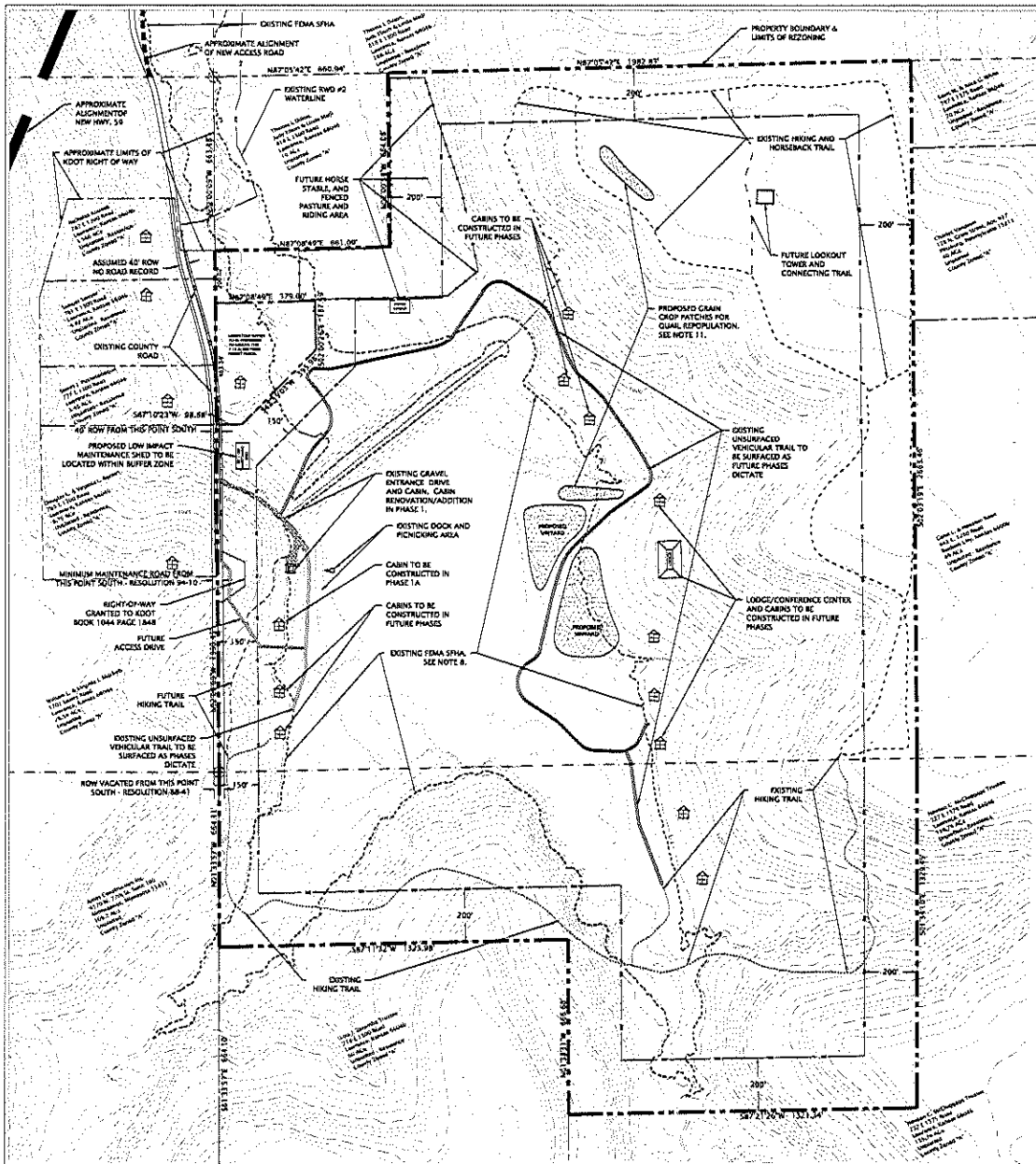
**12-309B-8. SUPPLEMENTARY USE REGULATIONS**

Supplementary use regulations are contained in Section 12-319.

**12-309B-9. SUPPLEMENTARY HEIGHT, AREA AND BULK REGULATIONS**

Supplementary height, area and bulk regulations are contained in Section 12-321.





SCALE: 1" = 200'

**LEGAL DESCRIPTION**

A TRACT OF LAND LOCATED IN THE NORTHWEST AND SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 14 SOUTH, RANGE 19 EAST OF THE SIXTH PRINCIPAL MERIDIAN, ALL IN DOUGLASS COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 12; THENCE SOUTH 02°00'00" EAST ALONG THE WEST LINE OF SAID SECTION, 663.48 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 02°00'00" EAST ALONG SAID WEST LINE, 1890.45 FEET; THENCE SOUTH 01°15'37" EAST, 864.11 FEET; THENCE NORTH 87°17'27" EAST, 1320.88 FEET; THENCE SOUTH 01°39'51" EAST, 888.89 FEET; THENCE NORTH 87°21'28" EAST, 1321.34 FEET; THENCE NORTH 01°34'18" WEST, 1324.45; THENCE NORTH 02°03'19" WEST, 2863.46 TO A POINT ON THE NORTH LINE OF SAID SECTION; THENCE SOUTH 87°03'42" WEST, 1942.83 FEET; THENCE SOUTH 02°00'58" EAST, 864.08 FEET; THENCE SOUTH 03°07'04" WEST, 461.09 FEET TO THE POINT OF BEGINNING.

A TRACT OF LAND COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 12; THENCE SOUTH 02°00'00" EAST ALONG THE WEST LINE OF SAID SECTION, 863.48 FEET; THENCE CONTINUING SOUTH 07°00'00" EAST ALONG THE WEST LINE OF SAID SECTION, 206.02 FEET TO THE POINT OF BEGINNING; THENCE NORTH 87°04'47" EAST, 378.00 FEET; THENCE SOUTH 02°07'07" EAST, 187.45 FEET; THENCE SOUTH 45°30'07" WEST, 395.88 FEET; THENCE SOUTH 87°16'27" WEST, 38.38 FEET TO A POINT ON THE WEST LINE OF SAID SECTION; THENCE NORTH 02°03'00" WEST ALONG THE WEST LINE OF SAID SECTION, 463.34 FEET TO THE POINT OF BEGINNING, LESS ROAD RIGHT-OF-WAY. THE TRACT CONTAINING 208.67 ACRES LESS ROAD RIGHT-OF-WAY.

**GENERAL NOTES**

- OWNER: Sadies Lake LC  
P.O. Box 1797  
Lawrence, Kansas 66044
- Engineer: Grob Engineering Services, LLC  
2212 Meek Way, Suite A  
Lawrence, Kansas 66049
  - Surveyor: All Points Surveying, LLP  
P.O. Box 4444  
Lawrence, KS 66044
  - Aerial and topographic information obtained from aerial survey performed by Senboth Mapping for the City of Lawrence and Douglas County 2008 and 2009. Specific topographic and boundary information for property & directly adjacent obtained from field survey provided by All Points Surveying, March 2011. Basis for bearings for this plan is State Plane Coordinate - North Zone.
  - Current Zoning: "A"
  - Existing Land Use: Residence and Accessory Cabin
  - Proposed Zoning: "RT"
  - Proposed Land Use: Rural Tourism
  - The property is in part located within a SPECIAL FLOOD HAZARD AREA (SFHA) SUBJECT TO INUNDATION BY THE 1% CHANCE FLOOD per FEMA Flood Insurance Rate Map (FIRM) Panel 282 of 460, Map Number 2004020202D, Map Revised August 5, 2010. Per the map, The 1% annual chance flood (100-year flood), also known as base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard Area include A, AE, AH, AG, AX, AR9, V, and VE. The Base Flood Elevation is the water-surface elevation of the 1% chance flood. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. The SFHA for the property is defined as "Zone A - No Base Flood Elevations determined".
  - No public improvements are required for the property as part of the rezoning.
  - An Easement is held by Wakarusa Watershed Joint District No. 35 for the maneuver for the purpose of floodwater retarding. The easement is 42.1 acres adjacent to and including the reservoir to mean sea level elevation 971.1.
  - Additional crop patches or manufactured habitat for deer, turkey and quail may be constructed along the edge of the timberline.
  - For aerial view of site see Sheet 2 of 2.

