

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

WEDNESDAY, DECEMBER 5, 2012

4:00 p.m.

-Consider approval of the minutes of November 7 and November 15, 2012

CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders;

REGULAR AGENDA

- (2) Consider approval of a Cross-Access Easement and Temporary Set Aside Agreement associated with CSU-12-00143: Certificate of Survey for a Cluster Development in the Urban Growth Area of Lawrence, for property generally located north of 977 E 100 Road. John E. Bowman and Ruth M. Bowman are property owners of record. (Mary Miller)
- (3) Consider approval of a Cross-Access Easement associated with CSU-12-00189: Certificate of Survey for a Cluster Development in the Urban Growth Area of Lawrence, for property generally located south of the intersection of N 1000 and E 1450 Roads. Benjamin W. Dennis and Stephanie L. Dennis are property owners of record. (Mary Miller)
- (4) Authorize the Public Works Director to approve change orders totaling 9% of the construction contract amount for Project No 2010-20, the reconstruction of Route 1055 (6th Street) from US-56 to Route 12. (Keith Browning)
- (5) Consider approving 2013 pay increases for employees (Sarah Plinsky)
- (6) (a) Consider approval of Accounts Payable (if necessary)
(b) Appointments
 -Bicycle Advisory Committee 12/2012 (eligible for reappointment)
 -Lawrence/Douglas County Advocacy Council on Aging 10/2012 (replacement)
 -(5 positions) Codes Board of Appeals-12/31/12
(c) Public Comment
(d) Miscellaneous

RECESS

RECONVENE

6:35 p.m.

- (7) Consider a 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. (Mary Miller)
- (8) Consider a Text Amendment, **TA-8-10-11**, to the Douglas County Zoning Regulations for the Unincorporated Territory of Douglas County to establish a Special Event Permit and develop application process and standards. (Mary Miller)
- (9) Adjourn

WEDNESDAY, DECEMBER 12, 2012

Consent:

-Consider Temporary Construction Easements in favor of KDOT.

-Consider Quit-Claim Deeds in favor of KDOT containing reversionary clauses that the real estate ceases to be used for its intended use.

6:35 p.m.

-Consider "Petition for Attachment of Lands to Rural Water District No. 2, Douglas County, Kansas" and receive statements of interested persons, including any testimony from city, township, county or regional planning commission having jurisdiction of the affected land.

-Consider approval of "Douglas County Kansas Heritage Conservation Plan" to be submitted to the Kansas State Historical Society for designation of Douglas County as a Certified Local Government, as deferred from the 11/28/12 Meeting. (John Bradley)

WEDNESDAY, DECEMBER 19, 2012

4:00 p.m.

-Amend the 2012 County Budget (Sarah Plinsky)

WEDNESDAY, DECEMBER 26, 2012 -Cancelled

WEDNESDAY, JANUARY 2, 2013

CUP-12-00099: Consider a Conditional Use Permit for sand excavation and extraction for Penny Sand Pit, approximately 434 acres located on the NE Corner of N 1500 Road & E 1850 Road. Submitted by Landplan Engineering, for William Penny & Van LLC, property owners of record. (Mary Miller will present the item.)

WEDNESDAY, JANUARY 9, 2013 – Cancelled

MONDAY, JANUARY 14, 2013

-9:00 a.m. –c Swear in reelected Commissioners and appoint Chairman of the Board for 2013

WEDNESDAY, JANUARY 16, 2013

WEDNESDAY, JANUARY 23, 2013

WEDNESDAY, JANUARY 30, 2013

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

Memorandum

City of Lawrence

Planning & Development Services

TO: Board of County Commissioners

FROM: Mary Miller, Planner

CC: Craig Weinaug, County Administrator

Date: For December 5, 2012 meeting

RE: Signatures on agreements required with Certificates of Survey

The two Certificates of Survey for Cluster Land Divisions within the Urban Growth Area listed below have been approved by the Planning Director:

CSU-12-00143 for property located in the northeast quarter of Section 32, Township 13 South, Range 19 East; generally described as south of 977 E 1000 Road.

CSU-12-00189 for property located in the northeast quarter of Section 31, Township 13 South, Range 20 East; generally described as south of the intersection of N 1000 and E 1450 Roads.

The properties included in these Certificates of Survey are marked in Figure 1. The Certificates of Survey and Build Out Plans are included as attachments with this memo for reference.

As required in Section 20-804 of the Subdivision Regulations [Section 22-110(i) of the County Code] Cross Access Easement and Maintenance Agreements were executed for both Certificates of Survey and a Temporary Set Aside Agreement was executed for CSU-12-00143, as environmentally sensitive lands as identified in Section 20-810(k) of the Subdivision Regulations [Section 11-110(k) of the County Code] are located on the property. (Figure 2)

ACTION REQUESTED

These agreements have been placed on the County Commission's agenda for consideration and signatures. Signed copies of the agreement will be provided at the meeting for signatures.

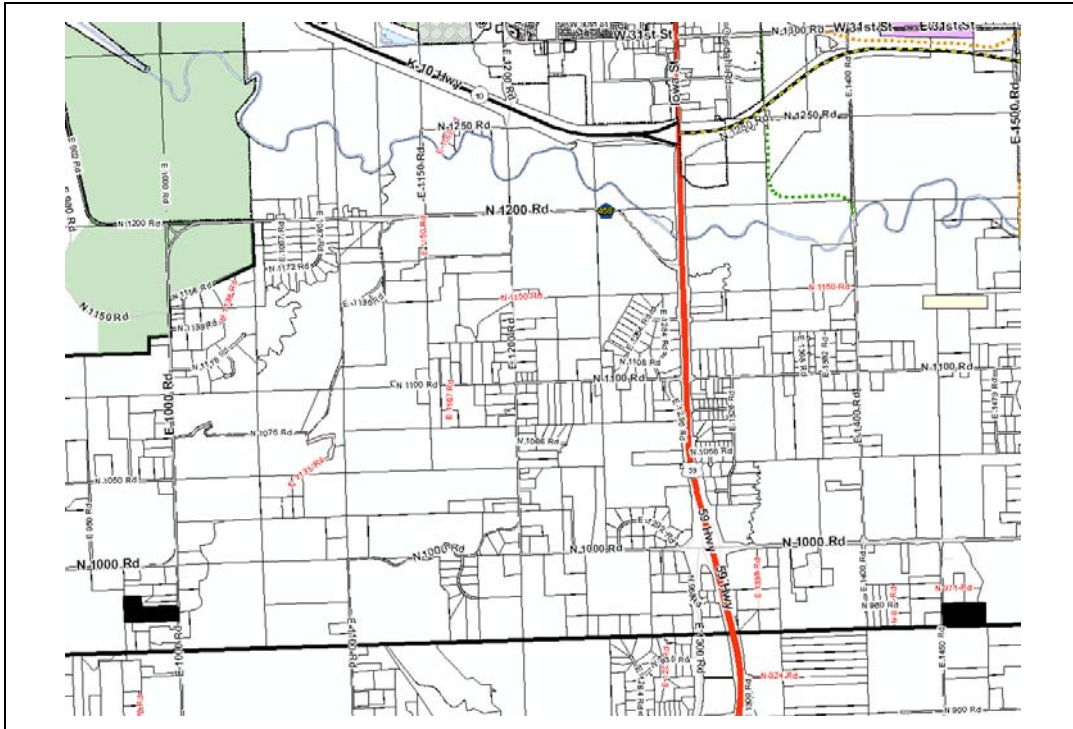


Figure 1. Properties included in Certificates of Survey marked in black. CSU-12-00143 is to the west of Hwy 59 and CSU-12-00189 is to the east. The bold line south of these properties marks the southern boundary of the Urban Growth Area.

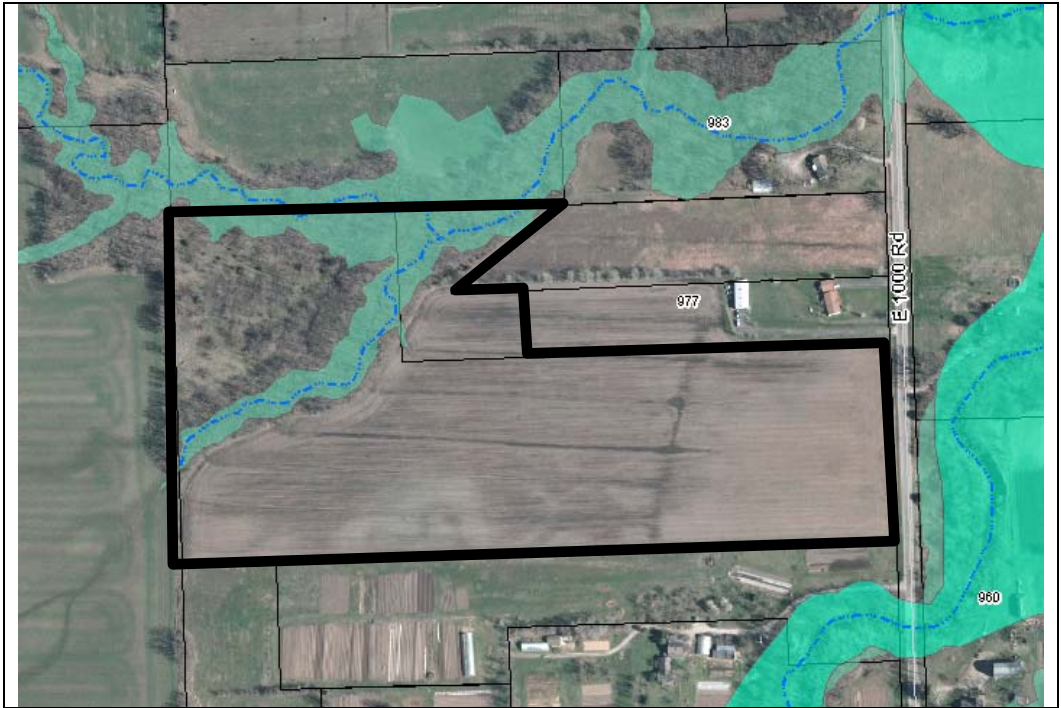
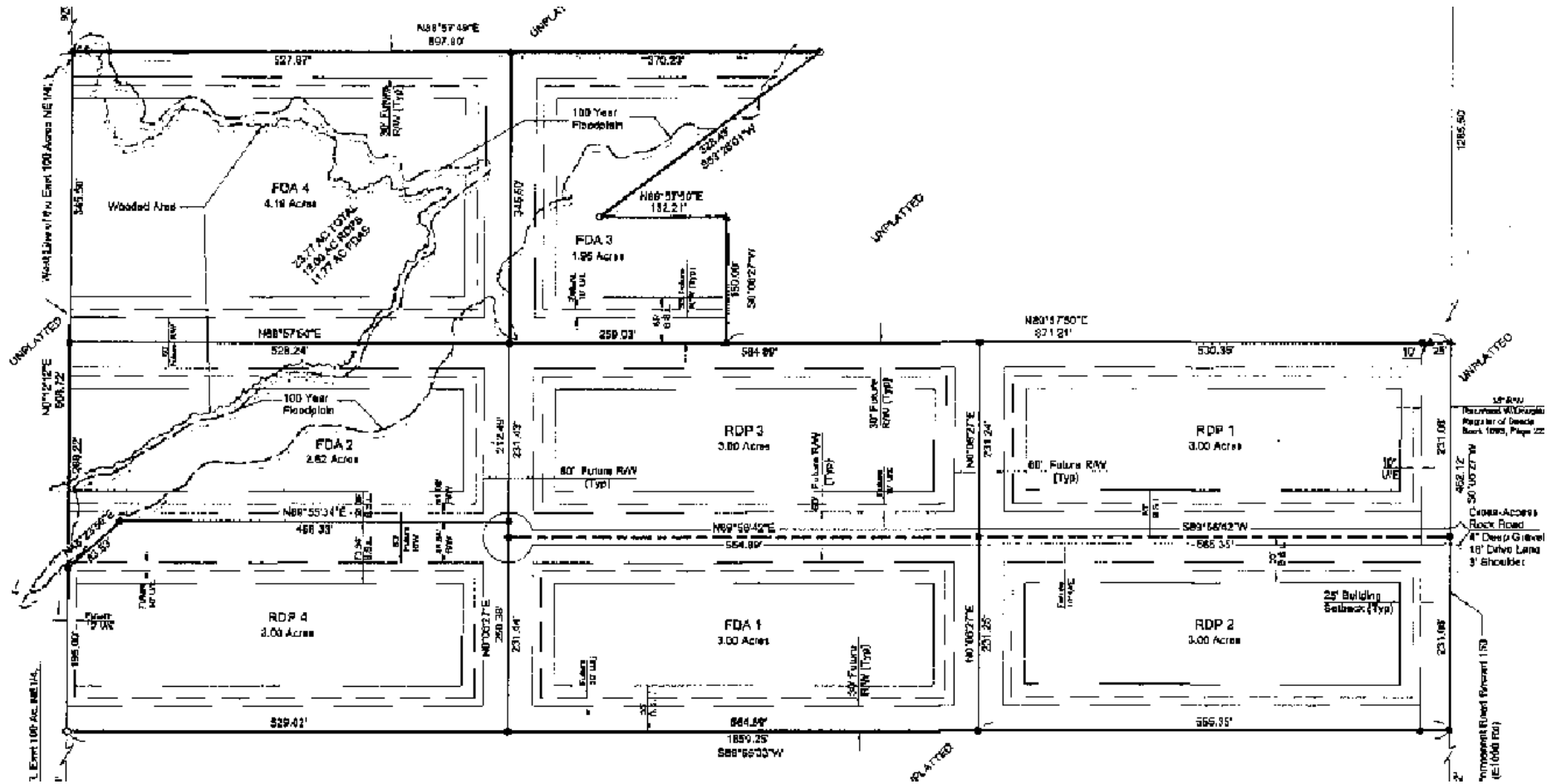
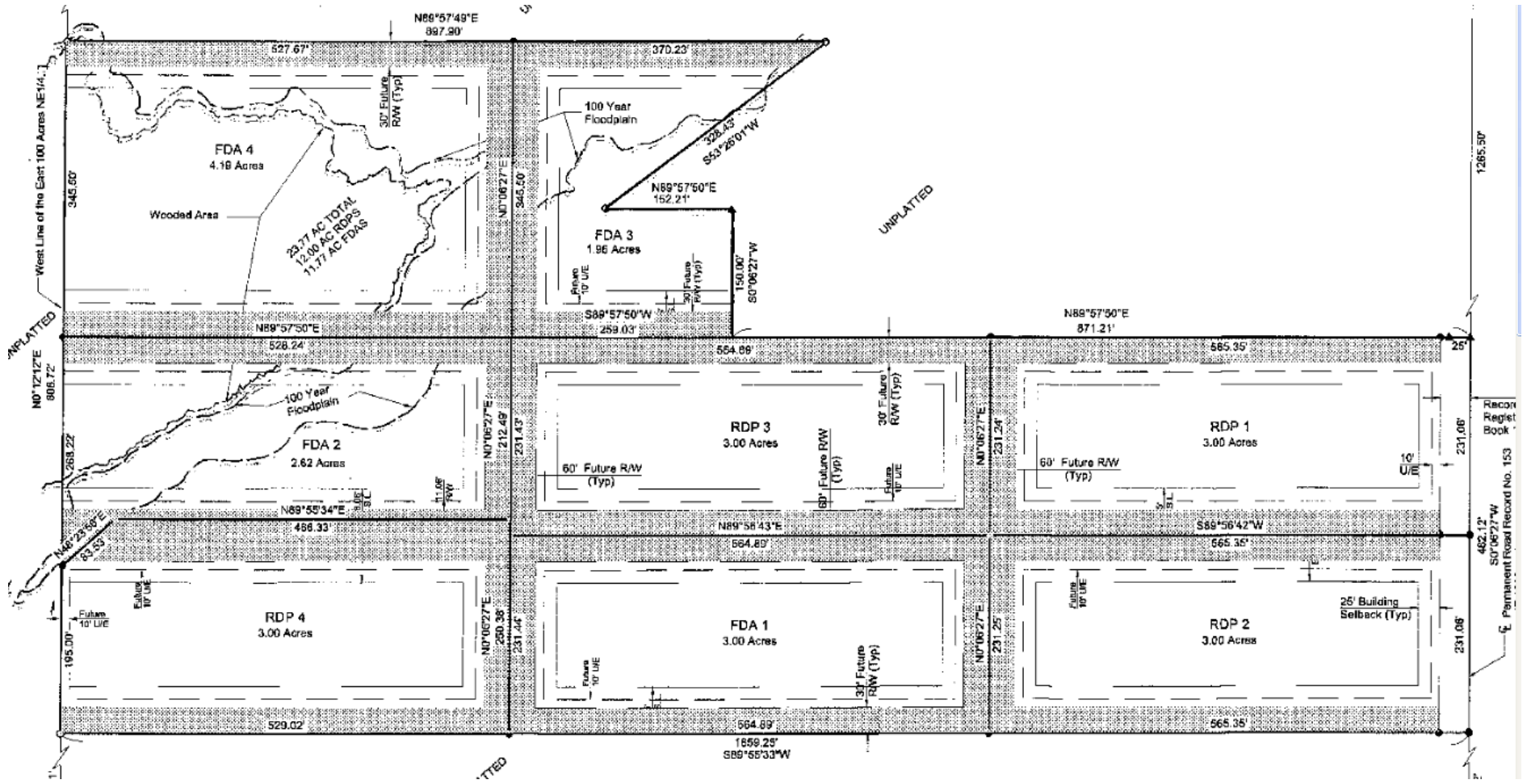


Figure 2. Environmentally sensitive lands included in the Temporary Set Aside Agreement for CSU-12-00143 include regulatory floodway fringe, stands of mature trees, and stream corridors.

