

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

WEDNESDAY, MAY 9, 2012

4:00 p.m

-Convene

-Consider a proclamation declaring May 2012 as "Mental Health Month." (David Johnson)

-2011 Telecommunicator of the Year Award presentation (Scott Ruf)

-Consider approval of the minutes for March 28, April 4, April 9 and April 11, 2012.

CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders;
(b) Consider approval of Cereal Malt Beverage License for Clinton Marina Inc. for a special event to be held June 16, 2012. (Clerk's Office); and
(c) Consider approval of the Force Account Agreement with KDOT for Public Works department personnel to perform construction inspection services for project No. 23-C-0059-01, reconstruction of the Route 6 curve at N 1150 Road. (Keith Browning)

REGULAR AGENDA

- (2) Emergency Communications to provide an update to the Commission on IRIS (Jillian Rodrigue)
-No backup
- (3) Consider adopting a new Resolution Implementing Open Burning Regulations in the unincorporated areas of Douglas County.(Teri Smith)
- (4) **CUP-2-1-12**: Consider a Conditional Use Permit to allow wine tasting and sales at Twin Oaks Golf Course, located at 1326 East 1900 Road. Submitted by Pep Selvan, for JF Burey, property owner of record. (PC Item 1; approved 9-0 on 4/23/12) Mary Miller will present the item.
- (5) Continued discussed from the April 25, 2012 BOCC meeting on Text Amendment TA-08-11-11 to the Douglas County Zoning Regulations for the Unincorporated Territory of Douglas County to establish *Agritourism* as a use in the County A (Agriculture) District. (Mary Miller)
- (6) Other Business
 - (a) Consider approval of Accounts Payable (if necessary)
 - (b) Appointments:
 - Lawrence-Douglas County Metropolitan Planning Commission - 05/12**
 - Property Crimes Compensation Board - 04/12**
 - Heritage Conservation Council (2) Positions - 05/12**
 - (c) Public Comment
 - (d) Miscellaneous

RECESS

6:35 p.m.

-Reconvene

- (7) Discussion of EMS expansion to Eudora (Caitlin Stene)
- (8) Public hearing to accept comment about the possible extension of Road No. 650 (N1675 Road) (Michael Kelly)
- (9) Consider resolution extending permanent Road No. 650 (N1675 Road) (Michael Kelly)
- (10) Adjourn

WEDNESDAY, MAY 16, 2012

WEDNESDAY, MAY 23, 2012 - cancelled

WEDNESDAY, MAY 30, 2012

4:00 p.m. (Proclamation for Relay for Life Week June 3-9)

WEDNESDAY, JUNE 20, 2012

6:00 p.m.

-Presentation from Fair Grounds CIP Committee

WEDNESDAY, JULY 11, 2012 4:00 p.m. – Cancelled; 6:35 p.m. – Tentatively Cancelled

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.*



Office of the County Commission

PROCLAMATION

For Douglas County, Kansas

- WHEREAS:** The U.S. Surgeon General states that mental health is fundamental to health, personal well-being, family, and interpersonal relationships, and contributes to community and society; and
- WHEREAS:** Mental illness affects one in four Americans every year, regardless of age, gender, race, ethnicity, religion, or economic status; and
- WHEREAS:** The U.S. Surgeon General has found that a range of treatments exists for most mental disorders and the efficacy of mental health treatments are well documented; and
- WHEREAS:** Douglas County, Kansas has made a commitment to community-based systems of mental health care for all residents; and
- WHEREAS:** The guiding principles of community mental health care have always been comprehensiveness, cost-efficiency, effective management, and high-quality and consumer-responsive services; and
- WHEREAS:** Mental Health America, the National Council for Community Behavioral Healthcare, and the Bert Nash Community Mental Health Center observe Mental Health Month every May to raise awareness and understanding of mental health and illness;

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS, do hereby proclaim the month of May 2012, as

"MENTAL HEALTH MONTH"

in Douglas County and call upon all citizens, government agencies, public and private institutions, businesses, and schools to recommit our community to increasing awareness and understanding of mental illness and the need for appropriate and accessible services for all people with mental illness.

ADOPTED this 9th day of May, 2012.

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

Mike Gaughan, Chairman

Nancy Thellman, Vice-Chair

Jim Flory, Member

RESOLUTION _____

WHEREAS, on the **9th of May, 2012**, the same being a regular session of the Board of County Commissioners of the County of Douglas, the application of **Clinton Marina Parking Lot Special Event** for a cereal malt beverage license came up for considerations by the above board and

WHEREAS, the Board does find that said **Clinton Marina Parking Lot Special Event** is qualified under the law to sell cereal malt beverages for consumption on the premises located **1329 E 800 Rd, Lawrence, Kansas on June 16th, 2012 only**.

WHEREAS, the Board further finds that due and legal notice has been given the **Clinton Township Board** and that ten days has expired from the giving of said notice and that no written objection has been filed by the **Clinton Township Board** protesting the granting of a cereal malt beverage license.

NOW THEREFORE, BE IT RESOLVED that the applicant, Clinton Marina granted a license to sell cereal malt beverage for consumption on the premises located at **1329 E 800 Rd, Lawrence, Kansas on June 16th, 2012 only**.

BE IT FURTHER RESOLVED, that Jameson Shew, County Clerk of Douglas County, Kansas be directed to issue said license.

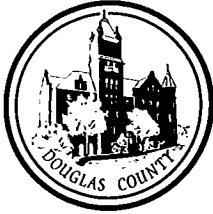
Chairman

Member

Member

ATTEST:

Jameson Shew, Douglas County Clerk



DOUGLAS COUNTY PUBLIC WORKS

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

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

MEMORANDUM

To : Board of County Commissioners

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

Date : May 3, 2012

Re : Consent Agenda Approval of Agreement for Construction Engineering
Reconstruction of Route 6 curve at N 1150 Road
Project No. 23 C-0059-01

Attached is a Force Account Agreement with KDOT by which this department would provide construction engineering (inspection) services for the project to reconstruct the curve on Route 6 at N 1150 Road approximately ½-mile south of the town of Clinton. You will recall we are receiving High Risk Rural Roads (HRRR) federal funding that covers 90% of construction and construction engineering costs. The project is currently scheduled for bid opening in May 2012 with construction scheduled for after Labor Day.

Under the agreement, this department will perform construction inspection for the project, and KDOT will reimburse us for 90% of all inspection costs. The remaining 10% will be paid from our budget as regular salaries. Under the contract, the upper limit of compensation is \$35,677.27 of which 90% would be reimbursed.

Action Required: Consent Agenda approval of the Force Account Agreement with KDOT for Public Works department personnel to perform construction inspection services for Project No. 23 C-0059-01, reconstruction of the Route 6 curve at N 1150 Road. The BOCC should sign two original copies of the agreement.

**COUNTY'S
ORIGINAL**

**CONTRACT FOR
FEDERAL-AID ROAD CONSTRUCTION
ENGINEERING BY COUNTY
(FORCE ACCOUNT AGREEMENT)**

CMS Contract No. _____

**PROJECT NO. 23 C-0059-01
DOUGLAS COUNTY**

THIS AGREEMENT entered into and is effective the date signed by the Secretary or designee, by and between Douglas County, hereinafter referred to as the "LPA" (Local Public Authority) as principal, and the Secretary of Transportation of the State of Kansas acting by and through the Kansas Department of Transportation (KDOT), hereinafter referred to as the "Secretary," as agent for the LPA pursuant to authority vested in the Parties hereto by virtue of K.S.A. 68-402b and K.S.A. 68-401 *et seq.* and an agreement between Parties dated September 8, 2011. The LPA and the Secretary are collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the Secretary of Transportation of the State of Kansas pursuant to federal and state law authorizes said LPA to perform certain construction engineering work on the above noted Project consisting of 0.18 miles of Grading and Surfacing located on Route 6 approximately 5.5 miles East of County Line and 11.5 miles North of County Line, and

WHEREAS, in the execution of this Agreement, the LPA certifies it has now available sufficient equipment of suitable type and the necessary employees adequately trained to perform the work required under this Agreement in an economical and workmanlike manner, and the LPA further certifies the use of the forces and equipment required for the performance of this work will not interfere with other work which is necessary to be performed by such forces and equipment on other roads in the LPA, and

WHEREAS, the approved plans and specifications for said Project are available in the KDOT Headquarters in Topeka, and

WHEREAS, the LPA and the Secretary desire to set forth in this instrument their understanding and agreements relating to the construction engineering and allocation of costs for the said Project.

NOW, THEREFORE, in consideration of the covenants of the Parties and to give this agreement full force and effect in providing the benefits hereinbefore mentioned, the Parties hereto mutually agree as follows:

SCOPE OF SERVICES

A. DEFINITIONS

- (1) The term "KDOT" shall mean the Kansas Department of Transportation and its authorized representatives.

- (2) The term "LPA" shall mean Douglas County and its authorized employees.
- (3) The term "FHWA" shall mean the Federal Highway Administration and its authorized representatives.
- (4) The term "Contractor" shall mean the individual, partnership, joint ventures, corporation, or agency undertaking the performance of the work designated under the terms of the construction contract.
- (5) The term "Specifications" shall mean the current Standard Specifications for Road and Bridge Construction of the Kansas Department of Transportation, as incorporated in the construction contract specifications and supplementals thereto.
- (6) The term "Construction Contract Proposal" shall mean the offer of the bidder or contractor on the Project, on the prescribed form, to perform the work and to furnish the labor and materials at the prices quoted.
- (7) The term "Special Provisions" shall mean the directions or requirements peculiar to a project and not otherwise thoroughly or satisfactorily included in the Specifications, and which are contained in the Construction Contract Proposal.
- (8) The term "Plans" shall mean the approved plan, profiles, typical cross sections, working drawings and supplemental drawings, or exact reproductions thereof, which show the location, character, dimensions, and details of the work to be done.
- (9) The term "Contract Documents" shall mean the Specifications, Construction Contract Proposal, Special Provisions and Plans, as defined above.
- (10) The term "Manual" shall mean the Construction Manual, the Forms and Documentation Manual, and all other publications of data and information produced by the KDOT for the instruction of its employees and furnished in bound or collected form.
- (11) The term "Field Engineer" shall for the administrative control of this Agreement is considered to mean Metro Engineer, Field Engineering Administrator and/or Area Engineer.

B. GENERAL RESPONSIBILITIES AND DUTIES

- (1) The LPA shall perform engineering services necessary and incidental to the accomplishment of the Project to the satisfaction of KDOT, and as more detailed in Special Attachment - Specific Construction Provisions.

The use of non-certified inspector(s) for this Project will be limited to specific work after demonstrating satisfactory performance and obtaining written approval by the Field Engineer.

- (4) The Project Engineer/Project Manager shall serve as field supervisor of all LPA personnel and services performed under this Agreement, and to act as liaison between the LPA and KDOT.
- (5) The Project Engineer/Project Manager shall transmit all reports and paperwork to, and communicate and coordinate project-related activity with the Construction Engineer/Construction Coordinator.
- (6) Orders or instructions issued by the Field Engineer will be transmitted through the Construction Engineer/Construction Coordinator and will in turn be transmitted through the Project Engineer/Project Manager to the Contractor. If in the absence of the Project Engineer/Project Manager a matter needs prompt attention, the Construction Engineer/Construction Coordinator will give the necessary orders and then notify the Project Engineer/Project Manager.
- (7) In the event of a controversy, the Project Engineer/Project Manager shall confer with the Construction Engineer/Construction Coordinator to determine proper course of action.

In the event the Construction Engineer/Construction Coordinator and the Project Engineer/Project Manager cannot agree the Construction Engineer/Construction Coordinator will promptly contact the Field Engineer or the District Construction Engineer of KDOT who will determine the necessary course of action.

D. AGENCY COORDINATION AND COOPERATION

- (1) Contact and coordination with all affected local, state and federal agencies, including the FHWA; private consultants and contractors; the general public; utilities and railroad companies shall be the responsibility of KDOT.
- (2) The LPA shall cooperate fully with KDOT, with local, state and federal agencies, including the FHWA, private consultants and contractors, the general public, utilities and railroad companies when so directed by KDOT. Such cooperation may include attendance at conferences.

E. MEETINGS AND CONFERENCES

- (1) Conferences as may be necessary for the discussion and review of the work under this Agreement shall be scheduled between the LPA and KDOT. These conferences may include field review of the Project.

Engineer, representatives of the construction office (including Construction Engineer/Construction Coordinator) and LPA's Project Engineer/Project Manager and such other representatives as may be designated by each party to the Agreement. KDOT will notify the LPA of the location, date and time and will make necessary arrangements for the conference. The evaluation shall consider the quality of the LPA's work, adequacy of staffing, extent of corrections, cooperation and related subjects.

B. DELAYS AND EXTENSIONS

- (1) Delays caused through no fault of the LPA may be cause for extension of time in completion of the work. Time extensions may be granted by KDOT upon reasonable claim and justification by the LPA and when necessary, approval has been given by the FHWA. Approved time extensions may also be cause for consideration of adjustments in payment, where warranted and approved by KDOT.

C. TERMINATION OF AGREEMENTS

- (1) The right is reserved by KDOT to terminate all or part of this Agreement at any time upon written notice to the LPA. Such notice shall be sent not less than ten (10) days in advance of the termination date stated in the notice.
- (2) The LPA may terminate this Agreement, in the event of substantial failure of other Parties to perform in accordance with the terms hereof, upon ten (10) days written notice in advance of the effective date of such termination received by all parties to this Agreement.
- (3) In the event the Agreement is terminated by KDOT without fault on the part of the LPA, the LPA shall be paid for the work performed or services rendered under the Basis of Payment determined for the Agreement.
- (4) In the event the services of the LPA are terminated by KDOT for fault including but not limited to: unreasonable delays in performance; failure to respond to KDOT requests; and/or unsatisfactory performance on the part of the LPA, the LPA shall be paid the reasonable value of the work performed or services rendered and delivered to KDOT up to the time of termination. The value of the work performed and services rendered and delivered will be determined by KDOT.

D. SUBLETTING OR ASSIGNMENT OF CONTRACT

- (1) The LPA shall not sublet or assign, outside of the LPA's departments, all or any part of the work under this Agreement without the prior written approval of KDOT. Consent by KDOT to assign, sublet or otherwise dispose of any portion of the Agreement shall not be construed to relieve the LPA of any responsibility for the fulfillment of the Agreement.

will issue the LPA a warrant for that portion of the eligible remaining five (5) percent of the voucher (up to the maximum of the federal share of the Agreement estimate and as allowed by provisions of State Law).

- (3) It is the policy of KDOT to make final payments to a LPA for services related to the Highway Program in a timely manner. The Single Audit Standards set forth in Federal O.M.B. Circular A-133, "Audits of State and Local Governments" and in 49 C.F.R. 18 (Common Rule), require that an audit be performed by an independent, certified public accountant in accordance with those standards.

KDOT may pay the final amount due for the authorized work performed based upon the LPAs most recent Single Audit Report available and a desk review of the claim by the Contract Audit Section of the Bureau of Fiscal Services. The LPA, by acceptance of this Agreement, acknowledges the final payment is subject to all single audits, which cover the time period of the expenses being claimed for reimbursement. KDOT and the LPA agree as the Single Audit Report becomes available for the reimbursement period (normally should occur within a period of 1-2 years), KDOT will review the Single Audit Report for items, which are declared as not eligible for reimbursement. The LPA agrees if payment has been made to the LPA for items subsequently found to be not eligible for reimbursement by audit, which the LPA will refund to KDOT the total amount of monies paid for same.

- (4) If they have not already done so, the LPA shall obtain a D-U-N-S number (Dun & Bradstreet Number). A D-U-N-S number can be obtained at the following website: http://www.dnb.com/us/duns_update/.
- (5) The LPA agrees it shall maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards.

IV. WORK ORDERS, EXTRA WORK, OR DECREASED WORK

- (1) Written orders regarding the services to be performed will be given by KDOT. Orders that do not change the scope of work in the Agreement, but increase or decrease the quantity of labor or materials or the expense of the work, shall not annul or void this Agreement.
- (2) The LPA must proceed with the work as directed by furnishing the necessary labor, equipment, materials and professional services to complete the services within the time limits specified in schedules or as adjusted by agreement of the Parties.
- (3) If in the LPA's opinion such orders involve work not included in the terms or scope of this Agreement, the LPA must notify KDOT in writing of this opinion if extra compensation is desired.

- (2) Documents collected or prepared by the LPA in the performance of this Agreement may be used without restriction by KDOT for any public purpose. Any such use shall be without compensation to the LPA.

D. CONTINGENT FEES

- (1) The LPA warrants they have not employed or retained any company or person, other than a bonafide employee working solely for the LPA to secure this Agreement, and they have not paid or agreed to pay any company or person, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

For breach or violation of this warranty KDOT shall have the right to annul this Agreement without liability.

E. AGREEMENT ITEMS

- (1) It is also understood and agreed that the Project plans, Specifications, Special Provisions, and Construction Contract Proposal (as available), and the Agreement Estimate and other Special Attachments (Index provides List of Special Attachments) are all essential documents of this Agreement and are hereby incorporated by reference into this Agreement and are a part thereof.

F. ACCESS TO RECORDS

- (1) The LPA and subcontractors if any, agree to maintain for inspection by KDOT and the FHWA all books, documents, papers, accounting records and other evidence pertaining to all costs incurred under this Agreement and to make such materials available at their respective offices at all reasonable times during the life of the Agreement and for three (3) years from the date of the final federal payment to KDOT under the Agreement, and to furnish copies thereof if requested.
- (2) If more than a nominal number of copies are requested the additional copies shall be furnished at the expense of the requesting agency.
- (3) The LPA will maintain these materials at the LPA offices.

G. LEGAL RELATIONS

- (1) The LPA shall become familiar with, and shall at all times observe and comply with, all applicable federal, state, and local laws, ordinances and regulations.
- (2) The LPA shall be responsible for any and all damages to property or persons arising out of an error, omission and/or negligent act in the LPA's performance of work under this Agreement.

this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

IN WITNESS WHEREOF: The Parties hereto have caused this Agreement to be signed by their duly authorized officers. It is further understood that this Agreement and all other Agreements entered into under the provisions of this Agreement shall be binding upon the Parties to this Agreement and their successors in office.

RECOMMEND FOR APPROVAL:

APPROPRIATE LOCAL OFFICIAL:

Douglas County Engineer

Chairperson of Board
of County Commissioners

ATTEST:

Commission Member

Douglas County Clerk (Date)

Commission Member

Kansas Department of Transportation
Michael S. King, Secretary of Transportation

BY: _____ (Date)
Jerome T. Younger, P. E.
Deputy Secretary and
State Transportation Engineer

INDEX OF ATTACHMENTS

Special Attachment No. 1	Specific Construction Provisions
Special Attachment No. 2	Civil Rights Act of 1964 Rehabilitation Act of 1973 Americans With Disabilities Act of 1990 Age Discrimination Act of 1975 Executive Order 12898 of 1994
Special Attachment No. 3	Contractual Provisions Attachment
Special Attachment No. 4	Estimate of Engineering Fee
Special Attachment No. 5	Listing of KDOT Certified Inspectors

SPECIFIC CONSTRUCTION PROVISIONS

I. SCOPE OF SERVICES

A. SERVICES TO BE PERFORMED BY THE CONSULTANT

The LPA agrees to:

- (1) Attend all conferences designated by KDOT, or required under the terms of the Agreement.
- (2) Designate a Project Engineer/Project Manager who shall report and transmit Project activity and documents to KDOT's Construction Office.
- (3) Assign a sufficient number of KDOT Certified Inspector(s) of the appropriate classifications to the Project to perform the services required under the Agreement in a timely manner to avoid delay to the Contractor.
- (4) Become familiar with the standard practices of KDOT, the Contract Documents (Specifications, Construction Contract Proposal, Special Provisions and Plans), and the Contractor's proposed schedule of operations prior to beginning field work under the Agreement.
- (5) Perform the LPA's field operations in accordance with accepted safety practices.
- (6) Furnish all equipment required to accomplish the LPA's work and to check or test it prior to use on the Project.
- (7) Provide for LPA personnel such transportation, supplies, materials and incidentals as are needed to accomplish the services required under the Agreement.
- (8) Undertake the following:

Transmit orders from KDOT to the Contractor and provide guidance in the proper interpretation of the Specifications and Plans.