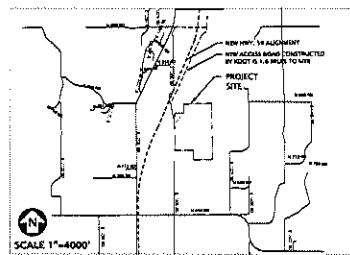
**DEVELOPMENT SUMMARY**

ORIGINAL PROPERTY BOUNDARIES	211.61 AC
PARCEL TO BE REMOVED BY HOMESTEAD SURVEY	3.14 AC
REZONING REQUEST	
ORIGINAL BOUNDARY LESS PARCEL TO BE REMOVED BY HOMESTEAD SURVEY	208.67 AC

**VARIANCE REQUEST**

- The Owner requests a variance for a reduction of the buffer along the west boundary of the project. The request is for a reduction from 200' to 150'. The owner believes the existing trees, the 30' elevation drop, and that it is adjacent to the existing right-of-way, thus the reduced buffer zone will be met by the intent.

**LOCATION MAP**



THIS DOCUMENT IS FOR PLANNING PURPOSES ONLY - NOT FOR CONSTRUCTION

**CONCEPTUAL SITE PLAN  
SADIES LAKE ADDITION**

**GES**  
**GROB ENGINEERING SERVICES, LLC**  
3710 Meek Way, Suite A  
Lawrence, Kansas 66049  
P.O. Box 502  
Lawrence, Kansas 66044  
Phone: 785-835-1900  
Fax: 785-835-1901

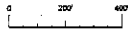
**CONCEPTUAL SITE PLAN FOR  
SADIES LAKE ADDITION  
778 E 1300 ROAD  
LAWRENCE, KANSAS**

DESIGNED BY	JDC
CHECKED BY	JDC
ISSUE DATE	March 21, 2011
REVISIONS	

SHEET  
**1**  
2



SCALE: 1" = 200'



**LEGAL DESCRIPTION**

A TRACT OF LAND LOCATED IN THE NORTHWEST AND SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 14 SOUTH, RANGE 19 EAST OF THE SIXTH PRINCIPAL MERIDIAN, ALL IN DOUGLAS COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 12, THENCE SOUTH 02°00'00" EAST ALONG THE WEST LINE OF SAID SECTION, 663.48 FEET TO THE POINT OF BEGINNING, THENCE SOUTH 02°00'00" EAST ALONG SAID WEST LINE, 1990.45 FEET; THENCE SOUTH 01°20'37" EAST, 884.11 FEET; THENCE NORTH 87°17'32" EAST, 1223.98 FEET; THENCE SOUTH 01°38'31" EAST, 688.60 FEET; THENCE NORTH 87°21'08" EAST, 1321.34 FEET; THENCE NORTH 01°34'10" WEST, 1328.45 FEET; THENCE NORTH 02°03'19" WEST, 2863.46 TO A POINT ON THE NORTH LINE OF SAID SECTION; THENCE SOUTH 87°05'40" WEST, 1962.83 FEET; THENCE SOUTH 02°00'58" EAST, 684.08 FEET; THENCE SOUTH 87°36'49" WEST, 601.89 FEET TO THE POINT OF BEGINNING, LESS

A TRACT OF LAND COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 12, THENCE SOUTH 02°00'00" EAST ALONG THE WEST LINE OF SAID SECTION, 663.48 FEET; THENCE CONTINUING SOUTH 02°00'00" EAST ALONG THE WEST LINE OF SAID SECTION, 2062.82 FEET TO THE POINT OF BEGINNING, THENCE NORTH 87°08'49" EAST, 339.00 FEET; THENCE SOUTH 02°00'00" EAST, 182.49 FEET; THENCE SOUTH 45°30'07" WEST, 395.88 FEET; THENCE SOUTH 87°19'21" WEST, 958.88 FEET TO A POINT ON THE WEST LINE OF SAID SECTION; THENCE NORTH 02°00'00" WEST ALONG THE WEST LINE OF SAID SECTION, 463.24 FEET TO THE POINT OF BEGINNING, LESS ROAD RIGHT-OF-WAY. THE TRACT CONTAINS 298.87 ACRES LESS ROAD RIGHT-OF-WAY.

THIS DOCUMENT IS FOR PLANNING PURPOSES ONLY - NOT FOR CONSTRUCTION

**CONCEPTUAL SITE PLAN  
SADIES LAKE ADDITION**



**GROB  
ENGINEERING  
SERVICES, LLC**

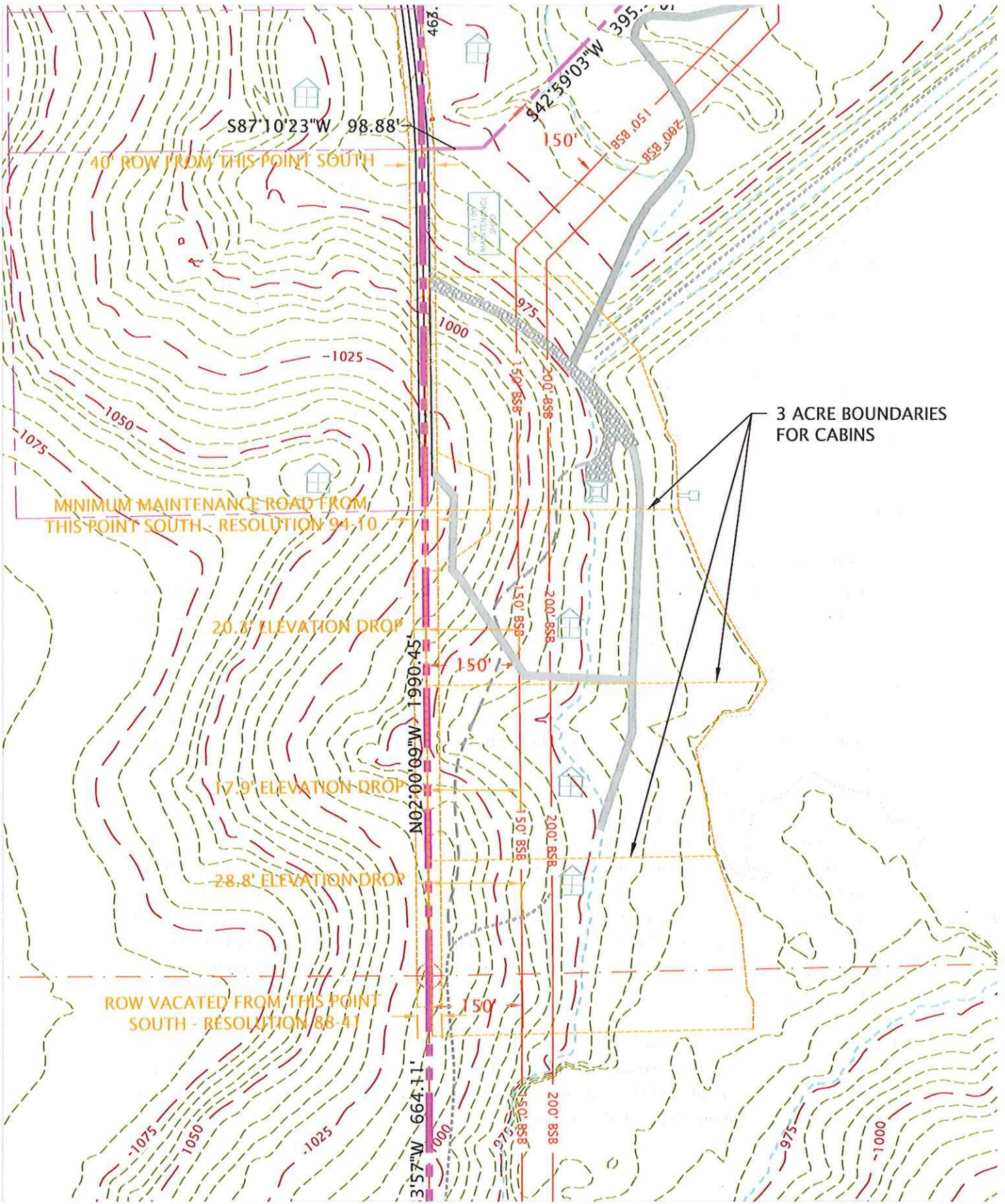
3310 Mead Way, Suite A - Lawrence, Kansas 66099  
P.O. Box 8274 Lawrence, Kansas 66084  
Phone 785 839-1900 Fax 785 839-1901