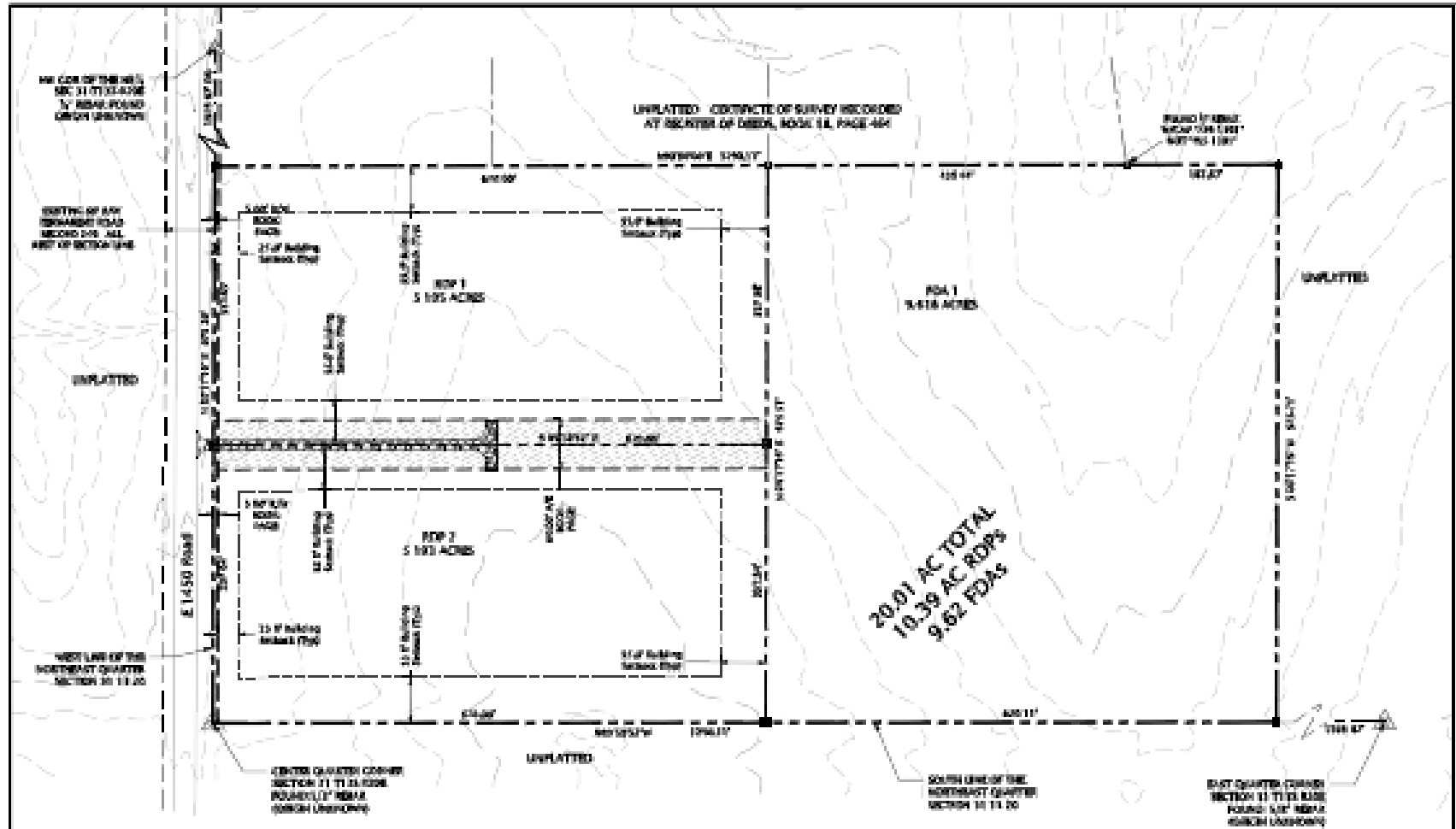
CSU-12-00143 Certificate of Survey



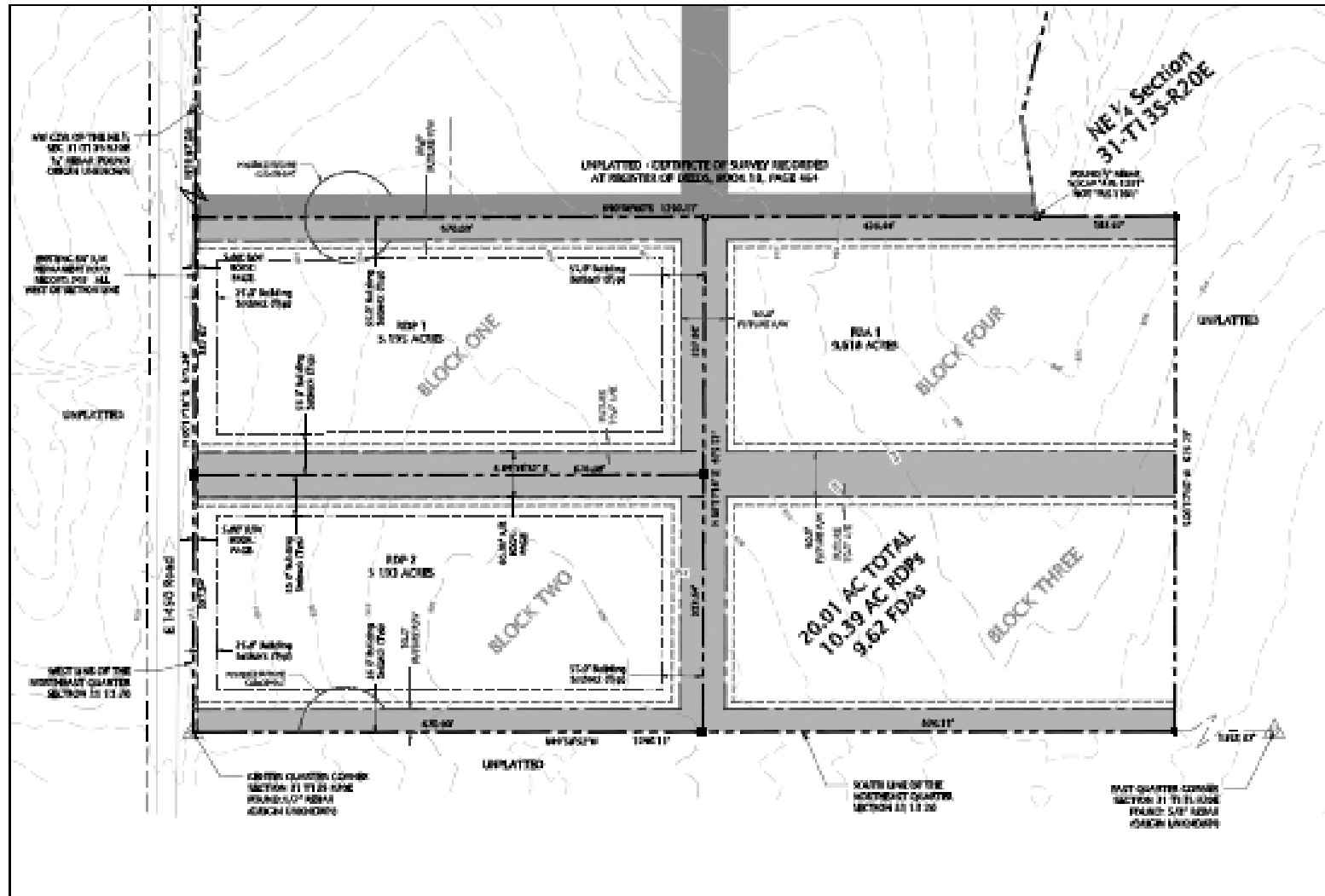
CSU-12-00143 Build Out Plan



CSU-12-00189 Certificate of Survey



CSU-12-00189 Build Out Plan



CROSS ACCESS EASEMENT AND MAINTENANCE AGREEMENT

This Cross Access Easement and Maintenance Agreement (this "**Easement**") is entered into this ____ day of _____, 20__ between John E. Bowman and Ruth M. Bowman, 977 E 1000 Road ("**Developer**") and County of Douglas County, Kansas, 1100 Massachusetts, Lawrence, Kansas 66044 ("Douglas"), and in favor of the County and property owners of the Cluster Development (defined below).

RECITALS

A. Developer desires to receive approval of a Certificate of Survey to permit Developer to legally subdivide the following described property located in Clinton Township, Douglas County, Kansas:

LEGAL DESCRIPTION

A parcel of land located in the Northeast Quarter (NE $\frac{1}{4}$) of Section Thirty-Two (32), Township Thirteen South (T13S), Range Nineteen East (R19E) of the 6th P.M., Douglas County, Kansas, more particularly described as follows:

Commencing at the Northeast corner of the Northeast Quarter (NE $\frac{1}{4}$); thence South 00° 06' 27" West a distance of 1,265.50 feet to the Point of Beginning, said point being on the East line of the Northeast Quarter (NE $\frac{1}{4}$); thence continuing South 00° 06' 27" West a distance of 462.12 feet, said point being on the East line of the Northeast Quarter (NE $\frac{1}{4}$); thence South 89° 55' 33" West a distance of 1,659.25 feet, said point being on the West line of the East 100 acres of the Northeast Quarter (NE $\frac{1}{4}$); thence North 00° 12' 12" East a distance a distance of 808.72 feet, said point being on the West line of the East 100 acres of the Northeast Quarter (NE $\frac{1}{4}$); thence North 89° 57' 49" East a distance of 897.90 feet; thence South 53° 26' 01" West a distance of 328.43 feet; thence North 89° 57' 50" East a distance of 152.21 feet; thence South 00° 06' 27" West a distance of 150.00 feet; thence North 89° 57' 50" East a distance of 871.21 feet, to the Point of Beginning, containing 23.77 Acres more or less, subject to public road right-of-way and easements of record.

B. As a condition of approval of the Certificate of Survey, Developer is required to enter into an agreement to create a Cross Access Easement on the Cluster Development, to allow for ingress and egress between the Residential Development Parcels to be located on the Cluster Development and to and from the adjacent public right-of-way, E 1000 Road.

C. As a condition of approval of the Certificate of Survey, said Cross Access Easement shall be deemed dedicated to the City of Lawrence, Kansas, as a permanent public road right-of-way and street, upon annexation by the City of Lawrence, Kansas and its acceptance of the dedication.

D. As a condition of Certificate of Survey approval, Developer is required to create a Maintenance Agreement for said Cross Access Easement.

GRANT OF EASEMENT

NOW, THEREFORE, in consideration of the mutual promises and obligations contained herein and other valuable considerations, the sufficiency of which are hereby acknowledged, the Developer agrees as follows:

1. Definitions. Capitalized words shall have the meaning defined in this Agreement. The following capitalized words not otherwise defined in this Agreement shall have the following definitions:

Certificate of Survey means the Certificate of Survey of the Cluster Development, approved in accordance with the Subdivision Regulations for Lawrence and the Unincorporated Areas of Douglas County, Kansas, and recorded with the Office of the Douglas County, Kansas Register of Deeds.

Residential Development Parcel means that tract or tracts of real estate located within the Cluster Development for which a residence may be constructed prior to annexation to the City of Lawrence, Kansas, as identified in the Certificate of Survey.

Subdivision Regulations means the jointly adopted Subdivision Regulations for the City of Lawrence, Kansas and the Unincorporated Areas of Douglas County, Kansas, as amended, or such successor subdivision regulations as are then applicable to the Cluster Development.

2. Grant of Cross Access Easements. Developer grants and dedicates to County, and establishes for the benefit of the current and future owners of the Cluster Development, a permanent and perpetual easement and right of way over, through, and across the following described tract of real estate, for vehicular and pedestrian ingress and egress, together with construction, installation, and maintenance of public utilities, to and from the various tracts or parcels of the Cluster Development and County Road E 1000.

A parcel of land located in the Northeast Quarter (NE $\frac{1}{4}$) of Section Thirty-Two (32), Township Thirteen South (T13S), Range Nineteen East (R19E) of the 6th P.M., Douglas County, Kansas, being 60.00 feet in width centered on a line now described as follows:

Commencing at the Northeast corner of the Northeast Quarter (NE $\frac{1}{4}$); thence South 00° 06' 27" West a distance of 1,496.56 feet said point being on the East line of the Northeast Quarter (NE $\frac{1}{4}$); thence South 89° 56' 42" West a distance of 35.00 feet to the Point of Beginning; thence continuing South 89° 56' 42" West a distance of 1,095.24 feet, containing 1.51 Acres more or less.

3. No Unreasonable Interference. No building, structure, obstruction, or other improvement shall be constructed, installed, or maintained in or upon the Easement Tract and nothing else shall be done within the Easement Tract that unreasonably interferes with the rights granted and established in this Agreement.

4. Construction, Repair and Maintenance.

A. Construction. Owner of Residential Development Parcel 1 (as shown on the Certificate of Survey) agrees to construct at his sole expense, approximately 1,130 lineal feet of road with a 4" thick aggregate surface within the Easement Tract (the "Road"). The Road shall be constructed within a reasonable time after the signing of this Agreement.

B. Repair and Maintenance. Repair and maintenance costs for the Road and associated improvements shall be provided by the owner of the single Residential Development Parcel. Said maintenance shall also require snow removal, which shall be done so as to not block or unreasonably interfere with travel on the Road. The owner or owners of the Residential Development Parcel shall be responsible for this repair and maintenance until such time as the Easement Tract is accepted as a public road or street for public maintenance by either the County or the City of Lawrence, Kansas. If there are more than one Residential Development Parcels, the owners of each Residential Development Parcels shall each share equally in all repair and maintenance of the Road.

5. No Termination. No breach of this Agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such party may have hereunder by reason of any breach of this Agreement. The ownership of the Cluster Development, now or in the future, by a single owner or owners shall not effectuate a merger or otherwise terminate this Agreement.

6. No Limitation of Remedies. Any violation or breach of this Agreement shall be considered a breach of the Certificate of Survey and a violation of the Subdivision Regulations, and the County shall have the authority to enforce this Agreement in any manner permitted by law. The various rights and remedies contained in this Agreement and reserved to the parties, except as otherwise provided in this Agreement, shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power or remedy or be construed as a waiver of any default or non-performance or as acquiescence therein.

7. Public Dedication. This Agreement shall be deemed a public dedication of the Easement Tract; provided, however, that County's signing of this Agreement shall not be deemed an acceptance of the dedication or and acceptance of any maintenance obligations over the Easement Tract or the Road.

8. Manner of Acceptance of Public Dedication. Prior to annexation of all or part of the Cluster Development into the City of Lawrence, Kansas, the County may accept the dedication of the Easement Tract as a public road, upon such terms and conditions as it determines appropriate. If dedication of the Easement Tract has not been previously accepted as a public road, then upon annexation of all or part of the Cluster Development into the City of Lawrence, Kansas, the City of Lawrence may accept the dedication of the Easement Tract upon such terms and conditions as it determines at the time of annexation. Any acceptance of the dedication of the Easement Tract as a public road shall be by a signed agreement specifically referencing this Agreement, authorized by formal action of the governing body the County or City of Lawrence, as the case may be, and recorded with the Office of the Douglas County Register of Deeds.

9. Construction of Terms. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. All headings herein are for convenience and shall not be resorted to for interpretation or construction. Any feminine or neuter pronoun shall be substituted for masculine form, or vice versa, and plural shall be substituted for singular where the context may require. No waiver of any provision of this Agreement shall be construed to be a waiver of any preceding or succeeding breach of such provision, or any other provision. This Agreement may be amended or modified only in writing, authorized and executed by the County (or the City of Lawrence, Kansas if the Cluster Development is then within the corporate boundaries of the City of Lawrence) and all owners of all or any part of the Cluster Development, and may not be amended or modified by oral agreements or understandings.

10. Severability. In case any one or more of the provisions of this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

11. Covenants Running With the Land. This Agreement and the easements granted, dedicated, and established hereby shall at all times be perpetual and construed appurtenant to the land and a covenant running with the land and shall be binding upon the owner or owners of all or part of the Easement Tract and all parties claiming by, through, or under them, and shall be for the benefit of and limitations upon all future owners of the Cluster Development, provided, however, that upon acceptance of the dedication of the Easement Tract by a governmental entity, whether the County or the City of Lawrence, Kansas, the Easement Tract shall become a public right of way, for the benefit of all members of the public; provided further, however, that the rights, duties, and obligations of each owner as set forth herein shall cease with the termination of his or its ownership, except for the duties and obligations arising during the period of his or its ownership.

IN WITNESS WHEREOF, Developer and County have executed this Easement as of the year and date first above stated.

DEVELOPER:

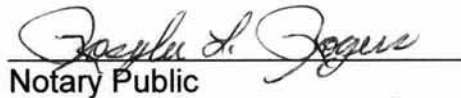

John E. Bowman


Ruth M. Bowman

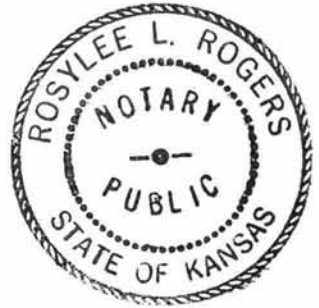
STATE OF KANSAS)
)
COUNTY OF DOUGLAS)

ss.

On this 10th day of November, 2012, before a, a Notary Public in and for the County of Douglas, personally appeared John E. and Ruth M. Bowman, husband and wife, on behalf of themselves, to me known to be the same persons who signed and is described in the above instrument and acknowledged the same to be his free act and deed.


Notary Public

My Commission expires: November 26, 2012



COUNTY:

Mike Gaughan
Chair, Board of County Commissioners

STATE OF KANSAS)
)
COUNTY OF DOUGLAS)

ss.

On this _____ day of _____, 2012, before a, a Notary Public in and for the County of Douglas, personally appeared Mike Gaughan, Chair, Board of County Commissioners, on behalf of Douglas County, Kansas, to me known to be the same person who signed and is described in the above instrument and acknowledged the same to be his free act and deed.

Notary Public
My Commission Expires:

TEMPORARY SET ASIDE AGREEMENT

THIS TEMPORARY SET ASIDE AGREEMENT (this “**Agreement**”) is entered into and effective this ____ day of _____, 20__, by _____, John E Bowman & Ruth M. Bowman, husband and wife, a Kansas limited liability company, etc.] (the “**Property Owner**”), having an address of 977 E 1000 Road in favor of the City of Lawrence (the “**City**”), having an address at 6 E 6th Street, Lawrence, Kansas 66044 and Douglas County Kansas (the “**County**”), having an address at 1100 Massachusetts, Lawrence, Kansas 66044 (the City and the County are referred to individually as a “**Beneficiary**” and collectively as the “**Beneficiaries**”).

RECITALS

WHEREAS, Property Owner is the owner of certain real property, legally described in **Exhibit A**, which is located in Douglas County, Kansas (the “**Protected Property**”), a map or schematic of which is shown in **Exhibit B**;

WHEREAS, the Protected Property possesses natural resources and environmentally sensitive areas which are identified in Section 20-810(k) of the Subdivision Regulations for Lawrence and the Unincorporated Areas of Douglas County, Kansas, such as (Floodways based on FEMA’s one-hundred year storm; Floodplains, based on the FEMA’s one-hundred year storm; jurisdictional wetlands; stream corridors; prominent natural geographic features with rocky outcroppings; stands of mature trees or individually significant mature trees; and other environmental, geographical or historical characteristics). The subject property has been subdivided through the Cluster Certificate of Survey process and the portions of the property containing (Floodplains, based on the FEMA’s one-hundred year storm, stream corridors, stands of mature trees) have been designated on the Certificate of Survey and are protected through this Temporary Set Aside Agreement as required in Section 20-804(c)(3)(i)(a);

WHEREAS, the specific natural resources, geographical or historical characteristics, and/or environmentally sensitive areas present are documented in an inventory of relevant features of the Protected Property worthy of protection, and are attached hereto as **Exhibit C** (collectively the “**Conservation Values**”);

WHEREAS, it is desired that the Conservation Values of the Protected Property be preserved and maintained by permitting only uses of the Protected Property that do not significantly impair or interfere with the Conservation Values.

AGREEMENT

The Property Owner hereby voluntarily enters into this Agreement with the Beneficiaries, to protect and preserve the Conservation Values of the Protected Property as follows:

1. PURPOSE. The purpose of this Agreement is to protect and preserve the Conservation Values of the Protected Property. Property Owner intends that this Agreement will confine the use of the Protected Property to such activities as are consistent with the purpose of this Agreement.

2. PROPERTY OWNER'S RESERVED RIGHTS. The Property Owner reserves to the Property Owner, and to the Property Owner's successors and assigns, all rights accruing from ownership of the Protected Property, including the right to engage in or permit others to engage in, uses of the Protected Property that are consistent with the purpose of this Agreement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

2.1 Conveyance. Property Owner may sell, give, mortgage, lease or otherwise convey the Protected Property, provided that such conveyance shall be subject to the terms and provisions of this Agreement.

2.2 Continued Agricultural Use. If one of the Conservation Values for the Protected Property is continued agricultural use, then Property Owner may continue to farm the Protected Property and raise livestock upon the Protected Property in accordance with those Conservation Values, and such agricultural use shall not be construed to be a commercial activity that is prohibited by this Agreement.

2.3 Timber. Cutting of trees and woody shrubs may be accomplished to maintain the character of the Protected Property, to maintain fences, and to prevent invasion of woody plants on the native vegetation; as long as the same does not adversely affect the Conservation Values of the Protected Property. Trees cut for authorized purposes may be utilized for personal use as firewood and shall not be sold commercially.

2.4 Recreational Uses. Property Owner, and its licensees and invitees, may make normal and customary non-commercial recreational uses of the Protected Property, such as horse riding, hiking, hunting and fishing, as long as the same does not adversely affect the Conservation Values of the Protected Property.

2.5 Fences. Property Owner may construct, repair, replace, maintain, improve or remove any additional fencing as the Property Owner deems necessary to secure the Protected Property, as long as done so in compliance with Kansas fence laws.

2.6 Educational Use. Property Owner may make the Protected Property accessible to the public to enjoy the Conservation Values of the Protected Property.

2.7 Vehicles. Motorized vehicles may be operated on the Protected Property to transport educational groups with special needs, to maintain fences, to remove trees and shrubs (if such removal is permitted by this Agreement), and to perform controlled burns (if such controlled burns are permitted by this Agreement and applicable law), all to maintain the character of the Protected Property. Use of permitted vehicles shall, however, be in a manner that will minimize impact on native vegetation and generally be confined to limited trails.

3. RIGHTS OF PROPERTY OWNER. To accomplish the purpose of this Agreement, the Property Owner conveys to the Beneficiaries, in accordance with the procedures set forth in Section 5, the right to take actions to prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this Agreement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use.