Perform or provide construction surveys, staking, and measurements needed by the Contractor (unless contractor construction staking is to be performed as a bid item by the Contractor) and perform measurements and surveys that are involved in the determination of final pay quantities.

Inspect all phases of construction operations to determine the Contractor's compliance with Contract Documents and to reject such work and materials which do not comply with Contract Documents until any

questions at issue can be referred to and be decided by the KDOT Field Engineer.

Take field samples and/or test materials to be incorporated in the work, and reject those not meeting the provisions of the Contract Documents until any questions at issue can be referred to and be decided by the Field Engineer.

Make certain that test report records or certificates of compliance for materials tested off the Project site and required, prior to the incorporation in the work, have been received.

Keep such daily diaries, logs and records as are needed for a complete record of the Contractor's progress.

Measure and compute all materials incorporated in the work and items of work completed, and maintain an item account record.

Provide measurement and computation of pay items.

Prepare and submit, or assist in preparing, such periodic, intermediate and final reports and records as may be required by KDOT and as are applicable to the Project, which may include:

- a. Progress Reports
- b. Weekly statement of working days
- c. Notice of change in construction status
- d. Report of field inspection of material
- e. Test report record
- f. Contractor pay estimates
- g. Pile driving data
- h. Piling record
- i. Final certification of materials
- j. Explanation of quantity variation
- k. State of contract time
- l. Other records and reports as required by the Project

Review, or assist in reviewing and preparing of documents, all Contractor submittals of records and reports required by KDOT and as are applicable to the Project to assure the Project is constructed in accordance with Federal and State requirements and which may include:

- a. Requests for partial and final payment
- b. Other reports and records as required by the individual Project

- (9) Prepare and submit, if desired by the LPA, partial payment invoices for services rendered by the LPA, but not to exceed one submittal per month.
- (10) Collect, properly label or identify, and deliver to KDOT all original diaries, logs, notebooks, accounts, records, reports and other documents prepared by the LPA in the performance of the Agreement, upon completion or termination of the Agreement.
- (11) Return, upon completion or termination of the Agreement, all Manuals, Contract Documents, guides, written instructions, unused forms and record keeping books, and other documents and materials furnished by KDOT. The LPA shall be responsible for replacing lost documents or materials at the price determined by KDOT.
- (12) Prepare and submit a certification of Project completion.
- (13) Prepare and submit a final payment voucher for services rendered by the LPA.
- (14) Prepare and deliver (when Project is completed) one copy of major changes to the plans (by letter) to KDOT. The letter should contain such items as the following:
 - a. Earthwork and Culverts
 1. A revised list of benchmarks
 2. Location of government benchmarks
 3. Major changes in alignment
 4. Major changes in grade line
 5. Established references on cornerstones
 6. Major changes in location of drainage structures
 7. Major changes in flow-line of drainage structures
 8. Drainage structures added or deleted
 9. Any change of access control
 - b. Bridges
 1. Changes in stationing
 2. Changes in type, size or elevation of footings
 3. Changes in grade line

B. SERVICES TO BE PROVIDED BY THE SECRETARY

- (1) The Secretary agrees to:
 - a. Make available to the LPA sufficient copies of the Contract Documents, shop drawings, plan revisions, written instructions and other information and data considered by KDOT to be necessary to

enable the LPA to perform the work under this Agreement, for the Project to the same standards required of KDOT's personnel.

- b. Provide for the use of the LPA a sufficient supply of the blank diaries, logs, record keeping books and reporting forms considered by KDOT to be necessary for the LPA to perform the services under this Agreement to the same standards required of KDOT'S personnel.
- c. Provide space in the field office and field laboratory furnished by the Contractor under the terms of the Construction Contract Proposal, for the occupancy and use of the LPA until completion of the construction work.
- d. Perform or provide for laboratory testing of materials requiring off-site testing facilities, and obtain test reports or certificates of compliance hereof.
- e. Perform all necessary weld inspection when there is welding for bridge beam connections and splices, and for sign supports. This includes all cross frames, diaphragm connections, and stud welding.
- f. Designate a Construction Engineer/Construction Coordinator in the Construction Office with the duties and responsibilities set forth in Section IC of the General Construction Provisions of the Agreement.
- g. Provide, through the Field Engineer and the District Staff, such assistance and guidance to the LPA as may be reasonably necessary to perform and complete the Agreement in conformance with standard construction engineering practices of KDOT.

- (2) KDOT reserves the right to assign and charge to the Project such KDOT personnel as may be needed.

II. PROSECUTION AND PROGRESS

- A. It is anticipated work under the construction contract will start in 2012, and be completed by/in 2012.
- B. The LPA shall complete all services to be rendered under this Agreement no later than two months after completion of Project construction. Failure to comply may result in disqualification of the LPA's Project Engineer/Project Manager or Chief Inspector until proper documentation is submitted and accepted.

III. BASIS OF PAYMENT

- A. Compensation of services provided by the LPA under the terms of the Agreement shall be the incurred and reimbursable actual costs to the LPA not to exceed the Agreement Estimate and as allowed by State Law and the Federal Share which will be limited to the applicable Federal-aid cost sharing formulae and availability of Federal-aid funds for engineering services. Federal-aid participation for this project is 90%.
- B. Reimbursement for costs will be limited to those which are allowable under the Code of Federal Regulations (CFR) Title 23 and Title 48, Chapter 1 and the Federal-aid Highway Policy Guide, Volume 1, Chapter 7, Section 2, except to the extent the provisions of that subpart are clearly inappropriate to the Agreement.
- C. The estimated hourly equipment and labor costs and Project estimates are included as special attachments.
- (1) Labor and fringe benefits will be charged at the LPA's actual cost. If an employee is paid monthly, his hourly rate will be computed by dividing his salary by the hours per month that he works.
 - (2) Equipment rental rates shall be KDOT's actual operating costs (excluding depreciation) of equipment used for the Project.
 - (3) Materials will be estimated at the price of the low quotes (when necessary) and paid for at invoice prices. (Copy of invoices to be furnished to the Secretary's Construction Engineer/Construction Coordinator).
- D. After completion of the Project, the LPA will furnish the Construction Engineer/Construction Coordinator with seven (7) certified itemized statements of the actual cost of construction engineering force account work detailed as follows:
- Labor: The total hours, rates and extension for each classification.
Equipment: The total hours, KDOT's rates and extension for each unit of machinery and equipment.
Materials: The quantities of materials, prices and extensions.
Transportation: Cost of delivery of materials, if any.
Miscellaneous: Cost of property damage, liability and worker's compensation insurance premiums; unemployment insurance contributions, social security, health and retirement payments, and/or other eligible Project related costs. Administrative costs are not eligible for reimbursement.

The statements shall be accompanied and supported by invoices for all materials used and transportation charges. However, if materials used for this Project are not specifically purchased for such work, but are taken from the LPA's stock,

inventory records must support quantities and process for materials from stock used for this Project.

The Secretary shall reserve the right to approve or disapprove the LPA's submitted claims for equipment actual operating cost.

- E. The Agreement Estimate of **\$35,677.27** has been agreed upon as the upper limit for compensation. It is intended as nearly as can be estimated to cover only actual costs and was agreed upon in order that the Secretary, as agent for said LPA, might permit the LPA to do such work as set forth in the Contract Documents, provided, however that if extra work has been authorized it will be reimbursed as per terms of the supplemental agreement(s).

IV. MISCELLANEOUS PROVISIONS

A. AUTHORIZED REPRESENTATIVES

- (1) The Field Engineer for KDOT will be Mr. Steve Baalman, P.E., whose work address is 322 South Martin, Osage City, Kansas 66523 and work telephone is 785-528-3128.
- (2) The Project Engineer/Project Manager for the LPA will be Mr. Nolan Packard, Certification Number 1896 (expiration date is 2/19/2015), whose work address is 1242 Massachusetts, Lawrence, Kansas 66044 and work telephone is 785-832-5293.
- (3) The Chief Inspector for the LPA will be Mr. Charles Quinn, Certification Number 1981 (expiration date is 12/14/2012), whose work address is 1242 Massachusetts, Lawrence, Kansas 66044 and work telephone is 785-832-5293.

B. ACCESS TO RECORDS

- (1) All documents and evidence pertaining to costs incurred under this Agreement will be available for inspection during normal business hours in the LPA's office, for a period of three (3) years following final Agreement payment.

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY
POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following "Nondiscrimination Clauses".

CLARIFICATION

Where the term "Consultant" appears in the following "Nondiscrimination Clauses", the term "Consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the Consultant, or the Consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

- 1) Compliance with regulations: The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the "Regulations"). The Regulations are herein incorporated by reference and made a part of this contract.
- 2) Nondiscrimination: The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) Solicitations for Subcontractors, including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

- 4) Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- 5) Employment: The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- 6) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) Disadvantaged Business Obligation
 - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 8) Executive Order 12898
 - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.
- 9) Incorporation of Provisions: The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.

State of Kansas
 Department of Administration
 DA-146a (Rev. 10-11)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 10-11), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

Attachment 10 - Construction Engineering Worksheet (Inspection)

Note: This spreadsheet is available to assist you with your inspection estimate to be forward to KDOT's approval. You may manipulate this form to your satisfaction.

Project No. 23 C 0059-01
 City of DOUGLAS County

Supporting Data Sheet
 for
 ESTIMATE OF ENGINEERING FEE

A. Direct Payroll

Contract Administration

<u>Work Type</u>	<u>Employee</u>	<u>Est. Hrs.</u>	<u>Rate</u>	<u>Extension</u>
1. Field Inspection daily contract documents	Eng(s) &/or Mang. Techn(s)	<u>12 @</u> <u>648 @</u>	<u>\$49.56 =</u> <u>\$26.69 =</u>	\$594.72 <u>\$17,295.12</u>
Subtotal				<u>\$17,889.84</u>
2. On-site Testing	Eng(s) &/or Mang. Techn(s)	<u>0 @</u> <u>36 @</u>	<u>\$49.56 =</u> <u>\$26.69 =</u>	\$0.00 <u>\$960.84</u>
Subtotal				<u>\$960.84</u>
3. Surveying	Eng(s) &/or Mang. Techn(s)	<u>4 @</u> <u>12 @</u>	<u>\$49.56 =</u> <u>\$26.69 =</u>	\$198.24 <u>\$320.28</u>
Subtotal				<u>\$518.52</u>
4. Cleanup	Techn(s)	<u>80 @</u>	<u>\$26.69 =</u>	<u>\$2,135.20</u>
5. Final Paper Preparation	Eng(s) &/or Mang. Techn(s)	<u>2 @</u> <u>60 @</u>	<u>\$49.56 =</u> <u>\$26.69 =</u>	\$99.12 <u>\$1,601.40</u>
Subtotal				<u>\$1,700.52</u>
Total Direct Payroll Costs				<u>\$23,204.92</u>

Project No. 23 C 0059-01
 City of DOUGLAS County

Summary Total Direct Payroll Costs

	Hours	Rate	Extension
Eng(s) &/or Mang.	<u>18 @</u>	<u>\$49.56 =</u>	\$892.08
Techn(s)	<u>836 @</u>	<u>\$26.69 =</u>	\$22,312.84
Total Direct Payroll Costs			\$23,204.92
B. Salary Related Overhead <u>50.3 %</u>			\$11,672.07
C. Total Payroll plus Overhead			\$34,876.99
D. Direct Expenses (Travel, Postage, Misc.)			
Mileage	miles	\$0.100mile	
Auto	<u> @</u>		\$0.00
Pickup	<u>3,078 @</u>	<u>\$0.26</u>	\$800.28
Postage & Telephone	<u> @</u>	<u> </u>	\$0.00
Testing Laboratory or Consulting Firm to Assist	<u> @</u>	<u> </u>	\$0.00
Equipment Rental	<u> @</u>	<u> </u>	\$0.00
Total Other Direct Expenses			<u>\$800.28</u>
TOTAL FORCE ACCOUNT ESTIMATE			<u>\$35,677.27</u>

Listing of Inspection Staff

The following personnel are available to perform work on project 23C-0059-01 when required

Certification and Expiration Dates

Name	Cert No.	INSPECTION						TESTING											QC/QA		
		BI	API	CPI	STR	IMSA	II AC	ACI AGF	ACI AGL	AMF	ACI CF	ACI CS	PO	SF	SD	SOF	SOL	NUC	ASPHALT	CONCRETE	
Nolan Packard	1896	2/15	2/15	2/15	2/15			1/13									2/13		1/13		
Charles Quinn	1981	12/14	12/14	12/14	12/14			1/13						3/14					3/15		
Glenda Melanson	2530	2/15	2/15	2/15				2/15											3/14		
Doug Stephens	730	4/12	4/12	4/12	4/12									3/15		3/16			1/13		

MEMO

To: Douglas County Commission

From: Teri Smith

Date: April 30, 2012

Re: Burn Ban Resolution

The Commission is being asked to consider the following:

Adopt a new Resolution Implementing Open Burning Regulations in the unincorporated areas of Douglas County.

The current process of enacting a burn ban requires

1. Notification and consensus from Fire Chiefs
2. Resolution brought before commissioners for approval and adoption for seven days
3. Information communicated to all appropriate parties
4. Additional requests to terminate or extend resolution

At the request of commissioners, Douglas County Emergency Management, Fire Chiefs and legal have developed regulations to promote fire safety and to protect persons and property from the dangers of open burning by implementing limited restrictions and requirements on open burning. This resolution will streamline the implementation of a burn ban and reduce confusion for the citizens of Douglas County by setting out a comprehensive regulatory process regarding open burning in the unincorporated areas. These include:

- Persons conducting open burning shall notify the jurisdictional fire department and Douglas County Emergency Communications.
- Open burning will only take place during a Low, Moderate or High Rangeland Fire Index Range, when wind speed is not greater than 20mph.
- There will be no burns in the Very High or Extreme categories of the Rangeland Fire Index.

HOME RULE RESOLUTION NO. HR- _____

A HOME RULE RESOLUTION IMPLEMENTING OPEN BURNING REGULATIONS FOR THE UNINCORPORATED AREAS OF DOUGLAS COUNTY, KANSAS

WHEREAS, K.S.A. 19-101a, *et seq.*, and amendments thereto, authorize the Board of County Commissioners of Douglas County, Kansas (hereinafter the "Board") to transact all county business and perform all powers of local legislation and administration it deems appropriate, including the enactment of legislation designed to protect the health, safety, welfare, and quality of life of the citizens of Douglas County; and

WHEREAS, it has been determined by the Board that there is a need to set out a comprehensive regulatory practice regarding open burning in the unincorporated areas of Douglas County, Kansas; and

WHEREAS, Kansas Administrative Regulations (hereinafter "K.A.R.") 28-19-645, prohibits the burning of any wastes, structures, vegetation, or any other materials on any premises, except as authorized by K.A.R. 28-19-647 and K.A.R. 28-19-648; and

WHEREAS, the Board has determined it is necessary and advisable to promote fire safety and to protect persons and property from the dangers of open burning by implementing limited restrictions and requirements on open burning.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS, SITTING IN REGULAR SESSION THIS ____ DAY OF _____, 2012 AND INTENDING TO EXERCISE OF THE POWERS OF HOME RULE LEGISLATION PURSUANT TO K.S.A. 19-101a, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Adoption of Regulations on Open Burning. The following is adopted as part of Chapter 6 (Fire Safety), Article 1 (Outdoor Burning) of the Douglas County Code:

CHAPTER 6. FIRE SAFETY

ARTICLE 1 OUTDOOR BURNING

6-101. OPEN BURNING DEFINED. No person shall conduct any open burning in the unincorporated areas of Douglas County except as allowed by K.A.R. 28-19-645 and this Article. Allowed open burning includes:

- (a) Agricultural open burning (K.A.R. 28-19-648). The open burning of vegetation such as grass, woody species, crop residue, and other dry plant growth for the purpose of crop, range, pasture, wildlife or watershed management; and
- (b) Residential open burning (K.A.R. 28-19-647(a)(1)). Open burning at a residential premise containing five or less dwelling units and incidental to the normal habitation of the units; and

- (c) Ceremonial and cooking open burning (K.A.R. 28-19-647(a)(2)). Open burning for cooking or ceremonial purposes on public or private land regularly used for recreational purposes. A ceremonial and cooking open burning fire shall not exceed five feet in diameter at its base. Ceremonial and cooking open burning fires that exceed this limitation require a permit from the Kansas Department of Health and Environment (KDHE) pursuant to K.A.R. 28-19-647(a)(4); and
- (d) Specifically approved open burning. (K.A.R. 28-19-647(a)(4)). Open burning approved by the Kansas Department of Health and Environment (KDHE) pursuant to K.A.R. 28-19-647(a)(4).

6-102. AGRICULTURAL OPEN BURNING.

- (a) Notice required. Persons conducting agricultural open burning, as described in 6-101(a), shall notify the jurisdictional fire department (determined by location of the burn) and the Douglas County Emergency Communication Center of such intention to burn prior to the burn and provide the following information and agree to the stated conditions:
 1. Location of the intended burn and the name, address, and telephone number of the person responsible for the open burning.
 2. Duration and schedule of the burning.
 3. Description of the proposed open burning.
 4. Agree to notify the jurisdictional fire department and Douglas County Emergency Communication Center when the fire is extinguished.

While a jurisdictional fire department or a county agency or department may receive notice of the burn and provide advice regarding the open burning, those agencies, departments and employees are only providing advice and do not assume any risk, create any duties or provide any guarantees as to the burn or the surrounding conditions.

- (b) Regulations. Persons conducting agricultural open burning as described in 6-101(a) shall comply with the following regulations:
 1. A person shall not conduct an agricultural open burn that creates a traffic safety hazard. If conditions exist that may result in smoke blowing toward a public roadway, the person conducting the burn shall give adequate notification to the Highway Patrol, Sheriff's Office, or other appropriate state or local traffic control authorities before burning.
 2. A person shall not conduct an agricultural open burn that creates an airport safety hazard. If smoke may affect visibility at an airport, the person conducting the burn shall give adequate notification to the appropriate airport authorities before burning.
 3. The person conducting the burn shall ensure that the burning is supervised until the fire is extinguished.

6-103. OPEN BURNING PROHIBITED UNDER CERTAIN CONDITIONS.

