

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

WEDNESDAY, APRIL 2, 2014

4:00 p.m.

- Consider approval of a Proclamation for "Child Abuse Prevention Month" (Jenna Preston)
- Consider approval of a Proclamation for "National Public Health Week, April 7 – 13, 2014" (Dan Partridge)
- Consider approval of the minutes for February 26, March 5 and March 12, 2014.

CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders;
- (b) Consider approval of Bids for Noxious Weed Herbicides (Keith Browning); and
- (c) Consider acquisition of easement for Project 2012-14 County Route 458 between E 1050 and US 59 Highway (Michael Kelly);

REGULAR AGENDA

- (2) **TA-13-00451**: Consider a Text Amendment to Section 12-319-7 of the Zoning Regulations for the Unincorporated Territory of Douglas County, Kansas to establish criteria and review process for Agritourism uses which may have significant off-site impacts. *(Amendment was initiated by the Board of County Commissioners at their October 16, 2013 meeting.)* Mary Miller will present the item.
- (3) (a) Consider approval of Accounts Payable (if necessary)
- (b) Appointments
Bert Nash Community Health Center Board of Directors (2) expire 04/2014
Heritage Conservation Council (3) positions expire 05/31/2014
Jayhawk Area Agency on Aging Board of Directors – (2) vacancies
Jayhawk Area Agency on Aging Tri-County Advisory Council – (2) vacancies
- (c) Public Comment
- (d) Miscellaneous
- (4) Adjourn

MONDAY, APRIL 7, 2014

9:00 a.m. – Lecompton Election Canvass

WEDNESDAY, APRIL 9, 2014 -6:35 p.m. only (Possible cancellation)

WEDNESDAY, APRIL 16, 2014

- Proclamation for National Public Safety Telecommunicator's Week April 13-19, 2014 (Scott Ruf)
 - Consider approval of FY2015 Comprehensive Plan/Budget for Community Corrections (Deborah Ferguson)
 - Consider approval of Health Insurance Stop-Loss Coverage (Sarah Plinsky)
- 6:35 p.m.
- CUP-14-00064 (CUP-12-16-02) 5-year compliance review and reclamation plans for Hamm Eudora Quarry #58 located on approximately 129 acres at, and north of, 1232 E 2300 Road. Mary Miller will present the item.

WEDNESDAY, APRIL 23, 2014

WEDNESDAY, APRIL 30, 2014

4:00 p.m.

- Presentation of Report from Lawrence-Douglas County Advocacy Council on Aging (Judy Bellome)

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



Office of the County Commission
PROCLAMATION
Child Abuse Prevention Month 2014

Whereas, children are key to the county's future success, prosperity and quality of life and, while children are our most valuable resource, they are also our most vulnerable; and

Whereas, children have a right to be safe and to be provided an opportunity to thrive, learn and grow; and

Whereas, child abuse and neglect can be prevented by supporting and strengthening families in Douglas County, Kansas' through the 5 Protective Factors: 1. Nurturing and Attachment, 2. Knowledge of Child/Youth Development, 3. Parental Resilience, 4. Social Connections and 5. Concrete Supports for Parents; and

Whereas, we must come together as partners so that the voices of our children are heard by all and we are as a community extending a helping hand to children and families in need; and

Whereas, by providing safe, stable and nurturing relationships for our children, free of violence, bullying, abuse and neglect, we can ensure that Douglas County's children will grow to their full potential as the next generation of leaders, helping to secure the future of this county, state and nation;

Therefore, the Board of County Commissioners of Douglas County, Kansas, do hereby proclaim April 2014 as Child Abuse Prevention month.

Dated this 2nd day of April 2014.

**BOARD OF COUNTY COMMISSION
OF DOUGLAS COUNTY, KANSAS**

2014 Community Partners:

Associated Youth Services
Ballard Community Services
Bert Nash Center
Big Brothers Big Sisters
Boys & Girls Club of Lawrence
Childcare Aware of Eastern Kansas
Douglas County CASA
Douglas County Child Development Association
Douglas County Dental Clinic
Douglas County Youth Services
ECKAN Head Start
Edna A. Hill Child Development Center (KU)
Family and Youth Intervention, CLO
GaDuGi SafeCenter
Headquarters Counseling Center
Healthcare Access, Inc.
Independence, Inc.
Just Food
Kansas Appleseed
Kansas Children's Service League (KCSL)
KU Center for Civic & Social Responsibility
KU Child and Family Services Center
KU/DCYS Truancy Prevention & Diversion Program
KVC Behavioral Healthcare
Lawrence Arts Center
Lawrence Community Nursery School
Lawrence Community Shelter
Lawrence-Douglas County Health Department
Lawrence-Douglas County Housing Authority
Lawrence Public Schools
Playful Awareness, LLC
StopGap, Inc.
Success By 6
TFI Family Services, Inc.
The Shelter, Inc.
United Way of Douglas County
VanGo
Willow Domestic Violence Center
KU Student Groups:
Kappa Alpha Theta, KU Chapter
KU Bachelor of Social Welfare Student Group
Omega Phi Alpha Service Sorority

Nancy Thellman, Chair

Jim Flory, Vice Chair

Mike Gaughan, Member



Office of the County Commission

Proclamation

Douglas County, Kansas

WHEREAS: Good health and quality of life for everyone in Douglas County is an important goal for our community; and

WHEREAS: The role of public health is to protect promote and restore the public's health; and

WHEREAS: The health of our community depends on many factors – such as individual health behaviors, education, jobs, quality of health care and the environment; and

WHEREAS: National Public Health Week provides the focused opportunity for the public to learn about our communities public health concerns and success stories; and

WHEREAS: Action by community leaders to implement policy changes that promote the community health plan goals of healthy eating, active living, reduced poverty, improved access to health care and mental health care will make our community a healthier place to live for current and future generations.

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Douglas County, Kansas, hereby proclaim the week of April 7-13, 2014 as

“PUBLIC HEALTH WEEK”

Dated this 2nd day of April 2014.

***BOARD OF COUNTY COMMISSION
OF DOUGLAS COUNTY, KANSAS***

Nancy Thellman, Chair

Jim Flory, Vice Chair

Mike Gaughan, Member

MEMORANDUM

To : Board of County Commissioners
From : Keith A. Browning, P.E., Director of Public Works/County Engineer
Date : March 27, 2014
Re : Consent Agenda Approval of Bids for Noxious Weed Herbicides

Bids were opened on March 25, 2014 for the supply of herbicides to treat noxious weeds. These herbicides are for supply to private landowners (at 75% of the county's cost plus shipping and handling) and for treating noxious weeds on county owned or maintained land. Bids were received from ten suppliers, as shown on the attached bid tabulation.

The recommended bids are as follows:

| Herbicide | Quantity | Unit Cost | Total Cost | Vendor |
|-----------------|----------|-----------|-------------|-----------|
| Picloram | 200 gal. | \$ 44.67 | \$ 8,934.00 | Van Diest |
| 2,4-D Amine | 800 gal. | \$ 12.14 | \$ 9,712.00 | Van Diest |
| Glyphosate | 400 gal. | \$ 13.57 | \$ 5,428.00 | Lone Pine |
| PastureGard HL | 250 gal. | \$ 67.85 | \$16,962.50 | Lone Pine |
| Milestone(Gal.) | 100 gal. | \$299.73 | \$29,973.00 | Van Diest |
| Milestone(Qt.) | 24 qt. | \$ 76.22 | \$ 1,829.28 | Van Diest |
| Escort XP | 128 oz. | \$ 3.61 | \$ 462.08 | Van Diest |

Action Required: Consent Agenda acceptance of the low bid from suppliers noted above.



DOUGLAS COUNTY PUBLIC WORKS

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

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

MEMORANDUM

TO : Douglas County Commission

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

DATE : March 28, 2014

RE : Project No. 2012-14; County Route 458; Acquisition of Easement;
Consent agenda

As you are aware Douglas County plans to improve County Route 458, from the intersection of US 59 Highway west a distance of approximately 2.5 miles, by adding 6.5 ft. shoulders as well as pavement rehabilitation.