4. PROHIBITED USES. Any activity on or use of the Protected Property inconsistent with the purpose of this Agreement and preservation of the Conservation Values of the Protected Property is prohibited. Without limiting the generality of the foregoing, the following activities and uses are prohibited:

4.1 Structures. There shall be no New Structure (defined hereafter) constructed on the Protected Property. The term “**New Structure**” includes, but is not limited to, a house, mobile or manufactured home, garage, barn, church, or other building, recreational courts or playing fields, landing strip, swimming pool, asphalt, concrete or asphalt pavement, billboard or other sign, antenna, storage tank, utility system, wind turbine, tower, any other temporary or permanent improvement of a similar nature or with similar characteristics. This prohibition shall not extend to the construction, repair, renovation, maintenance, or restoration of existing structures on the Protected Property which contributes to any historical Conservation Values.

4.2 Minerals and Gas Development. There shall be no exploration for, development of or extraction of minerals, gas or hydrocarbons on surface of the Protected Property.

4.3 Soil and Water and Watersheds. Any use or activity that may cause significant soil degradation or erosion or significant depletion or pollution of any surface or subsurface waters is prohibited. There shall be no damming, impoundment or channelization of the streams, watercourses, or watersheds on the Protected Property, except pursuant to the rights of a watershed district under K.S.A. 24-1201 *et seq.*, as amended.

4.4 Topography; Exposed Rock. There shall be no removal of topsoil, sod, sand, gravel, rock, or other materials, or any change in the topography of the Protected Property in any manner. Exposed rock and rock outcrops provide habitat for a diverse array of animals and contribute to the biological diversity of both flora and fauna and shall not be removed or disturbed.

4.6 Dumping. There shall be no dumping of trash, construction materials, or hazardous or toxic substances on the Protected Property.

4.8 Commercial Activities. Commercial activities other than those expressly provided for in this Agreement shall not be permitted on the Protected Property, either by Property Owner or Property Owner’s licensees, invitees, or tenants.

5. BENEFICIARIES’ REMEDIES.

5.1 Notice of Violation; Corrective Action. If the Beneficiary having regulatory authority over this Agreement (see Section 14) determines that a violation of the terms of this Agreement has occurred or is threatened, such Beneficiary shall give written notice to Property Owner of this violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purpose of this Agreement, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by such Beneficiary.

5.2 Injunctive Relief. If Property Owner fails to cure the violation within 30 days after receipt of notice thereof from the Beneficiary having regulatory authority over this Agreement, or under circumstances where the violation cannot reasonably be cured within a 30 day period, fails to begin curing such violation within the 30 day period, or fails to continue diligently to cure such violation until finally cured, the Beneficiary having regulatory authority over this Agreement may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement, to enjoin the violation, by temporary, preliminary and/or permanent injunction (*ex parte* as necessary), and to require the restoration of the Protected Property to the condition that existed at the time of this Agreement. Notwithstanding the 30 day notice required above, if the Beneficiary having regulatory authority, at its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, such Beneficiary may pursue its remedies under this Agreement, including but not limited to seeking temporary, preliminary and/or permanent injunction (*ex parte* as necessary) injunctive relief, without prior notice to Property Owner. The remedies described in this Section shall be in addition to all remedies now or hereafter existing at law or in equity.

5.3 Cost of Enforcement. All reasonable costs incurred by the Beneficiary having regulatory authority over this Agreement in enforcing the terms of this Agreement against Property Owner including, without limitation, costs and expenses of litigation, including expert witness fees and reasonable attorneys' fees, and any costs of restoration of the Protected Property necessitated by Property Owner's violation of the terms of this Agreement, shall be borne by Property Owner; provided, however, that if Property Owner ultimately prevails in a judicial enforcement action, each party shall bear its own costs.

5.4 Waivers. No delay or omission by a Beneficiary in the exercise of any right or remedy upon any breach by Property Owner shall impair such right or remedy or be construed as a waiver. Property Owner hereby waives any defense of laches, estoppel, or prescription.

6. ACCESS. No right of physical access by the general public to any portion of the Protected Property is conveyed by this Agreement.

7. COSTS, LIABILITIES, AND CONTROL.

7.1 Costs, Legal Requirements, and Liabilities. Property Owner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Protected Property, including the maintenance of adequate liability insurance coverage.

7.2 Control. Nothing in this Agreement shall be construed as creating any right or ability in either Beneficiary to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of the Property Owner's activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of any applicable environmental law.

8. AMENDMENT. If circumstances arise under which an amendment to or modification of this Agreement is advisable or necessary, Property Owner and the Beneficiaries are free to jointly amend this Agreement. Any such amendment shall be recorded in the Office of the Register of Deeds of Douglas County, Kansas.

9. NOTICES. Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to any other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Property Owner: John E. Bowman
Ruth M. Bowman
977 E 1000 Road
Lawrence, KS 66047

To Beneficiaries: Douglas County, Kansas
Attn: County Administrator
1100 Massachusetts
Lawrence, KS 66044

and City of Lawrence
Attn: City Manager
6 East 6th St.; PO Box 708
Lawrence, KS 66044

or to such other address as any party from time to time shall designate by written notice to the others.

10. RECORDATION. Property Owner, at Property Owner's expense, shall record this instrument in timely fashion in the Office of the Douglas County, Kansas Register of Deeds.

11. COVENANT RUNNING WITH THE LAND. Subject to termination or expiration of this Agreement according to its terms, the covenants, terms, conditions, and restrictions of this Agreement shall constitute a covenant and equitable servitude running with the land and be binding upon Property Owner and the Property Owner's personal representatives, heirs, successors and assigns, and inure to the benefit of the Beneficiaries and their respective successors and assigns. The terms "Property Owner" and "Beneficiaries," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Property Owner and his personal representatives, heirs, successors, and assigns, and each above-named Beneficiary and its successors and assigns. A party's rights and obligations under this Agreement terminate upon transfer of the party's interest in this Agreement or Protected Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

12. GENERAL PROVISIONS.

12.1 Controlling Law. The interpretation and performance of this Agreement shall be governed by the laws of the State of Kansas.

12.2 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Agreement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Agreement t, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 8.

13. TERMINATION. If the Beneficiaries' Subdivision Regulations are amended in the future such that this Agreement would not have been necessary to approve a Certificate of Survey division (as defined in the Subdivision Regulations) involving the Protected Property had the application for approval been made after the effective date of the amendment, any party may terminate this Agreement upon written notice to the others. In the event of a termination of this Agreement, the parties agree to sign an instrument identifying the termination and record it with the Office of the Douglas County, Kansas Register of Deeds.

14. REGULATORY AUTHORITY. The County shall have regulatory authority over this Agreement until such time that the Protected Property is annexed into the jurisdictional boundaries of the City of Lawrence, Kansas, and the City shall have regulatory authority thereafter until this Agreement expires.

15. EXPIRATION OF AGREEMENT. The Agreement shall expire on the date that is 2 years after the date the Protected Property is annexed into the jurisdictional boundaries of the City, unless further action is taken by either the City or the Property Owner to secure its continuance.

IN WITNESS WHEREOF, Property Owner and Beneficiaries have executed this Agreement as of the day and year first above written.

Property Owner:

John E. Bowman

Ruth M. Bowman

Beneficiaries:

Douglas County, Kansas

By: _____

Mike Gaughan
Title: Chair of Board of County Commissioners

ATTEST:

APPROVED AS TO FORM:

County Clerk

County Counselor

City of Lawrence, Kansas

By: _____

David L. Corliss
Title: City Manager

STATE OF KANSAS)
) ss
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came John E. Bowman and Ruth M. Bowman, known to me to be the same person(s) who executed the foregoing instrument as Property Owner, and duly acknowledged the execution of same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My commission expires:

STATE OF KANSAS)
) ss
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Mike Gaughan, Chair of the Board of Douglas County, Kansas Commissioners, known to me to be the same person who executed the foregoing instrument as a Beneficiary, and duly acknowledged the execution of same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My commission expires:

STATE OF KANSAS)
) ss
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this _____ day of _____, 20____, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came David L. Corliss, City Manager of the City of Lawrence, Kansas, known to me to be the same person who executed the foregoing instrument as a Beneficiary, and duly acknowledged the execution of same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Notary Public

My commission expires:

EXHIBITS A

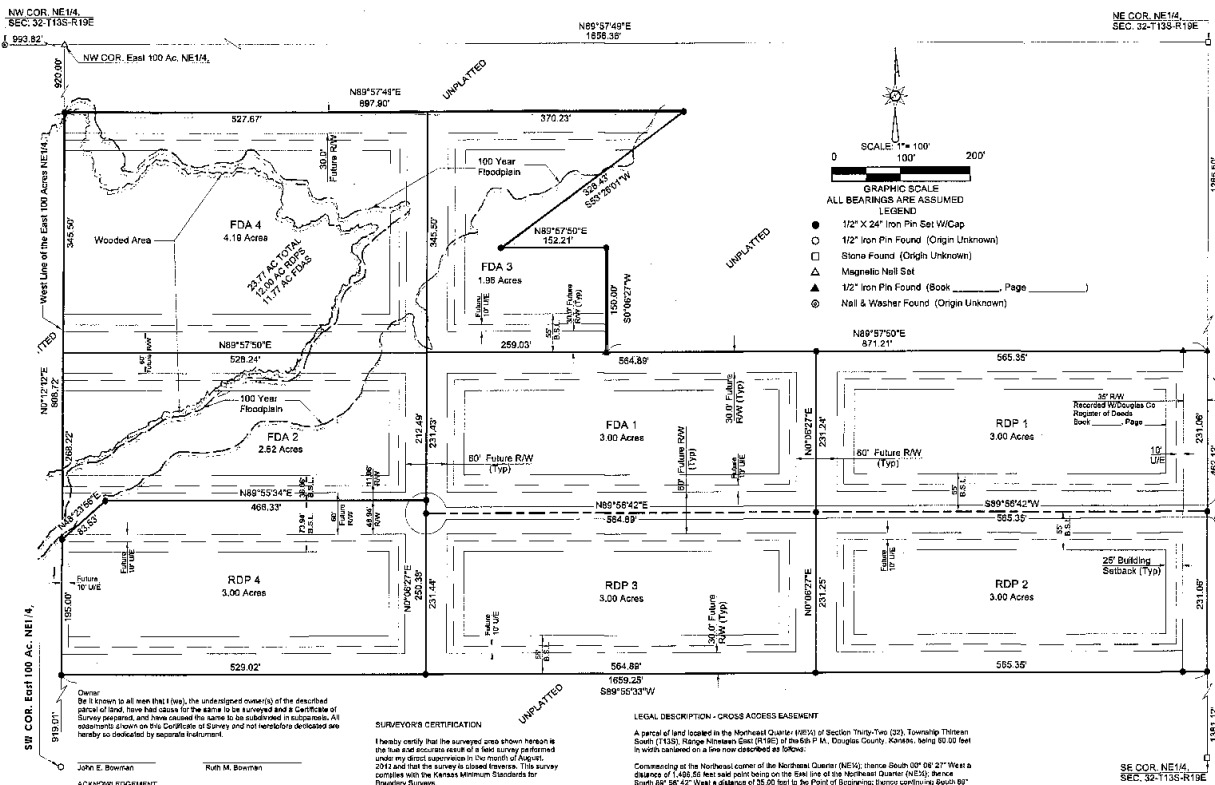
Legal Description of Protected Property

A parcel of land located in the Northeast Quarter (NE $\frac{1}{4}$) of Section Thirty-Two (32), Township Thirteen South (T13S), Range Nineteen East (R19E) of the 6th P.M., Douglas County, Kansas, more particularly described as follows:

Commencing at the Northeast corner of the Northeast Quarter (NE $\frac{1}{4}$); thence South 00° 06' 27" West a distance of 1,265.50 feet to the Point of Beginning, said point being on the East line of the Northeast Quarter (NE $\frac{1}{4}$); thence continuing South 00° 06' 27" West a distance of 462.12 feet, said point being on the East line of the Northeast Quarter (NE $\frac{1}{4}$); thence South 89° 55' 33" West a distance of 1,659.25 feet, said point being on the West line of the East 100 acres of the Northeast Quarter (NE $\frac{1}{4}$); thence North 00° 12' 11" East a distance a distance of 808.72 feet, said point being on the West line of the East 100 acres of the Northeast Quarter (NE $\frac{1}{4}$); thence North 89° 57' 49" East a distance of 897.90 feet; thence South 53° 26' 01" West a distance of 328.43 feet; thence North 89° 57' 50" East a distance of 152.21 feet; thence South 00° 06' 27" West a distance of 150.00 feet; thence North 89° 57' 50" East a distance of 871.21 feet, to the Point of Beginning, containing 23.77 Acres more or less, subject to public road right-of-way and easements of record.

EXHIBIT B

Map of Protected Property (Certificate of Survey with Sensitive Areas delineated)



Total Site Acreage 23.77

Acres	
Proposed Additional Permanent Right-of-Way Easement	0.11
Acres	
Immediate Development Area	12.00
Acres	
Residential Development Parcels	12.00
Acres	
Future Development Area	11.77
Acres	

- GENERAL NOTES**
1. Base for bearings for this Certificate of Survey is the East line of the Northeast Quarter of Section 32, Township 13 South, Range 18 East (S 32-7135-R18E).
 2. Vertical Benchmark: Douglas County Public Works NE Cor. NE1/4, Sec. 32-7135-R18E NAVD 88 Elevation = 852.82 ft.
 3. Typical Soil Type: Webshay Silty Clay Loam.
 4. This Certificate of Survey was prepared for the purpose of the platting of land. No further divisions of the parcels created by this survey shall occur until the property is subdivided in accordance with all applicable subdivision regulations of Douglas County or the city into which it is annexed or until an amended Certificate of Survey is approved and recorded with the Register of Deeds.
 5. This property division was designed in accordance with Section 20-804 of the Subdivision Regulations (Cluster Developments in the Urban Growth Areas) for Lawrence and the Unincorporated Areas of Douglas County, Kansas.
 6. The Cross-Access Easements shall become public right-of-way when property is annexed into the City of Lawrence. The Cross-Access Easement has been filed by separate instrument with the Douglas County Register of Deeds, Book _____, Page _____.
 7. The construction of the Cross-Access road to the future development area will be completed by the Developer.
 8. All access shall be Via the Cross-Access Easement. No RDP or FDA shall have direct access to E 1000 Road.
 9. A portion of this property is located within a designated floodplain per FEMA Map # 20040C004D Effective date, August 5, 2010. Floodplain is designated as an environmentally sensitive and per section 20-810(d), A Temporary Set Aside Agreement has been executed and recorded with the Register of Deeds, Book _____, Page _____.
 10. Sewage disposal will be provided by means of individual septic systems installed on each Residential Development Parcel. The septic systems will be abandoned upon annexation into the City of Lawrence, and concurrent connection to the City's sanitary sewer system.
 11. "RDPs created by this Certificate of Survey shall not be eligible for a building permit until wastewater disposal will be provided by an on-site sewage management system approved by the Director of Lawrence-Douglas County Health Department. A preliminary site evaluation for each septic system is required prior to a building permit being issued. The septic permit must be approved and purchased prior to the issuance of a building permit. On-site sewage management systems shall be constructed in accordance with "Standards on Individual On-Site Sewage Management Systems for the Unincorporated Territory of Douglas County, Kansas City Sanitation Code, Resolution 97-48, as amended."
 12. A letter has been provided from Douglas County Rural Water District # 6 stating that water meters are immediately available for "Big Customer" Development. The Residential Development Parcels shall not be eligible for building permits until the Rural Water District issues a water meter and documentation that a water meter has been purchased by the owner is presented to the Lawrence-Douglas County Health Department and the Douglas County Zoning Office.
 13. A Grant of Permanent Easement for Road Right-of-way has been filed with the Douglas County Register of Deeds, Book _____, Page _____.
 14. Restrictive Covenants are recorded at the Douglas County Register of Deeds, Book _____, Page _____.

OWNER
Be it known to all men that I, the undersigned owner(s) of the described parcel of land, have had said parcel surveyed and a Certificate of Survey prepared, and have caused the same to be subdivided and recorded as hereinafter shown on this Certificate of Survey and no restrictions developed are hereby so deduced by separate instrument.

SURVEYOR'S CERTIFICATION
I hereby certify that the surveyed area shown herein is the true and accurate result of a field survey performed under my direct supervision in the month of August, 2012 and that the survey is closed traverse. This survey complies with the Kansas Minimum Standards for Boundary Surveys.

ACKNOWLEDGEMENT
State of Kansas
County of Douglas

Be it remembered that on the _____ day of _____, 2012, before me, the undersigned, a notary public, in and for said County and State, came John E. Bowman and Ruth M. Bowman, husband and wife, who are personally known to me to be the same persons who executed the foregoing instrument of writing and who acknowledged the execution of the same.

In witness whereof, I have hereunto set my hand and affixed my seal on the day and year last written above.

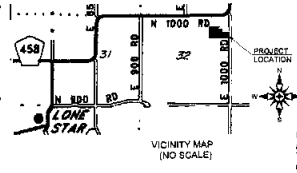
LEGAL DESCRIPTION - ORIGINAL PARCEL
Residential Development Parcel 1
A parcel of land located in the Northeast Quarter (NE1/4) of Section Thirty-Two (32), Township Thirteen South (13S), Range Nineteen East (R19E) of the 6th P.M., Douglas County, Kansas, more particularly described as follows: Commencing at the Northeast corner of the Northeast Quarter (NE1/4), thence South 00° 06' 27" West a distance of 1,265.50 feet to the Point of Beginning, said point being on the East line of the Northeast Quarter (NE1/4); thence South 89° 55' 33" West a distance of 1,639.25 feet, said point being on the West line of the East 100 acres of the Northeast Quarter (NE1/4); thence North 00° 12' 11" East a distance of 808.72 feet, said point being on the West line of the East 100 acres of the Northeast Quarter (NE1/4); thence North 89° 57' 49" East a distance of 887.80 feet; thence South 53° 28' 01" West a distance of 328.43 feet; thence North 89° 57' 50" East a distance of 152.21 feet; thence South 00° 06' 27" West a distance of 150.00 feet; thence North 89° 57' 52" East a distance of 871.21 feet, to the Point of Beginning, containing 23.77 Acres more or less, subject to public road right-of-way and easements of record.

LEGAL DESCRIPTION - CROSS ACCESS EASEMENT
A parcel of land located in the Northeast Quarter (NE1/4) of Section Thirty-Two (32), Township Thirteen South (13S), Range Nineteen East (R19E) of the 6th P.M., Douglas County, Kansas, more particularly described as follows: Commencing at the Northeast corner of the Northeast Quarter (NE1/4), thence South 00° 06' 27" West a distance of 1,265.50 feet to the Point of Beginning, thence continuing South 89° 57' 42" West a distance of 1,056.54 feet, containing 1.5 Acres more or less, subject to public road right-of-way and easements of record.

LEGAL DESCRIPTION - CROSS ACCESS EASEMENT
A parcel of land located in the Northeast Quarter (NE1/4) of Section Thirty-Two (32), Township Thirteen South (13S), Range Nineteen East (R19E) of the 6th P.M., Douglas County, Kansas, more particularly described as follows: Commencing at the Northeast corner of the Northeast Quarter (NE1/4), thence South 00° 06' 27" West a distance of 1,265.50 feet to the Point of Beginning, said point being on the East line of the Northeast Quarter (NE1/4); thence South 89° 55' 33" West a distance of 1,639.25 feet, said point being on the West line of the East 100 acres of the Northeast Quarter (NE1/4); thence North 00° 12' 11" East a distance of 808.72 feet, said point being on the West line of the East 100 acres of the Northeast Quarter (NE1/4); thence North 89° 57' 49" East a distance of 887.80 feet; thence South 53° 28' 01" West a distance of 328.43 feet; thence North 89° 57' 50" East a distance of 152.21 feet; thence South 00° 06' 27" West a distance of 150.00 feet; thence North 89° 57' 52" East a distance of 871.21 feet, to the Point of Beginning, containing 23.77 Acres more or less, subject to public road right-of-way and easements of record.

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Certificate of Survey for
An unplatted tract of land in the NE1/4 of Section 32, Township 13 South, Range 18 East, of the Sixth Principal Meridian in Douglas County, Kansas

EXHIBIT C

Conservation Values--Inventory of relevant features of the Protected Property worthy of protection.