THIS DOCUMENT IS CONSIDERED MADE BY GLOB ENGINEERING SERVICES, LLC. THE DRAWING MAY BE IN PHOTOGRAPHIC, E-FILE, OR OTHER FORM AND IS THE PROPERTY OF GLOB ENGINEERING SERVICES, LLC.

**CONCEPTUAL SITE PLAN for  
SADIES LAKE ADDITION  
778 E 1300 ROAD  
LAWRENCE, KANSAS**

DESIGNED BY	joc
CHECKED BY	joc
ISSUE DATE	March 21, 2011
REVISIONS	

SHEET  
**2**  
2



SCALE: 1" = 200'

SADIES LAKE ADDITION  
FIGURE 1

## Traffic Assessment

### *Site Access*

The site is accessed by Douglas County Permanent Road #630 or E 1300 Road. E 1300 Road takes access from N 900 Road which takes direct access from the existing US Highway 59. The distance to the site entrance from the access to Highway 59 is 1.9 miles. The northern most 1.6 miles of county road has been reconstructed as part of the new Highway 59 realignment/reconstruction. The south most 0.3 miles of access is a County "Full Maintenance" road. The attached illustration has been taken from the KDOT alignment figures prepared by Bartlett & West Engineers and Burns & McDonnell Engineers with callouts added by Grob Engineering to show the access route and proposed site.

### *Traffic Impact*

While the proposed Site Plan is only conceptual, an assessment has been made to evaluate the impact on traffic for the project site. For the basis of this evaluation a trip constitutes a round trip (one entering and one leaving).

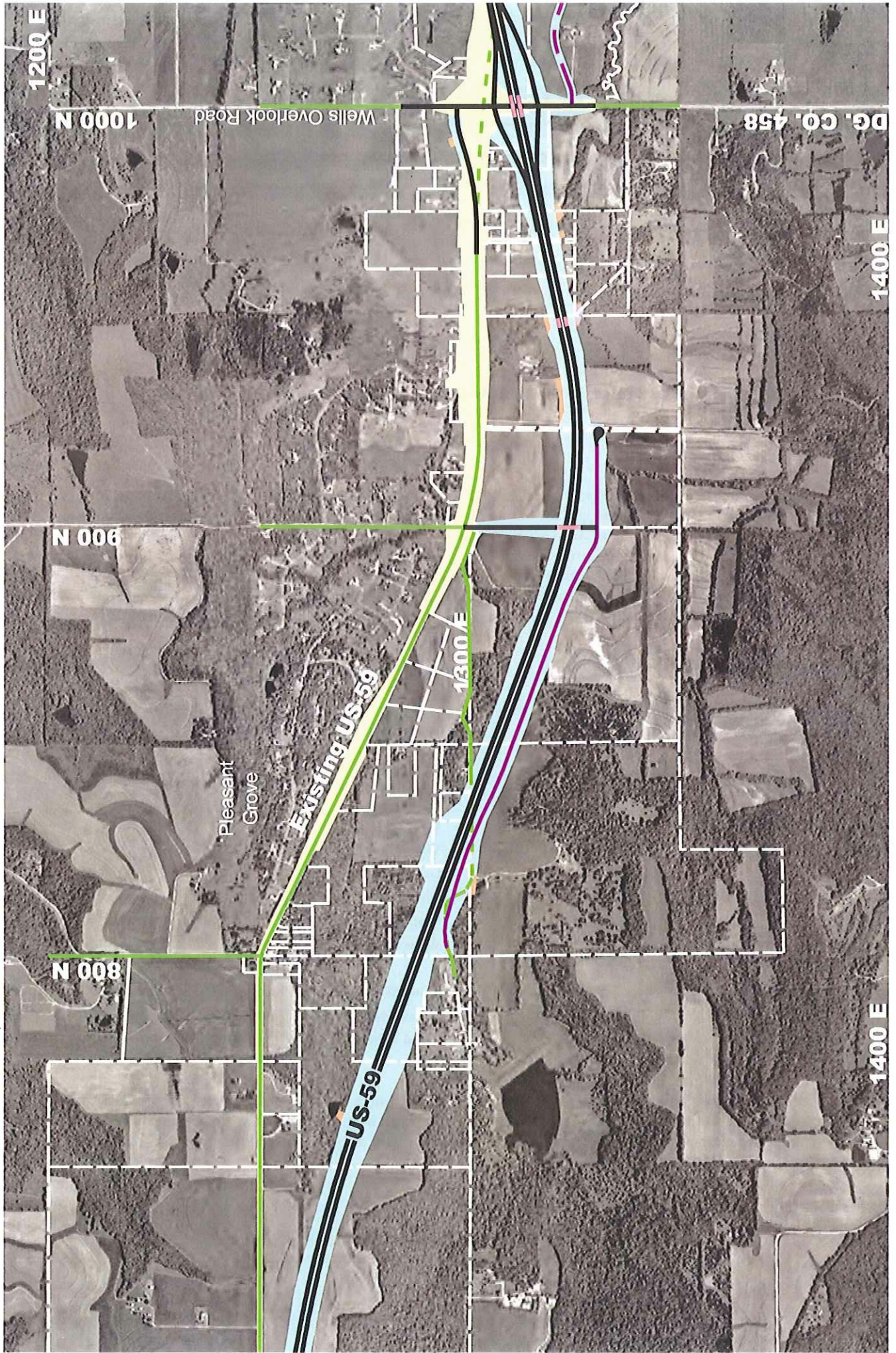
### *Cabins*

The estimated traffic generated by the cabins is based upon the "Recreational Homes" land use code #260, found in the 8th Edition of ITE Trip Generation. The peak daily average rate is 3.16 trips per unit, or 6.32 total daily trips for the existing cabin and 1 additional cabin proposed in the initial phase of the project. 41 total daily trips could be expected if/when all 13 cabins are constructed in future phases. These rates are similar to what could be expected if the cabins were single family residences.