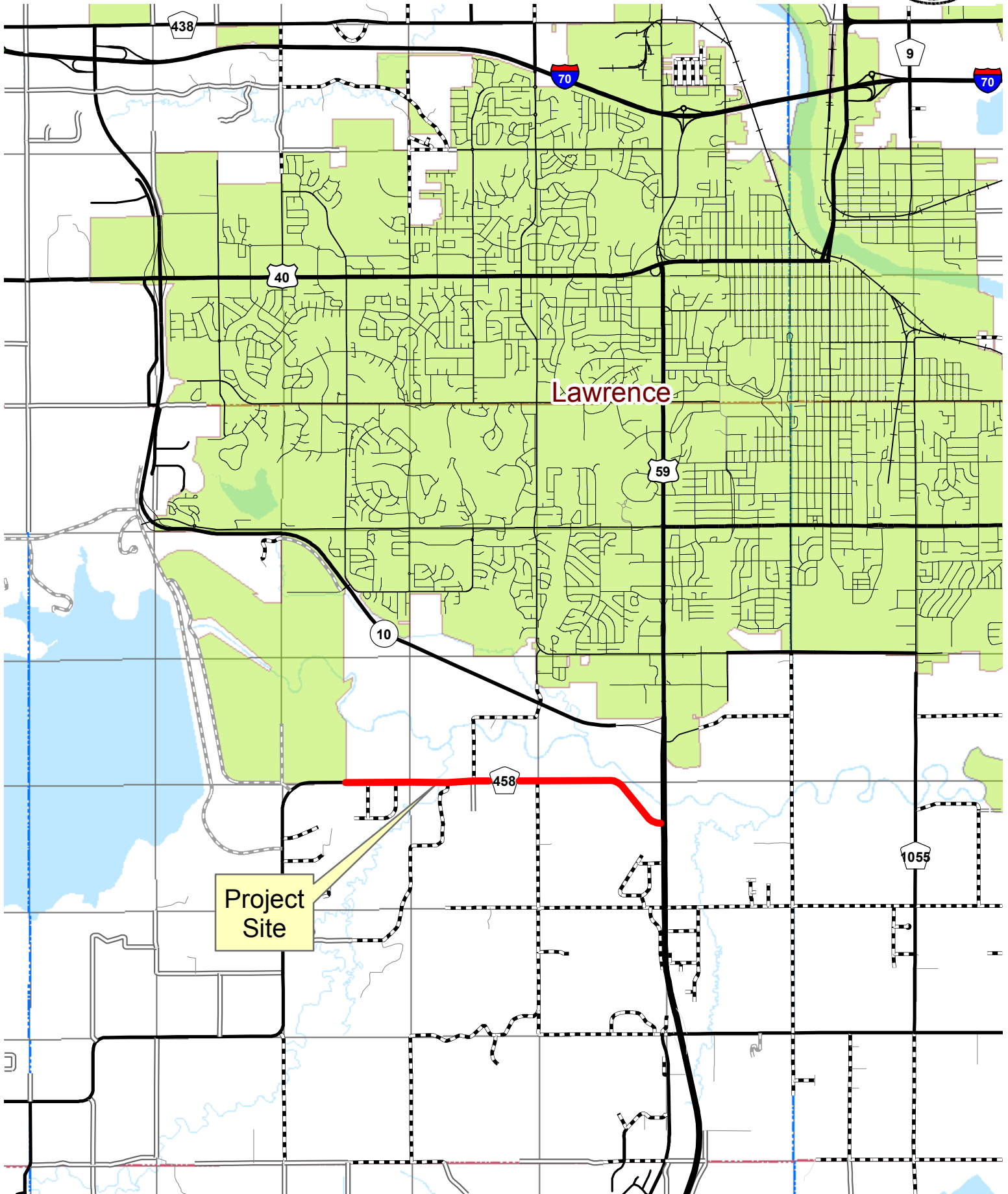
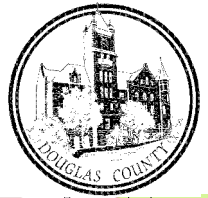
Negotiations with landowners (for easement) are underway and agreements have been concluded for seven of the ten parcels. The total amount for the attached contracts is \$28,050.00 and the funds for this project are coming primarily from the CIP with some assistance from a federal grant.

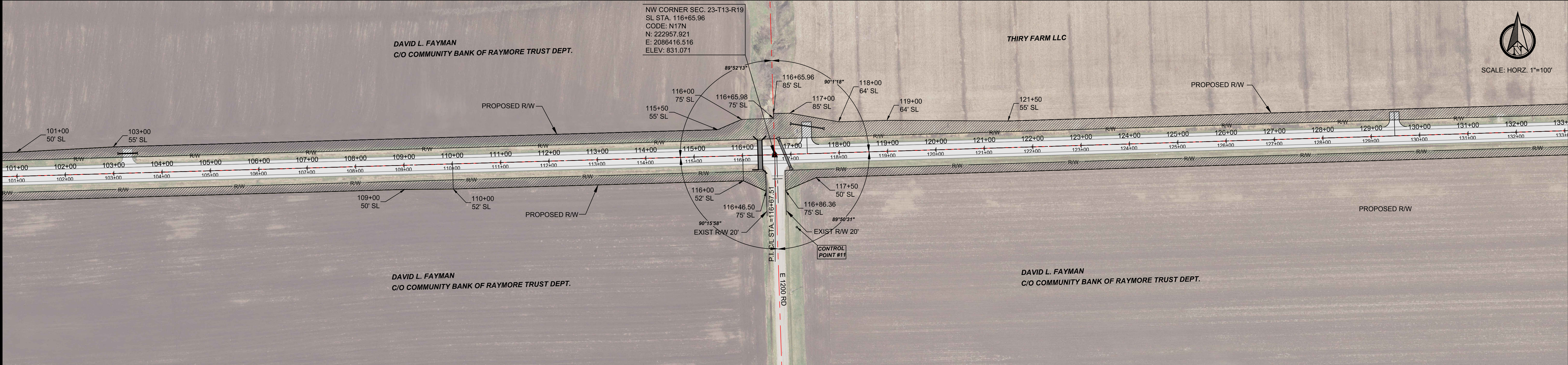
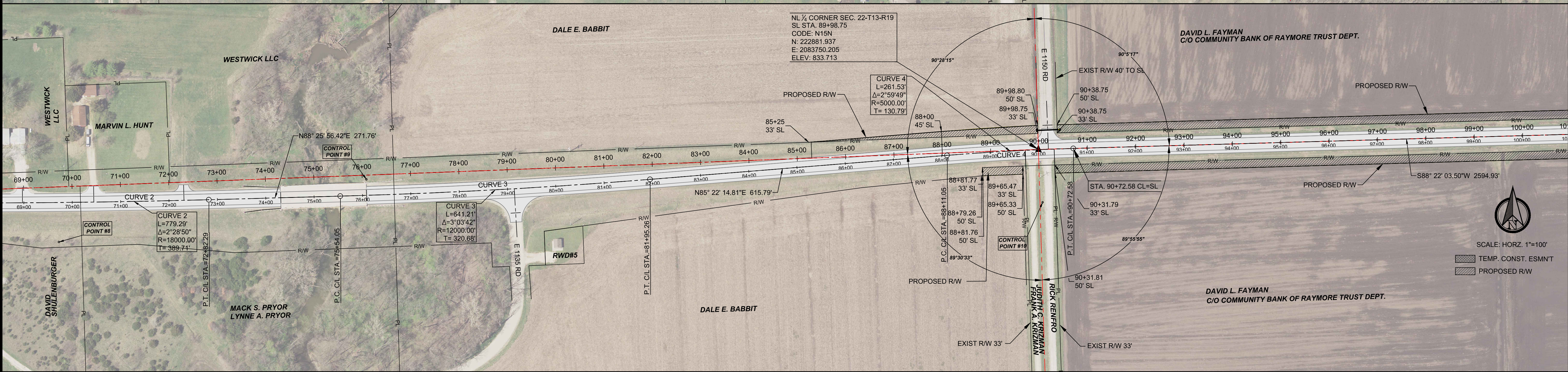
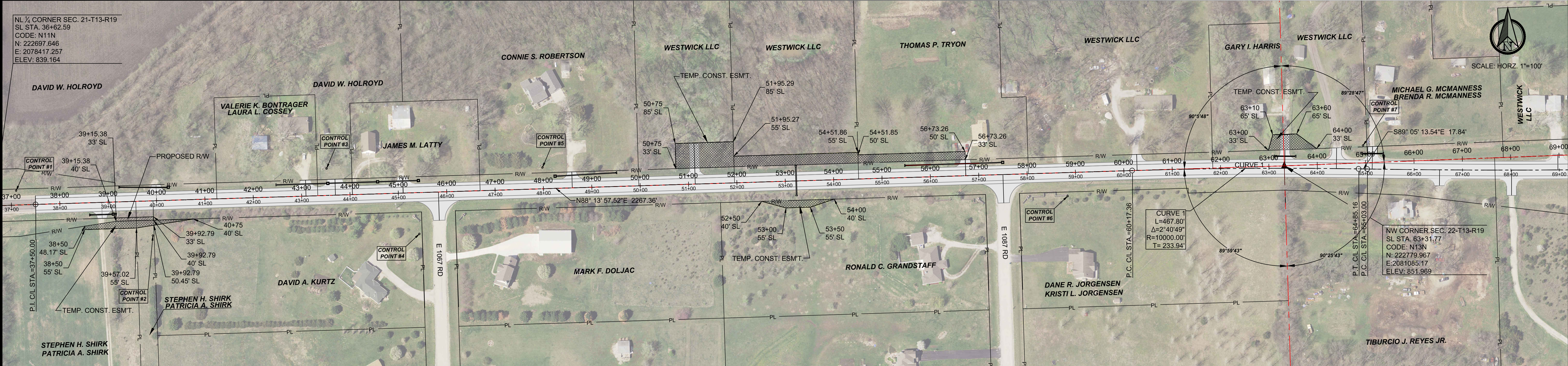
To ensure the proper completion of a necessary construction project approval is recommended for the attached CONTRACT's FOR HIGHWAY PURPOSES.