- (a) Open burning will only take place during a Low, Moderate, or High Rangeland Fire Index Range, when wind speed is not greater than 20mph. There are to be no burns in the Very High or Extreme categories of the Rangeland Fire Index.
- (b) Open burning is prohibited on those days when a local or state governmental entity has imposed a county-wide or state-wide burning ban that includes the proposed burn location as set forth in 6-104 and 6-105.

6-104. DECLARATION OF EMERGENCY.

- (a) As provided in K.S.A. 48-932, the Chairman of the Board may declare that due to low moisture conditions that an emergency exists and that the outdoor burning restrictions contained in section 6-105 shall take effect and be in force for periods not in excess of seven days at a time. Such restrictions shall take effect and be in force 24 hours after the filing thereof with the Douglas County Clerk.
- (b) As an alternative to the procedure contained in paragraph (a) of this section, a majority of the Board may declare by ordinary motion that due to low moisture conditions that an emergency exists and that the outdoor burning restrictions contained in this article shall be in force for such time period as determined appropriate by the Board. Such restrictions shall take effect and be in force 24 hours after the filing thereof with the Douglas County Clerk.

6-105. OUTDOOR BURNING RESTRICTIONS DURING EMERGENCY. Except as provided in section 6-106, during an emergency declared in accordance with section 6-104, the following activities shall be prohibited in the outdoors:

- (a) The careless use and disposal of smoking materials, including, but not limited to, cigarettes, cigars and pipes. All smoldering remains shall be discarded in inflammable containers and in a manner to reduce the potential for fires.
- (b) Building, maintaining, attending or using any open fire or campfire, except in permanent stoves or fireplaces or in barbecue grills in developed recreational sites or on residential home sites.
- (c) Burning of all fence rows, fields, wild lands, ravines, trash, debris or other areas or materials. Such burning may be exempted from these restrictions when it is necessary for crop survival and has been specifically approved in writing by both the Douglas County Sheriff's Office and, except in Marion Township, the township fire chief of the township in which the burning is to take place. Crop survival means the burning of stubble in preparation for the planting of a crop.

6-106. EXEMPTIONS.

- (a) An exemption from the restrictions under section 6-105 may be granted by the Board upon the filing of an application therefore by the owner or operator of any business in Douglas County that the Board finds meets the following conditions:

1. The burning of trash, debris, or waste that is a byproduct of the operation of the business is a business necessity.
 2. Such burning will be carried out at a location, at such a time, and in a manner that does not pose an unreasonable risk to neighboring property and the public health, safety and welfare.
 3. The business presents evidence of insurance determined by the Board to be adequate to insure against loss of life, other personal injury, or damage to any property occurring on or off the business premises that results either directly or indirectly from such burning operation.
 4. The business is in compliance with all other laws, rules or regulations of Douglas County at the time the permit is granted.
 5. The proposed burn complies with all permit and other requirements of K.A.R. 28-19-647.
- (b) Any exemption granted by the Board in accordance with this Section shall be subject to revocation at any time by a majority vote of the Board if the Board determines that one or more of the findings made in accordance with Subsection (a) of this Section are no longer applicable.
- (c) The Board may impose such conditions upon the approval of an exemption as it deems appropriate under the circumstances.

6-107. PRESUMPTION. In levying a criminal penalty or civil fine for any violation or failure to comply with any provision of this Resolution, it shall be considered *prima facie* evidence that the person owning, occupying, or controlling any property upon which open burning is conducted voluntarily allowed such burning to occur.

6-108. INTERPRETATION AND SEVERABILITY. This Article is supplementary to other provisions or remedies authorized or prescribed by any other applicable law or rule or regulation enacted thereunder. The invalidity of any particular provisions of this Article shall not affect the validity of any other provision. This Article shall be liberally construed to the fullest extent permitted by law to effectuate the broad remedial purposes for which it is intended.

6-108. ENFORCEMENT AND PENALTIES.

- (a) General Violation. Except as provided in Subparagraph (b) below, any person who violates or fails to comply with any provisions of this Article or engages in conduct in violation of this Article shall be guilty of a Class C misdemeanor.
- (b) Violation of a Burn Ban. A person conducting or responsible for an open burn in violation of a county or state-wide burn ban shall be guilty of a Class A misdemeanor.
- (c) Initiation of Criminal Proceedings. In addition to any other method of initiating a criminal proceeding under applicable law, any law enforcement officer or fire official of a governmental entity may initiate a criminal proceeding under this

Article by making an offense report and forwarding a copy to the district attorney for prosecution or by serving a citation and notice to appear in court upon the alleged violator.

SECTION 2. Repeal of Prior Provisions. CHAPTER 6, ARTICLE 1. OUTDOOR BURNING, Sections 6-101, 6-102, 6-103, and 6-104, as existing in the County Code before adoption of this Resolution, are hereby repealed. These sections are renumbered and amended as set forth above.

SECTION 3. Effective Date. This is a Home Rule Resolution and shall take effect and be in force from and after its publication once in the official county newspaper.

PASSED, APPROVED and ADOPTED by the Board of Douglas County Commissioners of Douglas County, Kansas on this _____ day of _____ 2012.

BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, KANSAS:

Mike Gaughan, Chair

Nancy Thellman, Member

Jim Flory, Member

ATTEST:

Jameson D. Shew, County Clerk

PLANNING COMMISSION REPORT
Regular Agenda – Public Hearing Item
Joint Hearing with Eudora Planning Commission

PC Staff Report
April 23, 2012

ITEM NO. 1: CONDITIONAL USE PERMIT FOR TWIN OAKS GOLF COURSE; 1326 E 1900 RD (MKM)

CUP-2-1-12: Consider a Conditional Use Permit to allow wine tasting and sales at Twin Oaks Golf Course, located at 1326 East 1900 Road. Submitted by Pep Selvan, for JF Burey, property owner of record. *Joint meeting with Eudora Planning Commission.*

STAFF RECOMMENDATION: Staff recommends approval of the Conditional Use Permit for the addition of a wine tasting area subject to the following conditions:

- 1) The provision of a revised floor plan with the following changes:
 - a. Addition of a note that the CUP permit may be released after the applicant has obtained the necessary State license for the wine tasting room.
 - b. Addition of a note that states that this CUP approves a wine tasting area with sales for off-site consumption. Sales of alcohol for on-site consumption would require rezoning to an appropriate zoning district.
 - c. The square footage of the area to be used for retail sales should be noted on the plan.
- 2) Parking shall be provided on surfaced parking area shown on approved CUP site plan. Additional parking would require the submittal of a revised site plan for the Golf Course CUP.
- 3) Compliance with Douglas County Building Codes as determined necessary by the Director of Zoning and Codes prior to the release of the Conditional Use Permit.

Attachments:

Attachment A: KSA-41-308a, Kansas Farm Winery Act
Attachment B: Letter of Determination
Attachment C: Clubhouse floor plan

Reason for Request: *“The approval of this application would allow us to expose our facility to another layer of adult interest. Some of our customers would enjoy the golfing activities, some wine tasting, and some both. This would increase the flow of traffic for new customers to realize the value of the entertainment that we provide.”*

KEY POINTS

- Wine tasting rooms located on a winery are permitted as agriculturally exempt uses. The State allows additional wine tasting areas; however, off-site wine tasting areas require approval of a CUP or location in an appropriate zoning district.
- The property is zoned V-C (Valley-Channel) which permits only agricultural and recreational uses. Residential uses are limited to ‘farm dwellings’.
- This Conditional Use Permit is in addition to the previous approved permit for the golf course [CUP-10-16-97].

DESCRIPTION OF USE

The subject property, 1326 E 1900 Road has an approved CUP for a golf course, driving range, pitch

and putt course, and clubhouse. This proposal is to add a second CUP for the addition of a wine tasting area within the clubhouse. The Kansas State Farm Winery Act, attachment A, allows each farm winery up to three locations for wine tasting and sales. BlueJacket Crossing Winery intends to locate their second location for wine tasting and sales within the clubhouse. No physical changes are proposed to the property. A mobile stand will be used for the sale of wine bottles and pouring of the samples. (See floorplan, Attachment C) The floor plan should note the approximate square footage of the area dedicated for retail sales of wine. If the wine tasting area increases the business at the clubhouse to the point that the parking area provided is inadequate, it will be necessary to revise the golf course CUP site plan to increase the parking area.

ASSOCIATED CASES/OTHER ACTION REQUIRED

- Board of County Commissioner’s approval of the Conditional Use.
- Release of Conditional Use Permit by the Douglas County Zoning and Codes Office.
- State license for the wine tasting room obtained.

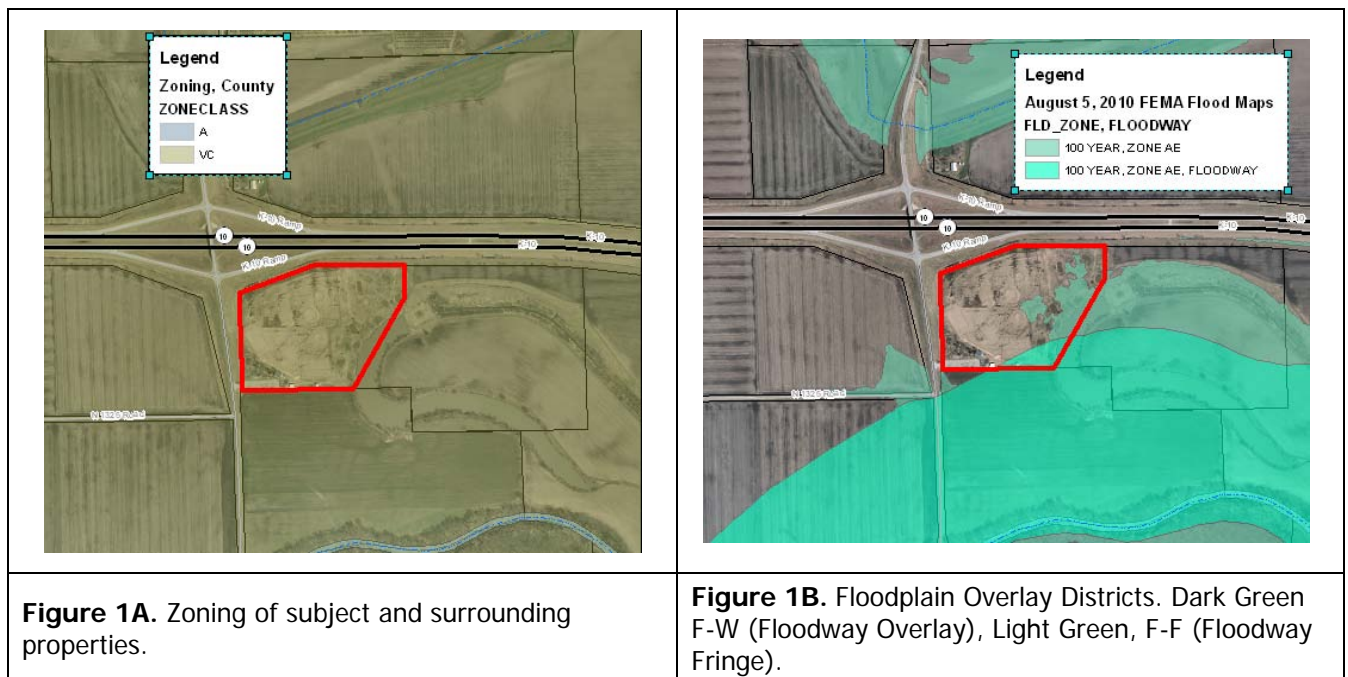
PUBLIC COMMENT

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

GENERAL INFORMATION

Current Zoning and Land Use: V-C (Valley Channel) F-W (Floodway Overlay) and F-F (Floodway Fringe Overlay) Districts; *Recreation facility*; golf course/pitch and putt/driving range and clubhouse. Proposed addition of wine tasting area.

Surrounding Zoning and Land Use: VC (Valley Channel) District in all directions; F-W (Floodway Overlay) District to the south and south east and F-F (Floodway Fringe Overlay) District to the southeast and east. Agricultural land uses in all directions. K-10 right-of-way adjacent to north property line. (Figure 1)



II. CHARACTER OF THE AREA

The subject property is approximately 24 acres in size, and is encumbered with the floodplain on the southeast portion. The property is developed with a clubhouse, driving range, pitch and putt area, and a golf course. The property is approximately 1.5 miles west of the City of Eudora and is adjacent to K-10. An off-ramp in this area provides access to K-10.

The surrounding area is agricultural with farm residential uses. (Figure 2)

Staff Finding – This agricultural area is characterized by its close proximity to the city of Eudora and K-10, a state highway.



Figure 2. Surrounding land use in the area is predominately agricultural. (Subject property outlined)

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

Applicant's response:

"The addition of a farm winery tasting space within the existing clubhouse compliments the adult golf experience. Both the driving range and farm wineries are zoned agriculturally. Most golf facilities provide the sales of beverages, including adult beverages. In this case patrons would be limited to free wine tasting and the opportunity for them to buy unopened wine by the bottle. This would be another item of ancillary sales already included in our CUP. The existing clubhouse has plenty of interior space to arrange a moveable tasting and sales area. There exists another farm winery tasting room within ½ mile of this location on the same paved road. There is plenty of parking. This could reduce the number of cars currently traveling the gravel roads to BlueJacket Crossing Winery. The location adjacent to K-10 Highway provides a high rate of traffic, great visibility and easy off ramp access on major paved roads. There are no neighbors to disturb.

Finally it is compatible with the Kansas State Farm Winery Act. Each farm winery is allowed up to 3 locations for wine tasting and sales. A state license is required and subject to state law and inspections."

The current zoning designation for the property is V-C (Valley Channel), F-W (Floodway Overlay) and F-F (Floodway Fringe Overlay) Districts. The golf facility is located within the V-C District which permits a limited range of uses including agriculture, recreation and farm residences. The proposed use, a wine tasting facility, would be permitted by right in this district as an agriculturally exempt use if it were located on the same property as the vineyard and winery. As this is a satellite location, the wine tasting area is not considered agriculturally exempt and a Conditional Use Permit is required. The property is suited to the uses which are permitted in the V-C District. The proposed use, an addition of a mobile wine tasting and sales area to the interior of the clubhouse, would be considered an accessory use to the clubhouse and would not result in any exterior changes and would therefore also be compatible with uses permitted in the V-C District.

Staff Finding – A Conditional Use Permit (CUP) does not change the base, underlying zoning; therefore, the suitability of the property for the uses permitted in the V-C District will not be altered. The property has been developed with a golf course and clubhouse and is well suited for the uses to which it has been restricted, as well as the proposed addition of a wine tasting and sales area to the clubhouse.

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

Staff Finding – The property is not vacant but has been developed with a golf course and clubhouse.

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

Applicant's Response:

"There should be no change to nearby property."

Section 12-319-1.01 of the County Zoning Regulations recognize that *"Certain uses may be desirable when located in the community, but that these uses may be incompatible with other uses permitted in a district...when found to be in the interest of the public health, safety, morals and general welfare of the community may be permitted, except as otherwise specified in any district from which they are prohibited."*

The proposed CUP would allow the addition of a wine tasting and sales area to the golf course clubhouse. This would be an ancillary use within the clubhouse. No exterior changes are being proposed and the property has no nearby residential neighbors. The addition of the wine tasting/sales area within the clubhouse may increase traffic to the golf course facility, but should have no detrimental effects on nearby property. As noted earlier, if the business increases to the point that parking cannot be accommodated on the surfaced parking area it will be necessary to revise the golf course CUP site plan to provide additional on-site parking.

Staff Finding – The addition of the wine tasting/sales area to the Twin Oaks golf clubhouse will not significantly alter the use and should have no detrimental effect on surrounding property.

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

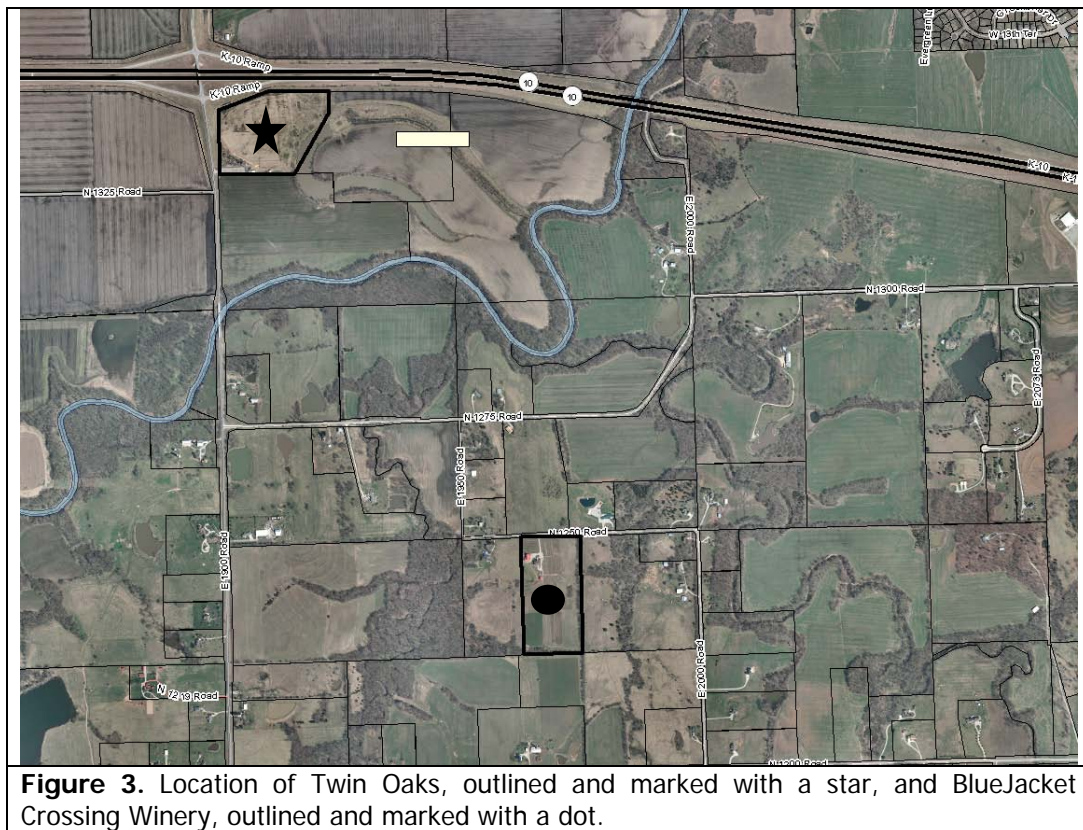
Applicant's Response:

"No apparent changes."

The purpose of this criterion is to compare the effect of denial of the request on the public health, safety and welfare to the effect of denial on the individual landowner. If the request were denied, the facility could continue to function as a golf facility with a clubhouse with accessory sales but a wine tasting/sales area would not be permitted within the clubhouse. The property is located in very close proximity to the on/off ramps for K-10 so an adequate transportation network is available if the addition of wine tasting and sales would increase business at the golf facility.

The addition of the wine tasting and sales area to the golf facility provides BlueJacket Crossing Winery with another outlet and would remove the need for some customers to travel to the winery site at 1969 N 1250 Road. (Figure 3) There will be no sales for on-site consumption and the sales will occur in a limited area as shown on the floor plan in Attachment C.

Staff Finding – Denial of the request would provide no benefit to the public health, safety and welfare. Denial of the request would prevent the applicant from locating their off-site wine tasting/sales area to this location while approval of the request would benefit the applicant by allowing them to site one of their off-site tasting facilities in a location with good access to the major transportation network. In addition, approval of the request may result in increased business benefits for both the winery and existing golf facility.