### *Lodge/Conference Center*

No specific category was found in the 8th Edition of ITE Trip Generation for a "Recreational Lodge/Conference Center". One category that appeared similar was a "Recreational Community Center" land use code #495 which estimated daily trip generation of 22.88 trips total. While similar categories exist, each varied greatly and was difficult to compare to this project. The daily average traffic was also determined based on anticipated occupancy. The building as shown on the Conceptual Site Plan is about 12,000 square feet which would provide about 8,000 square feet of useable space. As a lodge for cabin resident's and guest, an anticipated occupancy of 4 people per cabin has been estimated. This provides a possible occupancy of 52 people. As a conference center for public uses, a similar occupancy could be estimated. Based on this occupancy, parking/vehicle generation has been assumed to be 1 per 400 square feet of building area. Based on 12,000 square feet, the parking requirements would be 30 parking stalls. If 1.5 to 2.0 trips per parking stall was assumed, the total trips generated per day would be 45 to 60 trips.

The initial phases of development will have little effect on the existing traffic. When fully developed, a peak daily average traffic count could range from about 25 trips to possibly 100 trips. This count would appear to be similar to what might be expected on most rural local roads. Because the existing road is a dead end, additional through traffic will not exist.





SERVICE. THE BARTLETT & WEST WAY.

June 22, 2011

Board of Directors  
 RWD No. 2, Douglas County  
 681 E. 1250 Road  
 Lawrence, KS 66047

**SUBJECT: Sadies Lake Addition  
 W.O. 4005.102**

Dear Nathan:

This letter is in regard to the proposed service for Sadies Lake addition located in Section 12, Township 14 South, Range 19 East. The developer for this addition is proposing multiple phases of construction. The first phase will include the renovation of an existing cabin and the addition of a new cabin. The future phases could consist of eleven additional cabins and a Lodge/Tourism Center. It is being anticipated that each cabin facility will have water demands in the restrooms, and kitchen area. It is assumed that the Lodge will have water demands at restrooms, a utility room, and a kitchen area. The table below was created for the water demands of each facility using Water Supply Fixture Units (WSFU) as defined by the Uniform Plumbing Code.

Phase 1				Future Phase			
	No. of Fixtures	WSFU	Total WSFU		No. of Fixtures	WSFU	Total WSFU
<b>2 Cabins</b>				<b>11 Cabins</b>			
Water Closet	2	2.5	5	Water Closet	11	2.5	27.5
Sink	4	1.5	6	Sink	22	1.5	33
<b>Total WSFU Phase 1</b>			<b>11</b>	<b>Lodge</b>			
<b>Total Peak Demand Flow</b>			<b>10gpm</b>	Water Closet	4	2.5	10
				Urinal	2	2	4
				Sink	6	1.5	9
				Mop Basin	1	3	3
				Water Fountain	2	0.5	1
				<b>Total WSFU Future Phase</b>			<b>87.5</b>
				<b>Total Peak Demand Flow Future Phase</b>			<b>60 gpm</b>
				<b>Total Peak Demand Flow Both Phases</b>			<b>70 gpm</b>

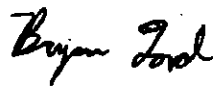
The water district currently has a 2.5-inch PVC waterline that fronts the proposed property and provides the property water service through a standard 5/8"x3/4" residential meter setting. This size of meter is generally rated for a maximum flow of 15 to 20 gpm. For service to the future phase, a new 4-inch waterline will need

to be installed off the District's existing 6-inch waterline from 850 Rd south to Sadies Lake. To serve the peak demand flow of 70 gpm a 1-1/2" positive displacement water meter will be required. With the necessary improvements in place it appears that the additional demands will not have a negative impact on the existing customers in the surrounding area.

To provide service to the one existing and one proposed cabin the District can continue service as it is currently. However, considering the Future Phases I would recommend the District serve this addition through one larger master meter instead of multiple residential meters. It will make meter reading easier as well as billing the customer. It would also allow the District's maintenance responsibility to end at a master meter vault near the main entrance of the lake addition.

Based on this hydraulic review it is feasible for the water district to provide water service to the proposed development with the upgrades as described above. The Board of Directors at RWD No. 2 should use this hydraulic review as an aid to determine how and if they are willing to provide the increased service to the proposed development.

Sincerely,

A handwritten signature in black ink that reads "Bryan Ford". The signature is written in a cursive, slightly slanted style.

Bryan Ford, P.E.



**JAMIE SHEW**  
**DOUGLAS COUNTY CLERK**

1100 Massachusetts  
Lawrence, KS 66044

Phone: 785-832-5267

Fax: 785-832-5192

Carrie F. Moore  
Chief Deputy Clerk

Benjamin Lampe  
Deputy Clerk-Elections


June 7, 2011

ATTN: DOUGLAS COUNTY COMMISSIONERS

RE: Protest Petition against Rezoning Request 2-3-9-11  
Rural Tourism 778 E 1300 Rd (900137 & 900138A)

**CERTIFICATION**

I, JAMIE SHEW, DOUGLAS COUNTY CLERK, DO HEREBY CERTIFY THAT THE  
ATTACHED PETITION, RECEIVED ON JUNE 6, 2011 IS A VALID PETITION.

  
Jamie Shew  
Douglas County Clerk

JS/cko



REZONING (CONDITIONAL USE PERMIT) PROTEST PETITION

Protest Petition against REZONING approx. 209 acrs from agricultural to rural tourism  
located at 778 E. 1300 Rd.

We, the undersigned property owners, do hereby protest the granting by the Board of  
County Commissioners of Douglas County, Kansas of [proposed rezoning from agricultural  
~~\_\_\_\_\_~~ (existing zoning) to rural tourism (proposed zoning)] or [a  
CUP to permit N/A] on the following described  
property: Legal description attached

[Attach or insert legal description or general description of the real estate proposed to  
be rezoned (or for the proposed CUP). A description of the real estate is available  
through the Lawrence-Douglas County Planning Office.]

We, the undersigned, are owners of real property located within the statutory area of  
notification related to the area for which the rezoning (or CUP) is sought. See K.S.A. 12-757(f).

**Note: Print name legible below or beside signature. All owners of the property  
must sign.**

<u>PRINTED NAME AND SIGNATURE OF OWNER</u>	<u>DESCRIPTION OF PROPERTY WITHIN NOTIFICATION AREA</u>	<u>RESIDENCE ADDRESS (IF DIFFERENT)</u>	<u>DATE</u>
<u>Carol L. Keen, Carol L. Keen</u>	<u>771 E 1375 Rd,</u>	<u>Lawrence, KS 66046</u>	<u>6-2-11</u>
<u>Houston B. Keen</u>	<u>771 E 1375 Rd</u>	<u>Lawrence KS 66046</u>	<u>6/2/11</u>
<u>Newton C. McCluggage</u>	<u>727 E 1375 Rd,</u>	<u>Lawrence, KS 66046</u>	<u>6-3-11</u>
<u>James J. Pustotany</u>	<u>777 E 1300 Road</u>	<u>Lawrence KS 66046</u>	<u>6/4/11</u>

RECEIVED  
DOUGLAS COUNTY CLERK  
LAWRENCE, KANSAS  
2011 JUN - 6 P 4:27

PRINTED NAME AND SIGNATURE OF OWNER      DESCRIPTION OF PROPERTY WITHIN NOTIFICATION AREA      RESIDENCE ADDRESS (IF DIFFERENT)      DATE

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

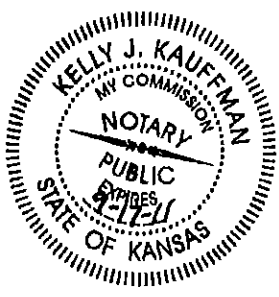
---

STATE OF KANSAS      )  
   )  
 COUNTY OF DOUGLAS      )      ss:

I am the circulator of this Protest Petition and a resident of the state of Kansas and possess the qualifications of an elector of the State of Kansas. I have personally witnessed the signing of the Protest Petition by each person whose name appears thereon.