ACTION REQUIRED: Consent agenda approval to authorize the Chair to affix her signature to the CONTRACT's FOR HIGHWAY PURPOSES for Project No. 2012-14.

Project No. 2012-14 General Location Map

1 inch = 1 miles
1 0.5 0 Miles





NL 1/4 CORNER SEC. 21-T13-R19
 SL STA. 36+62.59
 CODE: N11N
 N: 222697.646
 E: 2078417.257
 ELEV: 839.164

NL 1/4 CORNER SEC. 22-T13-R19
 SL STA. 89+98.75
 CODE: N16N
 N: 222881.937
 E: 2083750.205
 ELEV: 833.713

NW CORNER SEC. 23-T13-R19
 SL STA. 116+65.96
 CODE: N17N
 N: 222957.921
 E: 2086416.516
 ELEV: 831.071



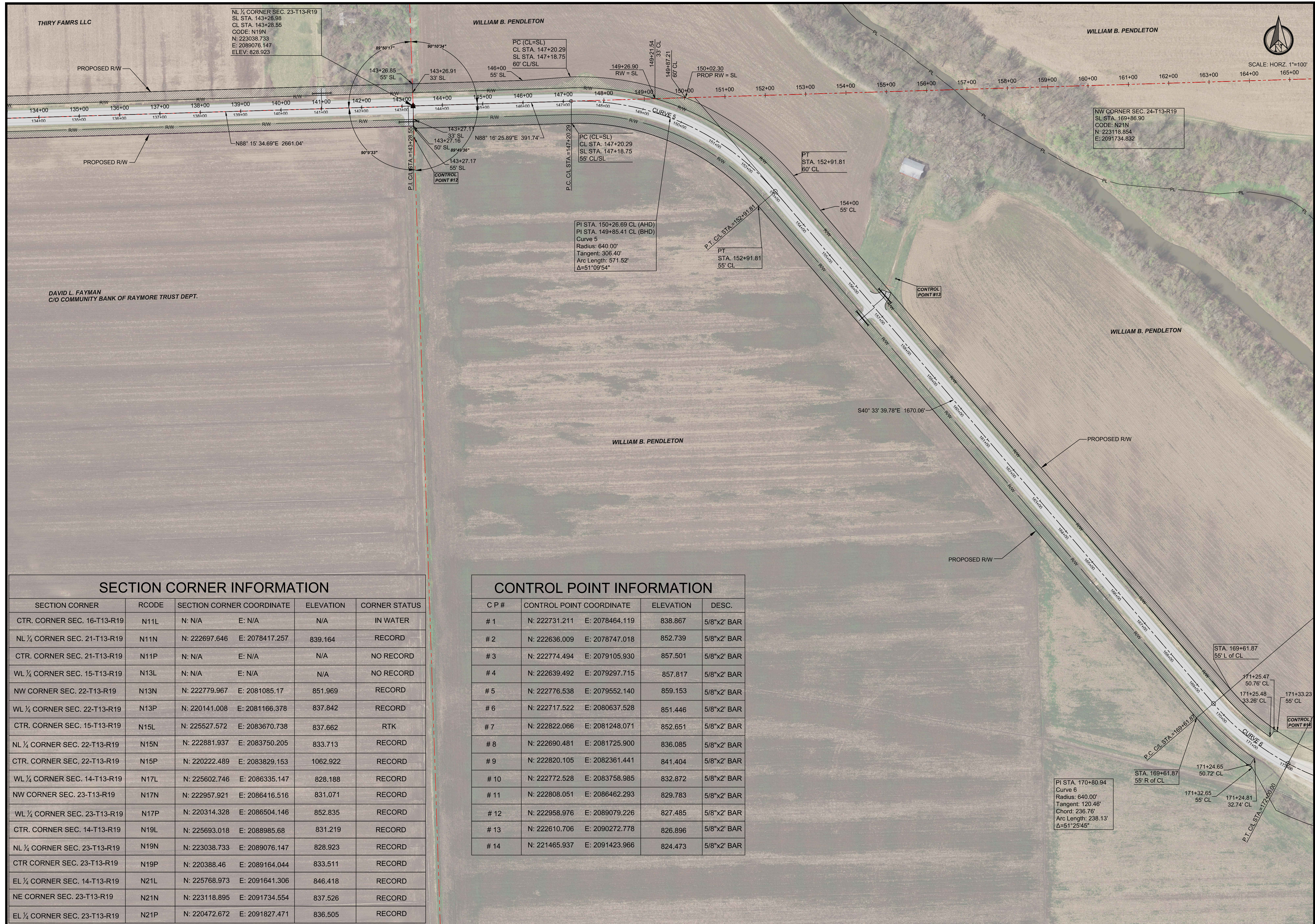
Douglas County Public Works
 1242 Massachusetts
 Lawrence, Kansas 66044



Project: RTE 458 OVERLAY
 Project No.: 2012-14
 Drawn By: L.H., J.S.
 Designed By: A.S.
 Checked By: T.G.
 Date: 8/2012

GENERAL LAYOUT
 AND R/W
 SHEET 5 OF 105

ROUTE 458, 3-R IMPROVEMENTS



SECTION CORNER INFORMATION

| SECTION CORNER | R/CODE | SECTION CORNER COORDINATE | ELEVATION | CORNER STATUS |
|-------------------------------|--------|------------------------------|-----------|---------------|
| CTR. CORNER SEC. 16-T13-R19 | N11L | N: N/A E: N/A | N/A | IN WATER |
| NL 1/4 CORNER SEC. 21-T13-R19 | N11N | N: 222697.646 E: 2078417.257 | 839.164 | RECORD |
| CTR. CORNER SEC. 21-T13-R19 | N11P | N: N/A E: N/A | N/A | NO RECORD |
| WL 1/4 CORNER SEC. 15-T13-R19 | N13L | N: N/A E: N/A | N/A | NO RECORD |
| NW CORNER SEC. 22-T13-R19 | N13N | N: 222779.967 E: 2081085.17 | 851.969 | RECORD |
| WL 1/4 CORNER SEC. 22-T13-R19 | N13P | N: 220141.008 E: 2081166.378 | 837.842 | RECORD |
| CTR. CORNER SEC. 15-T13-R19 | N15L | N: 225527.572 E: 2083670.738 | 837.662 | RTK |
| NL 1/4 CORNER SEC. 22-T13-R19 | N15N | N: 222881.937 E: 2083750.205 | 833.713 | RECORD |
| CTR. CORNER SEC. 22-T13-R19 | N15P | N: 220222.489 E: 2083829.153 | 1062.922 | RECORD |
| WL 1/4 CORNER SEC. 14-T13-R19 | N17L | N: 225602.746 E: 2086335.147 | 828.188 | RECORD |
| NW CORNER SEC. 23-T13-R19 | N17N | N: 222957.921 E: 2086416.516 | 831.071 | RECORD |
| WL 1/4 CORNER SEC. 23-T13-R19 | N17P | N: 220314.328 E: 2086504.146 | 852.835 | RECORD |
| CTR. CORNER SEC. 14-T13-R19 | N19L | N: 225693.018 E: 2088985.68 | 831.219 | RECORD |
| NL 1/4 CORNER SEC. 23-T13-R19 | N19N | N: 223038.733 E: 2089076.147 | 828.923 | RECORD |
| CTR CORNER SEC. 23-T13-R19 | N19P | N: 220388.46 E: 2089164.044 | 833.511 | RECORD |
| EL 1/4 CORNER SEC. 14-T13-R19 | N21L | N: 225768.973 E: 2091641.306 | 846.418 | RECORD |
| NE CORNER SEC. 23-T13-R19 | N21N | N: 223118.895 E: 2091734.554 | 837.526 | RECORD |
| EL 1/4 CORNER SEC. 23-T13-R19 | N21P | N: 220472.672 E: 2091827.471 | 836.505 | RECORD |

CONTROL POINT INFORMATION

| C P # | CONTROL POINT COORDINATE | ELEVATION | DESC. |
|-------|------------------------------|-----------|-------------|
| # 1 | N: 222731.211 E: 2078464.119 | 838.867 | 5/8"x2' BAR |
| # 2 | N: 222636.009 E: 2078747.018 | 852.739 | 5/8"x2' BAR |
| # 3 | N: 222774.494 E: 2079105.930 | 857.501 | 5/8"x2' BAR |
| # 4 | N: 222639.492 E: 2079297.715 | 857.817 | 5/8"x2' BAR |
| # 5 | N: 222776.538 E: 2079552.140 | 859.153 | 5/8"x2' BAR |
| # 6 | N: 222717.522 E: 2080637.528 | 851.446 | 5/8"x2' BAR |
| # 7 | N: 222822.066 E: 2081248.071 | 852.651 | 5/8"x2' BAR |
| # 8 | N: 222690.481 E: 2081725.900 | 836.085 | 5/8"x2' BAR |
| # 9 | N: 222820.105 E: 2082361.441 | 841.404 | 5/8"x2' BAR |
| # 10 | N: 222772.528 E: 2083758.985 | 832.872 | 5/8"x2' BAR |
| # 11 | N: 222808.051 E: 2086462.293 | 829.783 | 5/8"x2' BAR |
| # 12 | N: 222958.976 E: 2089079.226 | 827.485 | 5/8"x2' BAR |
| # 13 | N: 222610.706 E: 2090272.778 | 826.896 | 5/8"x2' BAR |
| # 14 | N: 221465.937 E: 2091423.966 | 824.473 | 5/8"x2' BAR |