1. Regulatory Floodway Fringe, designated on the FEMA Flood Insurance Rate Map for Douglas County based on the 100 year flood.
2. Stands of mature trees
3. Stream corridors

CROSS ACCESS EASEMENT AND MAINTENANCE AGREEMENT

This Cross Access Easement and Maintenance Agreement (this "**Agreement**") is entered into this _____ day of _____, 2010 by Benjamin W. and Stephanie L. Dennis, 2308 Stowe Drive Lawrence, Kansas 66049 ("**Developer**"), and County of Douglas County, Kansas 1100 Massachusetts, Lawrence, Kansas 66044 ("**County**"), and in favor of the County and property owners of the Cluster Development (defined below).

RECITALS

A. Developer has received Certificate of Survey approval to improve its property located Southeast of the intersection of County Road 249 (E. 1450 Road) and County Route 458 (N. 1000 Road) in Wakarusa Township, County of Douglas, State of Kansas, and legally described as follows:

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 13 SOUTH, RANGE 20 EAST OF THE SIXTH PRINCIPAL MERIDIAN, NOW DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID QUARTER SECTION; THENCE SOUTH 89°58'52" EAST ALONG THE SOUTH LINE OF SAID QUARTER SECTION, 1290.11 FEET; THENCE NORTH 00°17' 16" EAST. 675.71 FEET; THENCE SOUTH 90°00'00" WEST, 1290.11 FEET TO THE WEST LINE OF SAID QUARTER SECTION; THENCE SOUTH 00°17'16" WEST ALONG SAID WEST LINE, 675.29 FEET TO THE POINT OF BEGINNING. THE ABOVE CONTAINS 20.01 ACRES, MORE OR LESS, ALL IN DOUGLAS COUNTY, KANSAS AND IS SUBJECT TO ANY EASEMENTS, RIGHT OF WAY AND RESTRICTIONS OF RECORD.

(the "**Cluster Development**").

B. As a condition of Certificate of Survey approval, Developer is required to enter into an agreement to create a Cross Access Easement on its property to allow for ingress and egress between the Residential Development Parcels to be located on the Cluster Development and to and from the adjacent public right-of-way, E 1450 Road/ County Road 249.

C. As a condition of Certificate of Survey approval, said Cross Access Easement shall be deemed dedicated to the City of Lawrence, Kansas, as a permanent public road right-of-way and street, upon annexation by the City of Lawrence, Kansas.

D. As a condition of Certificate of Survey approval, Developer is required to create a Maintenance Agreement for said Cross Access Easement.

GRANT OF EASEMENT

NOW, THEREFORE, in consideration of the mutual promises and obligations contained herein and other valuable considerations, the sufficiency of which are hereby acknowledged, the Developer agrees as follows:

1. Definitions. Capitalized words shall have the meaning defined in this Agreement. The following capitalized words not otherwise defined in this Agreement shall have the following definitions:

Certificate of Survey means the Certificate of Survey of the Cluster Development, approved in accordance with the Subdivision Regulations for Lawrence and the Unincorporated Areas of Douglas County, Kansas, and recorded with the Office of the Douglas County, Kansas Register of Deeds.

Residential Development Parcel means that tract or tracts of real estate located within the Cluster Development for which a residence may be constructed prior to annexation to the City of Lawrence, Kansas, as identified in the Certificate of Survey.

Subdivision Regulations means the jointly adopted Subdivision Regulations for the City of Lawrence, Kansas and the Unincorporated Areas of Douglas County, Kansas, as amended, or such successor subdivision regulations as are then applicable to the Cluster Development.

2. Grant of Cross Access Easements. Developer grants and dedicates to County, and establishes for the benefit of the current and future owners of the Cluster Development, a permanent and perpetual easement and right of way over, through, and across the following described tract of real estate, for vehicular and pedestrian ingress and egress, together with construction, installation, and maintenance of public utilities, to and from the various tracts or parcels of the Cluster Development and County Road E 1450 Road:

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 13 SOUTH, RANGE 20 EAST OF THE SIXTH PRINCIPAL MERIDIAN, DOUGLAS COUNTY, KANSAS BEING 60.00 FEET IN WIDTH, CENTERED ON A LINE NOW DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID QUARTER SECTION; THENCE NORTH 00°17'16" EAST ALONG SAID WEST LINE, 307.64 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89°58'52" EAST, 670.00 FEET; THENCE NORTH 00°17' 16" EAST, 60.00 FEET; THENCE NORTH 89°58'52" WEST, 670.00 FEET TO THE WEST LINE OF SAID QUARTER SECTION; THENCE SOUTH 00°17'16" WEST ALONG SAID WEST LINE, 60.00 FEET TO THE POINT OF BEGINNING. THE ABOVE CONTAINS 0.923 ACRES, MORE OR LESS, ALL IN DOUGLAS COUNTY, KANSAS AND IS SUBJECT TO ANY RESTRICTIONS OF RECORD.

(the “**Easement Tract**”).

3. No Unreasonable Interference. No building, structure, obstruction, or other improvement shall be constructed, installed, or maintained in or upon the Easement Tract and nothing else shall be done within the Easement Tract that unreasonably interferes with the rights granted and established in this Agreement.

4. Construction, Repair and Maintenance.

A. Construction. Developer agrees to construct, at his sole expense, approximately 350 lineal feet of road with a 4” thick compacted aggregate surface within the Easement Tract (the “**Road**”). The Road shall be constructed within a reasonable time after the creation of the cross access easements.

B. Repair and Maintenance. Repair and maintenance costs for the roadway and associated improvements shall be provided by the owners of the Residential Development Parcels. Said maintenance shall also require snow removal, which shall not block the easement. The owner or owners of the Residential Development Parcel shall be responsible for this repair and maintenance until such time as the Easement Tract is accepted as a public road or street for public maintenance by either the County or the City of Lawrence, Kansas. If there are more than one Residential Development Parcels, the owners of each Residential Development Parcel shall each share equally in all repair and maintenance of the Road.

5. Public Dedication. This Agreement shall be deemed a public dedication of the Cross-Access Easement Tract; provided, however, that County’s signing of this Agreement shall not be deemed an acceptance of the dedication or and acceptance of any maintenance obligations over the Easement Tract or the Road.

6. Manner of Acceptance of Public Dedication. Prior to annexation of all or part of the Cluster Development into the City of Lawrence, Kansas, the County may accept the dedication of the Easement Tract as a public road, upon such terms and conditions as it determines appropriate. If dedication of the Easement Tract has not been previously accepted as a public road, then upon annexation of all or part of the Cluster Development into the City of Lawrence, Kansas, the City of Lawrence may accept the dedication of the Easement Tract upon such terms and conditions as it determines at the time of annexation. Any acceptance of the dedication of the Easement Tract as a public road shall be by a signed agreement specifically referencing this Agreement, authorized by formal action of the governing body the County or City of Lawrence, as the case may be, and recorded with the Office of the Douglas County Register of Deeds.

7. No Termination. No breach of this Agreement shall entitle any party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not

affect in any manner any other rights or remedies which such party may have hereunder by reason of any breach of this Agreement. The ownership of the Cluster Development, now or in the future, by a single owner or owners shall not effectuate a merger or otherwise terminate this Agreement.

8. No Limitation of Remedies. Any violation or breach of this Agreement shall be considered a breach of the Certificate of Survey and a violation of the Subdivision Regulations, and the County shall have the authority to enforce this Agreement in any manner permitted by law. The various rights and remedies contained in this Agreement and reserved to the parties, except as otherwise provided in this Agreement, shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power or remedy or be construed as a waiver of any default or non-performance or as acquiescence therein.

9. Construction of Terms. This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. All headings herein are for convenience and shall not be resorted to for interpretation or construction. Any feminine or neuter pronoun shall be substituted for masculine form, or vice versa, and plural shall be substituted for singular where the context may require. No waiver of any provision of this Agreement shall be construed to be a waiver of any preceding or succeeding breach of such provision, or any other provision. This Agreement may be amended or modified only in writing, authorized and executed by the County (or the City of Lawrence, Kansas if the Cluster Development is then within the corporate boundaries of the City of Lawrence) and all owners of all or any part of the Cluster Development, and may not be amended or modified by oral agreements or understandings.

10. Severability. In case anyone or more of the provisions of this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

11. Covenants Running With the Land. This Agreement and the easements granted, dedicated, and established hereby shall at all times be perpetual and construed appurtenant to the land and a covenant running with the land and shall be binding upon the owner or owners of all or part of the Easement Tract and all parties claiming by, through, or under them, and shall be for the benefit of and limitations upon all future owners of the Cluster Development, provided, however, that upon acceptance of the dedication of the Easement Tract by a governmental entity, whether the County or the City of Lawrence, Kansas, the Easement Tract shall become a public right of way, for the benefit of all members of the public; provided further, however, that the rights, duties, and obligations of each owner as set forth herein shall cease with the termination of his or its ownership, except for the duties and obligations arising during the period of his or its ownership.

IN WITNESS WHEREOF, Developer and County have executed this Agreement as of

the year and date first above stated.

DEVELOPER:

Benjamin W. Dennis Stephanie L. Dennis

COUNTY:

Mike Gaughan
Chairman County Commission

STATE OF KANSAS)
)ss.
COUNTY OF DOUGLAS)

On this _____ day of _____, 2012, before me, a Notary Public in and for the County of Douglas, personally appeared Benjamin W. and Stephanie L. Dennis, to me known to be the same persons who signed and is described in the above instrument and acknowledged the same to be his free act and deed.

_____, Notary Public
Douglas County, Kansas

STATE OF KANSAS)
)ss.
County of Douglas)

On this _____ day of _____, 2012, before me, a Notary Public in and for the County of Douglas, personally appeared Mike Gaughan, Chairman County Commissioners, on behalf of Douglas County Kansas to me known to be the same person who signed and is described in the above instrument and acknowledged the same to be his free act and deed.

_____, Notary Public
Douglas County, Kansas

MEMORANDUM

To : Board of County Commissioners

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

Date : November 30, 2012

Re : Change Orders for Project No. 2010-20
Route 1055 (6th Street) reconstruction in Baldwin City

During the April 4, 2012 commission meeting, the BOCC awarded a construction contract in the total amount of \$2,550,999.99 to RD Johnson for the reconstruction of Route 1055 (6th Street) from US-56 highway to Route 12. The BOCC also authorized me to approve change orders up to 5% of total contract costs. Construction is winding down, and the roadway is open to traffic. A compilation of change orders reveals we have exceeded the approved 5%.

We have had several change orders that have increased costs. Principal among the factors increasing costs was the need to stabilize the subgrade (soil beneath the pavement) throughout the majority of the project length. While some subgrade stabilization was predicted by the geotechnical study and included in the contract, a far larger area of stabilization was required due to poor soil stability and bearing capacities and the need to maintain continuous access to businesses. Subgrade stabilization was accomplished by incorporating flyash into the subgrade, and by using geo-grids where the use of flyash was not appropriate, e.g. in front of businesses. Other factors adding to the amount of change orders include the need to install additional riprap in a drainage channel to protect an existing business and routine Asphalt Material Index price adjustments for hot mix asphalt to reflect increases in asphalt material costs.

To date, the grand total of work accomplished exceeds the total contract amount by 5.54%. However, construction is not complete. Considering the amount of contract work to be completed, we estimate the total contract amount will increase to 6.66% over the original contract amount. In addition, the contractor has submitted information indicating earthwork quantities exceeded plan quantities. We are in the process of analyzing that information. If we deem the contractor's information to be correct, it will result in a total cost overrun of 8.42% above the original contract amount.

I am requesting authorization to approve additional change orders.

Action Required: Authorize the Public Works Director to approve change orders totaling 9% of the construction contract amount for Project No 2010-20, the reconstruction of Route 1055 (6th Street) from US-56 to Route 12.

MEMORANDUM

MEMO TO: Board of County Commissioners
Craig Weinaug

FROM: Sarah Plinsky, Assistant County Administrator

SUBJECT: Employee Pay Increases for 2013

DATE: November 30, 2012

As a part of the 2013 Budget process, the Board of County Commissioners approved a 3% increase to employee salaries. No decision was made at that time on how the increases should be administered. Below is a table that outlines the County’s history regarding salary increases.

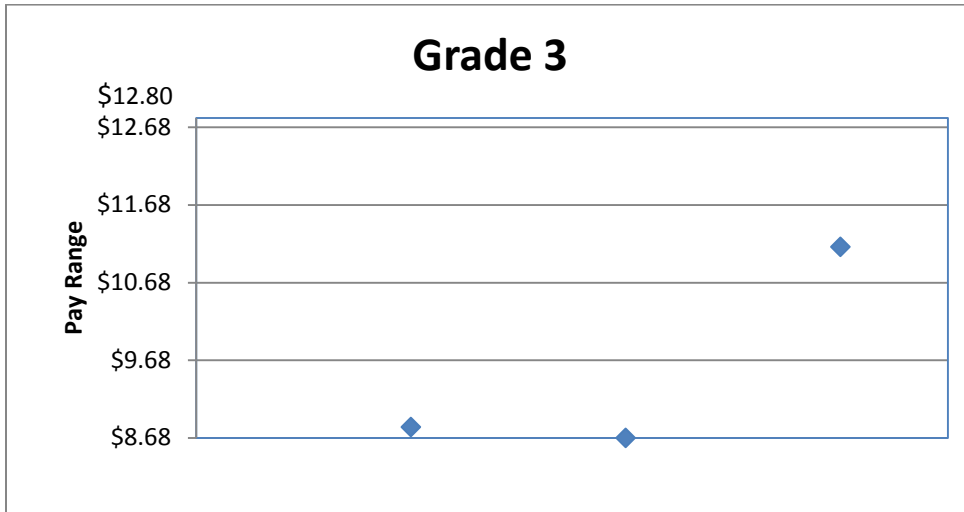
	2012	2011	2010	2009	2008	2007
Merit	None	2% lump Sum	1.5%	0%	0.50%	0.50%
COLA	1%	1%	1%	1%	3%	3.50%
Experience Pay	None	None	1%	1%	1%	1%

For the 2013, staff recommends that a 1% COLA be given to all eligible employees. Regarding the remainder of the increase, there are two options to consider. Both options would distribute the remaining 2% increase based on merit. Merit guidelines would be established by each department and communicated to employees. One option would be to give the merit pay as a percentage increase to base pay and the other option would be to pay the annual impact of that percentage increase as a lump sum payment, instead of adding it to the base pay of employees. These recommendations do not relate to District Court and District Attorney’s office employees. Different pay systems are established for those employees.

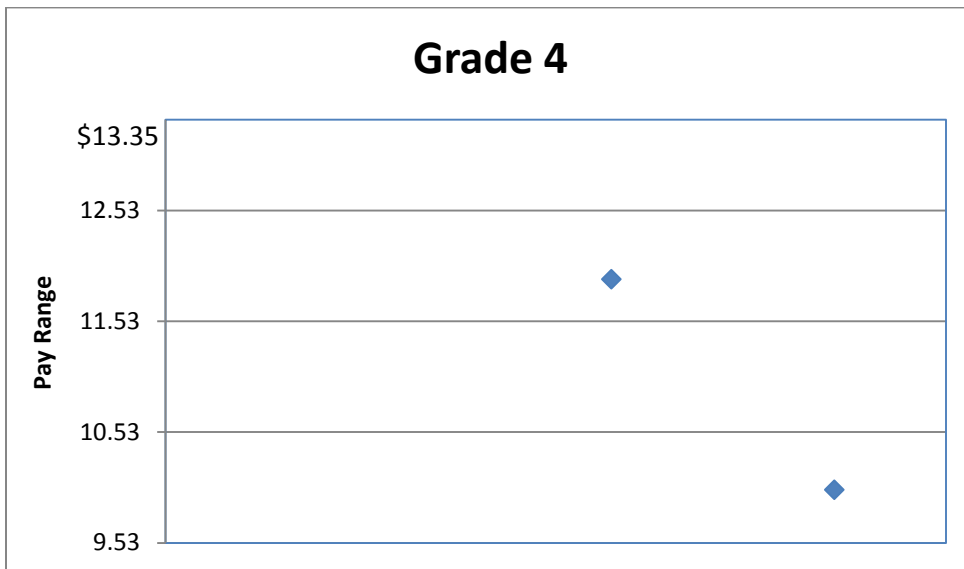
The advantage to giving merit pay in a lump sum is that it doesn’t add to the base personnel costs for the development of the 2014 Budget, and can be a helpful tool in controlling expenses. The disadvantage is that employees don’t progress through the pay range based on their experience with the organization. This can lead to pay compression issues that are expensive to rectify in the future.

I have prepared a series of scatter gram graphs for each grade in our pay system. Each data point represents an employee’s salary. This illustrates how employee pay is distributed. I will be available to review the information in detail at the meeting, but it is clear that some grades are already experience pay compression. Staff agrees that a comprehensive classification and pay review is needed. However, it isn’t advisable to start that effort, if funds are not available to address the concerns that might be identified. I will explore what options are available for a classification/position description review that would not necessarily impact employee pay, in 2013. Please let me know if you have any questions or concerns.

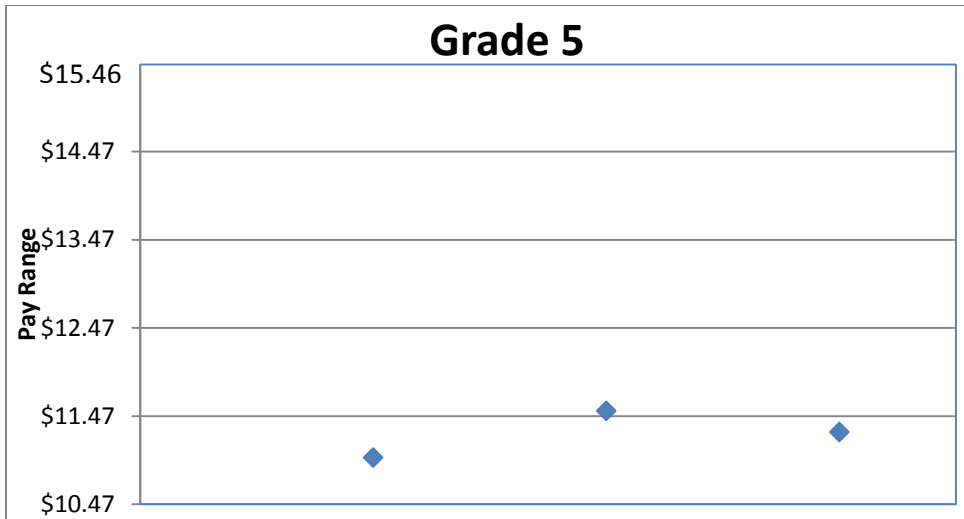
2012 Pay Distribution



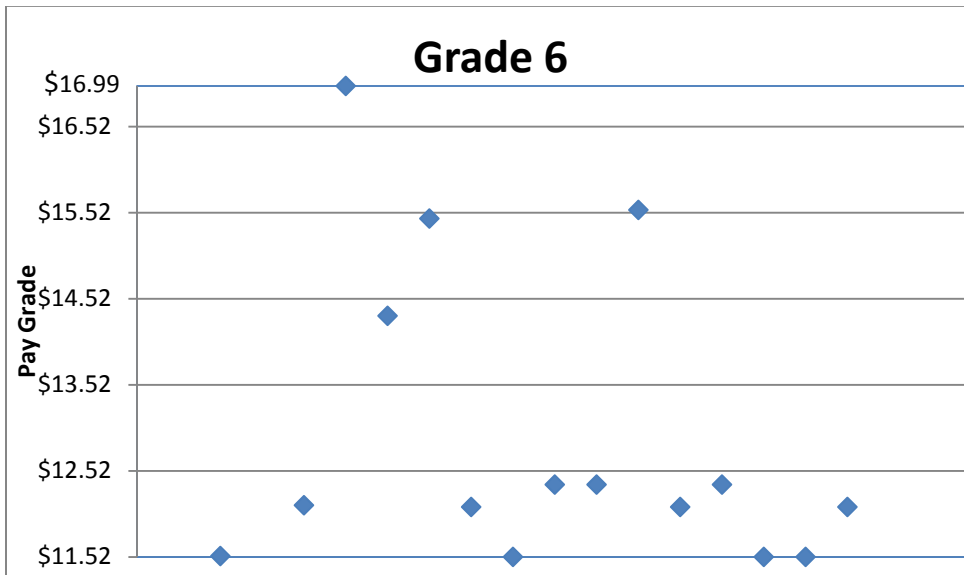
- Sample Grade 3 positions:
- Custodial Worker
 - JLE Custodial Worker