R. Eye      Robert V. Eye  
 Circulator Signature      Printed Name  
 Circulator's Residence and Address Lanney, Mo 1704 Mississippi St. 66044 Date 6-6-11  
 Signed and sworn to (or affirmed) before me on this 6th day of June  
 2011, by Robert V. Eye, circulator of this Protest Petition.

Kelly J. Kaufman  
 Notary Public  
 My appointment expires: 9-17-11



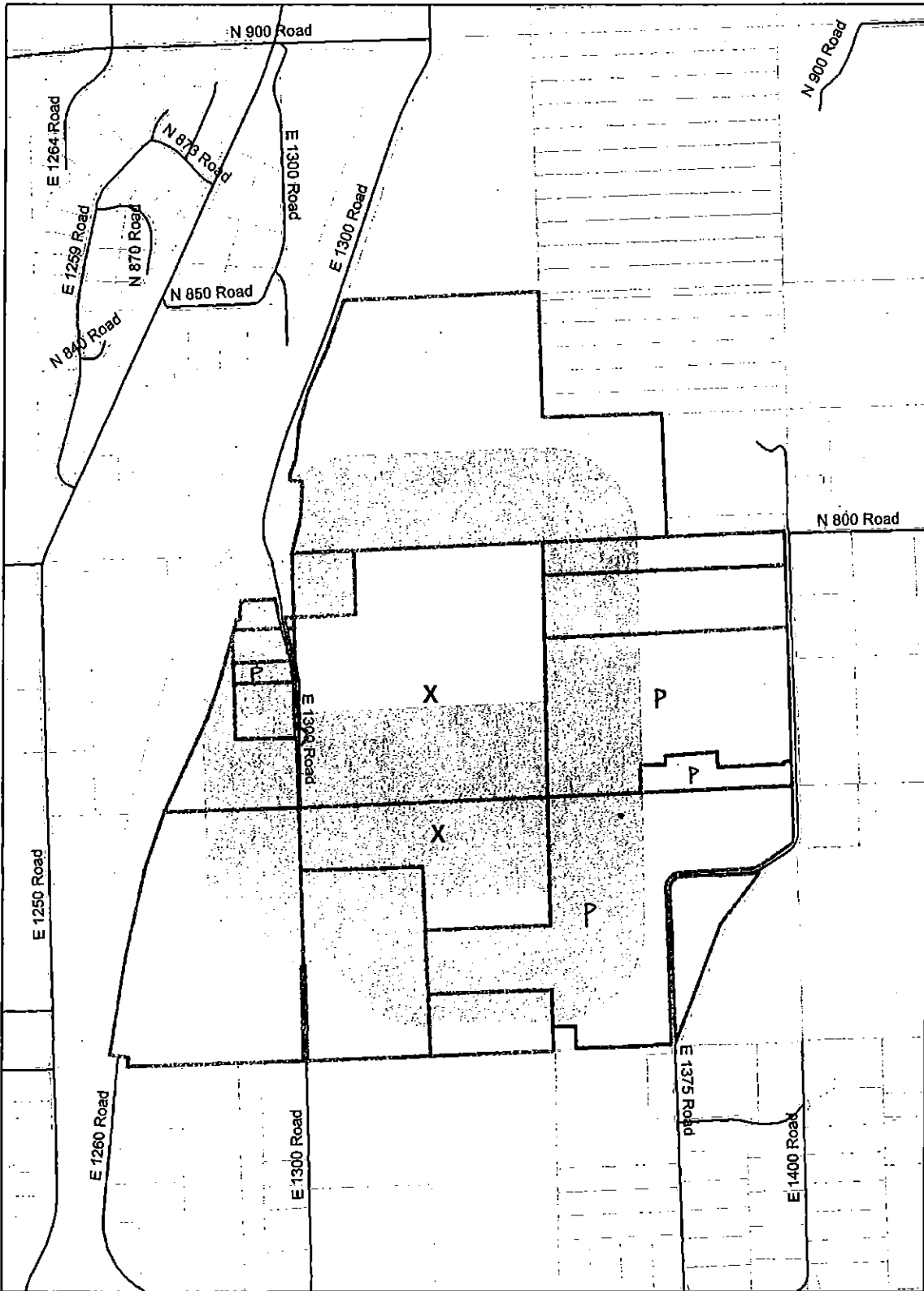
# LEGAL DESCRIPTION

A TRACT OF LAND LOCATED IN THE NORTHWEST AND SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 14 SOUTH, RANGE 19 EAST OF THE SIXTH PRINCIPAL MERIDIAN, ALL IN DOUGLAS COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 12; THENCE SOUTH 02°00'09" EAST ALONG THE WEST LINE OF SAID SECTION, 663.48 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 02°00'09" EAST ALONG SAID WEST LINE, 1990.45 FEET; THENCE SOUTH 01°33'57" EAST, 664.11 FEET; THENCE NORTH 87°11'32" EAST, 1323.98 FEET; THENCE SOUTH 01°38'31" EAST, 666.60 FEET; THENCE NORTH 87°21'26" EAST, 1321.34 FEET; THENCE NORTH 01°34'10" WEST, 1329.45; THENCE NORTH 02°03'19" WEST, 2663.46 TO A POINT ON THE NORTH LINE OF SAID SECTION; THENCE SOUTH 87°05'42" WEST, 1982.83 FEET; THENCE SOUTH 02°00'58" EAST, 664.08 FEET; THENCE SOUTH 87°08'49" WEST, 661.09 FEET TO THE POINT OF BEGINNING, LESS

A TRACT OF LAND COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 12; THENCE SOUTH 02°00'09" EAST ALONG THE WEST LINE OF SAID SECTION, 663.48 FEET; THENCE CONTINUING SOUTH 02°00'09" EAST ALONG THE WEST LINE OF SAID SECTION, 200.02 FEET TO THE POINT OF BEGINNING; THENCE NORTH 87°08'49" EAST, 379.00 FEET; THENCE SOUTH 02°00'26" EAST, 187.49 FEET; THENCE SOUTH 45°59'03" WEST, 395.98 FEET; THENCE SOUTH 87°10'23" WEST, 98.88 FEET TO A POINT ON THE WEST LINE OF SAID SECTION; THENCE NORTH 02°00'09" WEST ALONG THE WEST LINE OF SAID SECTION, 463.34 FEET TO THE POINT OF BEGINNING, LESS HIGHWAY RIGHT OF WAY. THE TRACT CONTAINS 208.67 ACRES LESS HIGHWAY RIGHT-OF-WAY.