PI STA. 170+80.94
 Curve 6
 Radius: 640.00'
 Tangent: 120.46'
 Chord: 236.76'
 Arc Length: 238.13'
 $\Delta=51^{\circ}25'45''$

Memorandum

Planning & Development Services

TO: Douglas County Board of County Commissioners

FROM: Mary Miller, Planning Staff

Date: For March 19, 2014 meeting

RE: TA-13-00451 Agritourism Regulations and Standards

Attachments:

Att. A: County Commission Direction

Att. B: Materials from January and February Planning Commission meetings

Att. C: Registration Form

This memo provides a summary of the process of the text amendment and the changes which have been made as well as draft language which compares the existing regulations to the proposed revised regulations.

The following are some important points about this amendment:

- 1) The intent of the revised regulations is to achieve a balance between the goals of fostering and promoting Agritourism and protecting the public health, safety, and welfare.
- 2) The Tier 2 process is the same process that is required for other permitted uses in the A District (with the exception of agriculture and residential uses).
- 3) Site planning is currently required for both administrative registration and registration requiring Commission approval; however, this requirement is noted in the registration form, which is attached with this email, rather than in the regulations. This revised language includes this information to provide more complete information on the registration process.
- 4) Agritourism uses which are agricultural are encouraged to register but registration is not required. Section 20-304-6.01 of the Zoning Regulations states: *"No land may be used except for a purpose permitted in the district in which it is located, provided; however, that **no regulations shall apply to the use of land for agricultural purposes** nor for the erection or maintenance of buildings thereon as long as such buildings are used for strictly agricultural purposes."* (emphasis added) The Zoning and Codes Department have established criteria based on Resolution No 08-25 to determine if a use is considered 'agricultural'.
- 5) Special Event Permits are an option for infrequent Agritourism uses.

BACKGROUND

October 16, 2013 Board of County Commissioners Meeting

The Commission established a temporary moratorium on the registration of Agritourism uses and initiated a text amendment to revise the Agritourism regulations.

November 6, 2013 Board of County Commissioners Study Session

The Commission provided direction for the revised regulations. A summary of the direction is included with this memo as Attachment A.

December 16, 2013 Planning Commission Meeting

Staff provided background information to the Commission. No action requested.

January 8, 2014 Neighborhood Meeting

Staff and neighbors to the proposed KC Pumpkin Patch discussed the potential impacts associated with the use and possible revisions to the regulations.

January 27, 2014 Planning Commission Meeting

The Commission considered draft language and public communications/comments and returned to Staff with recommended revisions and directed staff to provide revised language to all Registered Agritourism Operators for their feedback.

February 26, 2014 Planning Commission Meeting

The Commission considered revised draft language and additional public communications/comments, and voted unanimously to forward the text amendment to the County Commission with recommendation for approval subject to the condition that various revisions be made.

Staff materials, public communications and meeting minutes from the Planning Commission January and February meetings are included as Attachment B. Minutes which are not complete when this memo is printed will be added to the agenda at a later date.

SUMMARY OF CHANGES

The different versions of the draft language are included as attachments so the changes which have occurred can be tracked. The draft language which is included in this memo compares the proposed revised language with the existing regulations.

CHANGES MADE TO THE EXISTING CODE WITH THE TEXT AMENDMENT

1. Additional parameters have been established to differentiate between Agritourism uses which can be approved administratively and those which require County Commission approval (Tier 1 and 2) A third category was established for larger uses which would require approval as a CUP or with rezoning.
2. General standards were established for Tier 1 and Tier 2 uses as well as a waiver provision to provide the Zoning and Codes Director or the Board of Zoning and Codes the flexibility to waive standards when it is determined to be appropriate.

3. The registration process is more clearly outlined. Site planning is currently required, but is not listed as part of the registration process. This is now clarified in the regulations. Notification of neighbors for Tier 1 uses was added.
4. The limit on size was revised to be based on parking rather than attendance as this was seen to be more easily enforced.
5. Criteria for review of both Tier 1 and 2 uses was included as well as specific language noting that conditions could be applied to both tiers if necessary.
6. The possible actions the County Commission may take on a Tier 2 registration are listed.
7. The re-registration process is defined, with provisions for a Tier 2 re-registration to be administrative if no changes are being made and no unresolved complaints are on file. The revised regulations also include an administrative approval provision for minor changes to a Tier 2 use.

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 are protected. [Res. 13-02]

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:
 - 1) Farm markets/roadside stands,
 - 2) U-pick operations,
 - 3) Farm winery tours and tastings,
 - 4) Corn mazes,
 - 5) Farm-related interpretive facilities, exhibits, and tours,
 - 6) Historical, cultural, or agriculturally related educational and learning experiences, including volunteer workers,
 - 7) Farm stays,
 - 8) Bed and Breakfast establishments,
 - 9) Recreation related operations (fishing, hunting, bird watching, hiking, etc),
 - 10) Horseback riding,
 - 11) Garden, nursery tours and exhibits,
 - 12) Pumpkin patch visits and activities,
 - 13) Assembly type uses such as fairs or festivals which are historical, cultural, or agriculturally related; weddings, receptions; etc,
 - 14) Ancillary retail sales,
 - 15) Other uses that may be determined on a case by case basis if it meets the purpose and intent of the regulations.
- c. These Agritourism provisions do not apply to camping. [Res. 13-02]

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; Section 12-319A, Site Plan Regulations; or Section 319.85, Special **Event Use** Permits, although other State and local regulations shall apply. ~~Assembly type uses with an attendance of more than 100 persons shall require approval by the~~

~~Board of county Commissioners prior to registration per process in Section 12-319-7.02(c).~~

- b. Sections 12-319-7.03 and 12-319-7.06 establish the parameters for Tier 1 (low intensity), and Tier 2 (medium intensity) Agritourism uses.**
 - 1) Tier 1 (low intensity) Agritourism uses may be registered administratively by the Zoning and Codes Director.**
 - 2) Registration of Tier 2 (medium intensity) Agritourism uses requires approval by the Board of County Commissioners.**
 - 3) Agritourism uses which do not meet the definition or parameters of a Tier 1 or Tier 2 use require approval through a Conditional Use Permit, Special Event permit, or rezoning.**
- c. Registration forms shall be jointly reviewed by the Director of 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 Directors' 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.

12-309-7.03 TIER 1 (LOW INTENSITY) AGRITOURISM USES DEFINED

- a. Tier 1, or low intensity Agritourism uses are not expected to generate noise, or other impacts, to the level that they would have negative impacts on surrounding properties. Examples of Tier 1 Agritourism uses include, but are not limited to:**
 - 1) Farm Stands;**
 - 2) Farmers Markets with 10 or fewer vendors;**
 - 3) U-Pick Operations;**
 - 4) Farm Winery Tours and Tastings;**
 - 5) Corn Mazes and Pumpkin Patches visits and activities;**
 - 6) Farm Related Interpretative Facilities, Exhibits, and Tours;**

- 7) Historical, Cultural, or Agriculturally Related Educational and Learning Experiences, including volunteer workers;
- 8) Farm Stays and Bed and Breakfasts with no more than 3 guestrooms; and
- 9) Recreation Related Operations (Fishing, Hunting, Bird Watching, Hiking, etc.)
- 10) Equestrian Facilities;
- 11) Garden, Nursery Tours and Exhibits;
- 12) Small scale assembly type uses such as weddings, receptions; etc,
- 13) Christmas Tree Sales;
- 14) Farm Tours and Demonstrations;
- 15) Small scale entertainment such as the integration of music, theatre, or arts to enhance the rural experience.
- 16) Ancillary Retail Sales;
- 17) Other uses that may be determined on a case by case basis to meet the intent of the Tier 1 definition.

b. In addition to meeting the definition above, a proposed use must meet all the following parameters to be considered a Tier 1 Agritourism use:

- 1) The Agritourism use is located on a parcel, or one of a number of contiguous parcels (contiguous shall mean lands that are adjacent and road, rail, and other rights-of-way and easements shall not exclude parcels from being contiguous), under the same ownership, as agricultural land uses or a working farm or ranch as determined by the Zoning and Codes Director;
- 2) The Agritourism operator resides on the parcel, or one of a number of contiguous parcels, (as defined in this section), containing the Agritourism use; and
- 3) Parking for the Agritourism use is limited to 50 parking spaces.