VII. CONFORMANCE WITH THE COMPREHENSIVE PLAN

The subject property is not located within an identified urban growth area but is within 3 miles of the city limits of Eudora. The comprehensive plan recommends that agricultural uses continue to be the predominant land use within the areas of the county beyond the designated urban growth areas.

Staff Finding – The Comprehensive Plan recommends that uses in the rural area be limited to those compatible with agricultural uses and that the design should be consistent with the rural character. A Conditional Use Permit can be used to allow specific non-residential uses subject to approval of a site plan. This tool allows proportional development in harmony with the surrounding area. The proposed request is consistent with the Comprehensive Plan.

STAFF REVIEW

Per Section 12-314-3.04 of the Zoning Regulations of the Unincorporated Territory of Douglas County, public or private commercial recreational facilities and structures are permitted within the V-C District provided structures conform to the requirements of Sections 12-314-2 and 12-319 of the Regulations. Section 314-2 contains restrictions on structures that will cause an obstruction to the flow of the Kansas or Wakarusa River. Section 12-319 is the Supplemental Use Regulations, Conditional Uses and Temporary Uses Section. This Section requires approval of a Conditional or Temporary Use for any structure associated with recreation in the V-C District. A Conditional Use Permit was issued for the golf facility and clubhouse [CUP-10-16-97]. This CUP is not being altered with the subject request.

A Kansas Statute permits the owner of a farm winery to have three winery outlet licenses. (Attachment A) The applicant contacted staff about the possibility of locating an off-site wine tasting room/sales area in the clubhouse and the determination was made that the wine tasting area/sales would not be considered a part of the accessory sales use that was approved with the CUP for the clubhouse but would require separate approval through a Conditional Use Permit. (Attachment B) While the satellite winery outlet is a relatively new use, it has been determined to be similar to a *Fruit and Vegetable Stand* as defined in Section 12-303-1.39: *"A place, with or without buildings or structures, where fruit, vegetables, produce, dairy products, and the like are sold from one fruit or vegetable stand."* As the use has been determined to be similar to a *Fruit and Vegetable Stand* and this use is listed as a Conditional Use in Section 12-319-4.28; the determination was made that either rezoning or a Conditional Use Permit would be required for the wine tasting/sales area.

The applicant is proposing a mobile stand for the wine tasting/sales area to be located within the clubhouse. The wine tasting may occur anywhere within the clubhouse. The sales use being proposed is the sale of unopened bottles of wine produced by the winery hosting the tasting, similar to other tasting facilities. On-site consumption, beyond the tasting, is not being proposed with this Conditional Use application. The sale of wine or other alcohol for on-site consumption would require a rezoning to an appropriate zoning district. A note to this effect should be added to the plan.

The Zoning and Codes Director has commented that the addition of the wine tasting area may require that the building be brought into compliance with Building Codes and the restrooms be brought into ADA compliance. This was added as a condition of approval to the Conditional Use Permit.

If signage is to be used, the signage must comply with the sign regulations noted in Section 12-306-2.18 for the Ag District.

Joint Hearing

County Resolution No 80-5 established the policy that a joint hearing be held for requests within 3 miles of the incorporated cities in Douglas County so that the County Commission would have the benefit of both Planning Commissions' Recommendations. A joint meeting is being held between the Lawrence/Douglas-County Metropolitan Planning Commission and the City of Eudora Planning Commission and their recommendations will be forwarded to the Board of County Commissioners.

Conclusion

Approval of a CUP can be tailored to address specific issues such as intensity or frequency of use, include time limitations, and provide screening requirements. This Conditional Use Permit (CUP-2-1-12) adds the use of a wine tasting/sales area to the golf clubhouse which was approved with the previous CUP for this property (CUP-10-16-97).

Staff recommends approval of CUP-2-1-12 for a wine tasting area at the Twin Oaks Golf facility as conditioned.

41-308a: Farm winery license; authority of licensee. (a) A farm winery license shall allow:

(1) The manufacture of domestic table wine and domestic fortified wine in a quantity not exceeding 100,000 gallons per year and the storage thereof;

(2) the sale of wine, manufactured by the licensee, to licensed wine distributors, retailers, clubs, drinking establishments, holders of temporary permits as authorized by [K.S.A. 41-2645](#), and amendments thereto, and caterers;

(3) the sale, on the licensed premises in the original unopened container to consumers for consumption off the licensed premises, of wine manufactured by the licensee;

(4) the serving free of charge on the licensed premises and at special events, monitored and regulated by the division of alcoholic beverage control, of samples of wine manufactured by the licensee or imported under subsection (f), if the premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments;

(5) if the licensee is also licensed as a club or drinking establishment, the sale of domestic wine, domestic fortified wine and other alcoholic liquor for consumption on the licensed premises as authorized by the club and drinking establishment act;

(6) if the licensee is also licensed as a caterer, the sale of domestic wine, domestic fortified wine and other alcoholic liquor for consumption on the unlicensed premises as authorized by the club and drinking establishment act;

(7) the sale and shipping, in the original unopened container, to consumers outside this state of wine manufactured by the licensee, provided that the licensee complies with applicable laws and rules and regulations of the jurisdiction to which the wine is shipped; and

(8) the sale and shipping of wine within this state pursuant to a permit issued pursuant to K.S.A. 2009 Supp. 41-348, and amendments thereto.

(b) Upon application and payment of the fee prescribed by [K.S.A. 41-310](#), and amendments thereto, by a farm winery licensee, the director may issue not to exceed three winery outlet licenses to the farm winery licensee. A winery outlet license shall allow:

(1) The sale, on the licensed premises in the original unopened container to consumers for consumption off the licensed premises, of wine manufactured by the licensee;

(2) the serving on the licensed premises of samples of wine manufactured by the licensee or imported under subsection (f), if the premises are located in a county where the sale of alcoholic liquor is permitted by law in licensed drinking establishments; and

(3) the manufacture of domestic table wine and domestic fortified wine and the storage thereof; provided, that the aggregate quantity of wine produced by the farm winery licensee, including all winery outlets, shall not exceed 100,000 gallons per year.

(c) Not less than 60% of the products utilized in the manufacture of domestic table wine and domestic fortified wine by a farm winery shall be grown in Kansas except when a lesser

proportion is authorized by the director based upon the director's findings and judgment. The label of domestic wine and domestic fortified wine shall indicate that a majority of the products utilized in the manufacture of the wine at such winery were grown in Kansas.

(d) A farm winery or winery outlet may sell domestic wine and domestic fortified wine in the original unopened container to consumers for consumption off the licensed premises at any time between 6 a.m. and 12 midnight on any day except Sunday and between 12 noon and 6 p.m. on Sunday. If authorized by subsection (a), a farm winery may serve samples of domestic wine, domestic fortified wine and wine imported under subsection (e) and serve and sell domestic wine, domestic fortified wine and other alcoholic liquor for consumption on the licensed premises at any time when a club or drinking establishment is authorized to serve and sell alcoholic liquor. If authorized by subsection (b), a winery outlet may serve samples of domestic wine, domestic fortified wine and wine imported under subsection (e) at any time when the winery outlet is authorized to sell domestic wine and domestic fortified wine.

(e) The director may issue to the Kansas state fair or any bona fide group of grape growers or wine makers a permit to import into this state small quantities of wines. Such wine shall be used only for bona fide educational and scientific tasting programs and shall not be resold. Such wine shall not be subject to the tax imposed by [K.S.A. 41-501](#), and amendments thereto. The permit shall identify specifically the brand and type of wine to be imported, the quantity to be imported, the tasting programs for which the wine is to be used and the times and locations of such programs. The secretary shall adopt rules and regulations governing the importation of wine pursuant to this subsection and the conduct of tasting programs for which such wine is imported.

(f) A farm winery license or winery outlet license shall apply only to the premises described in the application and in the license issued and only one location shall be described in the license.

(g) No farm winery or winery outlet shall:

(1) Employ any person under the age of 18 years in connection with the manufacture, sale or serving of any alcoholic liquor;

(2) permit any employee of the licensee who is under the age of 21 years to work on the licensed premises at any time when not under the on-premise supervision of either the licensee or an employee of the licensee who is 21 years of age or over;

(3) employ any person under 21 years of age in connection with mixing or dispensing alcoholic liquor; or

(4) employ any person in connection with the manufacture or sale of alcoholic liquor if the person has been convicted of a felony.

(h) Whenever a farm winery or winery outlet licensee is convicted of a violation of the Kansas liquor control act, the director may revoke the licensee's license and order forfeiture of all fees paid for the license, after a hearing before the director for that purpose in accordance with the provisions of the Kansas administrative procedure act.

(i) This section shall be part of and supplemental to the Kansas liquor control act.

History: L. 1983, ch. 161, § 3; L. 1985, ch. 170, § 25; L. 1987, ch. 182, § 141; L. 1988, ch.

165, § 1; L. 1990, ch. 178, § 1; L. 1992, ch. 201, § 2; L. 1998, ch. 191, § 3; L. 2005, ch. 201, § 14; L. 2006, ch. 206, § 5; L. 2007, ch. 178, § 2; L. 2008, ch. 126, § 1; L. 2009, ch. 114, § 4; July 1.



6 East 6th St.
P.O. Box 708
Lawrence, KS 66044

www.lawrenceks.org/pds

Phone 785-832-3150
Tdd 785-832-3205
Fax 785-832-3160

March 31, 2011

Kandaya Selvan
1969 N 1250 Road
Eudora KS 66025

RE: Process for wine tasting room at Twin Oaks Golf Course

Dear Pep:

Evan Ice, Linda Finger, Keith Dabney and I discussed your proposal to locate a secondary wine tasting room at the Twin Oaks Golf Course to determine whether the use could occur at this location, and if so the appropriate approval process. The information below is the result of our meeting:

1. Ag Exempt Status. A wine tasting room is an agriculturally exempt use only when it is located on the same property as the vineyard, orchard or field where the plants are grown. Wine tasting rooms located off the property require approval through a Conditional Use Permit or location in a zoning district where alcohol sales is a permitted use.
2. Alcohol sales with a CUP prohibited. The question of whether alcohol sales for on-site consumption could be permitted with a CUP was presented to the Board of Zoning Appeals (BZA) with the Conditional Use Permit application for The Woods. The BZA determined that alcohol sales for on-site consumption would require appropriate zoning, rather than a Conditional Use Permit.
3. Distinction between a farm winery tasting room and alcohol sales. A 'farm winery tasting room' is not listed as a permitted use in the current Zoning Regulations. In our opinion an additional location for a farm winery tasting room is not equivalent to an establishment which sells liquor for on-site consumption. Therefore, a farm winery tasting room, without on-site consumption, could be approved with a Conditional Use Permit. On-site consumption (beyond the wine tasting) would require locating in a zoning district in which alcohol sales, such as bars and taverns, are permitted.
4. Existing CUP. We have reviewed and re-reviewed the existing CUP for Twin Oaks Golf Course and have concluded that your desired farm winery tasting room is not permitted without an amendment to the CUP.

The Twin Oaks CUP [CUP-2-2-92] was approved by the County Commission in 1992 with conditions of approval which included "*The submission of an operations plan for the facility which delineates commercial uses and square footage allocated to such uses within the approved structures. Expansion of uses or the location of additional uses within the complex will require review and approval by the Planning commission and Board of County Commissioners prior to operation*". (Condition No. 9) When the pitch and putt use was proposed a new CUP [CUP-10-16-97] was submitted and considered by the Planning Commission and approved by the County Commission (Jan 5, 1998). Given this previous action, the wine-tasting room would also require consideration by the Planning Commission and approval by the County Commission.

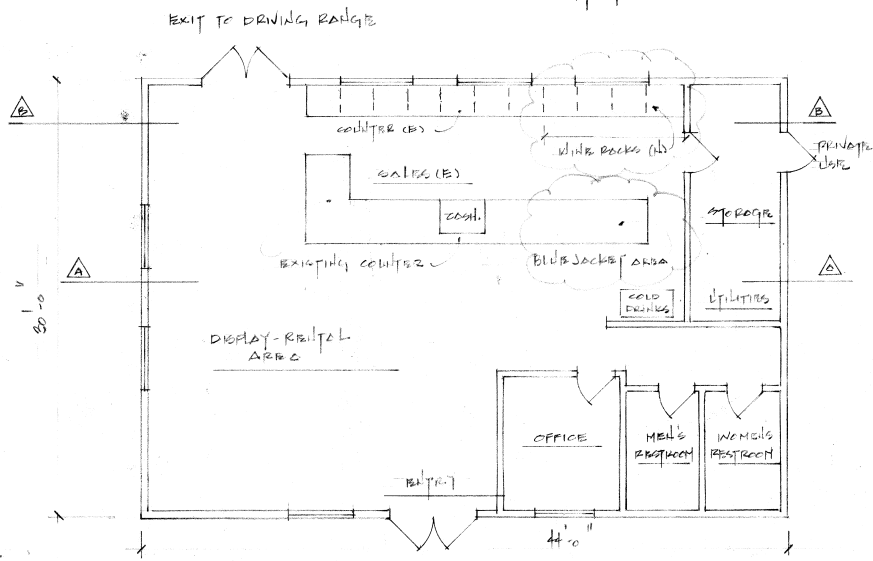
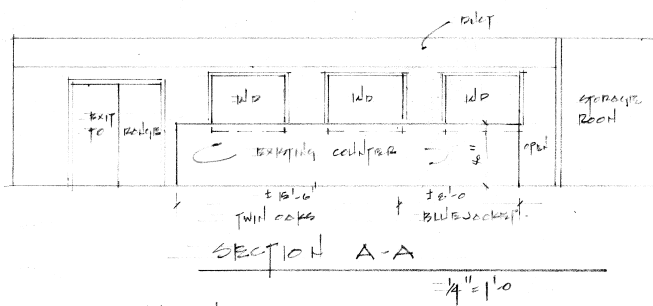
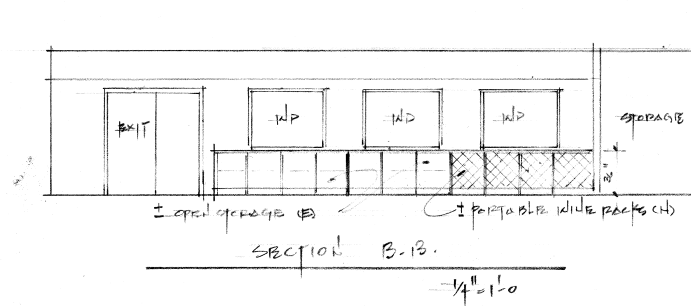
We're sorry that we couldn't reach the conclusion you desired, but we were unable to conclude that the testing room is ancillary to the operation of the golf course.

5. Approval process. The wine-tasting room would require the submittal of a new CUP or the amendment to the existing CUP for Twin Oaks Golf Course. The CUP would limit the new use to a 'farm winery tasting room' and would not allow on-site consumption of alcohol. A CUP application would be filed with the Planning Office, placed on the Planning Commission's agenda for consideration and then forwarded to the Board of County Commissioners for action.
6. Follow up: The 'farm winery tasting room' use should be addressed in the Zoning Regulations. With the revisions that are currently underway for the Zoning Regulations the term 'farm winery tasting room' shall be defined, the use included in the permitted use table so it is clear where it is permitted either as an agricultural exemption, where it requires a CUP and the zoning districts in which it would be permitted with a site plan.

We appreciate your diligence in working with us in deciphering where this new type of use in Douglas County would be permitted and hope this summary explains the necessary process adequately. If you have any questions, or would like to discuss this further, please contact me at 785-832-3147 or mmiller@lawrenceks.org

Sincerely,

Mary K Miller, AICP
City/County Planner II



NOTES:

1. BXC WINE MATERIALS WILL FIT IN (B) EXISTING CABINETS.
2. SALES MATERIALS AND WINE ARE PORTABLE
3. THE INTENT OF THIS DRAWING IS TO SHOW THE GENERAL AREA WHERE WINE TASTING MATERIALS WOULD BE ARRANGED.

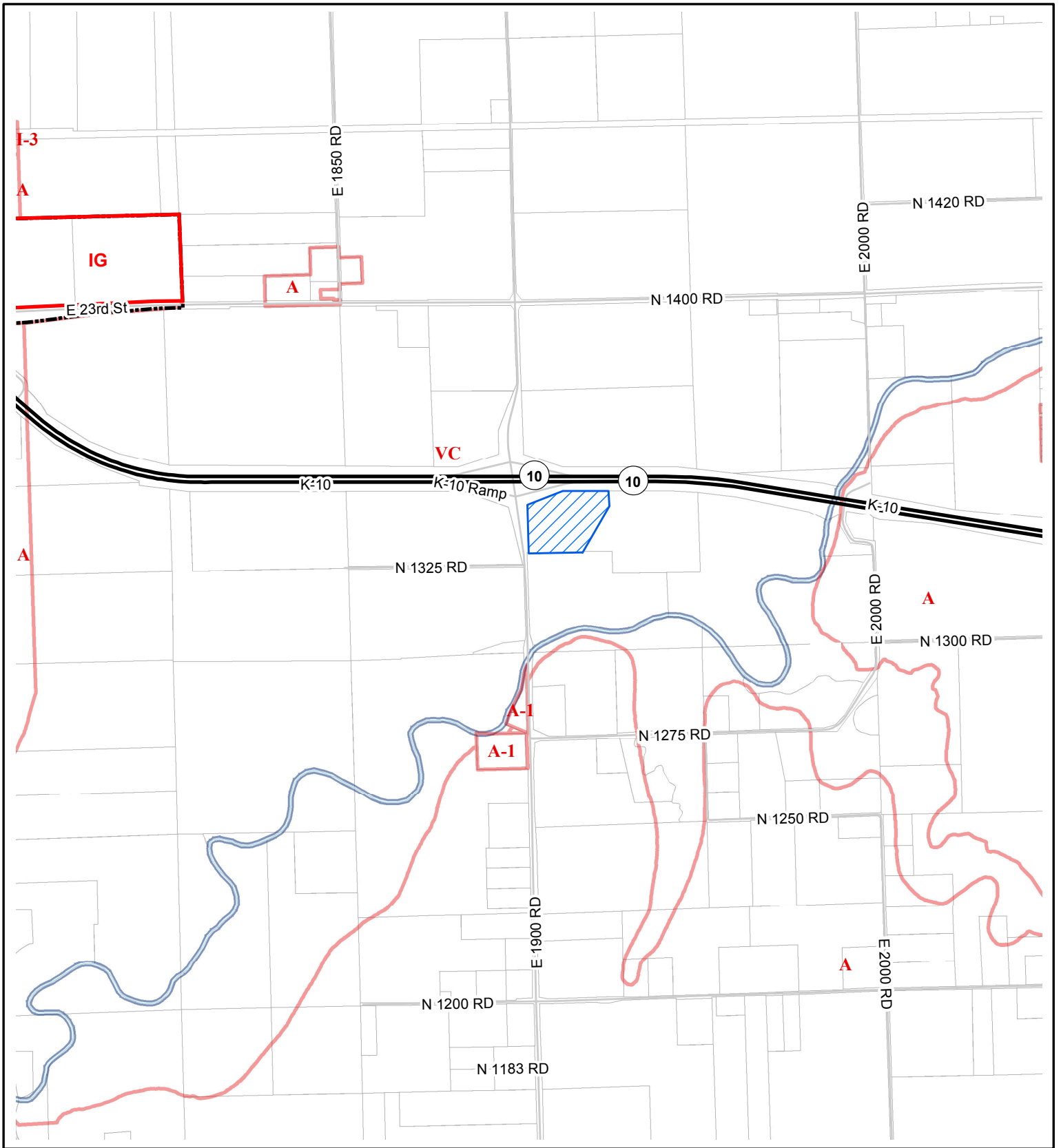
TWIN COGS GOLF BAR/BBQ

1/4" = 1'-0"




BLUEJACKETS CROSSING IDENTITY PREP. SHEET

REQUEST FOR WINE'S SALES CUPLET
APRIL 5, 2012. 785 542-1764



**CUP-02-01-12: Conditional Use Permit to allow wine tasting and sales at
Twin Oaks Golf Course 1326 E 1900 Rd**



 Area Requested

Scale: 1 Inch = 2000 Feet

Recess LDCMPC

Convene Joint Meeting with Eudora Planning Commission

ITEM NO. 1 CONDITIONAL USE PERMIT FOR TWIN OAKS GOLF COURSE; 1326 E 1900 RD (MKM)

CUP-2-1-12: Consider a Conditional Use Permit to allow wine tasting and sales at Twin Oaks Golf Course, located at 1326 East 1900 Road. Submitted by Pep Selvan, for JF Burey, property owner of record. *Joint meeting with Eudora Planning Commission.*

STAFF REPORT

Ms. Mary Miller presented the item.