POL WITHIN 1000 FT OF REZONING REQUEST 2-3-9-11  
RURAL TOURISM (900137 & 900138A)



06-07-11



Attorneys &amp; Counselors at Law

The Dibble Building  
123 SE 6th Avenue, Suite 200  
Topeka, Kansas 66603  
Telephone: 785-234-4040  
Fax: 785-234-4260

[www.kauffmaneye.com](http://www.kauffmaneye.com)

Kelly J. Kauffman, J.D.

Robert V. Eye, J.D.

Brett A. Jarmer, J.D.

May 23, 2011

Lawrence-Douglas County Metropolitan Planning Commission  
City Hall  
6 E. 6<sup>th</sup> St  
Lawrence, Kansas 66044  
Sent by fax to 785-832-3160

RE: Sadie's Lake Addition Rezoning request

Dear Commissioners:

We represent Mr. Newton McCluggage regarding the proposal to rezone the Sadie's Lake Addition from agricultural (A) to rural tourism (R-T). Mr. McCluggage was a recipient of the notice of the proposed rezoning from Mary Miller, City/County Planner, dated April 29, 2011. Please consider this correspondence as Mr. McCluggage's objection to the subject proposed rezoning request.

Mr. McCluggage lives at 727 E. 1375 Rd., immediately south of the Sadie's Lake Addition. He values the rural character of the area and is concerned that it will be threatened by the proposed development described in the application for rezoning.

Based on the application for rezoning, the property is proposed to be a recreational use with thirteen cabins and a retreat/conference center. However, the application does not specify the dimensions or other details of the proposed cabins. Nor does the application describe the dimensions or other details of the proposed retreat/conference center. Mr. McCluggage is concerned that the number of cabins may increase in the future. Further, the unspecified dimensions of the retreat/conference center give rise to concerns that the facility will be too large to remain contextual with the surrounding rural character.

We understand that presently the property is frequently used, with permission of the owner, for hunting. The Applicant states that the character of the property (sloping terrain, woods and watershed lake) provides a natural spatial buffer to the adjoining

[kelly@kauffmaneye.com](mailto:kelly@kauffmaneye.com)[bob@kauffmaneye.com](mailto:bob@kauffmaneye.com)[brett@kauffmaneye.com](mailto:brett@kauffmaneye.com)

properties.<sup>1</sup> Notwithstanding this natural buffer, Mr. McCluggage frequently hears gunfire that originates from the Sadie's Lake Addition. And because the property is presently used for hunting, Mr. McCluggage is concerned that it will increase as more visitors utilize the proposed cabins and retreat/conference center. The current hunting raises safety concerns and if hunting increases, as more patrons utilize the property for such activities, so too will the potential for stray rounds to find their way to Mr. McCluggage's property and other adjacent properties.

Throughout the subject application, there is repeated reference to the site characteristics mentioned above. However, the application seems to presume that the natural buffer is equally functional for all adjoining properties. Given the irregular topography of the area and varying depth of woods it is unlikely that all adjoining properties would have varying spatial barriers.

Presumably, the Applicant advances this proposal on the premise of "if we build it, they will come". Based on that premise, increased patronage of the proposed recreational area would cause additional automobile traffic. The attendant effects of increased traffic would undermine the rural character of the area that is presently valued for its relative peace and quiet.

*Horizon 2020* includes Goal 2 that seeks to conserve the rural character of Douglas County. It states:

The pattern of rural residential development should be to cluster residences to minimize impacts on the rural character of Douglas County and to protect existing agricultural and natural uses in those areas beyond the UGA of Lawrence, and the other incorporated cities of Eudora, Baldwin City and Lecompton.<sup>2</sup>

The proposed development conflicts with Goal 2.

The application does not describe whether or how its proposal comports with the intent to "cluster residences to minimize impacts on the rural character" of the adjacent properties. Presumably, Applicant considers the "natural spatial barriers" sufficient to absorb the effects of increased development. As noted above, the spatial barriers are problematic given the site's characteristics. Additionally, irrespective of the efficacy of the "natural spatial barriers" such will do nothing to offset the detrimental effects of increased traffic on rural characteristics. Further, the Applicant does not address whether developing the sloping topography will cause soil erosion, altered drainage patterns or other physical/environmental impacts that could conflict with preservation of the rural character of the area.

*Horizon 2020* addresses the Applicant's proposed uses:

Conference, recreational, or tourism uses located in the Rural Area, and which include some significant level of urban development, shall satisfy the criteria listed in Chapter Four. Such uses shall also include a mandatory minimum 200' natural buffer area or other appropriate distance as determined by the Board of County Commissioners. Proposed conference, recreational, or tourism facilities

<sup>1</sup> Application, Sheet A, nos. 2 & 3.

<sup>2</sup> *Horizon 2020*, p. 4-9.

shall include a site specific site plan with rezoning applications to demonstrate that the criteria listed in Chapter 4, and the 200' buffer area, have been met.<sup>3</sup>

The Chapter 4 rural area development criteria state in pertinent part:

The Rural Area is the land that lies outside the designated Urban Growth Areas 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. Rural development shall be subject to the overall policies, recommendations and standards of the Comprehensive Plan. There are a few locations, however, in the Rural Area which may be expected to receive some significant 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 other 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.

Applicant does not address the applicability of all Chapter 4 criteria.<sup>4</sup> In particular, there is no discussion of criterion (d) that anticipates a specific showing of how the proposed design will "preserve and/or integrate natural resources and the rural environment through appropriate land use, site design, buffering, or other methods." However, because the proposed uses include a conference center and recreational tourism, the application is required to include a site plan designating the minimum 200 foot natural buffer.

As proposed, the Applicant seeks a reduction of the 200 foot barrier to a 150 foot barrier. There appears to be no justification of this proposed compromise of the 200 foot barrier requirement except to accommodate the Applicant's building plans. The underlying purpose of the 200 foot barrier is to provide adequate spatial separation between rural development and existing uses. Mr. McCluggage is opposed to any reduction of the required 200 foot spatial barrier.

As the Commission is aware, in the context of rezoning decisions, *Golden v. City of Overland Park*, 224 Kan. 591 (1978), directs that the following be considered: (1) the character of the area; (2) zoning and uses of properties in the area; (3) whether present zoning restrictions for Sadie's Lake addition are suitable; (4) the detrimental effects of the proposed uses on

<sup>3</sup> Id. at p. 6-23.

<sup>4</sup> As for criterion (a) the application notes the proximity to Highway 59 (Sheet A, No. 3); regarding criterion (b), access to public water, the application states that rural water will be utilized (Utility Companies and Other Review Agencies). Proximity to facilities with similar uses, criterion (c), is not addressed.

adjacent properties; (5) duration of vacancy of the subject property; and (6) a balancing of interests of the benefits of the proposed uses compared to any losses caused thereby.<sup>5</sup> Moreover, the Court recognized that the instant rezoning decision should be considered in the context of the expectations of *Horizon 2020*.<sup>6</sup> As discussed above, the proposed rezoning conflicts with *Horizon 2020*. Based on the *Golden* criteria, as discussed in relation to *Horizon 2020*, the proposed rezoning should be rejected.

Based on the totality of the circumstances, Mr. McCluggage respectfully requests that the Sadie's Lake Addition rezoning application be denied.

Yours truly,



Robert V. Eye

cc: Newton McCluggage

---

<sup>5</sup> *Golden v. City of Overland Park*, 224 Kan. at 598. This list is not intended to be exhaustive. *Id.* The requirements of K.S.A. 12-741, et seq. also apply to this proposed rezoning.