12-319-7.04 TIER 1 AGRITOURISM USES STANDARDS:

The following standards apply to all Tier 1 Agritourism uses:

- a. The operators of the Agritourism use shall be limited to the property owner or operator, his/her family members and employees (whether paid or unpaid).
 - 1) 'Operator' refers to the person with the financial and legal responsibility for the Agritourism activity.
- b. Adequate parking shall be provided on-site for the use, including ADA parking (where applicable). No parking may occur on adjacent roads.
- c. In order to minimize noise from the agritourism use the following are prohibited: motors or motorized vehicles, with the exception of agricultural machinery and vehicles or electric motors, and outdoor

amplification of sound: such as auctioneering speakers or amplified music (with the exception of a stereo or radio).

- d. Landscaping or opaque fencing shall be provided along the perimeter of parking areas (excluding overflow areas) that are within view of residences or the road right of way. Landscaping shall consist of one of the following: a continuous hedge of shrubs or other vegetation, or opaque fencing, of a height determined by the Zoning and Codes Director to provide adequate screening for the parking area. Alternate forms of screening may be utilized, provided the Director of Zoning and Codes determines they will provide effective screening of the parking area.
- e. Exterior lighting used in conjunction with the Agritourism use shall be prohibited with the exception of the Farm Stays and Bed and Breakfast uses. Lighting used for these uses shall be located and shielded to prevent glare or trespass on to adjacent properties.
- f. Sanitary facilities shall be provided in accordance with Lawrence Douglas County Health Department requirements for the use and expected attendance.

12-319-7.05 ADMINISTRATIVE WAIVER

The Director of Zoning & Codes may waive these standards only if it can be demonstrated that the Agritourism use, by virtue of the size or type of use proposed, the location of the use, or other site specific characteristics, will not generate noise or other impacts that negatively impact surrounding properties.

12-319-7.06 TIER 1 AGRITOURISM REGISTRATION PROCESS

- a. The Agritourism operator shall submit the following materials to the Zoning and Codes Office:
 - 1) Approved State Agritourism Registration.
 - 2) Completed Douglas County Agritourism Registration form.
 - 3) Site plan
The agritourism site plan does not need to meet all the requirements in Section 12-319A, but must be adequate to illustrate the use and its conformance with the Zoning Regulations as well as the relationship of the use to the surrounding properties or right-of-way. At a minimum, the following items must be included:
 - a) All structures to be utilized for the agritourism use identified on the plan with dimensions, including the distance to the nearest property line.

- b) Areas where the agritourism use will occur and any areas where visitors would be allowed marked on the plan.
 - c) Access and parking areas shown and dimensioned, noting the number of spaces provided.
 - d) The water and sanitation facilities provided per the County Health Department approval.
 - e) Hours of operation noted.
 - f) Anticipated attendance noted.
 - i. For determination of parking requirements, parking is calculated at a rate of 1 parking space per 2 attendees. Attendance is limited to that which can be served by available parking as participants may arrive by bus or alternative forms of transportation.
- b. A 20 day property owner notification period is required.
- 1) The applicant shall obtain a list of property owners within 1000 ft of the property on which the Agritourism activity is to occur from the Douglas County Clerk's Office. If the notification area includes land within the corporate limits of a city, the list shall include owners of property within the 1000 ft notification area that extend 200 feet into the city. If the notification area extends into the adjacent County, notice must be sent to property owners in the adjacent County.
 - 2) The applicant shall mail a letter which contains the information below to the property owners on the list to advise them of the proposed Agritourism use and provide them the opportunity to contact the applicant or the Zoning and Codes Department if they have any questions.

"An Agritourism use located at _____ is in the process of being registered with Douglas County. The Agritourism use will consist of (brief description of the event). Please contact me at (phone number, email) with any questions regarding this registration or the Douglas County Zoning and Codes Department at 785-331-1343."
 - 3) The registrant must provide a copy of the letter, the property owner list, and certification of the date the letters were mailed to the address on the list with their registration materials
- c. The registration materials shall be reviewed by the Director of Zoning and Codes with the following approval criteria:

- 1) The proposed use and layout meets the intent and purpose of the Tier 1 definition;
 - 2) The proposed arrangement of buildings, off-street parking, access, lighting is compatible with adjacent land uses;
 - 3) Adequate screening is provided between the parking area and adjacent residences or road right-of-ways.
 - 4) The vehicular ingress and egress to and from the site provides for safe, efficient and convenient movement of traffic;
 - 5) The nature of the use is compatible with adjacent land uses and enhances or maintains the rural character of the unincorporated portion of the county.
- d. The Zoning and Codes Director may apply conditions to the registration, such as limitation on the hours, location, or the activity itself, if in the Director's opinion the conditions are necessary to mitigate off-site impacts.

12-319-7.07 DURATION/RE-REGISTRATION

The Douglas County Agritourism use registration coincides with the State Registration. Re-registration with the County is required when the State registration is renewed, every 5 years.

- a. The Agritourism Use may continue as long as the use complies with the conditions and standards that were applied with the registration.
- b. Only those activities specifically listed in the registration form and approved by the Directors are allowed to occur as Agritourism. Any change in proposed uses such as a new activity, increased parking, or expanded area of activity would require:
 - 1) The modification of the registration with the State, if necessary.
 - 2) Resubmittal of the revised registration form and revised site plan to the Zoning and Codes Office for a determination of compliance with the definition of Agritourism (if a new use is proposed) and re-registration through the processes established in this section.
- ~~e. Assembly type uses such as weddings, receptions, fairs, or festivals, that may have an attendance of more than 100 persons require Board of County Commission approval prior to registration as an Agritourism use through the following process:

 - ~~1) Information regarding the assembly type use shall be included with the registration form. The registration shall include, at a minimum the following information:~~~~

- ~~a) — The expected attendance,~~
- ~~b) — Activities associated with the assembly use,~~
- ~~c) — The number of assembly type events anticipated per year,~~
- ~~d) — Where parking will be provided on site,~~
- ~~e) — Lighting location and type if assembly is to occur after dark,~~
- ~~f) — Means to address health and sanitation at the site,~~
- ~~g) — Information from the applicable fire department regarding access to the site/assembly use.~~

12-309-7.08 TIER 2 (MEDIUM INTENSITY) AGRITOURISM USES- DEFINED

a. Tier 2 uses include higher intensity activities or have higher attendance than Tier 1 uses. Examples of Tier 2 Agritourism uses include, but are not limited to:

- 1) Uses that would be considered a Tier 1 use that do not meet the Tier 1 parameters;
- 2) Farmers Markets with more than 10 vendors;
- 3) Bed and Breakfasts or Farm Stays with more than 3 guest rooms;
- 4) Assembly type uses such as fairs or festivals which are historical, cultural, or agriculturally related.

c. In addition to meeting the definition above, a proposed use must meet the following parameter to be considered a Tier 2 Agritourism use:

- 1) Parking for the Agritourism use is limited to 200 parking spaces.

12-309-7.09 TIER 2 AGRITOURISM USE STANDARDS

The following use standards apply to all Tier 2 Agritourism uses:

a. Operators of the Agritourism activity shall be limited to the property owner or operator, his/her family members and employees (paid or unpaid).

- 1) Operator' refers to the person with the financial and legal responsibility for the Agritourism activity.

b. Adequate parking, including ADA parking, (when applicable), must be provided on-site. No parking may occur on adjacent roads.

- 1) For the purpose of calculating parking requirements, parking is calculated at a rate of 1 parking space per 2 attendees unless visitors are expected to utilize busses or alternative forms of transportation.

- c. No motors or motorized vehicles, with the exception of agricultural machinery and vehicles, or electric motors, will be utilized for the Agritourism Use.
- d. Landscaping or opaque fencing shall be provided along the perimeter of parking areas (excluding overflow areas) that are within view of residences or the road right of way. Landscaping shall consist of one of the following: a continuous hedge of shrubs or other vegetation or opaque fencing, of a height determined by the Zoning and Codes Director to provide adequate screening for the parking area. Alternate forms of screening may be utilized, provided the Director of Zoning and Codes determines they will provide effective screening of the parking area.
- e. If Agritourism activities are to occur outside of daylight hours, a plan shall be provided which shows the location of lighting for the Agritourism activity and the type of lighting fixtures being used as well as means taken to shield the lighting to insure no trespass or glare to adjacent properties.
- f. Sanitary facilities shall be provided in accordance with Lawrence Douglas County Health Department requirements for the proposed use and anticipated attendance.
- g. With the exception of agricultural activities, no activities associated with the Agritourism use may occur within 50 ft of a property line of the subject parcel or the perimeter of a group of contiguous parcels. The County Commission may vary this separation requirement depending on the nature of the Agritourism activity and the adjacent property.

12-309-7.10 The Board of County Commissioners may waive these standards if they determine that the Agritourism use, by virtue of the size or type of use proposed, the location of the use, other site specific characteristics, will not significantly impact surrounding properties.