APPLICANT PRESENTATION

Mr. Pep Selvan, BlueJacket Crossing Vineyard & Winery, said he was trying to help the owner of Twin Oaks Golf Course rejuvenate his business by encouraging more traffic from the K-10 corridor. He also said Twin Oaks would allow BlueJacket to use their parking lot to shuttle people to events at BlueJacket, which would reduce traffic to the winery. He said there was compatibility for each of their needs.

PUBLIC HEARING

Ms. Diane Menzie, volunteer at BlueJacket, was in favor of the Conditional Use Permit.

COMMISSION DISCUSSION

Eudora Planning Commissioners Kurt von Achen, Glenn Bartlett, Grant Martin, and Richard Campbell were present.

ACTION TAKEN by Eudora Planning Commission

Motioned by Eudora Commissioner Campbell, seconded by Eudora Commissioner Martin, to approve the Conditional Use Permit.

Unanimously approved 4-0.

ACTION TAKEN by Lawrence Planning Commission

Motioned by Commissioner von Achen, seconded by Commissioner Blaser, to approve the Conditional Use Permit for the addition of a wine tasting area subject to the following conditions:

- 1) The provision of a revised floor plan with the following changes:
 - a. Addition of a note that the CUP permit may be released after the applicant has obtained the necessary State license for the wine tasting room.
 - b. Addition of a note that states that this CUP approves a wine tasting area with sales for off-site consumption. Sales of alcohol for on-site consumption would require rezoning to an appropriate zoning district.
 - c. The square footage of the area to be used for retail sales should be noted on the plan.
- 2) Parking shall be provided on surfaced parking area shown on approved CUP site plan. Additional parking would require the submittal of a revised site plan for the Golf Course CUP.
- 3) Compliance with Douglas County Building Codes as determined necessary by the Director of Zoning and Codes prior to the release of the Conditional Use Permit.

Unanimously approved 9-0.

**Adjourn Joint Meeting
Reconvene LDCMPC**

Memorandum

City of Lawrence

Planning & Development Services

TO: Planning Commission

FROM: Mary Miller, Planning Staff

CC: Scott McCullough, Planning and Development Services Director
Sheila Stogsdill, Assistant Planning Director

Date: For March 26, 2012 meeting

RE: Agenda Item No. 3: TA-8-11-11, Agritourism

Attachments:

- A: Revised draft language
- B: Public communications received in February
- C: Committee discussion of text amendment and revisions

The Planning Commission considered the draft language for the Agritourism text amendment, TA-8-11-11, at their February 29, 2012 meeting and returned it to the Agritourism Committee with direction for revisions. The revisions which have been made to the draft are summarized at the end of this memo.

The committee held a special meeting on March 8th to discuss the Planning Commission's direction and develop revised language. The committee has not reach consensus on all items in the amendment; therefore, committee members were requested to provide their dissenting opinions or discussion on the amendment to be included with this agenda item so that complete information could be provided to the Commission. Comments provided by committee members are included in attachment C. The Comments provided by Linda Finger were submitted after the deadline for the February PC packet, but many of the revisions to the draft language were in response to her comments.

Summary of changes:

- 1) Removal of Section 12-319-7.01 (b) which contained an additional criteria for agritourism uses in Douglas County; that they be conducted on a working farm, ranch, or other agricultural land.
- 2) Addition of a note to the new Section 12-319-7.01(b) that camping is not included within the list of agritourism uses. This was done to clarify the uses which are permitted as Agritourism. In the absence of standards for camping within Douglas County, the addition of camping as an agritourism use at this time was not seen as appropriate.

- 3) Section 12-319-7.02 revised based on comments provided by Linda Finger to clarify that uses which are agriculturally exempt are not regulated by this provision and to add 'other uses' so the use is not restricted to only those listed.
- 4) Section 12-319-7.02 revised based on Planning Commission's direction and Natalya Lowther's February communication to allow a sliding barn door to count as a form of ingress/egress and to place a size limitation on the requirement to have 2 points of ingress/egress.
- 5) Various other wordsmithing changes throughout the document, based on Linda Finger's comments, to provide more clarity.

Agritourism

(Sections of the Zoning Regulations with proposed revisions are below. New language is shown in **bold**. Comments are in red. Changes made in response to the Planning Commission's February direction are shown in **bold red**. Other changes proposed by the Committee are also in **bold red**. The changes since the February draft are discussed in the March Planning Commission staff memo.)

12-303 DEFINITIONS

12-303-1.92 ANCILLARY RETAIL SALES: Sales of goods or services that differ from or enhance the principal use. Ancillary retail sales are subsidiary, supplementary, or secondary to the principal use.

12-303-1.93 FARM STAY: Overnight accommodations in a farm or ranch house for guests while they are vacationing at the farm/ranch as part of a registered Agritourism Use.

12-306 "A" AGRICULTURAL DISTRICT REGULATIONS

12-306-1 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 "A" Agricultural District. The purpose of this district is to provide for a full range of agricultural activities, including **agritourism**, and the processing and sale of agricultural products raised on the premises; and at the same time, to offer protection to agricultural land from the depreciating effect of objectionable, hazardous and unsightly uses. The District is also intended for purposes of protecting watersheds and water supplies to provide for spacious development, to protect forest areas, and scenic areas, and to conserve fish and wildlife, to promote forestry, the growing of natural crops and grazing, and to prevent untimely scattering of more dense urban development. For the purpose of restricting outdoor advertising signs, the area within this district shall be considered as defined for residential purposes only.

Add the following to the list of permitted uses in the A District:

12-306-2.26 Agritourism – Subject to conditions in Section 12-319.7.

SECTION 12-319 SUPPLEMENTAL USE REGULATIONS-CONDITIONAL USES-TEMPORARY USES

12-319-7 AGRITOURISM SUPPLEMENTAL USE REGULATIONS

Agritourism is recognized as a vital tool for sustaining the family farm and represents significant economic potential for the community in general. These regulations are intended to foster and promote agritourism in keeping with the State of Kansas policy of encouraging Agritourism, while ensuring that the public health, safety, and welfare is protected.

12-319-7.01 AGRITOURISM

- a. Agritourism is the intersection of agriculture and tourism, when the public visits rural areas for recreation, education, enjoyment, entertainment, adventure or relaxation. Agritourism uses the rural experience as a tool for economic development.

~~b. In order to be considered an agritourism use under these Regulations, the activity must occur on a working farm or ranch or other agricultural land.~~

- b. Typical Agritourism uses include, but are not limited to, the following:
- Farm markets/roadside stands,
 - U-pick operations,
 - Wineries and winery tours and tastings,
 - Local products retail operations (local crafts, food products),
 - Corn mazes,
 - Farm-related interpretive facilities, exhibits, and tours,
 - Agriculturally related educational and learning experiences, including volunteer workers.
 - Agriculturally related events/fairs/festivals,
 - Farm stays,
 - Bed and breakfast establishments,
 - Recreation related operations (fishing, hunting, bird watching, hiking, etc),
 - Horseback riding,
 - Garden, nursery tours and exhibits,
 - Pumpkin patch visits and activities,
 - Weddings, receptions and other assembly type uses,
 - Ancillary retail sales, or the ancillary sale of products made by other local producers
 - Other **Uses** that may be determined on a case by case basis if it meets the purpose and intent of the regulations.
- i. **These Agritourism provisions do not apply to camping.**

12-319-7.02 REGISTRATION AND APPROVAL PROCESS OF AGRITOURISM USES

After the use has been registered with the State, a copy of the Agritourism Promotion Act Registration Form shall be provided to the Douglas County Zoning and Codes Office to register the agritourism use with the County. Agritourism uses which meets the definition set forth in these Regulations and are registered with the State and with the County may occur without any additional review under these Regulations.

- a. Agritourism uses which are **exempt from these Zoning Regulations by virtue of being agricultural uses [K.S.A.19-2960(d)]** ~~permitted by right as Agricultural Uses in the A District~~ are not required to register with the State or County; however, registration is encouraged so the agritourism use can take advantage of incentives that have been developed for agritourism uses. Uses which are **exempt from these**

Zoning Regulations by virtue of being agricultural uses ~~permitted by right~~ and do not require registration ~~are include~~:

- i. Temporary stands for seasonal sale of products raised on the premises;
 - ii. U-Pick Operations;
 - iii. Farm tours;
 - iv. Retail sale of agricultural products raised on the premises; and
 - v. Wineries and Tasting Rooms;
 - vi. **And other uses as determined by the Director of Zoning and Codes.**
- b. Agritourism uses which are not ~~permitted by right~~ as exempted from **these Zoning Regulations by virtue of being agricultural uses ~~in the A District~~**, but that meet the definition of Agritourism provided in Section 12-319-7.01, may occur in the A District without any additional review under these Regulations when registered with the State and the County; although other State and local regulations shall apply.
- c. Agritourism uses which do not meet the criteria noted in this section require approval through the Conditional Use Permit process or must be located in a Zoning District in which it is a permitted use.

12-319-7.03 STRUCTURES AND BUILDING CODES

Structures for agritourism uses which are not permitted by right as Agricultural Uses, listed in Section 20-319-7.02(a), are required to comply with Douglas County Building Codes with the following exception:

- a. An existing agricultural building used for agritourism is not considered a change of occupancy that requires a building permit if the subordinate use of agritourism:
 - i. Occupies only levels of the building with **the following ingress/egress:**
 1. Two ground-level points of ingress and egress **for structures which exceed 250 sq ft in area.**
 2. **One ingress/egress is permitted for structures with less than 250 sq ft in area.**
 3. **For the purpose of this exemption a sliding barn or shed door is considered an acceptable ingress/egress.**
 - ii. Occupancy does not exceed 50 people at any one time;
 - iii. The use does not include overnight stays or the addition of a kitchen.

Mary Miller

From: Natalya Lowther [natalyalowther@hotmail.com]
Sent: Sunday, February 26, 2012 10:53 PM
To: Mary Miller
Subject: Comments on proposed Agritourism regulation

Hi, Mary! Here are my written public comments on the Agritourism regulation:

First and foremost, I would like to express my overall positive impression of the version of the proposed regulation that will be presented to the Planning Commission on Wednesday. It has been a few months since I was able to participate in any of the committee sessions, but I can see that a great deal of work has been done to simplify and clarify the proposed regulation and the results are impressive!

The proofreader in me would like to point out two apparent typographical errors:

1. In the introductory paragraph for 12-319-7.02, "Agritourism uses which meets" should more correctly be "Agritrouism uses which meet" for grammatical correctness.
2. In 12-319-7.03, the internal reference appears to be incorrect. It looks like it should reference 12-319-7.02, not 20-319-7.02.

In 12-319-7.02, I would like to suggest that "Uses which are permitted by right and do not require registration are" should end with "include" instead of "are", since this is actually a fairly narrow range of activities compared with what is actually permitted by right in the Agricultural zoning codes at 12-306 et seq. Let's leave it up to the ingenuity of our innovative Kansas farmers to make the most of their farms' particular resources!

The list of "permitted by right" agricultural uses includes "wineries and wine tasting rooms", yet I am not able to determine from the Agricultural zoning code how a wine tasting room, specifically, is permitted by right! Many other items in the list of "Agritourism uses" at 12-319-7.01(c) seem more clearly indicated as "permitted by right" in the Agricultural zoning codes, yet are not listed here as "permitted by right". It is hard to understand why a preference is given to tasting wine over, for example, "horseback riding" when "commercial stables" are clearly permitted by right in the zoning code!

I have several concerns about 12-319-7.03.

1. I am very concerned with the wording specifying "existing structures" as the only ones exempt from building codes. This places an unfair burden on agritourism operators newly entering the sector in future years by prohibiting them from adaptive re-use of structures built after enactment of this regulation (not "existing") but built without the intent of using them for agritourism and therefore not code compliant. For example, a few years from now a reclusive hay farmer builds a barn for storing hay. He's never even heard of agritourism. Some years later, he retires and sells the farm to his children. They are gregarious types and want to operate an agritourism enterprise from the barn that was "new" after these Agritourism regulations were passed. Under this wording of the regulation, they would need to upgrade that hay barn to meet the building codes (commercial codes? what codes would apply?). Meanwhile, their neighbor down the road has a similar barn just a few years older (predating the regulation). He decides to go into competition with them using his older building, and has a significant business advantage because his hay barn is few years older. He can start his enterprise without the expense of bringing his slightly older building into compliance with the building codes. Not only does he get to start business cheaper, he can start it tomorrow without having to do any renovations. This might have a beneficial effect of improving the value of rural properties with older buildings, but doesn't really fully encourage the creative use of resources available at hand in future generations.

It also places an unfair burden on an agritourism operator who endures a significant loss--for example a storm destroying an old barn which serves partly as agricultural storage and partly as agritourism retail sales space--who then must rebuild the structure at a much greater cost than its insured value in order to meet the building codes from which the old barn

was exempt. Again, this business would have a hard time competing with the one down the road that the tornado missed, which carries on in its quaint old unimproved barn unconcerned with building codes.

2. The regulation specifies two egress/ingress points without consideration for the size of the building or its intended use, for any except a very narrow range of activities that don't include actual farming activities. For an agritourism business based on hands-on "farm adventures" or "agri-education", this is very limiting. Instead of referencing the abbreviated list of agritourism activities in 12-319-7.02, the actual Agricultural zoning codes should be referenced.

As written, I would need to rebuild small chicken houses, small tool sheds, sheep sheds, etc. to include an unneeded second door in order to allow one or two agritourists at a time to use these small, unique buildings as temporary writing or art studios for a "farm art" workshop, or as spiritual retreat spaces during a farming retreat...or if a youth group had a farm-based educational "scavenger hunt" as part of their farm visit.

Many existing small farm sheds are not designed to allow the addition of a second door...for example, my prefabricated corrugated steel tool shed. Many ready-made small agricultural buildings are not designed with two doors. Likewise, in the case of an open shed, there might be only one egress/ingress but it might be the entire side of the building, or half the side of the building.

Perhaps this could be amended to exclude buildings under a certain square footage (120 sq. ft. is the maximum size allowed for a garden shed within the City of Lawrence? Or maybe the size of a standard garage is something that would not require more than one egress?).

3. The occupancy limit might also be a way of dealing with buildings that don't allow a second egress. For example, a building with only one standard pedestrian door might be acceptable for up to 10 people; one with a wide door (6 feet or wider) or half-open front might permit up to 20 people; while any number of people greater than 20 would require two doors. The number and size of rooms used might be another consideration. A table could easily organize this information.

While I hope these comments will be duly considered in the final version of the Agritourism regulations, I want to close by affirming the work of the committee and the regulatory language they have produced. This is a concise section that will open up the way for many wonderful and diverse Agritourism opportunities in Douglas County and support economic growth, as well as preserving family farms. I'm very excited about this new regulation!

Blessings,

Natalya Lowther
Pinwheel Farm
1480 N. 1700 Rd.
P.O. Box 1561
Lawrence, KS 66044
785-979-6786
natalyalowther@hotmail.com
www.pinwheelfarm.org

League of Women Voters of Lawrence-Douglas County
P.O. Box 1072, Lawrence, Kansas 66044

RECEIVED

MAR 26 2012

City County Planning Office
Lawrence, Kansas

March 25, 2012

Mr. Richard Hird, Chairman
Members
Lawrence-Douglas County Metropolitan Planning Commission
City Hall
Lawrence, Kansas 66044

RE: ITEM NO. 3; TEXT AMENDMENT TO THE DOUGLAS COUNTY ZONING REGULATIONS; AGRITOURISM

Dear Chairman Hird and Planning Commissioners:

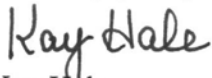
This letter suggests that the prospective proprietor of an Agritourism use be required to first consult with the Douglas County Zoning and Codes authority.

We have no objection to adding Agritourism to the Douglas County Zoning Regulations. Our problem with these regulations is the wording. We find it difficult to determine which Agritourism uses would be permitted as agricultural uses with no required registration and, on the other hand, those which would require registration both with the County Zoning and Codes department and the State of Kansas.

We suggest that one of the requirements of this use in general be that the property owner of the proposed use consult with the Douglas County Zoning and Codes authority: i.e., whoever is the official in charge of administering these regulations for instruction on how to proceed.

We hope that this is an acceptable suggestion.

Sincerely yours,



Kay Hale
President



Alan Black, Chairman
Land Use Committee

Agritourism Committee Discussion on Text Amendment Language

1. Comments provided by Linda Finger include a discussion on the staff report and draft language in pdf format. If you hover the mouse over the highlighted area the comment will appear. She also provided other information regarding various counties in Kansas.
2. Comments provided by Mary Miller regarding Section 12-310-7.01(b).

PLANNING COMMISSION REPORT
Regular Agenda -- Public Hearing Item

PC Staff Report
2/29/12

**ITEM NO. 10 TEXT AMENDMENT TO THE DOUGLAS COUNTY ZONING REGULATIONS;
AGRITOURISM (MKM)**

TA-8-11-11: Consider a Text Amendment to the Douglas County Zoning Regulations for the Unincorporated Territory of Douglas County to establish *Agritourism* as a use in the County A (Agriculture) District. *Initiated by Planning Commission on 7/27/11.*

RECOMMENDATION:

Staff recommends approval of the amendments to Articles 12-303, 12-306, and 12-319 of the Zoning Regulations for the unincorporated Territory of Douglas County, Kansas to establish 'Agritourism' as a use in the A District based on the analysis provided in the Staff Report.

Reason for Request: The Lawrence Douglas County Metropolitan Planning Commission initiated the text amendment to facilitate agritourism activities in Douglas County.

RELEVANT FACTOR:

- Conformance with the Comprehensive Plan.