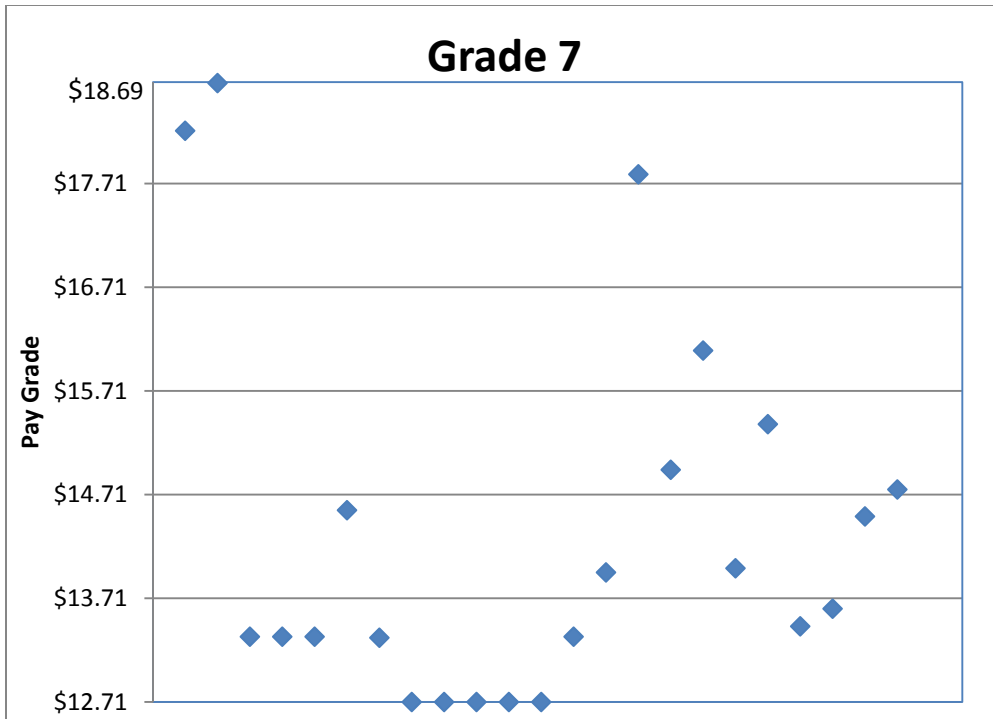
- Sample Grade 4 positions:
- Custodial Worker II
 - JLE Custodial WorkerII



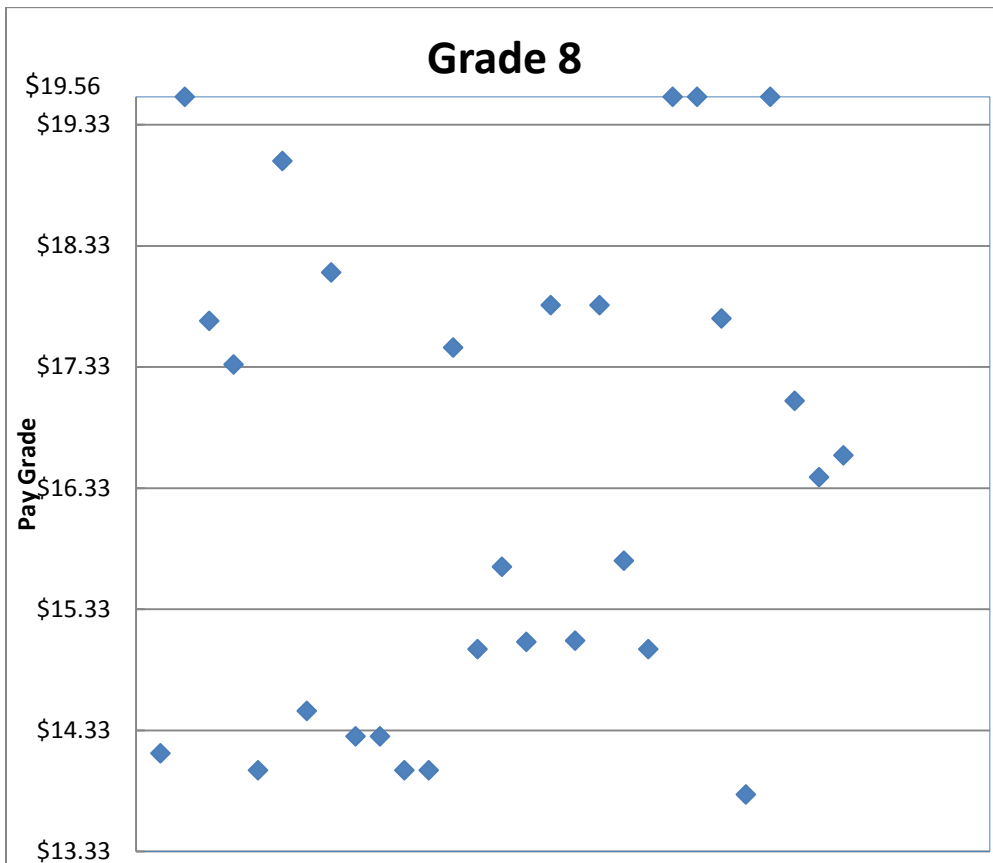
- Sample Grade 5 positions:
- Account Clerk 1
 - Cook
 - Real Estate/Title Clerk I
 - Recording Clerk I



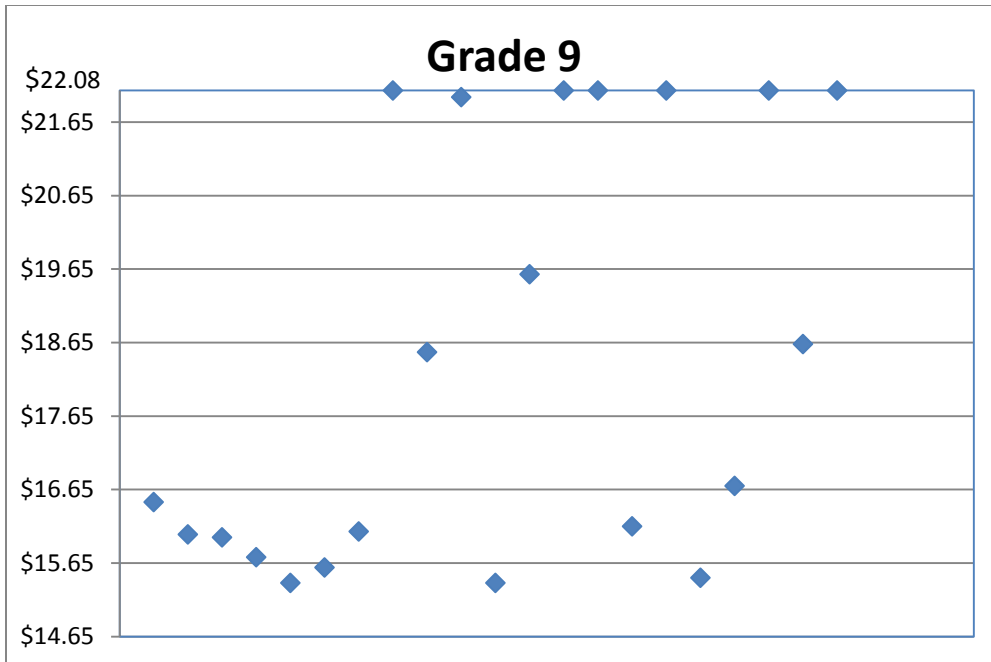
- Sample Grade 6 positions:
- Building /Grounds Worker 1
 - Secretary
 - Registration/Tax Clerk I
 - Lobby Officer
 - Records Asst.
 - Custodial Worker III



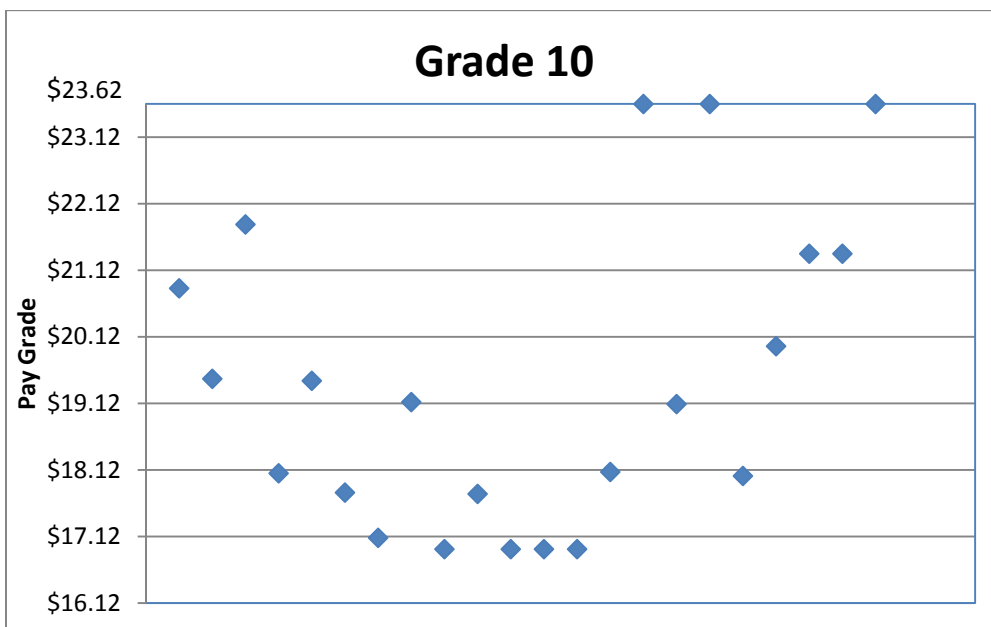
- Sample Grade 7 positions:
- Account Clerk II
 - Appraiser I
 - Equip Oper I
 - Food Service Super
 - Recording Clk II
 - Real Estate Clk II
 - Registration Clk II



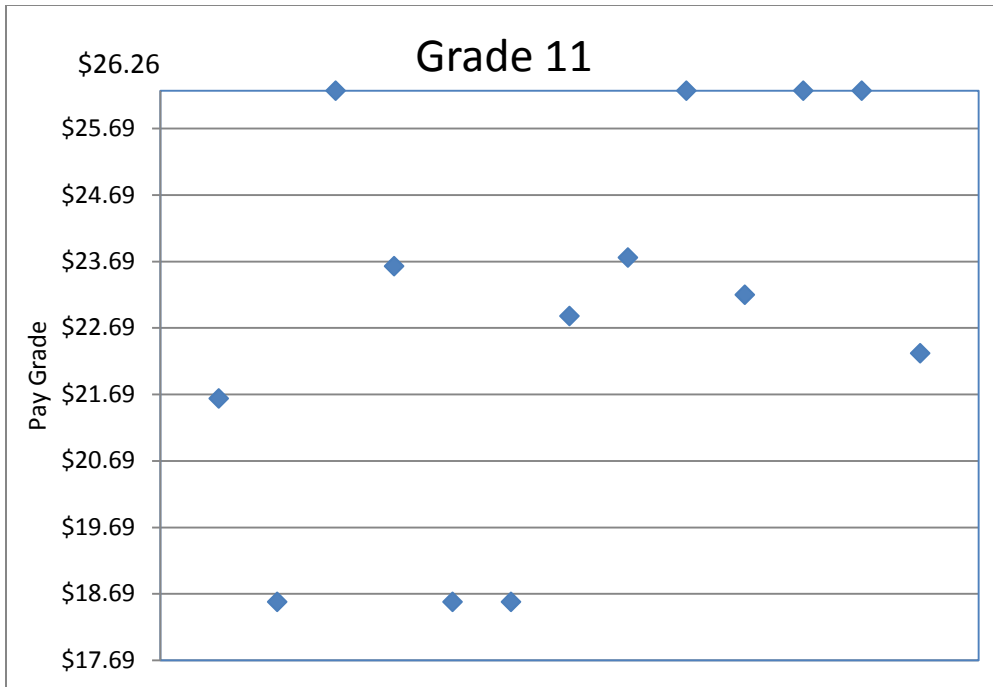
- Sample Grade 8 positions:
- Bld/Grounds Worker II
 - Engineer Tech I
 - Admin. Secretary
 - Sr. Personal Property Appraiser
 - Equip. Operator II
 - Real Estate/Title Clerk III
 - Civil Process Svr
 - Reg/Tax Clerk III
 - Veg Control Wrkr II



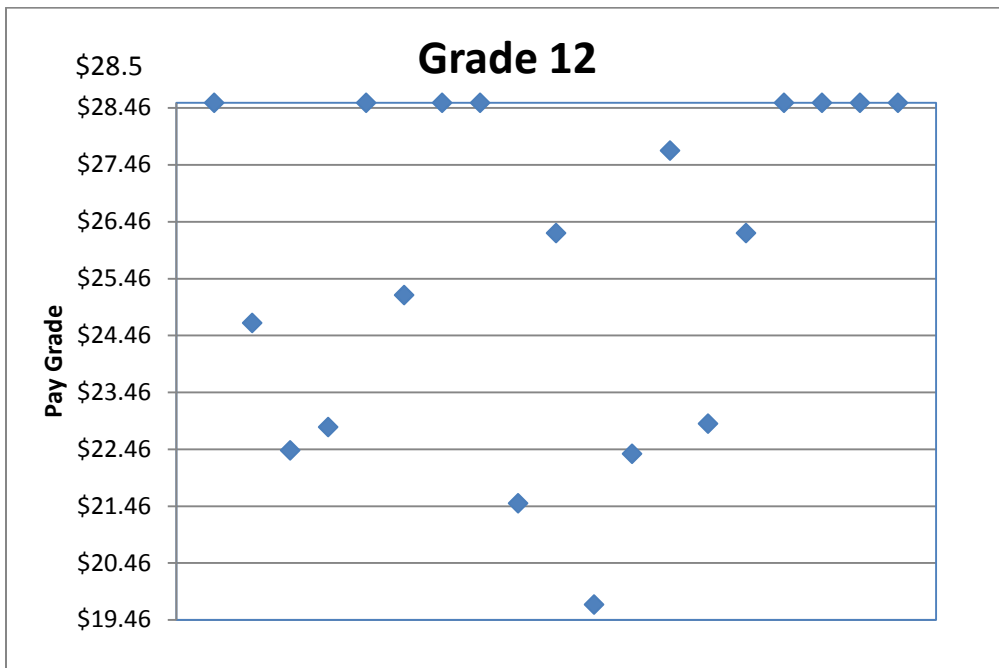
- Sample Grade 9 positions:
- Acct Clerk III
 - Admin Officer
 - Appraiser II
 - Bldng/Grnds Wrkr III
 - Computer Tech II
 - Fleet Mechanic
 - GIS Tech
 - Warrants Clerk
 - Homeland Sec asst.
 - Sp Dep Procs Srvr



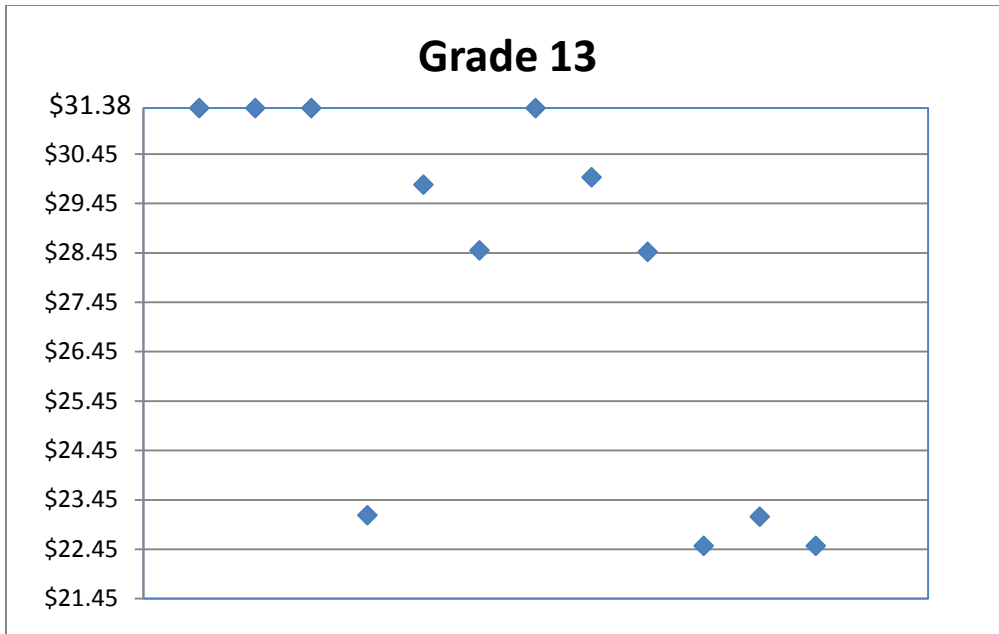
- Sample Grade 10 positions:
- Engineering Tech II
 - Equip Oper III
 - Deputy Reg of Deeds
 - Corrections Admin Coordinator
 - Asst. Motor Veh Super
 - Account Clerk 4
 - Exec Secretary
 - GIS Analyst
 - PC Specialist I
 - Real Estate Title Coord
 - Veg Control Specialist



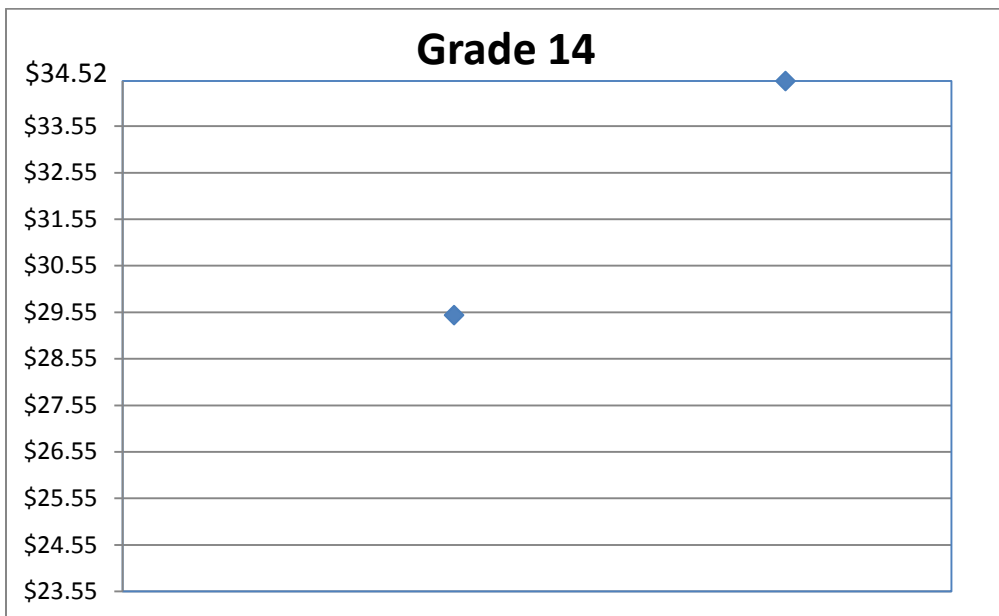
- Sample Grade 11 positions:
- Admin Serv Super
 - Appraisal Mngr I
 - Civil Engineer I
 - Dep Treas
 - Director Tax & Accting
 - Juv Case Manager
 - Juv Diversion Mngr
 - Personnel Speclst
 - Programmer Analyst
 - Re Entry Case Mngr
 - Resource Comm Serv Mngr
 - Permits Inspector
 - Senior Sign Install Tech.