12-309-7.11 TIER 2 AGRITOURISM USES REGISTRATION PROCESS

- a. The Agritourism operator shall submit the following materials to the Zoning and Codes Office:
 - 1) Approved State Agritourism Registration.
 - 2) Completed Douglas County Agritourism Registration form.
 - 3) Site plan meeting the requirements outlined in Section 12-319-7.06(a)(3).
 - 4) Information from the applicable fire department regarding access to the proposed Agritourism Activity area.

- b. A minimum 20 day property owner notification period is required. The Commission will hold a public hearing on the proposed use at the time and place listed in the public notice.
- 1) 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) For **Agritourism** ~~assembly type~~ uses that will be located on an unpaved road, the Zoning and Codes Office shall **also** mail notice to all property owners of residentially developed property on an unpaved road which would be considered the most direct route to the nearest hard-surfaced road.
 - b) **If the notification area includes land within the corporate limits of a city, the list shall include owners of property within the 1000 ft notification area that extend 200 feet into the city. If the notification area extends into the adjacent County, notice must be sent to property owners in the adjacent County.**
- c. **The Director of Zoning and Codes shall review the registration application with the criteria noted in this section and provide a report with recommendation to the Commission.**
- 1) **The proposed arrangement of buildings, off-street parking, access, lighting is compatible with adjacent land uses;**
 - 2) **Adequate screening is provided between the parking area and adjacent residences or road right-of-ways.**
 - 3) **The vehicular ingress and egress to and from the site provides for safe, efficient and convenient movement of traffic including emergency vehicles;**
 - 4) **The nature of the use is compatible with adjacent land uses and enhances or maintains the rural character of the unincorporated portion of the county.**
 - 5) **Suitability of the existing road network suitable for the traffic expected to be generated by the Agritourism use. Road improvements may be required in some cases.**
- d. ~~The Board of County Commissioners may impose conditions and restrictions in conjunction with approval of the assembly type use.~~
- d. **The Board of County Commissioners may take one of the following actions on the registration:**

- 1) Approve the registration, including waiving any standard deemed reasonable to waive;
- 2) Approve the registration with conditions/restrictions such as limitation on the size of buildings and parking areas, establishment of operating hours; establishment of buffering, limitation on activities; road improvements; etc;
- 3) Return the registration to staff with request for more information; or
- 4) Deny the registration.

~~e. 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.~~

12-309-7.12 Duration/Review

The Douglas County Agritourism Use registration coincides with the State Registration. Re-registration with the County is required when the State registration is renewed, every 5 years.

- a. The Agritourism Use may continue as long as the use complies with the conditions and standards that were applied with the registration.
- b. A Tier 2 use that received County Commission approval may be re-registered administratively by the Zoning and Codes Director if the use remains the same as on the original registration and no unresolved complaints are on file.
- c. Only those activities specifically listed in the registration form and approved by the Directors are allowed to occur as Agritourism. Any change in proposed uses **such as a new activity, increased parking, expanded area of activity** would require:
 - 1) The modification of the registration with the State, **if necessary**.
 - 2) Resubmittal of the revised registration form **and revised site plan** 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 **and re-registration through the processes established above**.
 - 3) **Minor changes to the plan (changes that do not include an additional use or an increase in agritourism activity or parking area above 25% of the previous activity or parking area) may be approved administratively by the Zoning and Codes Director following notification of neighbors within 1000 ft.**

~~13 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.~~

- d. Engaging in any activity not listed on the registration **or operating out of compliance with the plans and conditions approved with the registration** would be considered a violation subject to the enforcement provisions of Section 12-329.

12-319-7.03 STRUCTURES AND CONSTRUCTION CODES

Structures for Agritourism uses are required to comply with Douglas County Construction Codes, adopted by HR-12-11-5, and amendments thereto.

STUDY SESSION 11/6/13

BOCC DIRECTION ON AGRITOURISM TEXT AMENDMENT:

- 1) Develop a set of criteria or parameters to categorize activity levels so that those activities with potential off-site impacts would be evaluated more carefully and conditions or restrictions could be applied (or the registration denied) as needed to protect the health, safety, and welfare of the public.

The parameter in place at this time is attendance: assembly type uses that would have more than 100 attendees on site (at one time).

- Possible parameters that were discussed included the general nature of the activity, the location of the property from residences, the size of the property that the activity is on (ability to buffer the activity from nearby residences), size of building or parking area being proposed, whether the Agritourism operator lives on the property, whether the property is in agricultural production, whether the Agritourism activity benefits from the rural character of the area or could possibly detract from it.
- 2) Develop standards that would apply to agritourism activities.
 - These could include parking, screening, buffering, traffic studies,
 - 3) Suggested that it might be helpful to create an overlay or map that shows where Agritourism Activities are located, especially where they are clustered. This won't be included in the revised text amendment, but staff will look into this.

PROCESS

A text amendment will be prepared to revise the provisions related to Agritourism as noted above. Planning and Zoning and Codes staff will meet with various stakeholders including members of the former Agritourism committee, current or future Agritourism operators, and other members of the public to develop a set of options and draft revised Code language to provide to the Planning Commission. Following the public hearing and Planning Commission's recommendation, the text amendment will be brought to the County Commission.

PLANNING COMMISSION REPORT
Regular Agenda -- Public Hearing Item

PC Staff Report
1/27/14

ITEM NO. 6 TEXT AMENDMENT TO THE ZONING REGULATIONS; AGRITOURISM (MKM)

TA-13-00451: Consider a Text Amendment to Section 12-319-7 of the Zoning Regulations for the Unincorporated Territory of Douglas County, Kansas to establish criteria and review process for Agritourism uses which may have significant off-site impacts. (*Amendment was initiated by the Board of County Commissioners at their October 16, 2013 meeting.*)

RECOMMENDATION:

Staff recommends approval of the amendment to Section 12-319-7 of the Zoning Regulations for the Unincorporated Territory of Douglas County, Kansas to revise the supplemental use regulations for Agritourism uses.

Reason for Request: To establish additional parameters and standards to address off-site impacts associated with Agritourism uses.

RELEVANT FACTOR:

- Conformance with the Comprehensive Plan.

PUBLIC COMMENT

- A stakeholder meeting was held on November 21, 2013 to discuss the proposed amendment. Attendees included Zoning and Codes Director, planning staff, a member of the Food Policy Group, the former chair of the Planning Commission Agritourism Committee, zoning administrator for Baldwin City, and a neighboring property owner to the site with the proposed KC Pumpkin Patch. The neighbor of the proposed pumpkin patch site requested an evening meeting so more of the property owners/residents in the area could attend to discuss the proposed amendment and explain their concerns with the existing language.
- Staff met with residents who lived near the proposed KC Pumpkin Patch on January 8, 2014. The neighbors explained their concerns with the proposed Agritourism use and suggested measures they felt would protect their properties from off-site impacts of agritourism uses.

ATTACHMENTS

Attachment A: Draft language showing changes.

Attachment B: Draft language with changes incorporated.

BACKGROUND

MORATORIUM:

At their October 16, 2013 meeting the Board of County Commissioners approved a temporary moratorium on the registration of Agritourism uses and initiated a text amendment to revise the Agritourism standards in the *Zoning Regulations for the Unincorporated Territory of Douglas County*. These actions were in response to concerns regarding off-site impacts that could occur with intense Agritourism activities.

STUDY SESSION:

The County Commission held a study session on November 6, 2013 to discuss the concerns and provided staff with the following direction on the type of revisions needed:

- 1) Establish clear parameters to differentiate between the differing intensities of Agritourism activities beyond the current parameter of attendance (over 100 attendees). Possible parameters include:
 - a. The general nature of the Agritourism activity.
 - b. Distance of the Agritourism activity from residences.
 - c. Size and use of the property where the Agritourism activity is proposed.
 - d. Size of facilities (such as structures and parking areas) being proposed for the Agritourism activity.
 - e. Whether the Agritourism operator lives on the site.
 - f. Whether the Agritourism activity is compatible with the rural character of the area.
- 2) Develop standards for Agritourism activities such as parking, screening, and buffering requirements. Provisions related to transportation should also be made for the more intense Agritourism activities such as traffic studies and possible improvements to the roads, if necessary to accommodate the use.

STAKEHOLDER MEETING:

The following suggestions were provided at the stakeholder meeting:

- 1) Develop a clearer limitation on scale of activity than attendance, due to enforcement difficulties. Possibly limit the size of buildings or the number of parking spaces permitted rather than attendees.
- 2) Night-time activity was seen as a factor for off-site impacts.
- 3) Buffering and screening should be required.
- 4) If no residence is on the site, the use may be more intense than if the operator lived on the site.
- 5) Institute a complaint based review of approved uses.

NEIGHBORHOOD MEETING

At the January 8th meeting, the property owners provided the following suggestions:

- 1) Require notification of neighbors for all Agritourism registrations.
- 2) If operator doesn't live on the site or the activity is too close to a residence, the registration should go to the County Commission.
- 3) Attendance is too difficult to measure/enforce. Attendance should be enforced with limitations on parking.
- 4) Neighbors should be notified when a large assembly use is to occur.
- 5) Some of the neighbors suggested that the Conditional Use Permit process should be re-established for all Agritourism uses. (As this exceeded the direction provided by the County Commission, this suggestion was not followed up on.)