PUBLIC COMMENT

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

ATTACHMENTS

- Attachment A: Agritourism Committee June Report and Recommendation
- Attachment B: Planning Commission minutes, June and July 2011
- Attachment C: Kansas Agritourism Promotion Act and Application
- Attachment D: Proposed Amendment, TA-8-11-11, *Agritourism*

The Agritourism Committee of the Lawrence Douglas County Metropolitan Planning Commission was formed in January of 2010 to study agritourism and make recommendations to the Planning Commission regarding options which could be undertaken to promote and facilitate agritourism activities as well as possible revisions to the Zoning Regulations which would ensure the public health, safety, and welfare is protected while agritourism is facilitated.

The Planning Commission received the Agritourism Committee's report and recommendations in June of 2011, Attachment A, and voted unanimously at their July meeting to initiate a text amendment creating *agritourism* as a permitted use in the A District and establishing standards.

The Committee met with various stakeholders and groups to determine the most effective means of promoting and facilitating agritourism activities while insuring the public health and safety are protected. Attachment C with this memo contains the State Agritourism Promotion Act which the Committee used as a guide. This attachment also contains a list of agritourism uses in NE Kansas and a map showing the location of agritourism uses in Douglas County.

CONFORMANCE WITH THE COMPREHENSIVE PLAN

Horizon 2020 discusses the need for the protection of agricultural lands and incentives to retain agricultural land in production. Agritourism is an economic tool which allows farmers to make an additional income from their farmland, thereby maintaining its viability and keeping it in production.

CRITERIA FOR REVIEW AND DECISION-MAKING

Section 20-1302(f) provides review and decision-making criteria on proposed text amendments. It states that review bodies shall consider at least the following factors:

1) Whether the proposed text amendment corrects an error or inconsistency in the Development Code or meets the challenge of a changing condition; and

Agritourism represents a significant revenue source for many farmers across the nation, as shown in the table below from the K-State report “Agritourism: If We Build it Will They Come?” written by Dan Bernardo, Luc Valentin, and John Leatherman. Kansas is located in the Prairie Gateway Region.

Table 1. Total Annual and Average Income (Gross Receipts) Generated by On-Farm Recreation, By Region

Region	Annual Total Income	Average Income/Farm	% of Farms w/Recreation Income	Avg. Income for Farms w/ Recreation
Heartland	\$38,500,000	\$90	7%	\$1,286
Northern Crescent	\$298,000,000	\$963	2%	\$48,150
Northern Plains	\$14,000,000	\$138	5%	\$2,760
Prairie Gateway	\$79,000,000	\$267	4%	\$6,675
Eastern Uplands	\$5,000,000	\$14	1%	\$1,400
Southern Seaboard	\$37,800,000	\$161	3%	\$5,366
Fruitful Rim	\$278,600,000	\$1,127	3%	\$37,566
Basin & Range	\$36,700,000	\$437	6%	\$7,283
Mississippi Portal	\$8,000,000	\$69	1%	\$6,900
TOTAL	\$796,000,000	\$368	2%	\$9,200

As this table shows, agritourism is a mean of economic opportunity for farmers and ranchers, allowing them to maintain the rural/agricultural lifestyle, and increasing the long-term sustainability of family farms.

The text amendment addresses a changing situation: the need for increased economic opportunities for farms to allow them to remain viable.

2) Whether the proposed text amendment is consistent with the Comprehensive Plan and the stated purpose of this Development Code (Sec. 20-104).

The Comprehensive plan provides the following recommendations regarding the preservation of agricultural land uses and promotion of agritourism:

Chapter 5, Residential, “Agricultural uses should continue to be the predominant land use within the areas of the county beyond the designated urban growth/service areas (rural area). Uses permitted in the rural area should continue to be limited to those which are compatible with agricultural production and uses. Uses which allow farmers to sell directly to the consumer, such as seasonal farm stands and pick-your-own farm operations, provide flexibility and incentives to retain agricultural land in production. Residential development should be limited in these areas so that new development does not unnecessarily remove productive land from agricultural use.” (page 5-6)

Chapter 5, Residential, Policy 2.1(a) “Continue to support and recognize the importance of preserving the agricultural use of land in unincorporated areas of Douglas County. (page 5-14)

Chapter 16, Environment, Policy 2.7(d) “Encourage and develop policies that support agri- and eco-tourism, as well as a sustainable local/regional food system. (page 16-15)

The amendment will facilitate and foster agritourism as a tool for preserving the family farm which is in conformance with the policies in *Horizon 2020*.

OVERVIEW OF PROPOSED AMENDMENT

The following changes are being proposed to the Zoning Regulations:

Section 12-303 has been revised to include definitions of the following terms being used with Agritourism uses: 'Farm Stay' and 'Ancillary Retail Sales'.

Section 12-306 has been revised to add 'Agritourism' to the list of uses permitted in the A District. Section 12-319 has been revised to include a new subsection, (7), with the regulations that apply to agritourism.

This section identifies the purpose of the Agritourism regulations, which is to foster and promote agritourism while ensuring that the public health, safety, and welfare is protected.

A critical component of this amendment is a clear definition of 'Agritourism'. This section provides a definition that is based on the State's definition in the Agritourism Promotion Act. An agritourism use does not have to be agricultural in nature but must occur on a working farm, ranch, or other agricultural land. The state's definition does not require agritourism uses to occur on a working farm, ranch, or other agricultural land (land in agricultural production) but this was added to our definition as a means to achieve one of the primary goals of agritourism, the preservation of family farms.

This section notes the agritourism uses which are permitted by right and those which require registration. Uses which are considered 'agricultural' uses include temporary farm stands, the sale of products raised on the farm, U-pick operations, farm tours, and winery tasting rooms. These uses are specifically listed in the draft language and do not require registration. These uses are permitted today as agriculturally exempt uses and no change is being proposed to these uses with this amendment. Agritourism uses which are not agriculturally exempt uses must register with the Douglas County Zoning and Codes Office. Agritourism uses, as defined in the Zoning Regulations, which are registered with the County require no further review under the Zoning Regulations; however other state and local regulations will apply.

One of the issues that were raised as obstacles to agritourism was the cost of bringing an existing agricultural building into compliance with the Douglas County Building Codes. An exemption was created from the building code requirement to allow agritourism uses in existing agricultural buildings to occur without requiring compliance with the building code. All other structures must comply with Code. An example of this would be a Christmas Tree Farm which sells Christmas Trees and decides to also sell hot cider and snacks and ornaments or other accessory items in the barn with the Christmas Trees. The addition of 'retail sales' would require the barn (or that portion of the barn if the area being used for sales is separated from the remainder of the barn) to be brought into compliance with Building Codes. The intent of this language is to provide some flexibility for smaller operations.

The exception proposed is for an existing agricultural building used for the subordinate use of agritourism if the following criteria are met:

- 1) The activity must occur on a floor with 2 ground-level points of ingress/egress;
- 2) Occupancy is limited to 50 people at any one time; and
- 3) The use does not involve overnight stays or the addition of a kitchen.

Any other structures used for agritourism uses must comply with Building Codes.

Staff Recommendation

Staff recommends approval of proposed revisions to Articles 12-303, 12-306, and 12-319 of the Zoning Regulations for the unincorporated Territory of Douglas County, Kansas to establish 'Agritourism' as a use in the A District.

Agritourism

(Sections of the Zoning Regulations with proposed revisions are below. New language is shown in **bold**. Comments are in red.)

12-303 DEFINITIONS

12-303-1.92 ANCILLARY RETAIL SALES: Sales of goods or services that differ from or enhance the principal use. Ancillary retail sales are subsidiary, supplementary, or secondary to the principal use.

12-303-1.93 FARM STAY: Overnight accommodations in a farm or ranch house for guests while they are vacationing at the farm/ranch as part of a registered Agritourism Use.

12-306 "A" AGRICULTURAL DISTRICT REGULATIONS

12-306-1 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 "A" Agricultural District. The purpose of this district is to provide for a full range of agricultural activities, including **agritourism**, and the processing and sale of agricultural products raised on the premises; and at the same time, to offer protection to agricultural land from the depreciating effect of objectionable, hazardous and unsightly uses. The District is also intended for purposes of protecting watersheds and water supplies to provide for spacious development, to protect forest areas, and scenic areas, and to conserve fish and wildlife, to promote forestry, the growing of natural crops and grazing, and to prevent untimely scattering of more dense urban development. For the purpose of restricting outdoor advertising signs, the area within this district shall be considered as defined for residential purposes only.

Add the following to the list of permitted uses in the A District:

12-306-2.26 Agritourism – Subject to conditions in Section 12-319.7.

SECTION 12-319 SUPPLEMENTAL USE REGULATIONS-CONDITIONAL USES-TEMPORARY USES

12-319-7 AGRITOURISM SUPPLEMENTAL USE REGULATIONS

Agritourism is recognized as a vital tool for sustaining the family farm and represents significant economic potential for the community in general. These regulations are intended to foster and promote agritourism in keeping with the State of Kansas policy of encouraging Agritourism, while ensuring that the public health, safety, and welfare is protected.

12-319-7.01 AGRITOURISM

- a. **Agritourism is the intersection of agriculture and tourism, when the public visits rural areas for recreation, education, enjoyment, entertainment, adventure or relaxation. Agritourism uses the rural experience as a tool for economic development.**

- b. In order to be considered an agritourism use under these Regulations, the activity must occur on a working farm or ranch **or other agricultural land.**
- c. Typical Agritourism uses include, but are not limited to, the following:
- Farm markets/roadside stands,
 - U-pick operations,
 - Wineries and winery tours and tastings,
 - **Local products retail operations (local crafts, food products),**
 - Corn mazes,
 - Farm-related interpretive facilities, exhibits, and tours,
 - Agriculturally related educational and learning experiences, including volunteer workers.
 - Agriculturally related events/fairs/festivals,
 - Farm stays,
 - Bed and breakfast establishments,
 - Recreation related operations (fishing, hunting, bird watching, hiking, etc),
 - Horseback riding,
 - Garden, nursery tours and exhibits,
 - Pumpkin patch visits and activities,
 - Weddings, receptions and other assembly type uses,
 - Ancillary retail sales, or the ancillary sale of products made by **other local producers**
 - **Others that may be determined on a case by case basis if it meets the purpose and intent of the regulations.**

12-319-7.02 REGISTRATION AND APPROVAL PROCESS OF AGRITOURISM USES

After the use has been registered with the State, a copy of the Agritourism Promotion Act Registration Form shall be provided to the Douglas County Zoning and Codes Office to **register** the agritourism use with the County. Agritourism uses which meets the definition set forth in these Regulations and are registered with the State and with the County may occur without any additional review under these Regulations.

- a. Agritourism uses which are permitted by right as Agricultural Uses in the A District are not required to register with the State or County; however, registration is encouraged so the agritourism use can take advantage of incentives that have been developed for agritourism uses. Uses which are permitted by right and do not require registration are:
- i. Temporary stands for seasonal sale of products raised on the premises;
 - ii. U-Pick Operations;
 - iii. Farm tours;
 - iv. Retail sale of agricultural products raised on the premises; and
 - v. Wineries and Tasting Rooms.

- b. **Agritourism uses which are not permitted by right as Agricultural Uses in the A District, but that meet the definition of Agritourism provided in Section 12-319-7.01, may occur in the A District without any additional review under these Regulations when registered with the State and the County; although other State and local regulations shall apply.**
- c. Agritourism uses which do not meet the criteria noted in this section require approval through the Conditional Use Permit process or must be located in a Zoning District in which it is a permitted use.

12-319-7.03 STRUCTURES AND BUILDING CODES

Structures for agritourism uses which are not permitted by right as Agricultural Uses, listed in Section 20-319-7.02(a), are required to comply with Douglas County Building Codes with the following exception:

- a. An existing agricultural building used for agritourism is not considered a change of occupancy that requires a building permit if the subordinate use of agritourism:
 - i. Occupies only levels of the building with two ground-level points of ingress and egress;
 - ii. Occupancy does not exceed 50 people at any one time;
 - iii. The use does not include overnight stays or the addition of a kitchen.

Kansas Counties: Planning & Zoning Status – September 2010

COUNTY NAME (COUNTY SEAT)	COUNTYWIDE ZONING	PARTIAL COUNTY ZONING	CITY ETJ ONLY	NO KNOWN ZONING IN COUNTY
Allen (Iola)	Yes			
Anderson (Garnett)	Yes			
Atchison (Atchison)				√
Barber (Medicine Lodge)				√
Barton (Great Bend)	Yes			
Bourbon (Fort Scott)			√	
Brown (Hiawatha)			√	
Butler (El Dorado)	Yes			
Chase (Cottonwood Falls)				√
Chautauqua (Sedan)				√
Cherokee (Columbus)				√
Cheyenne (St Francis)				√
Clark (Ashland)				√
Clay (Clay Center)	Yes			
Cloud (Concordia)			√	
Coffey (Burlington)	Yes			
Comanche (Coldwater)				√
Cowley (Winfield)		Yes		
Crawford (Girard)		Yes		
Decatur (Oberlin)			√	
Dickinson (Abilene)	Yes			
Doniphan (Troy)	Yes			
Douglas (Lawrence)*	Yes			
Edwards (Kinsley)	Yes			
Elk (Howard)				√
Ellis (Hays)	Yes			
Ellsworth (Ellsworth)			√	
Finney (Garden City)	Yes			
Ford (Dodge City)	Yes			
Franklin (Ottawa)*	Yes			
Geary (Junction City)*	Yes			

COUNTY NAME (COUNTY SEAT)	COUNTYWIDE ZONING	PARTIAL COUNTY ZONING	CITY ETJ ONLY	NO KNOWN ZONING IN COUNTY
Gove (Gove)			√	
Graham (Hill City)				√
Grant (Ulysses)				√
Gray (Cimarron)	Yes			
Greeley (Tribune)				√
Greenwood (Eureka)	Yes			
Hamilton (Syracuse)				√
Harper (Anthony)	Yes			
Harvey (Newton)	Yes			
Haskell (Sublette)				√
Hodgeman (Jetmore)	Yes			
Jackson (Holton)	Yes			
Jefferson (Oskaloosa)	Yes			
Jewell (Mankato)			√	
Johnson (Olathe)*	Yes			
Kearny (Lakin)	Yes			
Kingman (Kingman)	Yes			
Kiowa (Greensburg)				√
Labette (Oswego)			√	
Lane (Dighton)			√	
Leavenworth (Lansing)	Yes			
Lincoln (Lincoln)			√	
Linn (Mound City)	Yes			
Logan (Oakley)			√	
Lyon (Emporia)	Yes			
Marion (Marion)	Yes			
Marshall (Marysville)			√	
McPherson (McPherson)	Yes			
Meade (Meade)				√
Miami (Paola)*	Yes			
Mitchell (Beloit)			√	
Montgomery (Independence)		Yes		
Morris (Council Grove)				√
Morton (Elkhart)			√	

COUNTY NAME (COUNTY SEAT)	COUNTYWIDE ZONING	PARTIAL COUNTY ZONING	CITY ETJ ONLY	NO KNOWN ZONING IN COUNTY
Nemaha (Seneca)			√	
Neosho (Erie)	Yes			
Ness (Ness City)				√
Norton (Norton)				√
Osage (Lyndon)	Yes			
Osborne (Osborne)				√
Ottawa (Minneapolis)			√	
Pawnee (Larned)	Yes			
Phillips (Phillipsburg)				√
Pottawatomie (Westmoreland)	Yes			
Pratt (Pratt)			√	
Rawlins (Atwood)				√
Reno (South Hutchinson)		Yes		
Republic (Belleville)			√	
Rice (Lyons)	Yes			
Riley (Grandview Plaza)	Yes			
Rooks (Stockton)				√
Rush (LaCrosse)	Yes			
Russell (Russell)	Yes			
Saline (Salina)	Yes			
Scott (Scott City)				√
Sedgwick (Derby)*	Yes			
Seward (Liberal)	Yes			
Shawnee (Topeka)*	Yes			
Sheridan (Hoxie)			√	
Sherman (Goodland)			√	
Smith (Smith Center)				√
Stafford (St John)	Yes			
Stanton (Johnson City)				√
Stevens (Hugoton)	Yes			
Sumner (Wellington)*	Yes			
Thomas (Colby)			√	
Trego (Wakeeney)			√	
Wabaunsee (Alma)	Yes			

COUNTY NAME (COUNTY SEAT)	COUNTYWIDE ZONING	PARTIAL COUNTY ZONING	CITY ETJ ONLY	NO KNOWN ZONING IN COUNTY
Wallace (Sharon Springs)				√
Washington (Washington)				√
Wichita (Leoti)				√
Wilson (Fredonia)	Yes			
Woodson (Yates Center)	Yes			
Wyandotte (Kansas City)*	Yes			

Sub-categories:

- 29 Counties that are unzoned
- 50 Counties that have countywide zoning
- 26 Counties that have cities with zoning or ETZ

105

* indicate counties that have adopted some type of building codes; although they may not be county-wide.

Discussion on Section **12-319-7.01 (b)**, removed,

"In order to be considered an agritourism use under these Regulations, the activity must occur on a working farm or ranch or other agricultural land."

- 1) Purpose of the criteria:** Many land uses are permitted in the A District other than 'agriculture'. Churches, schools, country clubs, and rural residences on as little as 3 acres are permitted. If the purpose of agritourism is to preserve agricultural land and we are developing incentives to make it easier for the family farmer to get into the agritourism business, why would we apply these incentives to non-agricultural land uses? Non-agricultural land uses could still participate in these activities but would need a CUP or appropriate zoning, depending on the proposed use.

This criteria differentiates *agritourism* from rural or other forms of tourism.

- 2) The terms 'working farm, ranch or other agricultural land':** The committee discussed using the term 'working farm or ranch' at one of our earlier meetings, but realized there would be disagreement on what does 'working' mean and what is meant by a 'farm or ranch'. The purpose of 'other agricultural land' is to include ag land that may not meet the definition of a working farm or ranch but to distinguish it from other non-ag uses in the County. (residential, for instance) The County has a standard which they use to determine if land is agricultural when determining if a property is exempt from the zoning regulations. I believe the standard is a minimum area of 40 acres or an ag income, listed on the appropriate income tax form, of \$1000 a year. Perhaps the use of the term 'working farm or ranch or other agricultural land' would be more appropriate if a definition, for the purpose of agritourism, was provided.
- 3) Planning Commission directed us to remove this additional criteria but to set other conditions so we could determine if an agritourism use met our definition.** The definition we are proposing is basically the same as the State's with the exclusion of 'camping' and that the use must occur in the A District.

**ITEM NO. 3 TEXT AMENDMENT TO THE DOUGLAS COUNTY ZONING REGULATIONS;
AGRITOURISM (MKM)**

TA-8-11-11: Consider a Text Amendment to the Douglas County Zoning Regulations for the Unincorporated Territory of Douglas County to establish *Agritourism* as a use in the County A (Agriculture) District. *Deferred by Planning Commission on 2/29/12.*

STAFF PRESENTATION

Ms. Mary Miller presented the item.

PUBLIC HEARING

Ms. Natalya Lowther, Pinwheel Farms, did not feel it should be the job of the Douglas County Zoning & Codes Administrator to decide what is and isn't an agricultural activity in situations where agritourism is involved. She felt it added to the duties of one already very busy individual in an area that was not their main field of work and training. She said putting one individual in charge of making that decision was a violation of Kansas State Statute.

Ms. Marci Francisco, League of Women Voters, said the intention of the committee in recommending the language was not to have one person make the determination. The language recommended talks about contacting the Zoning & Codes office. She said their concern was that it was confusing and they didn't want someone to assume they had an agricultural use and then be told they should have started the process through the County. The League felt this was a fuzzy area for determination between what was an agricultural use and what was not.