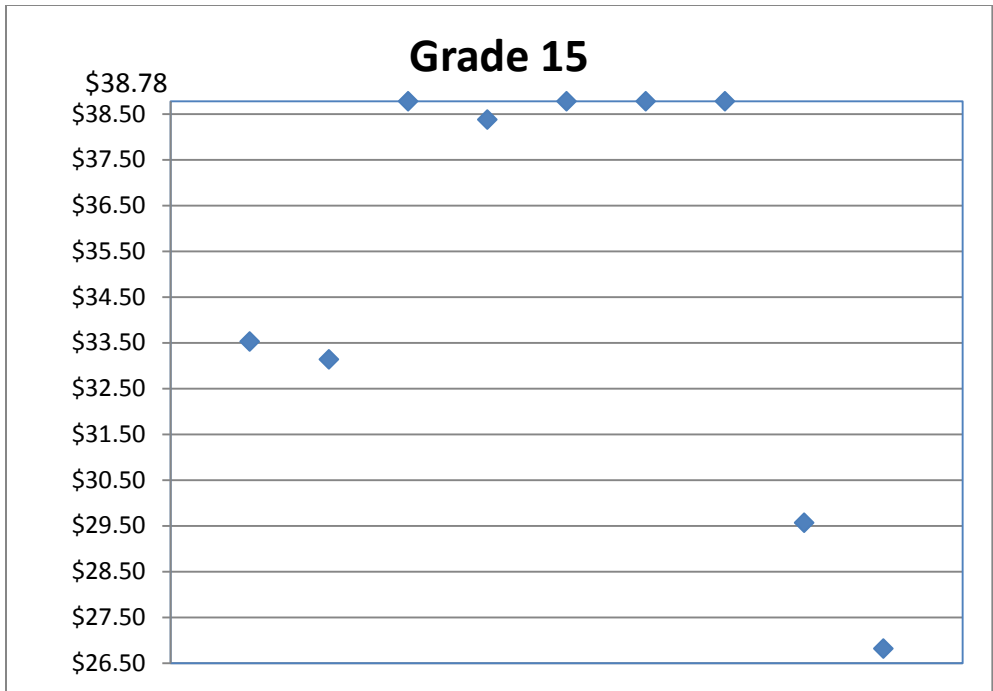
- Sample Grade 12 positions:
- Park Maint Super
 - Road & Bridge Super
 - Fleet Maint Super
 - Combo Building Inspector
 - Chief Dep Clerk
 - Doc Mngmnt Spec
 - Engineering Tech III
 - Management Info Specialist
 - PC Specialist II
 - GIS Analyst II



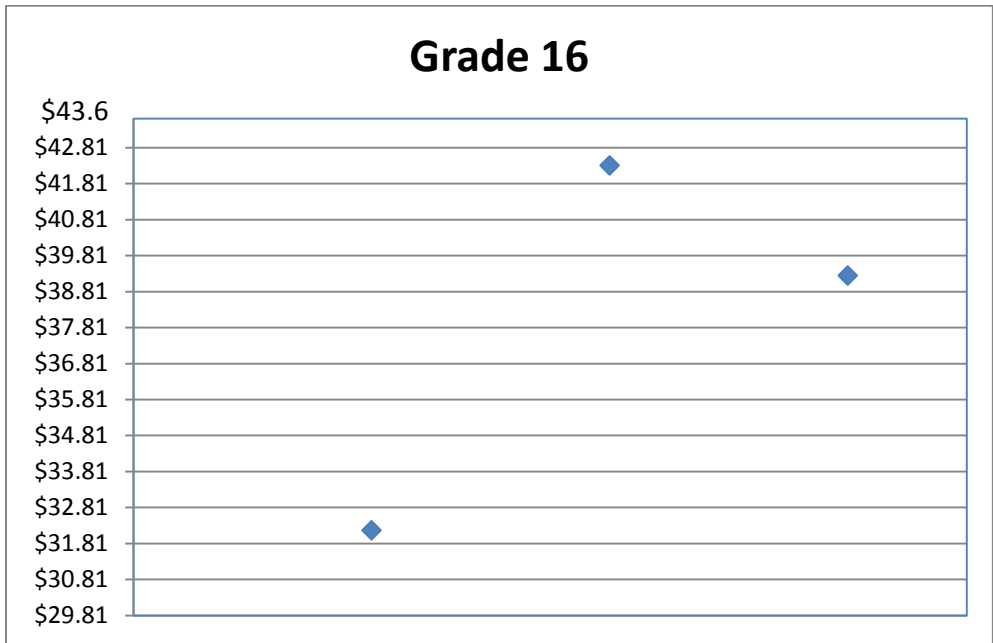
- Sample Grade 13 positions:
- Asst Op Div Mgr
 - App Mgr II
 - Budget Director
 - Engineer Tech IV
 - Programmer/Analyst II
 - Purch Director
 - Webmaster



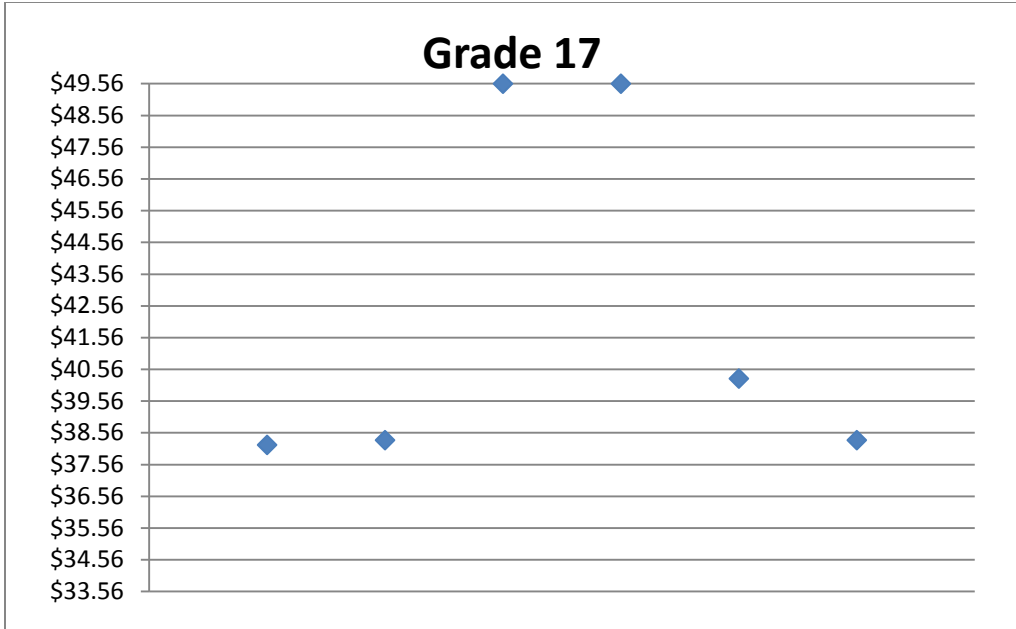
- Sample Grade 14 positions:
- Civil Eng. II
 - Emerg Mngmnt D Dir.
 - Jail Maint. Super
 - Network Admin I



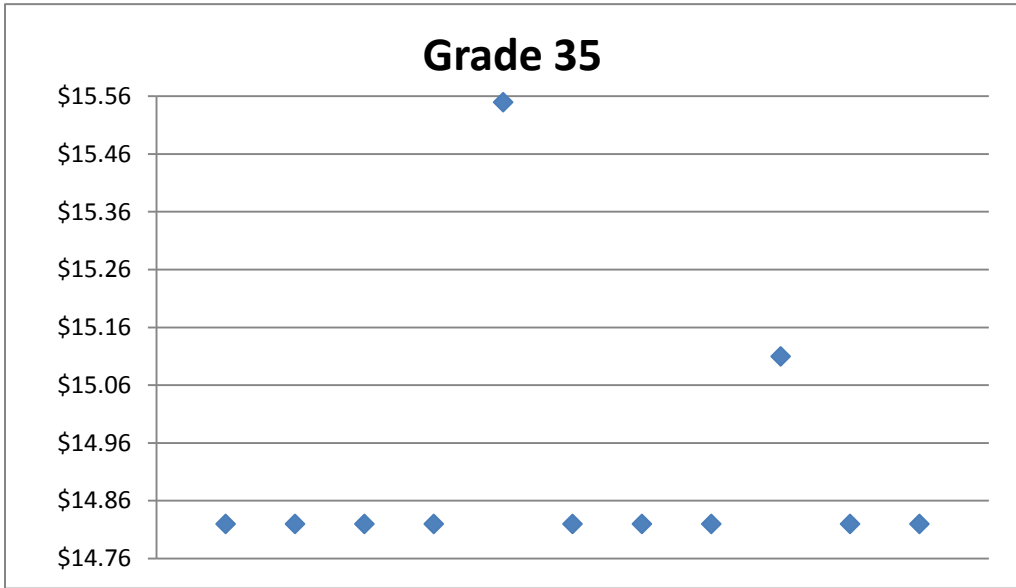
- Sample Grade 15 positions:
- Civil Engineering III
 - Dir Building & Grounds
 - Zoning Director
 - Engineering Tech 5
 - GIS Coordinator
 - Lead Programmer
 - Network Admin.II
 - Planning Resource Coordinator
 - Re entry Prog Dir.



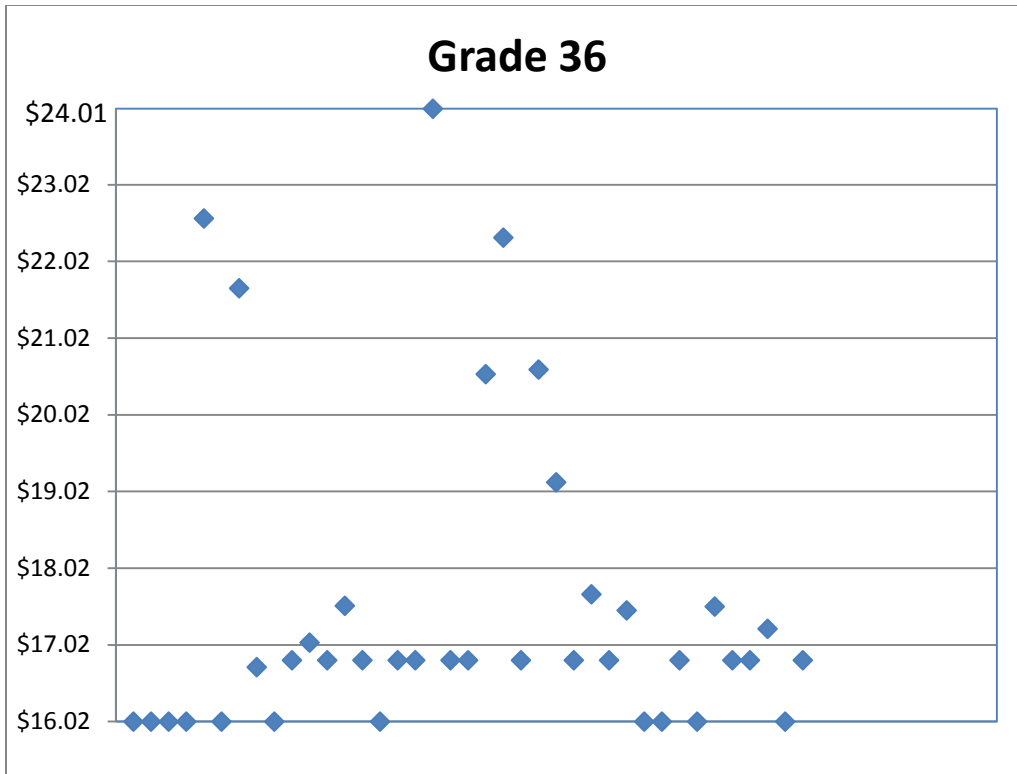
- Sample Grade 16 positions:
- Civil Engineer 4
 - Operations Div Mgr
 - Sustainability Coord



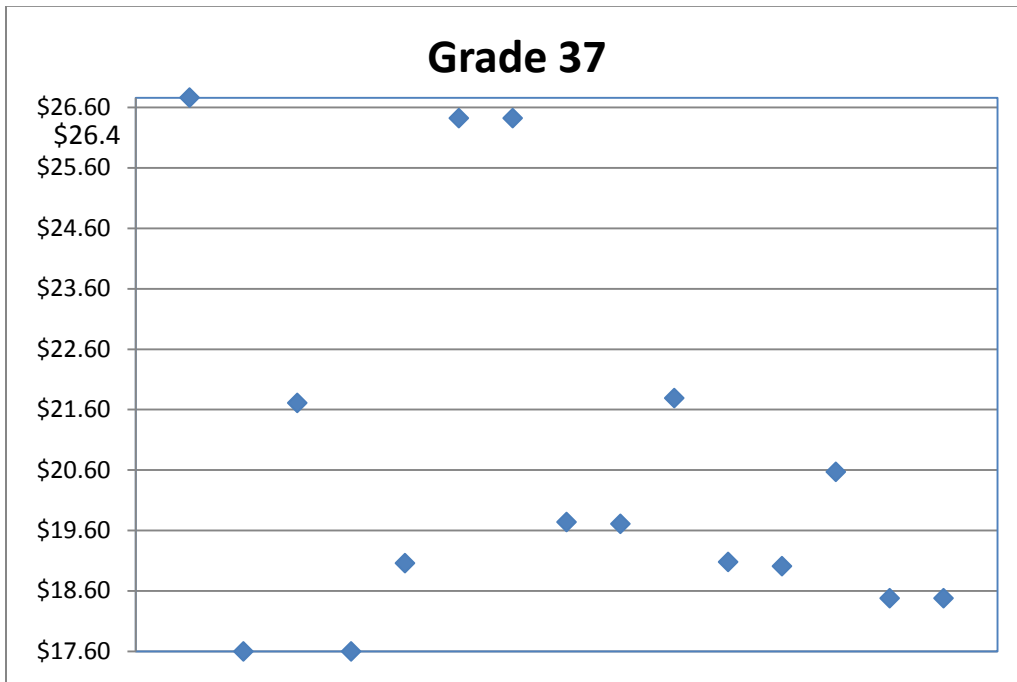
- Sample Grade 17 positions:
- Co Appraiser
 - Co Clerk
 - Co Commissioner
 - IT Director
 - Engineering Director
 - Reg of Deeds
 - Co Treas



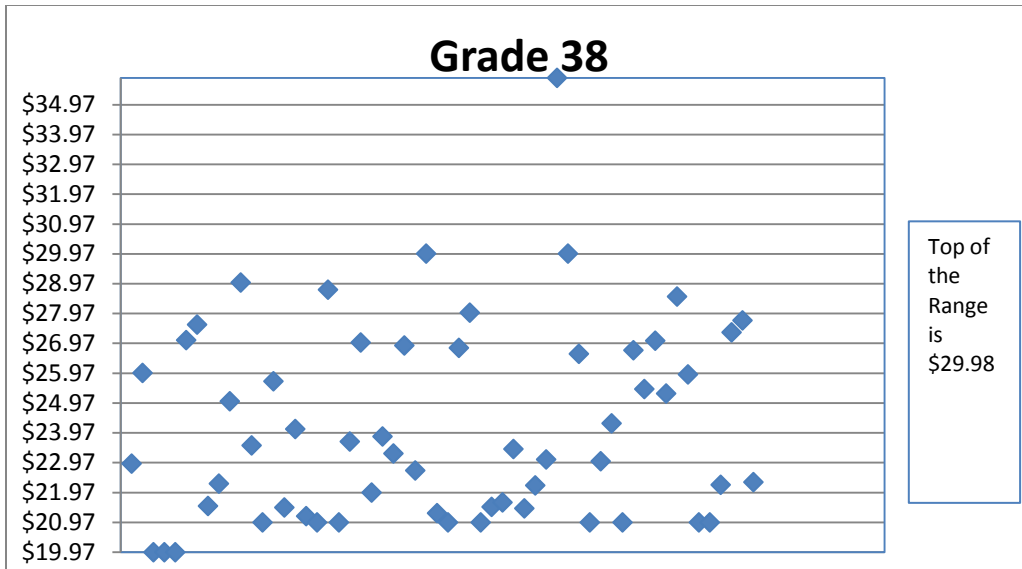
- Sample Grade 35 positions:
- Corr Officer I
 - Disp- Entry Level
 - 911 Call taker



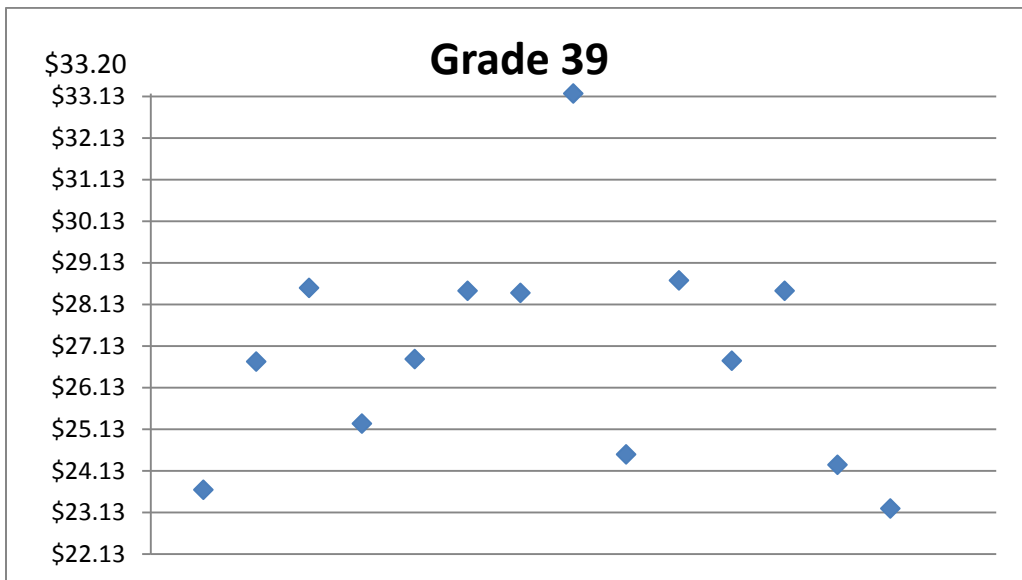
- Sample Grade 36 positions:
- Dispatcher I
 - Corr Officer II



- Sample Grade 37 positions:
- Corr Officer III
 - Corr. Program Coordinator
 - Dispatcher II



- Sample Grade 38 positions:
- Corr Officer 4
 - Deputy Sheriff
 - Training Officer
 - Communications Shift Super
 - Training & QA Super -ECC



- Sample Grade 39 positions:
- Corporal
 - Corrections Super
 - Communications Shift Super

Memorandum

Planning & Development Services

TO: Board of County Commissioners

FROM: Mary Miller, AICP

Date: For December 5, 2012 meeting

RE: Draft revised language for Agritourism text amendment addressing fairs/festivals/weddings/receptions and other assembly type uses.

Attachments:

Attachment A: Committee Chair Memo

Attachment B: Draft Language

Attachment C: Approval Table

The Agritourism Committee met on Thursday October 11th to revise the draft language in response to concerns raised at the September 19, 2012 County Commission meeting regarding possible off-site impacts from larger or more intense agritourism events/activities. The two agritourism uses that were seen as possibly having off-site negative impacts were:

- Historical, cultural, or agriculturally related events/fairs/festivals; and
- Weddings, receptions and other assembly type uses.

The language was revised to develop a County Commission review and approval process so that those agritourism uses which may have more off-site impact could have additional review and notification would be provided to the public as recommended by the Commission.

Suggestions were made during the revision process that the number of events permitted per year should be limited or the number of attendees permitted with administrative review should be lower. The Committee Chair, Rick Hird, provided a memo discussing agritourism and the proposed revisions (Attachment A).

The concern with the two uses listed above is based on the size and scope of the activity. As these uses are both assembly type uses, they were combined in the draft language into one use:

- **Assembly type uses such as fairs or festivals which are historical, cultural, or agriculturally related; weddings; receptions; etc.,**

We then worked to establish an approval process for assembly type uses above a certain size, which have been registered with the State and are attempting to register with the

County. The size of the assembly use refers to the number of people on site at any one time. The revisions are shown in bold red print in the attached draft amendment.

CHANGE BEING PROPOSED:

1. 12-303-1.92 Clarification that the definition of ancillary retail sales applies only to the agritourism section.
2. 12-319-7.01(b) Definition revised to group events, fairs, weddings, festivals as assembly type uses.
3. 12-319-7.02(a) included exemption from Special Event Permits for registered agritourism uses.
Added language that agritourism uses with attendance greater than 150 requires County Commission approval prior to registration.
4. 12-319-7.02(c) Addition of new section to include registration process information for agritourism uses above the threshold set in preceding section.
5. Building Code section is noted as 'to be removed' when building codes are amended, but the intent is for this to remain in the regulations until such changes have been made.

DISCUSSION

This procedure protects the public health, safety, and welfare in that it includes notification of nearby landowners, a public hearing, and County Commission review in order to evaluate and minimize possible off-site impacts resulting from assembly type uses.