OVERVIEW OF PROPOSED AMENDMENT

The proposed draft language was developed based on the County Commission's direction with the suggestions from the stakeholder and neighborhood meetings being taken into consideration. The intent of the amendment is to provide additional safeguards to the nearby properties, insuring the protection of the public health, safety, and welfare while maintaining the intent of the original Agritourism amendment, to facilitate and encourage Agritourism through an abbreviated, streamlined review process.

The following changes are being proposed to the Zoning Regulations:

Housekeeping. A minor housekeeping change is proposed to section 12-319-7.02(a) to correct the section and title for the Special Event Permit reference.

Tiers. The existing language has a two-tiered approach, with all Agritourism uses being reviewed administratively except for assembly uses with more than 100 attendees. The proposed language creates parameters and definitions for these 2 tiers and requires those which may include more intense activities that have more potential for negative off-site impacts to require County Commission approval. The CUP process is re-instated for those Agritourism uses that are of higher intensity than those defined as Tier 2 uses.

Notification. The notification requirement has been expanded to apply to all Agritourism use registrations.

Standards. Standards have been developed for both tiers to assist in the development of uses which do not negatively impact nearby properties. The registration process has been expanded to note the type of plan/information that is needed with the registration materials.

Review criteria. The revised language also provides review criteria. This not only provides guidance for the staff reviewing the registration but also serves as a useful tool for the the potential operator when planning and designing their proposed use.

County Commission Action. The current language notes that the County Commission may place conditions or restrictions on the proposed use. The proposed language improves this by noting the various actions the Commission may take on the registration and providing examples of conditions which could be applied.

Changes to use. The revised language clarifies that any change to the Agritourism use, such as expanding the area of the use, or increasing the amount of parking would require re-registration. The language also clarifies that, in addition to conducting a use that is not listed on the registration, operating out of compliance with the registration site plan or with the conditions/restrictions that were placed on the registration would be considered a violation subject to the enforcement provisions of Section 12-329.

The proposed language will provide the following benefits:

- The proposed revisions will benefit the potential Agritourism Operators by establishing clear parameters and standards as well as review criteria so they can anticipate the type of review the registration will require and can plan the Agritourism use to comply with the established standards. A streamlined and abbreviated review process is still possible for low and medium intensity Agritourism uses.
- The proposed revisions will benefit nearby property owners by including notification so neighbors can be informed of, and have input into, all Agritourism registrations. The standards and review criteria will assist in the development of Agritourism uses that do not negatively impact nearby properties. High intensity Agritourism uses, those which do not meet the definition or parameters of a Tier 1 or Tier 2 use (such as a use which would have more than 100 parking spaces or a use that would utilize motorized vehicles) would require approval through the CUP process or rezoning, or with a Special Event Permit for temporary uses.
- The proposed revisions will benefit staff by providing clear standards and criteria for review and enforcement.

CRITERIA FOR REVIEW AND DECISION-MAKING

The Zoning Regulations outline the process for text amendments in Section 12-314 but does not provide specific criteria for the review of these amendments. The proposed text amendment was reviewed with the following guidance provided in Section 20-1302(f) of the City Development Code:

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

The proposed amendment corrects an error in the Zoning Regulations in that the earlier adopted Agritourism Regulations were found to be deficient in protection standards for nearby property owners. The proposed language includes standards to reduce the potential for negative impacts from Agritourism uses while still providing an abbreviated and streamlined review process for low and medium intensity Agritourism uses.

2) Whether the proposed text amendment is consistent with the Comprehensive Plan and the stated purpose of the Zoning Regulations. Portions of the referenced documents are below with staff comments following in red:

General goal of the Comprehensive Plan: *"The overall community goal for planning is to provide, within the range of democratic and constitutional processes, for the optimum in public health, safety, convenience, general social and physical environment and individual opportunities for all the residents of the community, regardless of racial, ethnic, social or economic origin. It is the goal of the planning process to achieve a maximum of individual freedom, but public welfare must prevail. It is the intent to meet and safeguard individual rights and vested interests in a manner which will create the minimum disruption in individual freedoms and life values."* (Horizon 2020, Introduction)

The proposed text amendment is consistent with the Comprehensive plan as it provides additional safeguards to protect the public health, safety, convenience while retaining the provisions for a streamlined review process which facilitate and encourage low and medium intensity Agritourism uses.

Stated purpose of the Zoning Regulations: *"The zoning regulations and districts as herein established have been made in accordance with a land use study plan, to promote, in accordance with present and future needs, the safety, morals, order, convenience, prosperity, and general welfare of the citizens of Douglas County, Kansas, and to provide for efficiency and economy in the process of development, for the appropriate and best use of land, for convenience of traffic and circulation of people and goods, for the use and occupancy of buildings, for healthful and convenient distribution of population, for good civic design and arrangement, and for adequate public utilities and facilities by regulating the location and use of buildings, structures, and land for trade, industry, and residence, by regulating and limiting or determining the height and bulk of buildings and structures, the area of yards and other open spaces, and the density of use. They have been made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the unincorporated territory of Douglas County, Kansas.* (Section 12-302)

The proposed text amendment is consistent with the stated purpose of the Zoning Regulations as it provides additional safeguards to protect the public health, safety, convenience and general welfare.

Staff Recommendation

Staff recommends approval of proposed revisions to Articles 12-319-7 of the Zoning Regulations for the Unincorporated Territory of Douglas County, Kansas to revise the supplemental use regulations for Agritourism uses.

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 are 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:
 - 1) Farm markets/roadside stands,
 - 2) U-pick operations,
 - 3) Farm winery tours and tastings,
 - 4) Corn mazes,
 - 5) Farm-related interpretive facilities, exhibits, and tours,
 - 6) Historical, cultural, or agriculturally related educational and learning experiences, including volunteer workers,
 - 7) Farm stays,
 - 8) Bed and Breakfast establishments,
 - 9) Recreation related operations (fishing, hunting, bird watching, hiking, etc),
 - 10) Horseback riding,
 - 11) Garden, nursery tours and exhibits,
 - 12) Pumpkin patch visits and activities,
 - 13) Assembly type uses such as fairs or festivals which are historical, cultural, or agriculturally related; weddings, receptions; etc,
 - 14) Ancillary retail sales,
 - 15) Other uses that may be determined on a case by case basis if it meets the purpose and intent of the regulations.
- c. 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;

Section 12-319A, Site Plan Regulations; or Section 319.8 ~~5~~, Special Event ~~Use~~ Permits, although other State and local regulations shall apply.

- b. Sections 12-319-7.03 and 12-319-7.06 establish the parameters for Tier 1 (low intensity), and Tier 2 (medium intensity) Agritourism uses.
 - 1) Tier 1 (low intensity) Agritourism uses may be registered administratively by the Zoning and Codes Director.
 - 2) Registration of Tier 2 (medium intensity) Agritourism uses requires approval by the Board of County Commissioners.
 - 3) Agritourism uses which do not meet the definition or parameters of a Tier 1 or Tier 2 use require approval through a Conditional Use Permit, Special Event Permit, or rezoning.

~~Assembly type uses with an attendance of more than 100 persons shall require approval by the Board of Commissioners prior to registration per process in Section 12-319-7.02(c).~~

- c. Registration forms shall be jointly reviewed by the Director of 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.
 - 1) 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.
 - 2) If the Directors are unable to make a determination, the registration will be referred to the Board of County Commissioners.
 - 3) 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.

12-309-7.03 TIER 1 (LOW INTENSITY) AGRITOURISM USES DEFINED

- a. Tier 1, or low intensity Agritourism uses are not expected to generate noise, or other impacts, to the level that they would have negative impacts on surrounding properties. Examples of Tier 1 Agritourism uses include, but are not limited to:
 - 1) Farm Stands;
 - 2) Farmers Markets with 4 or fewer vendors;
 - 3) U-Pick Operations;

- 4) Farm Winery Tours and Tastings;
 - 5) Corn Mazes and Pumpkin Patches visits and activities;
 - 6) Farm Related Interpretative Facilities, Exhibits, and Tours;
 - 7) Historical, Cultural, or Agriculturally Related Educational and Learning Experiences, including volunteer workers;
 - 8) Farm Stays and Bed and Breakfasts with no more than 3 guestrooms; and
 - 9) Recreation Related Operations (Fishing, Hunting, Bird Watching, Hiking, etc.)
 - 10) Equestrian Facilities;
 - 11) Garden, Nursery Tours and Exhibits;
 - 12) Assembly type uses such as weddings, receptions; etc,
 - 13) Christmas Tree Sales;
 - 14) Farm Tours and Demonstrations;
 - 15) Small scale entertainment such as the integration of music, theatre, or arts to enhance the rural experience.
 - 16) Other uses that may be determined on a case by case basis to meet the intent of the Tier 1 definition.
- b. In addition to meeting the definition above, a proposed use must meet all the following parameters to be considered a Tier 1 Agritourism use:
- 1) The Agritourism use is accessory to and located on a parcel, or one of a number of contiguous parcels under the same ownership, as agricultural land uses or a working farm or ranch;
 - 2) The Agritourism operator resides on the parcel, or one of a number of contiguous parcels, containing the Agritourism use;
 - 3) Parking for the Agritourism use is limited to 25 parking spaces;
 - 4) No motors or motorized vehicles, with the exception of agricultural machinery and vehicles, will be utilized for the Agritourism Use;
 - 5) No amplification of noise is proposed: such as auctioneering speakers or amplified music (with the exception of a stereo or radio); and
 - 6) All Agritourism activities will occur in the daylight hours.