COMMISSION DISCUSSION

Commissioner Belt asked if there was sufficient guidance from the committee for the definition of agritourism.

Commissioner Hird put two definitions of agritourism on the overhead. One was the definition from the State Statute and the other was the definition they settled on for the Text Amendment language. He said the State Statute defines agritourism activity in a very general way, which was intentional to encourage it. He felt the State Statute and Text Amendment language were enough to indicate to someone what was and was not agritourism. He stated saving the family farm was one of the goals of agritourism but another component was the economic development component. He stated it was not purely for farms in the traditional sense, but it was also to stimulate economic activity based upon a rural experience.

Commissioner Belt said he liked the definition to provide as many opportunities as possible. He expressed concern about when the decision maker position changes their perspective might be different.

Mr. McCullough said the Zoning Official was charged through the Codes of the County with making those decisions. He said determinations were made by looking at case law, State Statutes, local Codes, and there was always an appeal process as well.

Commissioner Blaser said the committee tried to keep the definition simple. He felt simple was better. He hoped they could approve this and send it on and tweak later if needed.

Commissioner Liese asked Ms. Francisco if the League of Women Voters was satisfied.

Ms. Francisco said she could not represent the committee because they did not see the language staff was suggesting. She said this was a general definition and would be confusing for an individual to make that determination. She said the language presented by staff seemed appropriate based on the comments made by the League of Women Voters.

Commissioner Finkeldei said he would support the changes. He said if they adopt it tonight they were saying they want to encourage agritourism. He felt it sent the right message to County Commission. He said if the County Commission wants to regulate it more than the State they will send it back.

ACTION TAKEN

Motioned by Commissioner Hird, seconded by Commissioner Blaser, to approve the Text Amendment, TA-8-11-11, to the Douglas County Zoning Regulations for the Unincorporated Territory of Douglas County to establish *Agritourism* as a use in the County A (Agriculture) District, as outlined in the staff report with the additional language staff drafted to accommodate the concern of the League of Women Voters.

Commissioner Blaser asked if everyone would need to check with the County Zoning & Codes office before deciding to do agritourism.

Commissioner Hird said he thought it was reasonable step and could prevent problems.

Commissioner Blaser said it was still an interpretation.

Commissioner Hird said when the committee first drafted language it looked more like typical zoning regulations than something to promote an activity, so they backed off and started over.

Ms. Miller said the language was only a recommendation that they 'should check' not that they need to. She said if they are agriculturally exempt they do not have to look at the zoning regulations.

Mr. McCullough said it was a way for a person not to invest in something that wasn't agritourism. He said it was better to get that determination upfront.

Commissioner Blaser inquired about the appeal process.

Mr. McCullough said if someone gets a determination of one category or another that could be appealed to the Board of Zoning Appeals. He said they could find out upfront if they are Code compliant moving forward.

Unanimously approved 8-0.

Memorandum

To: County Commission of Douglas County, Kansas

From: Caitlin Stene, Douglas County Management Intern

Date: May 9, 2012

Subject: Research for possible expansion of an EMS station to the City of Eudora

Background:

In 2010, the City of Eudora conducted a management audit of the City's Fire Department. This provided the City with six recommendations and options for improvement in their fire services. Recommendation five of the management audit states: "consider pressing the County and LDCFM for either funding two full time staffed first responders or providing a fully staffed ALS ambulance in the City of Eudora". This report finding prompted the November 10th, 2010 letter (appendix A) addressed to County Commissioner Nancy Thellman, which stated a possible area of collaboration between the City of Eudora and Douglas County. The "Advanced Life Support Response" recommendation states the need for improvement in response time for emergency medical services. The combination of the management audit and the letter to the County Commission created the need for research into the possibility and feasibility of an EMS expansion to the City of Eudora.

EMS Expansion Considerations:

After an informational meeting with Lawrence-Douglas County Fire and Medical Chief Mark Bradford and Division Chief Bill Stark, four areas of analysis were determined to be essential for the proper consideration of this project. These four areas are: call volume, response time, population density, and reliability of first responders in the area. These areas are explored below, as well as an estimated budget of one-time and yearly operating expenses for a new station in Eudora.

Call volume analysis:

For this consideration area it was decided to use the Baldwin City EMS station as a comparable reference for call volume. Baldwin City EMS station is currently the only Lawrence-Douglas County Fire and Medical (LDCFM) operated station in the County that provides EMS response services only. After conversations with Chief Bradford, it was decided that Baldwin City was a good comparison station to analyze call volume and potential demand. Call volume data was collected from 2008 to August 2011. Below is a chart that summarizes the findings:

Station/Area	Area yearly call volume average	Lawrence-Douglas County Medical yearly call volume average	Percent of total calls
Eudora	361	7631	4.73%
Baldwin City	321	7631	4.21%

Based on the information presented above, the City of Eudora area receives slightly more EMS related calls per year when compared to Baldwin City area.

Below is a breakdown of call volume for the City of Eudora by call type.

Eudora EMS Calls Volume by Description	2011	2010	2009	2008	TOTAL	% of Total
EMS call BLS care only all patients	35	59	48	15	157	11%
EMS call ALS care on one or more patients	121	234	221	193	769	53%
EMS call all patients no treatment	8	47	32	45	132	9%
Medical Transfer - Non Emergency	12	14	14	22	62	4%
Medical Transfer - Emergency	15	8	11	3	37	3%
Motor vehicle accident with injuries	1	27	2	4	34	2%
Motor vehicle accident-patient refusal	1	10	7	0	18	1%
Motor Vehicle Accident - No obvious Injuries/asses	2	5	2	1	10	1%
Medical Standby - County Structure Fire	1	5	5	9	20	1%
Medical Standby -For Law Enforcement	0	2	0	0	2	0%
Assist person no obvious injury or assessment	5	18	13	15	51	4%
EMS Call - Cancelled by Law Enforcement	14	35	22	27	98	7%
EMS Call - Cancelled by Alarm Company	0	0	1	1	2	0%
EMS Call - Cancelled by Caller	4	10	6	8	28	2%
No EMS Incident found on arrival at location	1	6	3	2	12	1%
Medical Panic Alarm - Unintentional	0	0	1	2	3	0%
EMS call, party transported by non-fire agency	0	0	1	0	1	0%
Motor vehicle accident - injuries/extrication	1	6	0	0	7	0%
Motor vehicle versus pedestrian/bicycle accident	1	1	0	1	3	0%
TOTAL	222	487	389	348	1446	100%

*Data for 2011 is up until August 31, 2011

As one can see from the information presented above, EMS calls providing basic life support (BLS) and advanced life support (ALS) account for over 60% of the average calls for the Eudora area. These two call types combined make up the majority of calls that the LDCFM respond to in the Eudora area. The data presented in the above two tables was obtained from the Lawrence-Douglas County Fire and Medical dispatch call records.

Response Time mapping:

Attached to this memo are two response time maps.

The first map shows the current response time of EMS services to Eudora from Lawrence-Douglas County Fire and EMS Station Number Two. This station currently does all of the major responding to the Eudora area when EMS is needed in a situation. As you can see from looking at the map, it takes an EMS unit approximately 11 to 15 minutes, depending on location of incident, to arrive in Eudora.

The second map displays what the response time would be if a station was located in downtown Eudora. As expected and implied with this research project, the response time for EMS will improve drastically with an additional EMS station being placed in Eudora.

These maps help to display the changes that would be experienced in service provision if an additional EMS station was located in the City of Eudora.

Population Density:

A comparison of population and density between the City of Eudora and the City of Baldwin City is shown below. One can see from looking at the chart, that the City of Eudora has more residence per square mile when compared to the City of Baldwin City. These numbers reflect the city population as reported on the 2010 Census, the numbers were obtained from the Douglas County GIS Department.

City	Total population	Population density
Eudora	6425	2185 per square mile
Baldwin City	4923	1879 per square mile

It is important to remember the rationale for the placement of the Baldwin City EMS station. When the initial merger of the Lawrence and Douglas County Fire and EMS took place over 10 years ago, it was decided to open an EMS only station in Baldwin City. Due to distance from Lawrence and the geographical area of southern and western Douglas County, it was decided during the merger that Baldwin City would be an appropriate location for an EMS station. The Baldwin City EMS station services the southern and western portion of Douglas County. The EMS station is financed solely by Douglas County.

Rough estimated budget:

The below budget is an estimate of both the one-time and operating expenses for an EMS station located in the City of Eudora.

Estimated Budget		
One-Time Expenses		
Building		unknown
Equipment		
	Ambulance	\$200,000.00
Start-up equipment-Ambulance		\$70,000.00
Start-up equipment-Station		\$100,000.00
Total One-Time Expenses		\$370,000.00
Operating Expenses		
Salary & Benefits*		\$600,000.00
Supplies		\$14,000.00
Building		
	Utilities	\$10,500.00
	Pest Control	\$600.00
Depreciation		\$37,000.00
Total Operating Expenses		\$662,100.00

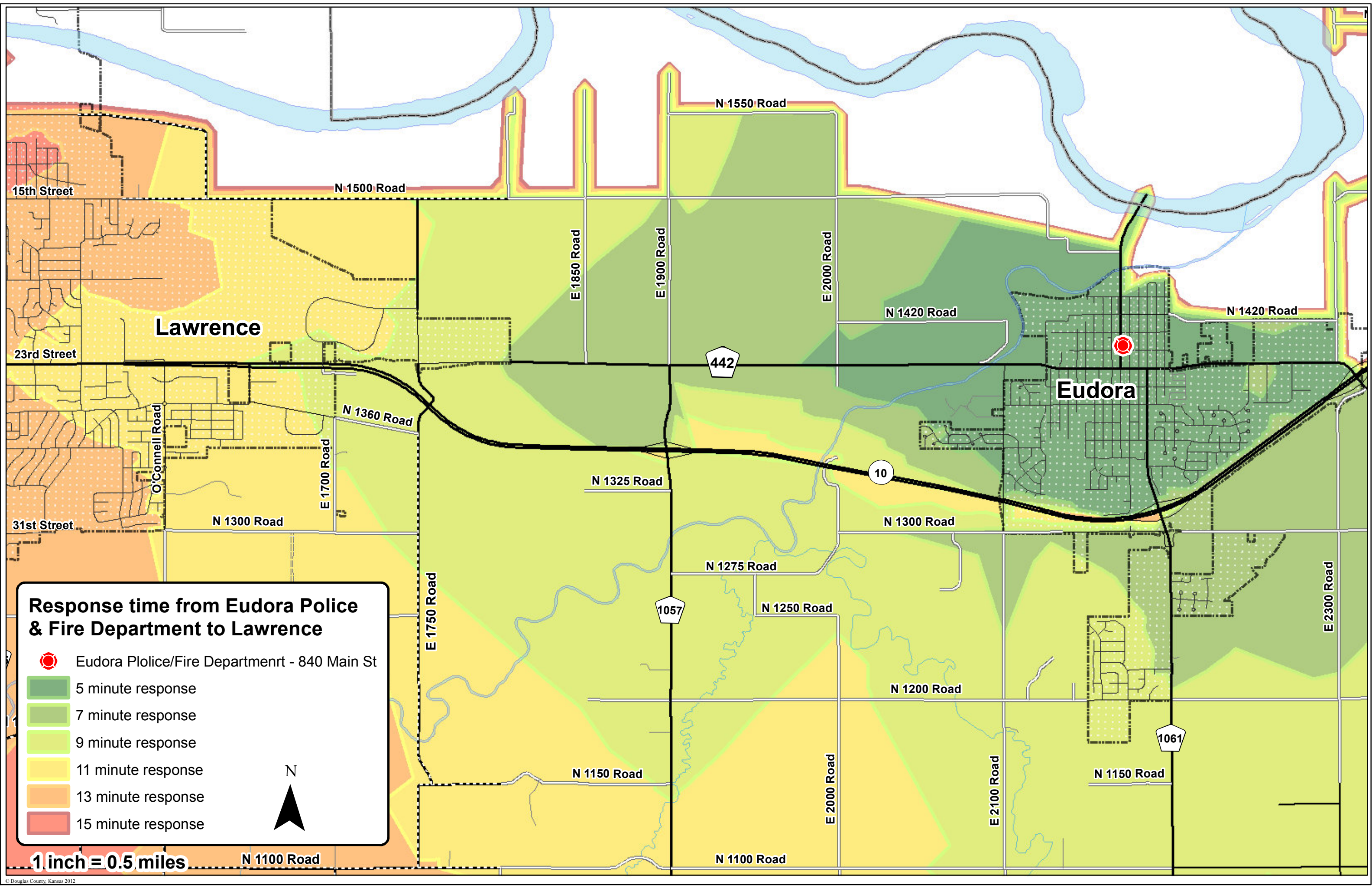
*Salary & Benefit calculations provided in appendix B

While the cost of building is currently unknown, it is acknowledged that the City of Eudora is in the process of building a new fire station. With the construction of a new fire station there is a possibility for an EMS station to be located in the old fire station. If it is decided to proceed with the creation of a Eudora EMS station, conversations will need to take place to decide the on a building and a location for the EMS station.








Annually the cost of operating an EMS only station in the City of Eudora will cost approximately \$662,000 dollars.

Further Considerations:

Based upon conversations with LDCFM Chief Bradford it is important to consider the strength and reliability of the local first responder in the Eudora area. The strength of the first responder unit operating in the Eudora area needs to a consideration of officials when making the decision to expand EMS services.

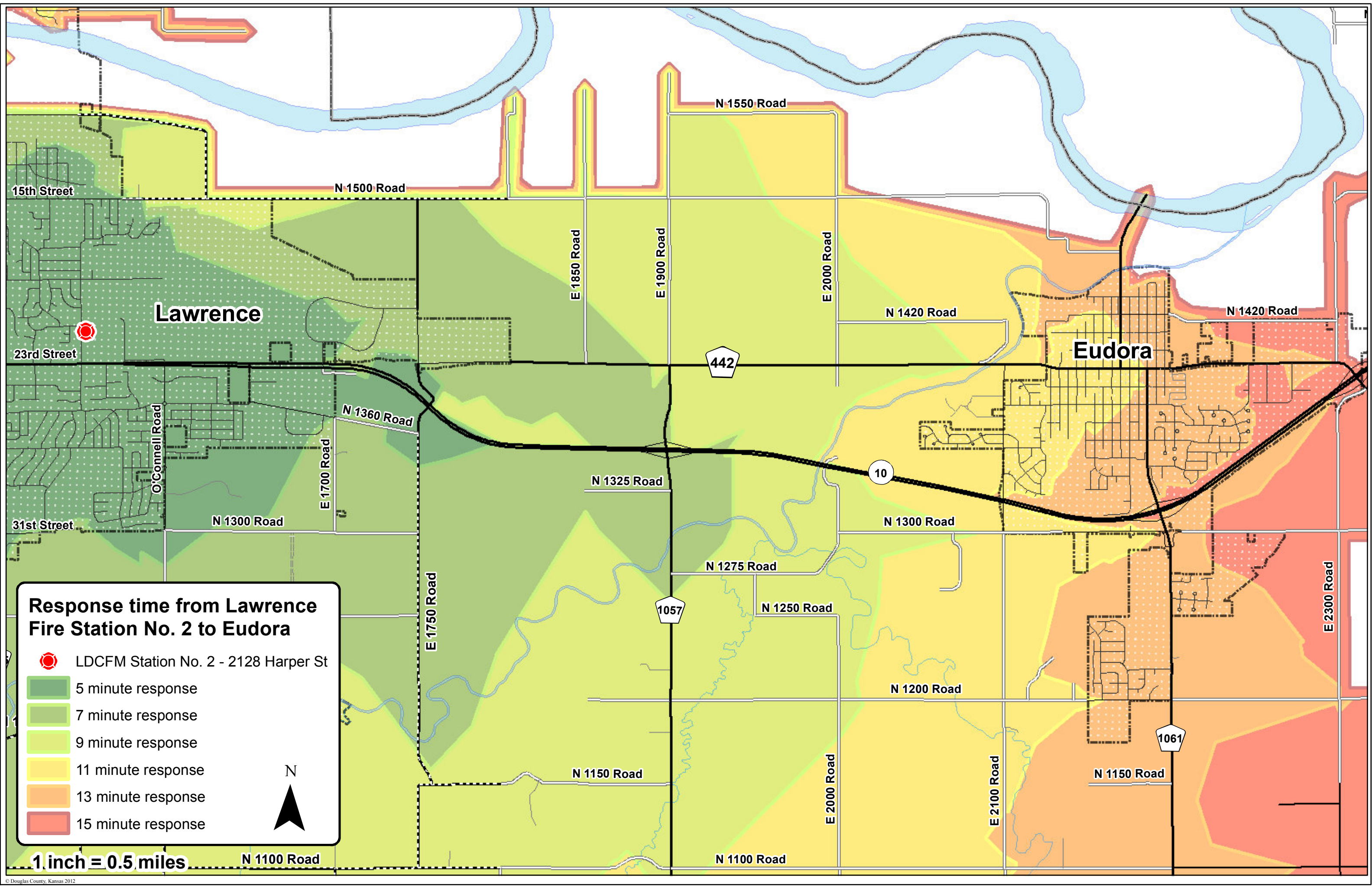


Response time from Eudora Police & Fire Department to Lawrence




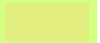



-  Eudora Police/Fire Department - 840 Main St
-  5 minute response
-  7 minute response
-  9 minute response
-  11 minute response
-  13 minute response
-  15 minute response



1 inch = 0.5 miles

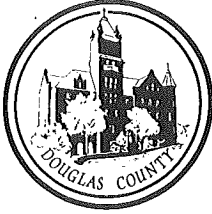


Response time from Lawrence Fire Station No. 2 to Eudora

-  LDCFM Station No. 2 - 2128 Harper St
-  5 minute response
-  7 minute response
-  9 minute response
-  11 minute response
-  13 minute response
-  15 minute response

N
▲

1 inch = 0.5 miles



DOUGLAS COUNTY PUBLIC WORKS

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

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

MEMORANDUM

TO : Douglas County Commission

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

DATE : April 25, 2012

RE : Proposed extension of Road No. 650 (N1675 Road)

As you will recall we received a request to extend Road No. 650 (N1675 Road), located west of E350 Road, approximately 0.1 mile. Please see the attached location map and aerial photo. The proposed road extension will allow the Vermette's parcel to be "building permitable"... a condition (vesting) they lost when they sold "agricultural" property to the Solbach's. As you are aware at least 250 feet of public road frontage is needed to obtain a residential building permit. While the Vermette's parcel already has a residence on the property it would not be eligible for a building permit should it be destroyed by fire. In addition, the road is proposed to be extended past the Vermette's parcel such that the Solbach's property will have public road access. The Solbach's have indicated they have no plans to build a residence on their tract.