<sup>6</sup> *Id.*



TO: Planning Commission  
FROM: Bill Mitchell, 1201 Emery Road, Lawrence, Kansas 66044  
SUBJ: Sadies [sic] Lake rezoning (2-3-9-11)  
DATE: 14 May 2011

RECEIVED

MAY 17 2011

City County Planning Office  
Lawrence, Kansas

I (we) own the (erstwhile, pre-KDOT, 70a.) ag land west of Sadie's lake - have owned it since before Sadie Henderson built the lake - and have reckoned ever since it was built that the land would not remain ag use forever. R-T zoning is new and open-ended enough that I (nor, probably, you) can't guess what might develop there but something will and I'm resigned to it. My resignation is not total, however; I have 3 concerns and hope you will help allay them:

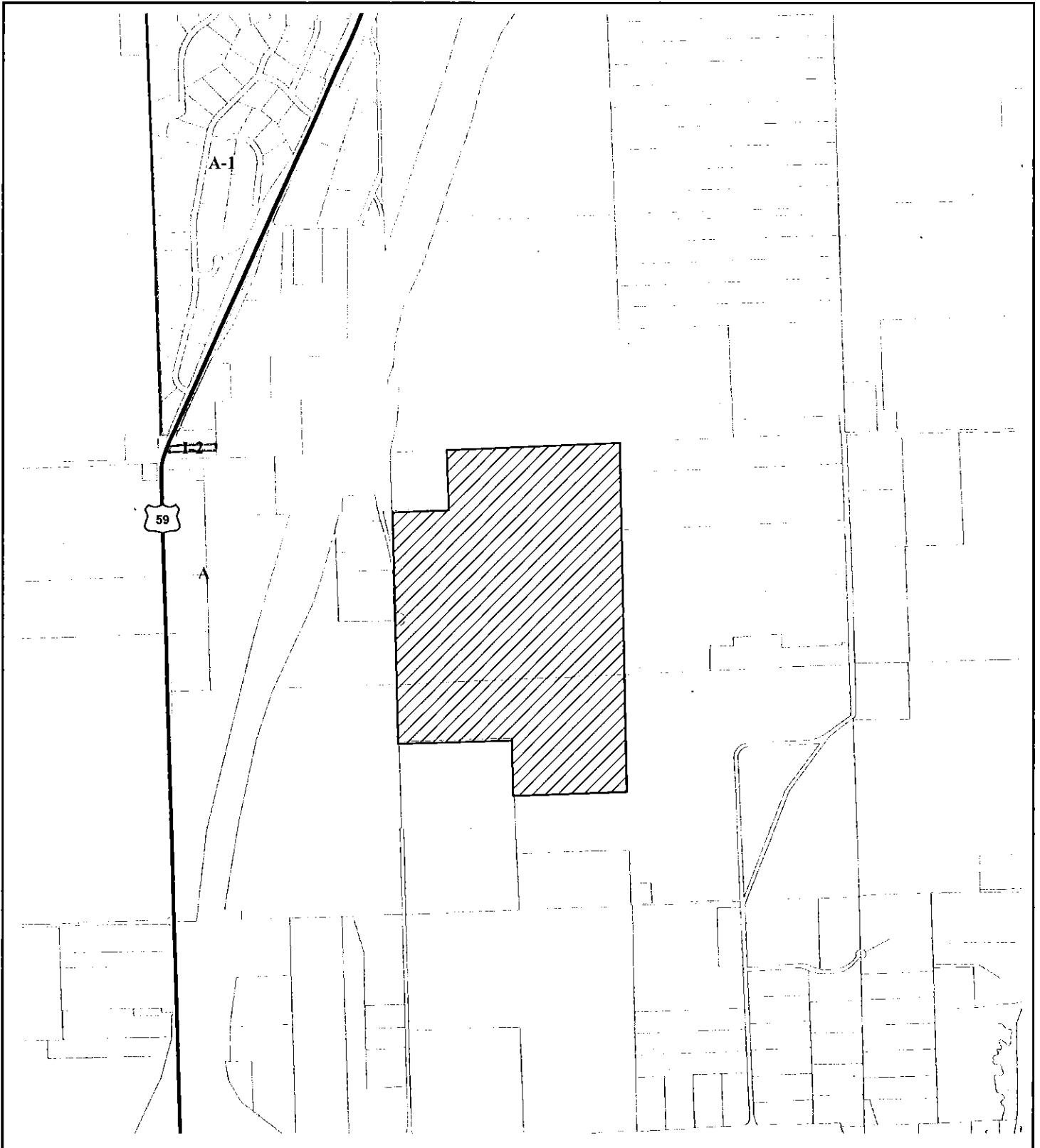
First: The road between us (1300 E) is now minimum maintenance. I don't know how or at whose cost roads are brought out of minimum maintenance status but I'd like to be assured, as this rezoning goes through, that I will not have to cost-share with my commercial neighbor to the east should the road be developed in future.

Second: Please require the statutory 200' buffer (now shown as 150') on the west side of the rezoned property. It is strange to me that the developer wants a reduced buffer on the only side of his property where there is existing residential development and his justification for the variance seems flimsy: there are "existing trees and elevation drop" on the south and east borders as well as the west. Please deny the variance.

Third: Since the site plan accompanying the rezoning request is only "conceptual" (meaning that "cabins", "lodges", "stables", etc. may morph in who-knows-what) please require notification before any future changes of use.

Thank you (three times).


cc: Mary Miller, Planner



**Z-03-09-11: Rezoning of 209 acres from A to R-T  
778 E 1300 Road**

Lawrence-Douglas County Planning Office  
May 1 2011



 Area Requested

Scale: 1 Inch = 1500 Feet

PC Minutes 5/23/11

**ITEM NO. 5 A TO R-T; 209 ACRES; 778 E 1300 RD (MKM)**

**Z-3-9-11:** Consider a request to rezone approximately 209 acres from A (Agricultural) to R-T (Rural Tourism), located at 778 E 1300 Rd. Submitted by Grob Engineering Services, for Sadies Lake LC, property owner of record.

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

Commissioner Finkeldei asked if the Site Plan would be approved by County Commission.

Ms. Miller said that was correct.

Commissioner Harris asked how large the conference center could be.

Ms. Miller said for the Woods project a 55,000 square foot conference center was approved so this conference center could be larger which could be something the County Commission would look at. She said the type of road was different and that the 55,000 square foot conference center was appropriate for the Woods since it was on N. 1800 Road but this project was on a township road so it probably would not be as large.

Commissioner Harris asked if that would be up to the County Commission to decide.

Ms. Miller said that was correct, as well as the township and county engineer providing their input on how much traffic that road could handle.

**APPLICANT PRESENTATION**

Mr. Dean Grob, Grob Engineering Services, said the reduced buffer did not lend itself well to the conference center or other larger buildings because of its total size. He said regarding the hunting aspect of the property the owners wanted to maintain any hunting rights they currently have. He said commercial hunting and guided tour hunting would not be a permitted uses in the R-T zoning and would have to be a Conditional Use Permit. He stated the owners were hunters and may have guests hunt with them but they had no desire to pursue a Conditional Use Permit. He did not believe hunting would increase with more cabins, but instead decrease due to safety reasons. He said west of the property was a minimum maintenance road that the owners had no desire to extend. He said the existing FEMA floodplain cuts off that end of the property so there was nothing to be gained by extending the road to the south.

Commissioner Hird inquired about the cost for road improvements.