This procedure encourages agritourism by providing an abbreviated review process from a Conditional Use Permit (Planning Commission recommendation is not required). The County Commission approval of an assembly type use will run throughout the lifetime of the agritourism activity. It does not need to be returned to the County Commission with re-registration if the use has not changed.

Attachment C contains a table showing the various approval processes for uses within the unincorporated areas of the county. Agritourism uses and Special Event Permits are included although they have not yet been adopted.

ACTION OPTIONS

1. Approve the draft language as provided
2. Revise the draft language based on information provided in Attachment A
3. Return the draft language to the Committee for further work
4. Return the draft language to the Planning Commission for discussion and recommendation

To: Mike Gaughan, Chair, Douglas County Commission
Nancy Thellman, Douglas County Commissioner
Jim Flory, Douglas County Commissioner
Mary Miller, Planning Department

From: Rick Hird

Date: October 26, 2012

Re: Agritourism Text Amendment

Chairman Gaughan, et al.,

I appreciate the opportunity to serve on the Planning Commission and as Chair of the Agritourism Committee. I have enjoyed working with the Committee members since January of 2010 – nearly three years of work! I thought it might be helpful – perhaps mainly to me – to summarize my responses to the text amendment language proposed in response to the concerns raised by Commissioner Flory, as well as the comments provided by Linda Finger.

I still sense some hesitation to endorse Agritourism in Douglas County and that bothers me greatly. We should be embracing Agritourism and the potential benefits to our community. It is not only our state's policy, but represents a genuine avenue for economic development in Douglas County. It is beyond dispute that Agritourism will draw visitors and their dollars from neighboring counties and states. We need that economic boost in Douglas County. And it will provide a second source of income for farmers struggling to stay on their farms.

Respect for the rights of neighbors is an important consideration, but respect for the right of landowners to use their property is also important. Most farmers fiercely defend their right to use their own land as they see fit and they expect their neighbors to have the same right. When the Commission has to strike a proper balance of interests between "5 acre retirees" and those trying to make a living in rural areas, please remember that the countryside is not a retirement village – it is an active and living economic community. Please do not impose urban expectations and standards in the rural environment.

The proposal which emerged from the Agritourism Committee and which was adopted by the Planning Commission by unanimous vote, looks very little like the current draft. The Committee consciously drafted a text amendment designed to facilitate agritourism by removing administrative barriers. The goal was to make it easier to conduct agritourism and not create another book of regulations.

The latest draft includes the following sections on which I wish to comment:

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

- a. **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 meet the definition set forth in these Regulations and are registered with the State and with the County may occur as permitted in Section 12-319-7 without any additional review under Section 12-319,**

Conditional Use Permits, ~~or~~ Section 12-319A, Site Plan Regulations, or Section XXX Special Use Permits, although other State and local regulations shall apply. Assembly type uses with an attendance of more than 150 persons shall require approval by the Board of County Commissioners prior to registration per process in Section 12-319-7.02(c).

- b. Registration forms shall be jointly reviewed by the Director of the Zoning and Codes Office and the Planning Director to determine if the proposed use(s) meet the definition of agritourism set forth in these Regulations within 7 working days of submittal.
- i. Additional descriptive information may be necessary for the determination. This information will be provided by the agritourism operator and kept as a part of the registration.
 - ii. If the Directors are unable to make a determination, the registration will be referred to the Board of County Commissioners.
 - iii. The applicant for the agritourism registration may file an appeal from the Director's determination. Appeals from the determination shall be made to the Board of County Commissioners. An appeal must be filed within 30 days of notification of the determination to the applicant. The appeal will be considered at the next available Commission meeting.
- c. Assembly type uses such as weddings, receptions, fairs, or festivals, that may have an attendance of more than 150 persons require Board of County Commission approval prior to registration as an agritourism use through the following process:
- i. Information regarding the assembly type use shall be included with the registration form. The registration shall include, at a minimum, the following information:
 - The expected attendance,
 - Activities associated with the assembly use,
 - Where parking will be provided on site,
 - Lighting location and type if assembly is to occur after dark,
 - Means to address health and sanitation at the site.
 - Information from the applicable fire department regarding access to the site/assembly use.
 - ii. The County Zoning and Codes Office shall mail notice to all property owners within 1000 ft of the proposed use and the date and time the use will be considered by the Board of County Commissioners. A 20 day notification period is required.
 - iii. The proposed use will be placed on the first available Board of County Commissioner's agenda following the notification period. The Commission will hold a public hearing on the proposed use at the time and place listed in the public notice.

- iv. **With County Commission approval the assembly type use, up to the attendance noted on the registration form, may continue to occur as long as registered as an agritourism use with the State and the County.**

My Comments are as follows:

1. The registration process provides protection from abuse.

The original Committee proposal was to simply have agritourism operators register with the state and file the registration with the county. In response to Commissioner Flory's concerns, an entire additional procedure was added in subsection b., requiring review of the application by the Director of Zoning and Codes and the Director of Planning. Those Directors would have the right to obtain further information about the application and if they have any doubts about an application, they can refer it to the County Commission. This is a substantial additional administrative layer and I think it addresses Commissioner Flory's concerns.

2. The Commission should not impose an arbitrary limit of 100 persons.

While I agree with the registration process described in subsections a. and b., I respectfully disagree with the suggestion that an assembly with 100 or more potential guests should require County Commission approval. **I do not agree with the last sentence of subsection a. or the addition of subsection c.** As drafted, subsection c. amounts to a CUP process for any activity at which 100 people will attend. I am opposed to that restriction, which was discussed thoroughly by the Committee.

The Committee discussed setting limit on the number of attendees of anywhere from 100 to 500. The Committee also discussed a tiered system for registrations and several other alternative methods. However, setting attendance limits is problematic. Is the measure a daily limit or a limit at any given time? To what does the numerical limit apply? For example, the total number of attendees during a day-long Asparagus Festival might be more than 150, but the number of attendees at any one time might be 10 or 20. Does the Festival turn away guests when 150 people have passed through the turnstile? Or could the Asparagus Festival have a rolling attendance during the day with 149 people on site at any given time, but with the total number for the day far surpassing that mark? How does an agritourism operator anticipate the number of guests?

Because there are many examples of agritourism uses that could have attendance well above 100, and because the Committee recognized the logistical difficulties in setting an arbitrary number and enforcing it, the Committee did not impose the restriction. I understand Commissioner Flory's concerns and while I respectfully dissent, **if a numerical limit must be imposed, I suggest it should be 250.**

3. The Commission should not arbitrarily limit the number of events per year.

I may be confusing this with the Special Events Permit application, which is a separate matter. The goal of the text amendment is to facilitate agritourism. An arbitrary limit on the number of

events per year is a step in the direction of squelching agritourism, not facilitating it. There is no reasonable reason advanced for such a limit, as agritourism operators must abide by all laws anyway. We have a noise ordinance. Parking isn't allowed on public roads. Sanitation facilities are already required. We currently have ordinances that restrict the impact of any activity on neighbors. Let's not send the message that we want agritourism operators to be successful, but not too successful.

4. The Commission should leave the building code language in the text amendment

Until the building codes are adopted, amended, adjusted and sit still, **I suggest retaining the language in the text amendment as drafted:**

12-319-7.03 STRUCTURES AND BUILDING CODES

Structures for agritourism uses are required to comply with Douglas County Building Codes with the following exception:

- a. **An existing building used for an agritourism use is not considered a change of occupancy that requires a building permit if the subordinate use of agritourism use:**
 - 1. **Occupies only the grade level of a structure that has at least one egress door that is a minimum of 32" wide.**
 - 2. **Two ground-level points of ingress and egress for structures which exceed 250 sq ft in area.**

- b. **To assist in the determination if the agritourism use in an existing agricultural building would be considered a change of occupancy that requires a building permit, the registration form must list each of the criteria above and represent compliance with all of them.**

If the building code is amended some day to incorporate the concepts stated in section 12-319-7.03, then the section could be deleted from H2020. Until then, it should stay in the text amendment.

I agree with Linda's statement in her email regarding not requiring sprinklers in agritourism buildings. But we may have a disagreement with respect to the interplay of the building code and Linda's proposed limit of 100 people. If I understand correctly, Linda is indicating that the building code does not require sprinklers for a building with an "assembly use" of up to 100 and building code requires sprinklers, without any discretion, for assembly uses above that number. Therefore, she suggests the limit should be 100 people.

First, let's make sure we're not confusing the measurement of the occupancy for purposes of the building code with the measurement of occupancy for agritourism uses. Linda's email indicates:

Talking to Kay and Pat, the 2012 I-Codes based requirements on building usage. An assembly use of 100 or more in a building requires the installation of sprinklers. Other requirements in the building code allow some judgment calls by

inspectors (e.g. the need for panic hardware, fire alarms, exit signs). There is no "option" to the sprinkler requirement in the codes, other than to reduce the floor area by separating a large space with fire-rated walls (which in turn, reduces the occupancy load per room). I've explained this to Jim and Craig. It makes sense to me not to get to a point where sprinklers are required in an agritourism building for a myriad of reasons. (my underlining)

I am not a building codes expert, but it is my understanding that the building code calculates an occupancy load per room based upon a certain number of square feet per person and the square footage of the building. I think Kay and Mary and I discussed this at our meeting in June (?) and we realized we had different approaches when talking about occupancy loads. I think we agreed that for the purpose of the agritourism exemption, the occupancy limit should be based upon the number of persons allowed, not the square footage of the building.

Second, I don't see anything preventing the Commission from amending that part of the building code to make the sprinkler requirement kick in at a number higher than 100. Otherwise, we're just applying the code as written, without any modification for agritourism uses.

CONCLUSION

I respectfully request the County Commission to pass the latest draft of the Agritourism Text Amendment with the deletion of the last sentence of Section 12-319-7.02, subsection a., and all of subsection c.

**TA-8-11-11 Agritourism
Draft language with changes shown
For December 5, 2012 BoCC meeting**

Draft Language as recommended by PC and revised based on BoCC direction in **bold** print.
Changes made to address Commission's concern with festivals/fairs and other assembly type
uses in **bold red** print; deleted text ~~struckthrough~~.

Agritourism

12-303 DEFINITIONS

12-303-1.92 ANCILLARY RETAIL SALES: For the purpose of ~~this~~ Section **12-319-7** only, 'ancillary retail sales' refers to the 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.

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. Typical agritourism uses include, but are not limited to, the following:
 - Farm markets/roadside stands,
 - U-pick operations,
 - Farm winery tours and tastings,
 - Corn mazes,
 - Farm-related interpretive facilities, exhibits, and tours,
 - Historical, cultural, or agriculturally related educational and learning experiences, including volunteer workers.
 - ~~Historical, cultural, or 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,~~
 - **Assembly type uses such as fairs or festivals which are historical, cultural, or agriculturally related; weddings; receptions; etc.,**
 - Ancillary retail sales,
 - 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

- a. 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 meet the definition set forth in these Regulations and are registered with the State and with the County may occur as permitted in Section 12-319-7 without any additional review under Section 12-319, Conditional Use Permits, ~~or~~ Section 12-319A, Site Plan Regulations, **or Section XXX Special Use Permits,** although other State and local regulations shall apply. **Assembly type uses with an attendance of more than 150 persons shall require approval by the Board of County Commissioners prior to registration per process in Section 12-319-7.02(c).**

- b. Registration forms shall be jointly reviewed by the Director of the Zoning and Codes Office and the Planning Director to determine if the

proposed use(s) meet the definition of agritourism set forth in these Regulations within 7 working days of submittal.

- i. Additional descriptive information may be necessary for the determination. This information will be provided by the agritourism operator and kept as a part of the registration.
 - ii. If the Directors are unable to make a determination, the registration will be referred to the Board of County Commissioners.
 - iii. The applicant for the agritourism registration may file an appeal from the Director's determination. Appeals from the determination shall be made to the Board of County Commissioners. An appeal must be filed within 30 days of notification of the determination to the applicant. The appeal will be considered at the next available Commission meeting.
 - c. **Assembly type uses such as weddings, receptions, fairs, or festivals, that may have an attendance of more than 150 persons require Board of County Commission approval prior to registration as an agritourism use through the following process:**
 - i. **Information regarding the assembly type use shall be included with the registration form. The registration shall include, at a minimum, the following information:**
 - The expected attendance,
 - Activities associated with the assembly use,
 - Where parking will be provided on site,
 - Lighting location and type if assembly is to occur after dark,
 - Means to address health and sanitation at the site.
 - Information from the applicable fire department regarding access to the site/assembly use.
 - ii. The County Zoning and Codes Office shall mail notice to all property owners within 1000 ft of the proposed use and the date and time the use will be considered by the Board of County Commissioners. A 20 day notification period is required.
 - iii. The proposed use will be placed on the first available Board of County Commissioner's agenda following the notification period. The Commission will hold a public hearing on the proposed use at the time and place listed in the public notice.
 - iv. With County Commission approval the assembly type use, up to the attendance noted on the registration form, may continue to occur as long as registered as an agritourism use with the State and the County.
 - d. Only those activities specifically listed in the registration form and approved by the Directors are allowed to occur as agritourism.

- i. Any change in proposed uses would require:
 - the modification of the registration with the State,
 - resubmittal of the revised registration form to the Zoning and Codes Office for a determination of compliance with the definition of agritourism provided in this Section by the Director of the Zoning and Codes Office and the Planning Director.

- e. The KS Agritourism Act requires agritourism uses to register with the State every 5 years. Agritourism uses must register with the County each time an agritourism use is registered with the State, every 5 years, or any time a registration form is amended.

- f. Engaging in any activity not listed on the registration would be considered a violation subject to the enforcement provisions of Section 12-329.

The following section to be removed when the Building Codes have been revised.

12-319-7.03 STRUCTURES AND BUILDING CODES

Structures for agritourism uses are required to comply with Douglas County Building Codes with the following exception:

- a. An existing building used for an agritourism use is not considered a change of occupancy that requires a building permit if the subordinate use of agritourism use:
 - 1. Occupies only the grade level of a structure that has at least one egress door that is a minimum of 32" wide.
 - 2. Two ground-level points of ingress and egress for structures which exceed 250 sq ft in area.

- b. To assist in the determination if the agritourism use in an existing agricultural building would be considered a change of occupancy that requires a building permit, the registration form must list each of the criteria above and represent compliance with all of them.

USE	APPLICATION REVIEW PROCESS	NOTIFICATION	TIME FRAME
<ul style="list-style-type: none"> • Agricultural Use U-pick operations, etc. 	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • No time limit
<ul style="list-style-type: none"> • Rural Home Occupations Type 1 	<ul style="list-style-type: none"> • Application • Administrative 	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Annual renewal required
<ul style="list-style-type: none"> • Rural Home Occupations Type 2 	<ul style="list-style-type: none"> • Application • Administrative 	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Annual renewal required
<ul style="list-style-type: none"> • Special Event Permit (proposed) 	<ul style="list-style-type: none"> • Application • Administrative if criteria are met • BoCC approval for all others 	<ul style="list-style-type: none"> • Mailed notice to property owners within 1000 ft 	<ul style="list-style-type: none"> • Maximum duration of 7 days, • Maximum of 4 events on a property per year
<ul style="list-style-type: none"> • Temporary Business Use 	<ul style="list-style-type: none"> • Application and temporary business plan • Administrative review • Public hearing and decision by BoCC 	<ul style="list-style-type: none"> • 10 day mailed notice to property owners within 1000 ft, and residential structures with driveways access from the primary road to the site within 1 mile of the main entrance. 	<ul style="list-style-type: none"> • BoCC, case by case.
<ul style="list-style-type: none"> • Uses Permitted in the A District (Not ag or residential). 	<ul style="list-style-type: none"> • Administrative Site Plan review with BoCC action 	<ul style="list-style-type: none"> • Surrounding owner notice not required. • BoCC agenda online notification 	<ul style="list-style-type: none"> • No time limit
<ul style="list-style-type: none"> • Agritourism, assembly use less than 150 at any one time (proposed) 	<ul style="list-style-type: none"> • Registration form • Administrative or BoCC if staff requests a determination as to whether the use complies with the definition of Agritourism. 	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Re-registration is required every 5 years or when use is changed.
<ul style="list-style-type: none"> • Agritourism, assembly use greater than 150 at any one time. (proposed) 	<ul style="list-style-type: none"> • Registration form with additional information regarding the assembly type use. • BoCC 	<ul style="list-style-type: none"> • 20 day mailed notice to landowners within 1000 ft of subject property. • BoCC agenda online notification 	<ul style="list-style-type: none"> • Re-registration every 5 years or when use is changed. • Approval by the BoCC extends through subsequent re-registrations if the use remains the same.
<ul style="list-style-type: none"> • Uses which require a CUP 	<ul style="list-style-type: none"> • Conditional Use Permit application • Planning Commission public hearing and recommendation. • 14 day waiting period for protest petition. • BoCC action. 	<ul style="list-style-type: none"> • 20 day mailed notice within 1000 ft • 20 day newspaper notice • BoCC agenda online notification 	<ul style="list-style-type: none"> • 10 year time frame typical. (This is not set by code but is the common practice.)

Memorandum

Planning & Development Services

TO: Board of County Commissioners

FROM: Mary Miller, AICP

Date: For December 5, 2012 meeting

RE: Draft revised language for TA-8-10-11: Text Amendment for Special Event Permit

Attachments:

Attachment A: Draft Language

Attachment B: Staff Report

Attachment C: Planning Commission Minutes

The Planning Commission considered the Zoning Regulations text amendment referenced above at their April 13, 2012 meeting and voted unanimously to forward the amendment to the County Commission with a recommendation for approval. The staff report included with this memo explains the intent and purpose of the amendment.

The draft language included as Attachment A has been revised as noted below since it was before the Planning Commission:

- The notification requirement was revised, as discussed at the Planning Commission meeting, to specify that notification would extend 200 ft if the notification area fell within the limits of an incorporated city.
- Language exempting 4 events associated with agritourism activities from the requirement to obtain a Special Event Permit was removed following the County Commission discussion on Agritourism. Registered agritourism activities are not required to obtain a Special Event Permit; however, events which are associated with a registered agritourism use but are not listed on the registration form are required to obtain a Special Event Permit.
- Language regarding the agritourism exemption from the building code was removed.
- The revised language retains 'flea market or swap meet' as a use which could be permitted with a Temporary Business Permit. An example of a use which has obtained a Temporary Business Permit under this category is a stand for the seasonal sale of nuts and berries which are not raised on site.

ACTION REQUESTED

Approve the draft language for TA-8-10-11, Special Event Permits, as provided with this staff memo.

*(All language in Section 12-319-5 is new.
Changes based on BoCC comments on Agritourism;
deleted text is shown as ~~struckthrough~~; added text as **bold**)*

12-319-5. SPECIAL EVENTS

12-319-5.01 Purpose and Intent.

- a. The purpose of this section is to establish procedures and standards for conducting short-term special events on private property within the unincorporated area of Douglas County.
- b. The regulations in this section are intended to provide an efficient procedure for processing special event applications while promoting the health, safety and welfare of all persons in the county by ensuring that special events do not create disturbances, become nuisances, disrupt traffic, or threaten or damage persons or property.

12-319.5.02 Special Event Defined.

The term 'special event' shall mean a short-term use of land or structures which is not otherwise included as a permitted or accessory use by these Zoning Regulations.

12-319.503 Exempt Events

The following types of events are exempt from the requirement to have a Special Event Permit:

- a. Private gatherings held by the property owner or resident, (such as wedding receptions or family reunions)
- b. Garage sale, estate auction, or similar event. A maximum of 2 of these events are permitted through this exemption per calendar year.
- c. Fundraising or non-commercial events for nonprofit religious, political, educational or community service organizations which meet the following criteria and standards:
 - 1) Event is conducted entirely on private property owned or leased by the sponsoring organization as a permanent facility.
 - 2) Any structure used in conjunction with the special event shall meet all applicable yard setbacks and shall be subject to a valid building permit.
 - 3) The event shall be restricted to hours of operation between 8 AM and 11 PM
 - 4) Maximum duration of 7 days,
 - 5) Maximum of 4 events on a property per calendar year, and
 - 6) Signs displayed in conjunction with use shall comply with sign regulations for the Zoning District in which the property is located.
- ~~d.~~ Events ~~associated with an agritourism use which is~~ which are registered with the State and County **as agritourism** are exempt from the requirement to obtain a Special Event Permit ~~with the following limitation:~~
 - 1) ~~Up to 4 events of a similar nature are exempt. More than 4 events of a similar nature would require an amendment to the Agritourism registration with the State and County, or approval through the Special Event Process.~~

12-319-5.04 Events which require Special Event Permits

Events which do not meet the criteria for exemption listed in Section 12-309-5.03 require a Special Event Permit.