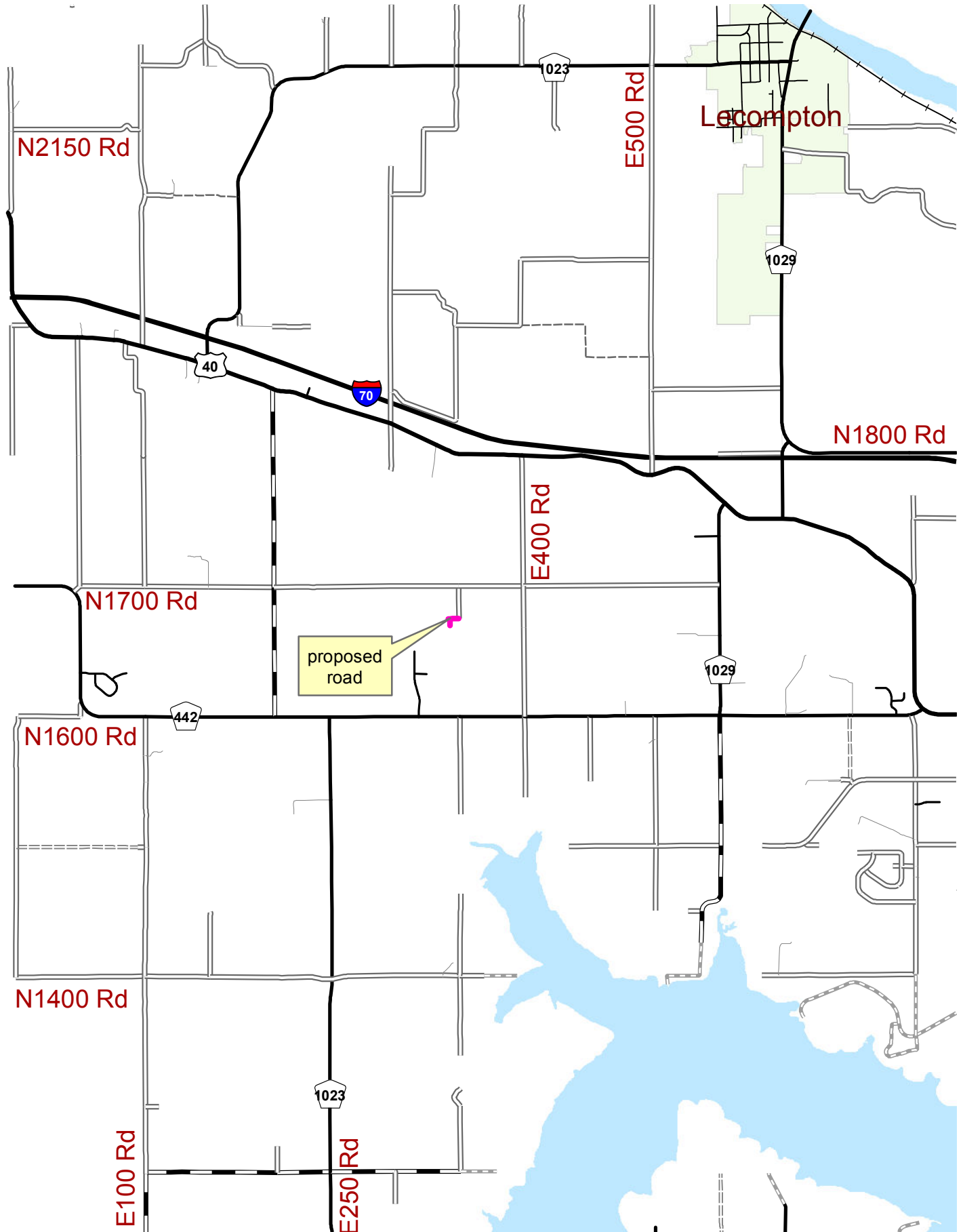
The Solbach's and Vermette's have signed an affidavit stating they will not protest the connection of the proposed road extension to another appropriate public road in the future should the county pursue such a project. No such project has been nor is being contemplated.

Attached are BOCC minutes from previous discussions pertaining to the road extension, a previous Memo to BOCC from Sept. 23, 2009, and a resolution that will extend the roadway as proposed.

ACTION REQUIRED: Hold a "public hearing" regarding the proposed road extension. Then a motion is required to enact the attached resolution.

Road Extension Location Map

1 inch = 1 miles
0.5 0.25 0 0.5 Miles



Road Extension

1 inch = 300 feet
150 75 0 150 Feet



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9/30/2009	
Minutes	
<p>Flory called the regular session meeting to order at 6:35 p.m. on Wednesday, September 30, 2009 with two members present. Thellman was absent.</p> <p>Flory moved to approve the minutes of August 19 and September 9, 2009. Motion was seconded by Gaughan and carried 2-0.</p> <p>CONSENT AGENDA 09-30-09 Flory moved approval of the following Consent Agenda:</p> <ul style="list-style-type: none"> -#9658; Commission Order No. 09-036 (on file in the office of the Clerk); -#9658; Resolution 09-34 establishing a 45 miles per hour maximum speed limit on a portion of County Route 1057 (E 1900 Road) in Eudora Township. <p>Motion was seconded by Gaughan and carried 2-0.</p> <p>PLANNING 09-30-09 The item regarding the reconsideration of the motion on Item 6 (Z-11-19-08) on the September 23, 2009 agenda has been withdrawn by Commissioner Flory.</p> <p>PUBLIC WORKS/ROAD EXTENSION 09-30-09 Keith Browning, Director of Public Works, presented the Board with a request to create road right-of-way in Kanwaka Township. The proposed road would be N 1675 Road and extend west from the current terminus of E 350 Road, one-fourth mile south of N 1700 Road. John Solbach, made the request on behalf of property owners Judy and Fred Vermette to allow another buildable lot for the 25-acre parcel immediately southwest of the terminus of E 350 Road. In order to allow another buildable lot, at least 500 feet of right-of-way must be created.</p> <p>Browning stated in his opinion, a road connection between E 318 Road in Fox Run Subdivision and E 350 Road would be an improvement to the road network since it would provide connectivity between Route 442 (Stull Road) and N 1700 Road. It would also benefit properties along E350 Road lying south of an existing culvert approximately 480 feet south of N 1700 Road. Browning expressed concern that properties on E350 south of the existing culvert could be inaccessible after large rains. Solbach's request would not complete a connection between E 318 Road and E 350 Road, but would be a small step towards a connection. Browning's opinion is such a connection should follow E 350 Road alignment south to the quarter section line, then continue west to E 318 to follow a more favorable topography route.</p> <p>John Solbach, attorney for the Vermettes, stated he would be willing to give easements to the County to complete the connection if that were necessary. The Vermette's five-acre lot is not buildable nor can they get a building permit to make improvements without the road extension. The dedicated right-of-way would need to be 600 feet, and the applicants would construct 350 feet of roadway.</p> <p>Browning stated that if the County is working toward a connection to Fox Run Subdivision, it would make sense to go south. There is no interest in a connection though at this time.</p> <p>Flory stated that although a south connection might give better access, Kanwaka Township has indicated that they are not in favor of making the connection. The cost of the actual construction of the road, and any other expense, would be born by the property owners. After constructed, if approved by the County, maintenance would be the responsibility of the township.</p>	

Solbach stated he currently has a 35 ft easement across 20 acres and a 35 ft easement from the Vermettes on the south side. He stated the property owner to the north would be willing to dedicate an easement to the County.

Gaughan asked if the County could obtain the entire right-of-way for the south road to assist a future Commission. Browning stated "yes" that could be done.

It was the consensus of the board to table the item for the October 14, 2009 agenda when there will be a full Commission present. The Board will consider at that time whether to direct staff to prepare the necessary resolution and notice.

ACCOUNTS PAYABLE 09-30-09

Flory moved to approve accounts payable in the amount of \$956,771.74 paid on 09/28/09; payroll in the amount of \$760,177.76 paid on 09/25/09; KPERs in the amount of \$64,602.90 paid on 09/25/09; and FICA in the amount of \$56,026.34 paid on 09/25/09. Motion was seconded by Gaughan and carried 2-0.

Flory moved to adjourn the meeting; Gaughan seconded and the motion carried 2-0.

Nancy Thellman, Chair

Jim Flory, Vice-Chair

ATTEST:

Jamie Shew, County Clerk

Mike Gaughan, Member

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Date	
10/14/2009	
Minutes	
<p>Flory called the regular session meeting to order at 4:00 p.m. on Wednesday, October 14, 2009 with two members present. Thellman was absent.</p> <p>CONSENT AGENDA 10-14-09 Flory moved approval of the following Consent Agenda:</p> <p>-#9658; Application for an authorized emergency vehicle permit for Dillon Filkins, Kanwaka Township Fire Department.</p> <p>Motion was seconded by Gaughan and carried 2-0.</p> <p>EMERGENCY MANAGEMENT 10-14-09 Chuck Magaha, President of the Kansas Emergency Management Association, presented the awards to the following Emergency Management Staff: Teri Smith, Director of Emergency Management, as Emergency Management Professional of the Year; Sheila Meggison, Emergency Management Planner, for Outstanding New Emergency Management Professional; and Jillian Blair, Assistant Emergency Management Director, as a Kansas Certified Emergency Manager.</p> <p>EMERGENCY COMMUNICATIONS 10-14-09 Selma Southard, Director of Emergency Communications, asked the Board to authorize the utilization of Douglas County 911 Fee Funds to upgrade the Douglas County's VHF Fire Radio System to the mandated FCC Narrowbanding Spectrum at a cost of \$103,721.79 for Douglas County Emergency Communication's portion. Southard recommends using the company that previously installed the existing equipment being reprogrammed. Douglas County Emergency Management will seek grant funding for their portion (\$17,457.51) of the system and the Kansas University Police Department's Communications Center will be paying for their portion in the amount of \$987.56.</p> <p>Flory moved approval to authorize use of Douglas County 911 Fee Funds to implement and upgrade Douglas County's VHF fire Radio System to the mandated FCC Narrowbanding Spectrum in the amount of \$103,721.79. The motion was seconded by Gaughan and carried 2-0.</p> <p>PUBLIC WORKS/ROAD EXTENSION 10-14-09 The Board continued their discussion concerning a request for a road extension of N 1675 Road at the southern end of E 350 Road in section 29-12-18, as tabled from the September 30, 2009 agenda. John Solbach, one of the property owners, stated he is not here representing the Vermettes as an attorney, but as an interested party in the road extension. The Vermettes are the other property owner in this request.</p> <p>Flory commented that the Board needed to consider the following: 1) whether to approve the creation of road right-of-way, and if so, 2) whether access should be taken from the west as requested by the applicant or south as suggested by the Director of Public Works, keeping in mind the possibility of a road connection to the south with a road in Fox Run Subdivision sometime in the future.</p> <p>Per a request by the Board, Keith Browning, Director of Public Works, discussed the west and south road extension options. Solbach stated that if the Board approved the west extension, there is already a road easement with the property owner to the north. If the Board approved the extension to the south, the property owner on the east side of the extension is unwilling to grant a right-of-way easement.</p> <p>Flory asked if the road could extend south later, after extending the road to the west. Browning stated it could by petition or through a process like today. Gaughan raised concerns that a road extension to the west would</p>	

not meet the policy criteria set out in Home Rule Resolution 08-5-2 concerning networking as a criteria for road extension. He asked Linda Finger, Planning Resource Coordinator, for her feedback.

Finger stated she needed to ask for some direction if networking is not the key issue for this Commission. Safety and environmental concerns are also discussed in the road evaluation criteria and they have been discussed as contributing factors today. Regardless of whether the road goes west or south, there is a low water crossing issue along E350 to the north of this property which increases safety concerns if more houses are added. Staff needs direction on what to advise property owners who have similar interests and what to come back to the Commission with in the future when others want road extensions.

Gaughan asked if a road was required south, from the western extension of N 1675 Road across Solbach's property, if Solbach would be required to subdivide his property. Finger confirmed that the creation of a road to the south of N 1675 Road would divide Solbach's property resulting in a division of the existing parcel.

Gaughan then asked what obligation Mr. Solbach would have in the future to dedicate road right-of-way to the south of N 1675 Rd if the County wants to create a connection between that road and the property south of Solbach's.

Solbach stated in 10 years if an easement is something the County wants, he will not raise a problem with the request. Solbach stated he is willing to put that in writing in a document for public record to attach to the Certificate of Survey, assuring that he would provide public right-of-way and that this would be a commitment that would run with the land.

Flory moved to proceed with scheduling a public hearing for formal determination of a petition for creation of N 1675 Road to the west of E 350 Road. He asked staff to draft a resolution creating new public road right-of-way from the terminus of E 350 to the west, based on a determination of the necessary footage needed for the construction of a road. Public Works will work with the applicants to determine what that footage should be. Flory also asked staff to work with the applicant to create language for the certificate of survey process, as a condition the Commission can add to the road approval, which would be filed with the Certificate of Survey. Motion was seconded by Gaughan and carried 2-0.

[Flory stated common sense will be the Board's key consideration to each situation in the future, with the basic theory being that the road evaluation criteria are to be applied using common sense. Gaughan stated he would like to use the road criteria but there may be a different standard for the weighting of factors in the reviewing of new road request. Both Commissioners indicated that the Board will work on language to help staff respond to future applicants and that will give clarity to their use and interpretation of the resolution.]

PUBLIC COMMENT 10-14-09

Russ Lang, local real estate agent, presented the Board with an issue regarding property his client purchased along a shared private drive. He was notified by Keith Dabney that the three properties along the drive would no longer have the opportunity to get building permits issued through the county because there is no record of the private drive having been approved by a previous County Commission. Lang stated the shared driveway issue has not changed for the properties he has represented since 1963. He has talked to Linda Finger and understood that a resolution to address private roads in a broader way was being worked on, but it had been two months and if that cannot be worked out he still wants the Board to address his specific concern. At this time, if the houses were destroyed by fire or tornado, they could not get a building permit to be rebuilt.

EXECUTIVE SESSION 10-14-09

At 5:25 p.m., Flory moved for the Board to recess to executive session for 30 minutes (or until 5:55 p.m.) to discuss the two issues. The justification for the first issue involved the acquisition of right-of-way for a Douglas County project. Attendees included: Evan Ice, County Counselor; Craig Weinaug, County Administrator; Pam Madl, Assistant County Administrator; Keith Browning, Public Works Director; and Michael Kelly, County Surveyor.

The second topic involved the need for consultation with the County Counselor on matters, which would be deemed, privileged under the attorney-client relationship. Attendees for this portion of executive session included:

Evan Ice, County Counselor; Craig Weinaug, County Administrator; Pam Madl, and Assistant County Administrator. Motion was seconded by Gaughan and carried 2-0.

The Board returned to regular session at 5:55 p.m. No action was taken.

ACCOUNTS PAYABLE 10-14-09

Flory moved to approve accounts payable in the amount of \$532,201.18 to be paid on 10/15/09. Motion was seconded by Gaughan and carried 2-0.

Flory moved to adjourn the meeting; Gaughan seconded and the motion carried 2-0.

RESOLUTION NO. 12 - _____

A RESOLUTION EXTENDING
PERMANENT ROAD RECORD NO. 650
(N1675 ROAD)

WHEREAS, pursuant to Charter Resolution 07-4-1, the Board of County Commissioners of Douglas County may lay out, alter, relocate, widen, extend, or vacate any road as the board determines appropriate and in the public interest; and,

WHEREAS, the Board has received a request to extend Permanent Road Record No. 650; and,

WHEREAS all permanent road right of way required for extending Permanent Road Record No. 650 has been donated to Douglas County; and,

WHEREAS, notice of the road extension was sent by first class mail to the owner of each property adjoining the road; and,

WHEREAS, the Board has determined the extension of said road is appropriate and in the public interest; and

WHEREAS, the county surveyor has prepared a plat indicating the location of said road; and,

WHEREAS, the permanent easement required for the extension of said road is described as follows:

That portion of the Northwest Quarter (NW $\frac{1}{4}$) of Section 29, Township 12 South, Range 18 East of the Sixth Principal Meridian in Douglas County, Kansas, described as follows:

beginning at the southeast corner of the North Half of said Northwest Quarter (N $\frac{1}{2}$, NW $\frac{1}{4}$), thence north along the east line of the North Half of said Northwest Quarter (N $\frac{1}{2}$, NW $\frac{1}{4}$) on an assumed bearing of North 0 degrees 14 minutes 29 seconds West a distance of 60.01 feet, thence North 89 degrees 20 minutes 16 seconds West a distance of 85.14 feet, thence South 76 degrees 11 minutes 5 seconds West a distance of 100.00 feet, thence North 89 degrees 20 minutes 16 seconds West a distance of 226.91 feet, thence South 0 degrees 39 minutes 44 seconds West a distance of 35.00 feet to the south line of the North Half of said Northwest Quarter (N $\frac{1}{2}$, NW $\frac{1}{4}$), thence South 0 degrees 39 minutes 44 seconds West a distance of 35.00 feet, thence South 89 degrees 20 minutes 16 seconds East a distance of 40.36 feet, thence South 0 degrees 14 minutes 29 seconds East a distance of 215.45 feet, thence North 89 degrees 45 minutes 31 seconds East a distance of 70.00 feet, thence North 0 degrees 14 minutes 29 seconds West a

distance of 214.34 feet, thence South 89 degrees 20 minutes 16 seconds East a distance of 125.22 feet, thence North 76 degrees 11 minutes 5 seconds East a distance of 100.00 feet, thence South 89 degrees 20 minutes 16 seconds East a distance of 77.56 feet to the east line of the South Half of said Northwest Quarter (S ½, NW ¼), thence North 0 degrees 14 minutes 29 seconds West along the east line of the South Half of said Northwest Quarter (S ½, NW ¼) a distance of 10.00 feet to the point of beginning.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Douglas County, Kansas, that the above described extension of Permanent Road Record No. 650 (N1675 Road) is hereby established, contingent upon proper instruments of conveyance of right of way being recorded in the office of the Register of Deeds; and,

BE IT FURTHER RESOLVED the road shall be placed under the maintenance jurisdiction of Kanwaka Township upon completion of construction.

ADOPTED this _____ day of _____, 2012.

BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, KANSAS

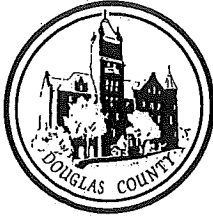
Mike Gaughan, Chair

ATTEST:

Jim Flory, Member

Jamie Shew, County Clerk

Nancy Thellman, Member



DOUGLAS COUNTY PUBLIC WORKS

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

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

MEMORANDUM

To : Board of County Commissioners

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

Date : September 23, 2009

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

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

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

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

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

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

September 23, 2009
Page Two

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

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

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

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

Responses from Linda Finger, Planning Resources Coordinator

Response to Economic Conditions 3:

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

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

Response to Safety and Environmental Considerations 4:

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

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

HOME RULE RESOLUTION NO. HR 08-5-2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

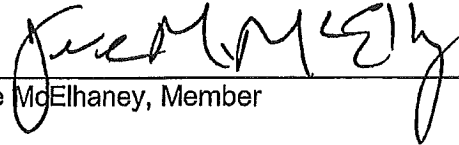
SECTION 4. Publication. This is a home rule resolution and shall be effective after publication one time in the Official County newspaper.

ADOPTED this 21st day of May, 2008.

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



Bob Johnson, Chair



Jere McElhaney, Member



Charles Jones, Member

ATTEST:



Jameson D. Shaw, County Clerk

CHARTER RESOLUTION NO. 07-4-1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



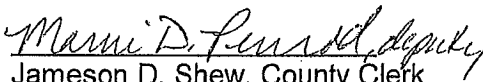
Bob Johnson, Chair



Jere McElhaney, Member

Charles Jones, Member

ATTEST:


Jameson D. Shew, County Clerk