Mr. Grob said presently it was a minimum maintenance road but basically there was no road there.

Commissioner Hird asked where the minimum maintenance part of it located.

Mr. Grob pointed on the overhead to where it was located. He said there was a piece of right-of-way that was vacated to the south.

Commissioner Harris asked for clarification about the hunting. She asked if the proposed zoning did not allow hunting.

Mr. Grob said commercial hunting and guided hunting tours would not be permitted in R-T zoning, but the owner would still retain property owner hunting rights.

Commissioner Harris said she did not understand how that would work.

Mr. McCullough said staff could not give a definitive answer because there may be some differences in terms of a single user. He said the gray area was if there could be exempt agricultural based hunting and a commercial property with cabins.

Commissioner Harris said she wanted to be sure the applicant knew the restrictions on the uses. She also asked if it was possible to build some of the cabins closer to the floodplain line than what was requested.

Mr. Grob said it was a matter of trying to fit everything within the layout of the land. He was okay with a condition that stated within the reduction could only be cabins versus anything else. He said it was possible to squeeze a cabin between the 200' buffer and the floodplain. He said there was only one actual residence/house across from the property.

Commissioner Finkeldei inquired about the setback requirement from the buffer line.

Mr. Grob said he wanted a little wiggle room to figure it out.

### **PUBLIC HEARING**

Mr. Robert Eye, attorney representing Mr. Newton McCluggage, said some of the comments heard tonight clarified some things and raised additional concerns. He stated if there were 13 cabins on the property there would be the opportunity for 13 hunting parties and that nothing in the plan would limit it. He said there was no limitation on the use or patron use of the property for hunting. He expressed concern for the potential of a 55,000' conference center. He said a conference center was contrary to rural character according to Horizon 2020. He was concerned that this was a sensitive area with slopes and that additional development might cause additional erosion or change drainage patterns. He also expressed concern regarding traffic. He said a 55,000' conference center would have the potential for many more cars. He felt that access to water should be available before the plan went forward and that if water was not available the rezoning would be a mute point.

Commissioner Hird said regarding Mr. Eye's argument about hunting parties, the way it was zoned now (agricultural) there could be 100 hunting parties. He asked where the number for 13 hunting parties came from.

Mr. Eye said the number came from 13 cabins.

Commissioner Hird asked if he was suggesting that there would be 13 hunting parties on 209 acres.

Mr. Eye said the way the applicant structured the rezoning request there would be nothing to prohibit that. He said it would clearly not be a safe thing to do.

Commissioner Hird said the only thing preventing that would be common sense.

Mr. Eye said that was correct.

Mr. Bill Mitchell, neighbor to the east across the minimum maintenance road, said he was relieved to hear he would not be required to co-share on the upgrading of the road. He hoped they would disallow the requested variance of 150' and require the statutory 200'. He disagreed with Mr. Grob's comment about the number of houses across 1300 Road. He said there were four houses across the road. He said the justification for this was to make room to build cabins and the real justification for narrowing the buffer was that there were existing trees and elevation drop. He felt the minimum 200' should be preserved. He stated the conceptual Site Plan may morph into something else. He felt it was only fair that neighbors be given notification of all future Site Plans and changes of use. He said if the rezoning was approved he would like to see some limitations placed on the hunting, such as bow hunting for deer or small caliber shotguns for birds. He stated Rural Tourism zoning was new and unknown making the neighbors the guinea pig.

### **APPLICANT CLOSING COMMENTS**

Mr. Grob said Mr. Mitchell was correct, there were four residences on the west side of the property. He said the one residence he spoke of earlier was the one in the setback reduction.

Commissioner Harris said she was leaning toward deferral to clear up issues on hunting and water. She asked if the applicant would be okay with that.

Mr. Grob said that would be fine if the Commission desired to do so. He said he spoke with the Rural Water District and meters were available. He said it was more of a matter of improvements may need to be made to the infrastructure. He said the property owner could currently hunt and they wanted to maintain that right.

### **COMMISSION DISCUSSION**

Commissioner Finkeldei asked staff about Mr. Mitchell's request for notification.

Ms. Miller said county Site Plans do not receive notification.

Mr. McCullough said it could be added as a condition to the rezoning.

Commissioner Finkeldei said the request regarding reduction of the buffer zone was to allow flexibility for the cabin sites during the rezoning stage. He said during the Site Plan stage they would know exactly where the cabins would be at and someone could object at that time and ask the County Commission to move it.

Ms. Miller said she believed they could, yes.

Commissioner Hird said if deferring this was the wise choice then he was fine with that. He was concerned about the notice requirement and said if this was deferred he hoped there would be notice. He said he was not nearly concerned about the hunting issue as others may be. He said with his personal experiences of hunting, two hunting parties with rifles on 209 acres, would be a problem. He said three hunting parties shooting shotguns at quail would be no problem. He said a 22 caliber rifle bullet would travel 2 miles so using a small caliber was not the answer, he said it was common sense. He said he did not want to see any commercial hunting but that it was not being requested by the applicant. He felt it was a slippery slope of restricting land owners right to hunt their own land.

Commissioner Rasmussen said he would rather deal with this tonight than delay it. He did not see a problem with including a requirement that notification be provided to the property owners along that road.

Commissioner Singleton agreed with Commissioner Rasmussen. She said the hunting issue could be researched and investigated and presented to the County Commissioners. She said Commissioner Hird was correct, hunting parties have to self regulate with noise, space, and the number of people. She would like to see this plan go on with a requirement for Site Plan notification to the neighbors in the immediate area when it goes to County Commission.

### **ACTION TAKEN**

Motioned by Commissioner Singleton, seconded by Commissioner Finkeldei, to approve the rezoning request for approximately 209 acres from A (Agricultural) District to R-T (Rural Tourism), with a reduced buffer width of 150 ft along the west property line 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 subject to the following conditions:

1. The rezoning will not be placed on the Board of County Commission's agenda for consideration until the Rural Water District has determined adequate water capacity is, or can be made, available to serve the facility.
2. Property owners on the portion of E 1300 Road which is used to access the subject property from Hwy 59 shall be notified when a site plan has been submitted for the rural tourism use.

Commissioner Finkeldei asked staff about a condition regarding notification.

Mr. McCullough said he would consult with the County Attorney, Evan Ice, about notification. He said that type of condition could create procedural issues in the future if staff does not pick up on the condition.

Commissioner Finkeldei said regarding the hunting issue, if for some reason it was discovered that hunting would not be allowed at all, the applicant may have to make a decision about proceeding with the rezoning. He said he was voting in favor with the assumption that hunting would still be allowed for the owners and their guests, but not for commercial hunting.

Commissioner Hird inquired about the issue of the gravel road accessing this site.

Mr. McCullough said the County Engineer reviewed the traffic study and would be reviewed upon Site Plan submittal.

Ms. Miller said the Township did not have objections to the number of traffic that would be traveling. She said when a Site Plan was submitted with the exact number of cabins and square footage of the lodge that was when it would be decided if any upgrades would be needed to the road.

Commissioner Hird asked with Rural Water District.

Ms. Miller said Rural Water District 2.

Commissioner Hird said he currently served on the Rural Water District 2 board and that they meet Thursday.

Commissioner Finkeldei said in theory it was possible to have a 55,000 square foot building but that the County Commission would not approve something that large.

Commissioner Harris said she would vote against the motion and would prefer to see cabins built as close as possible to the buffer boundary indicated in the Code.

Motion carried 8-1, with Commissioner Harris voting in opposition.