- a. These include events which are open to the general public, whether or not an admission or entrance fee is charged. These events include, but are not limited to auctions, temporary faith-based assemblies, rallies, concerts, performances, festivals, fairs, carnivals, fundraisers, or similar public gatherings.
- b. Events may occur either with or without the sale or provision of alcoholic liquor or cereal malt beverages. The property owner is responsible for obtaining necessary liquor licenses.

12-319-5.05 Permit Approval Process.

- a. Special Event Permits may be approved administratively or may require approval by the Board of County Commissioners depending on the nature of the activity and the potential impacts to the surrounding properties.
- b. Special Events which do not meet the criteria listed in Section 12-319-5.06 or the standards listed in Section 12-319-5.07 or have characteristics that the Zoning and Codes Director determines may constitute a nuisance or danger shall require approval of the Board of County Commissioners.

12-319-5.06 Criteria for Administrative Approval.

The Zoning and Codes Director shall review the Special Event Permit application with the following criteria to determine if the permit may be processed administratively:

- a. The principal route to the event is on a road network suitable for the anticipated attendance, per the determination of the County Engineer or township official.
- b. Event hours between 7 AM and 11 PM.
- c. The event lasts no more than 14 days.
- d. Up to 4 events within the calendar year may be permitted administratively for a property. Additional events require approval by the Board of County Commissioners.
- e. The event does not propose any overnight sleeping accommodations.

12-319.507 Standards

In addition to the criteria noted above, all special events shall comply with the following performance standards and any additional conditions deemed necessary by the Director of Zoning and Codes, or the Board of County Commissioners, if applicable, in order to minimize any negative impacts to surrounding properties and protect the public health, safety and welfare.

- a. **Noise.** The County Noise Ordinance (HR 11-7-3) shall be observed.

- b. Parking.** Adequate parking areas (including accessible parking) are required for the event.
- 1) Accessible parking must be located as near to the event area as possible.
 - 2) Parking shall be provided on the same property as the event to the fullest extent possible. No parking shall occur on the public right-of-way
 - 3) Parking may be located on adjoining property with advance written consent of the affected landowner. A copy of the written consent shall be provided to the Zoning and Codes Director prior to approval of the permit.
- c. Location of Event.**
- 1) The event shall not interfere with access into the site for emergency vehicles.
 - 2) No special events are permitted to be located within the regulatory floodway.
- d. Health and Sanitation.** All requirements of the Lawrence-Douglas County Health Department shall be met.
- e. Lighting.** All lighting sources shall be shielded or aimed so the direct illumination is confined to the property on which the event is located.
- 1) The operation of searchlights or similar lighting sources is prohibited.
 - 2) Flashing light source is prohibited.
 - 3) Animated or lighted signs are prohibited.
- f. Signage.**
- 1) One temporary freestanding or wall-mounted on-site sign is permitted.
 - 2) The applicable sign regulations for the Zoning District in which the property is located shall apply.
 - 3) Sign text and graphics, which relate only to the special event shall be removed immediately upon cessation of the event.
 - 4) Off-premise directional signage, on private property, that describes the location of the use, shall be allowed with the written approval of the property owner. A map with the location of the signage shall be provided to the Zoning and Codes Office prior to event.
 - 5) Under no circumstance is signage permitted within the public right-of-way.
- g. Other Permits and Laws.** Any required local or state permits or licenses, etc., shall be obtained before the Special Event Permit is issued and the event shall comply with all applicable sales tax and other laws of Douglas County.

- h. Structures.** Any structure used for a special event must comply with Douglas County Building codes, ~~with the exception of the structures which are exempt for Agritourism Uses as specified in Section XXXX.~~
- i. Site Restoration.** The site shall be left free of debris, litter or any other unsightly evidence of the use upon completion or removal of the use and shall thereafter be used only in accordance with the applicable provisions of the zoning regulations.

12-319-5.08 Review and Approval Procedure

Special events which do not meet the exemption criteria listed in Section 12-319-5.03 shall obtain a Special Event Permit through the following procedure:

- a.** Submittal of a completed Special Event Permit application, and the appropriate application fee to the Douglas County Zoning and Codes Office.

 - 1) The application must be provided at least 20 days prior to the event to allow time for a review of the application and notification of neighbors.
 - 2) The Director of Zoning and Codes shall make a determination within 7 calendar days of the submittal as to whether the permit may be approved administratively or requires Board of County Commissioners approval.

 - Applications which are referred to the Board of County Commissioners for approval will be reviewed and placed on the next available agenda.
- b.** The applicant shall obtain a list of property owners within 1000 ft of the property on which the Special Event is proposed from the Douglas County Clerk's Office. **If the foregoing area includes area within the corporate limits of a city, the list shall include owners of property extending 200 feet into the corporate limits of the city. The applicant shall** mail a letter which contains the information below to the property owners on the list to advise them of the proposed event and provide them the opportunity to contact the applicant or the Zoning and Codes Office if they have any questions.

A Special Event Permit is being proposed for property located at _____ . The event will consist of (brief description of event) and will run from _____ to _____ between the hours of _____. A Special Event Permit application will be submitted to the Douglas County Zoning and Codes Office.

Please contact me at _____ with any questions regarding this event, or the Douglas County Zoning and Codes Office at 785-331-1343.

- 1) The applicant must provide a copy of the letter, the property owner list and certification of the date the letters were mailed to the addresses on the list with their application.

- c.** A Special Event Permit may be administratively issued by the Director of Zoning and Codes if the criteria listed in Section 12-319-5.06 and the standards listed in Section 12-319-5.07 are met and the Director determines the event will not create a public nuisance or danger.
- d.** Special Events which do not meet the criteria for administrative approval, or are determined to constitute a potential nuisance or danger to the public, shall be referred to the Board of County Commission for action.
- e.** Following the approval of the Special Event, a permit shall be issued to the applicant at no additional charge. The permit shall be kept on the premises during the duration of the event.

*(Section 12-319-6 has been revised:
deleted text is shown as ~~struckthrough~~ and new text is in **bold**.
This section has been renumbered, as will be the subsequent sections.)*

**12-319-6 ~~12-319-5.01~~ TEMPORARY BUSINESS USES AND TEMPORARY BUSINESS
USE PERMITS**

Temporary business uses may be permitted in any district upon the review and finding of the Board of County Commissioners that the proposed use is in the public interest. In making such determination, the Board shall consider the intensity and duration of the use, the traffic that can be expected to be generated by the use, the applicant's plans for dealing with sanitation and other public health and safety issues, and other factors which the Board in its discretion determines will affect the public health, safety and welfare.

12-319-6.01 Definitions.

- a. "Temporary business use" shall mean the carrying on of any of the activities enumerated in subparagraph (2) of this Paragraph (b) on real property located in the unincorporated area of Douglas County, Kansas, which is not owned and regularly used by the applicant/sponsor of such activity for such purpose; provided that, "temporary business use" shall not include the activities of persons, families, groups or social or religious organizations that conduct fund raising, social or religious activities on real property which is owned and regularly used by such persons, families or groups for such activity. An activity enumerated in subparagraph (2), below, held on property which is leased or borrowed for the purpose of conducting the activity shall be presumed to be a "temporary business use" which is subject to the requirements of this Section 12-319-6.
- b. Temporary business uses shall include the following activities:
- i. Batching plant, including portland cement, concrete or asphalt.
 - ii. Construction building or construction materials yard.
 - iii. Real estate tract sales office.
 - iv. Flea market or swap meet.
 - ~~v. Concerts, musical performances, plays and other performing arts events.~~
 - ~~vi. Circus or carnival.~~
- 4) Movie or video filming operations involving a combined crew, cast and extras of greater than ten (10) persons, except that one permit may be acquired for a single movie or video filming operation at different locations over a six (6) month period provided the applicant therefor informs the Douglas County Sheriff of each filming location twenty-four (24) hours prior to commencing filming operations.
- c. Application Procedure. An applicant for a temporary business use permit shall make application to the office of the Douglas County Zoning Administrator no less than twenty-eight days before the date of the proposed temporary business use. For good cause shown, the Board of County Commissioners may allow an application to be filed on shorter notice. All applications shall be accompanied by a non-refundable application fee in an amount set by resolution of the Board of County Commissioners but not less

than one hundred dollars. In the application the applicant shall identify each sponsor of or other persons with a financial interest in the proposed activity.

d. Temporary Business Use Plan. Each temporary business use application shall be accompanied by ten copies of a plan in which the applicant explains the activity, the number of persons anticipated to attend, the location of the ~~event~~ **temporary business use**, and detailed information concerning the applicant's plans and procedures for the following:

- 1) Controlling traffic, parking and road conditions during the ~~event~~ **temporary business use**, including provisions for off-road parking;
- 2) Addressing health and sanitation concerns at the site, including toilet and drinking water facilities and supplies adequate to meet the anticipated crowd plus a reasonable allowance for additional persons, including certification by Lawrence-Douglas County Health Department that all sanitation and health concerns have been adequately addressed in the applicant's plans;
- 3) Providing adequate illumination at the site if the ~~event~~ **temporary business use** is to be held at night;
- 4) Providing security at the site, including the hiring of private security guards;
- 5) Providing adequate fire safety precautions at the site, including consultation with the township fire department and approval prior to the activity;
- 6) Evidence that the applicant has secured or can secure adequate general liability and property insurance coverage for the ~~event~~ **temporary business use**;
- 7) If applicable, the serving of alcoholic beverages, including cereal malt beverage;

e. Public Notice Requirements. Upon receipt of the application for a temporary business use permit, the Zoning Administrator shall notify the applicant of the date scheduled for a public hearing on such application before the Board of County Commissioners. No less than ten days prior to the public hearing the Zoning Administrator shall send notice of the date, time and place of the hearing by first class mail to the following persons:

- 1) The owners and occupants of properties within 1,000 feet of the boundaries of the site at which the proposed use will occur; and,
- 2) The owners and occupants of residential structures served by driveways which take access from the public road which shall serve as the primary access to the proposed site and that are within one mile of the main entrance to such site. The public notice provided for herein also shall contain a copy of the temporary business use plan required in paragraph (d) or a summary thereof. The failure of any of the above described persons to receive the notice provided for herein shall not invalidate any proceedings held concerning a temporary business use permit application. The notice required by this subsection shall only be required to be sent to the non-owner occupants of properties described herein if the names and addresses of such persons can be ascertained from records of the County that are available to the Zoning Administrator.

- f.** Public Hearing and Decision by Board. Each application for a temporary business use permit shall be exempt from the requirements of Section 12-319-1, but the application shall be the subject of a public hearing before the Board of County Commissioners on the date and at the time and place set out in the notice required to be given under paragraph (e) of this section. After the public hearing held thereon, the Board may approve or deny the permit, or the Board may continue the hearing or a decision on the permit application until a subsequent meeting. If the permit is approved, the Board shall establish the effective time period for the permit and all conditions under which the permit is granted. Such conditions may include, but shall not be limited to, a requirement that a cash bond be posted by the applicant to reimburse Douglas County for the cost of any overtime incurred by County staff in responding to calls by law enforcement personnel and the provision of other services in connection with the permitted activity. Within 14 days after the conclusion of the use the County Administrator shall review all costs incurred by the County, shall deduct the amount of the costs from the bond, and shall refund the balance of the cash bond to the applicant.
- g.** Permit Not Assignable. Any permit issued under this section may not be assigned by the applicant to any other person without the consent of the Board of County Commissioners.

PLANNING COMMISSION REPORT
Regular Agenda -- Public Hearing Item

PC Staff Report
4/23/12

**ITEM NO. 8 TEXT AMENDMENT TO THE DOUGLAS COUNTY ZONING REGULATIONS;
SPECIAL EVENT PERMIT PROCESS (MKM)**

TA-8-10-11: Consider a Text Amendment to the Douglas County Zoning Regulations for the Unincorporated Territory of Douglas County to establish a Special Event Permit Process and associated standards for certain temporary uses in various zoning districts.

RECOMMENDATION:

Staff recommends approval of the amendments to Article 12-319 of the Zoning Regulations for the unincorporated Territory of Douglas County, Kansas to establish a Special Event Permit Process and associated standards by adding Section 12-319-5, Special Events; renumbering the remaining sections, and revising Temporary Business Use Permits to remove activities which would be considered 'special events' and forwarding this recommendation to the Douglas County Board of Commissioners for approval.

Reason for Request: The Lawrence Douglas County Metropolitan Planning Commission initiated the text amendment on the recommendation of the Agritourism Committee to provide an alternative to the Conditional Use Permit process.

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 Report and Recommendation
Attachment B: Proposed Amendment, TA-8-10-11, *Special Event Permit*

The Agritourism Committee identified concerns among stakeholders with the time and approval process involved with a Conditional Use Permit during its review of Agritourism in Douglas County. As a result, the committee recommended that a text amendment be initiated to create a Special Event Permit process to accommodate temporary events in the 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. Special Event Permits may accommodate agritourism uses or infrequent commercial uses rather than requiring a Conditional Use Permit or rezoning for a more permanent commercial use.

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**

The County Zoning Regulations currently contain provisions for 'Temporary Business Use Permits'. These contain some activities that could be considered 'Special Events' such as concerts and circuses as well as temporary business uses such as a batch asphalt plant. This amendment will create a Special Event Permit for events and will include the few events that have been included with the business use. The creation of a Special Event Permit will remove 'events' from the temporary business permits and will provide an alternative to the Conditional Use Permit for temporary events.

The text amendment addresses a changing situation: the need for a short term permit for temporary events rather than requiring the approval as a Conditional Use.

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 provide an efficient means for the permitting of temporary events which will support agri- and eco-tourism as well as help maintain agricultural uses as the predominant land use 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 12-319-5 has been revised from 'Temporary Business Uses and Temporary Business Use Permits' to Special Events. This section includes the definition of a Special Event, explains when a Special Event Permit is required and what uses are exempt, outlines the approval process, and establishes general standards for Special Events.
- Temporary Business Uses and Temporary Business Use Permits will be moved to Section 12-319-6 and revised to remove reference to uses which would be considered Special Events.
- All subsequent sections in 12-319 will be renumbered.

Staff Recommendation

Staff recommends approval of proposed revisions to Article 12-319 of the Zoning Regulations for the unincorporated Territory of Douglas County, Kansas to establish a Special Event Permit process and standards.

PC Minutes 4/23/12

ITEM NO. 8 TEXT AMENDMENT TO THE DOUGLAS COUNTY ZONING REGULATIONS;
SPECIAL EVENT PERMIT PROCESS (MKM)

TA-8-10-11: Consider a Text Amendment to the Douglas County Zoning Regulations for the Unincorporated Territory of Douglas County to establish a Special Event Permit Process and associated Standards for certain temporary uses in various zoning districts.

STAFF REPORT

Ms. Mary Miller presented the item.

PUBLIC HEARING

Ms. Natalya Lowther, Pinwheel Farm, expressed concern about the language causing burdensome restrictions on the States initiative to promote rural economic development through agritourism. She inquired about the term 'similar events' and what was meant by that. She said the undefined term meant the agritourism event Planner would have to ask the Zoning & Codes administrator whether he considered any given activity similar to another for each event. She said a Conditional Use Permit requires notice within 1000' radius outside city limits and 200' inside city limits. She said the Special Event Permit process specified a flat 1000' radius regardless of jurisdiction. She suggested it include the same language as Conditional Use Permits of 200' within the city limits. She felt they should think carefully about setting conditions for events if those limitations might restrict the public constitutional right to freely and peacefully assemble. She said they should also be careful that religious events require approval, which could lead to the establishment of a county religion, and if only some permits are approved it might violate the Bill of Rights. She stated the Zoning & Codes administrator was already overburdened with permits and seemed unable to respond to applicant calls, information requests, and permit approvals in a timely manner.

COMMISSION DISCUSSION

Commissioner Liese thanked Ms. Lowther for her comments. He said she mentioned activities that sounded more like private gatherings.

Ms. Lowther said the events she mentioned were not necessarily for profit but were public events, not private.

Ms. Miller said that would be a public event. She said if she was a registered agritourism activity it would be exempt. She stated if she had more than four activities of the same type she would need to either amend her agritourism registration or the fifth one would require a Special Event Permit.

Commissioner Liese agreed with Ms. Lowther's suggestion for notice of property owners. He asked how it was defined.

Ms. Miller said it was from the property lines and the property ownership list is obtained from the County Clerk's office. She said the 200' notice for properties in the city was an oversight on her part and she would make that change.

Commissioner Finkeldei asked why four events were chosen.

Ms. Miller said the main reason that number was chosen was because that was the number that was used within city limits for Special Event Permits.

Commissioner Finkeldei asked if an event was not in the agritourism registration it would need to be amended.

Ms. Miller said if an activity was included in the agritourism registration than it was an exempt activity. She said Ms. Lowther would not need a Special Event Permit for activities listed in her agritourism registration. She said the registration could be amended with the State to add additional uses.

Commissioner Liese asked Ms. Lowther why she wouldn't put everything she thought she might do in the agritourism registration.

Ms. Lowther said she went through the agritourism registration many years ago and did not remember exactly what she registered for but she said the categories were fairly broad. She said she has had more recent experiences with lines being drawn very narrow by the County Zoning & Codes department about what does or does not meet the definition. She was concerned about the potential for her thinking that a potluck fit in category x with her State registration and the County Zoning & Codes department saying that it did not fall within that category. She said her operation was almost totally crippled two years ago because she thought her operation was covered under State agritourism regulations but the County Zoning & Codes department thought otherwise. She said a few years ago she went through the Conditional Use Permit process to lay out a plan to allow individuals traveling from out of state to take part in agricultural activities and camp on her property. She said she can't even pitch a tent in her own pasture to monitor the safety of her own sheep as part of her agricultural job. She said she had 6,000 hours of volunteer labor offered that she had to turn down in six months because she couldn't let them bring their van or camper to sleep in. She was worried about the same sort of thing happening with other regulations that go back to the same individuals that have made these determinations in the past. She said in 2006 she was cited in violation of using a tent camper on her own property. She said now she knows regulations allow her to do that but at the time she didn't fight a \$500 a day fine that she was going to be levied for pitching a tent camper on her own land.

Commissioner Hird said regulations regarding camping was something they would have to tackle at some point in the future.

Commissioner Liese said he did not want to see Planning Commission decide to limit agritourism business through this process. He liked what staff had drafted.

ACTION TAKEN

Motioned by Commissioner Finkeldei, seconded by Commissioner Blaser, to approve the amendments to Article 12-319 of the Zoning Regulations for the unincorporated Territory of Douglas County, Kansas to establish a Special Event Permit Process and associated standards by adding Section 12-319-5, Special Events; renumbering the remaining sections, and revising Temporary Business Use Permits to remove activities which would be considered 'special events' and forwarding this recommendation to the Douglas County Board of Commissioners for approval, with the revision that property ownership notice would 1000' outside city limits and 200' within city limits.

Commissioner von Achen asked Ms. Lowther if she still saw this as restrictive to her business.

Ms. Lowther said the point at which it becomes restrictive is with the people administrating it by having different interpretations of the regulations. She said the County Zoning & Codes department imposes the restrictions they want on the people they want.

Mr. McCullough said today if a property is a registered agritourism use they will be registered with a specific use. He said for example, a non-profit organization having a fund raising event for three days, had no mechanism short of a Conditional Use Permit to do that. He said the intent of the Special Event Permit was that it would open the door for uses not registered as agritourism. He stated this provides the opportunity for a special event in the county one time or multiple times a year.

Commissioner Liese said he would vote in favor. He stated this may be a way for Ms. Lowther to do even more without having to get a Conditional Use Permit. He said he saw this as facilitating extraordinary events.

Ms. Lowther said she has been denied the right to do things on a regular basis that she is registered for as an agritourism use with the State. She said just because she was registered with the State as an agritourism use doesn't mean she's allowed to do it in Douglas County.

Commissioner Hird said County Commission was scheduled to hear the agritourism text amendment on Wednesday. He said they were working toward a mechanism to determine whether uses were legitimately an agritourism use. He said one of the issues that County Commission would likely struggle with is what is and is not an agritourism use. He said it was a good step forward and he would support the motion.

Unanimously approved 9-0.