12-319-7.04 TIER 1 AGRITOURISM USES STANDARDS:

The following standards apply to all Tier 1 Agritourism uses:

- a. The operators of the Agritourism use shall be limited to the property owner or operator, his/her immediate family and employees.

- b. Adequate parking shall be provided on-site for the use, including ADA parking. No parking may occur on adjacent roads. (Parking is calculated at a rate of 1 parking space per 2 attendees.)
- c. Landscaping or fencing shall be provided along the perimeter of parking areas that are within view of residences or the road right of way. Landscaping shall consist of one of the following: a continuous hedge of shrubs or other vegetation at least 3 ft in height, berms that are a minimum of 3 ft in height with a slope of 3:1, or opaque fencing. Fencing to screen a parking area from adjacent residences may be between 4 and 6 ft in height. Fencing or walls between the parking lot and the street right-of-way may be between 3 to 6 ft in height. (In these instances, the location of fencing within the required setback will not require a variance from the Board of Zoning Appeals.)
- d. No exterior lighting shall be provided for the Agritourism use.
- e. Sanitary facilities shall be provided in accordance with Lawrence Douglas County Health Department requirements.

12-319-7.05 TIER 1 AGRITOURISM REGISTRATION PROCESS

- a. The Agritourism operator shall submit the following materials to the Zoning and Codes Office:
 - 1) Approved State Agritourism Registration.
 - 2) Completed Douglas County Agritourism Registration form.
 - 3) Site plan
The agritourism site plan does not need to meet all the requirements in Section 12-319A, but must be adequate to illustrate the use and its conformance with the Zoning Regulations as well as the relationship of the use to the surrounding properties or right-of-way. At a minimum, the following items must be included:
 - i. All structures to be utilized for the agritourism use with dimensions, including the distance to the nearest property line.
 - ii. Areas where the agritourism use will occur and any areas where visitors would be allowed.
 - iii. Access and parking areas shown and dimensioned, noting the number of spaces provided.

- iv. Water and sanitation facilities provided per the County Health Department approval.
 - v. Hours of operation noted.
 - vi. Anticipated attendance noted (parking is required at 1 parking space per 2 attendees).
- b. A minimum 20 day notification period is required. The Douglas County Zoning and Codes Office will provide notice to property owners within 1,000 ft of the proposed Agritourism site.
- c. The registration materials shall be reviewed by the Director of Zoning and Codes with the following approval criteria:
- 1) The proposed use and layout meets the intent and purpose of the Tier 1 definition;
 - 2) The proposed arrangement of buildings, off-street parking, access, lighting is compatible with adjacent land uses;
 - 3) Adequate screening is provided between the parking area and adjacent residences or road right-of-ways.
 - 4) The vehicular ingress and egress to and from the site provides for safe, efficient and convenient movement of traffic;
 - 5) The nature of the use is compatible with adjacent land uses and enhances or the rural character of the unincorporated portion of the county.
- d. The Zoning and Codes Director may apply conditions to the registration, such as limitation on the hours, location, or the activity itself, if in the Director's opinion the conditions are necessary to mitigate off-site impacts.
- e. Re-registration is required as noted in Section 12-309-7.08.

~~d. Assembly type uses such as weddings, receptions, fairs, or festivals, that may have an attendance of more than 100 persons require Board of County Commission approval prior to registration as an Agritourism use through the following process:~~

- ~~1) Information regarding the assembly type use shall be included with the registration form. The registration shall include, at a minimum the following information:
 - ~~a) The expected attendance,~~
 - ~~b) Activities associated with the assembly use,~~~~

- ~~e) The number of assembly type events anticipated per year,~~
- ~~d) Where parking will be provided on site,~~
- ~~e) Lighting location and type if assembly is to occur after dark,~~
- ~~f) Means to address health and sanitation at the site,~~
- ~~g) Information from the applicable fire department regarding access to the site/assembly use.~~

12-309-7.06 TIER 2 (MEDIUM INTENSITY) AGRITOURISM USES- DEFINED

- a. Tier 2 uses include higher intensity activities or have higher attendance than Tier 1 uses. Examples of Tier 2 Agritourism uses include, but are not limited to:
 - 1) Uses that would be considered a Tier 1 use that do not meet the Tier 1 parameters;
 - 2) Farmers Markets with more than 4 vendors;
 - 3) Bed and Breakfasts or Farm Stays with more than 3 guest rooms;
 - 4) Assembly type uses such as fairs or festivals which are historical, cultural, or agriculturally related.
- b. In addition to meeting the definition above, a proposed use must meet all the following parameters to be considered a Tier 2 Agritourism use:
 - 1) Parking for the Agritourism use is limited to 100 parking spaces.
 - 2) No motors or motorized vehicles, with the exception of agricultural machinery and vehicles, will be utilized for the Agritourism Use.
- c. Agritourism uses which do not meet the definition of Tier 1 or Tier 2 Agritourism uses may be considered by the County Commission through the Special Event Permit, Conditional Use Permit, or rezoning process established in these Regulations.

12-309-7.07 TIER 2 AGRITOURISM USE STANDARDS

The following use standards apply to all Tier 2 Agritourism uses:

- a. Operators of the Agritourism activity shall be limited to the property owner or operator, his/her immediate family and employees.
- b. Adequate parking, including ADA parking, must be provided on-site. No parking may occur on adjacent roads. (Parking is calculated at a rate of 1 parking space per 2 attendees.)

- c. Landscaping or fencing shall be provided along perimeter of parking areas that are within view of residences or the road right of way. Landscaping shall consist of one of the following: a continuous hedge of shrubs or other vegetation that is at least 3 ft in height, berms that are a minimum of 3 ft in height with a slope of 3:1, or opaque fencing. Fencing to screen a parking area from adjacent residences may be from 4 to 6 ft in height. Fencing or walls between the parking lot and the street right-of-way may be from 3 to 6 ft in height. (In these instances, fencing may be located within the setback without obtaining a variance from the Board of Zoning Appeals.)
- d. If Agritourism activities are to occur outside of daylight hours, a plan shall be provided which shows the location of lighting for the Agritourism activity and the type of lighting fixtures being used as well as means taken to shield the lighting to insure no trespass or glare to adjacent properties.
- e. Sanitary facilities shall be provided in accordance with Lawrence Douglas County Health Department requirements.
- f. With the exception of agricultural activities, no activities associated with the Agritourism use may occur within 200 ft of a property line.

12-309-7.08 TIER 2 AGRITOURISM USES REGISTRATION PROCESS

- a. The Agritourism operator shall submit the following materials to the Zoning and Codes Office:
 - 1) Approved State Agritourism Registration.
 - 2) Completed Douglas County Agritourism Registration form.
 - 3) Site plan meeting the requirements outlined in Section 12-319-7.05(a)(3).
 - 4) Information from the applicable fire department regarding access to the proposed Agritourism Activity area.
- b. 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. For Agritourism ~~assembly~~ ~~type~~ uses that will be located on an unpaved road, the Zoning and Codes Office shall mail notice to all property owners of residentially developed property on an unpaved road which would be considered the most direct route to the nearest hard-surfaced road. A minimum 20 day notification period is required. The Commission will hold a public hearing on the proposed use at the time and place listed in the public notice.

- c. The Director of Zoning and Codes shall review the registration application with the criteria noted in this section and provide a report with recommendation to the Commission.
 - 1) The proposed arrangement of buildings, off-street parking, access, lighting is compatible with adjacent land uses;
 - 2) Adequate screening is provided between the parking area and adjacent residences or road right-of-ways.
 - 3) The vehicular ingress and egress to and from the site provides for safe, efficient and convenient movement of traffic including emergency vehicles;
 - 4) The nature of the use is compatible with adjacent land uses and enhances the rural character of the unincorporated portion of the county.
- ~~d. The Board of County Commissioners may impose conditions and restrictions in conjunction with approval of the assembly type use.~~
- d. The Board of County Commissioners may take one of the following actions on the registration:
 - 1) Approve the registration;
 - 2) Approve the registration with conditions/restrictions such as limitation on the size of buildings and parking areas, establishment of operating hours; establishment of buffering, limitation on activities; road improvements; etc;
 - 3) Return the registration to staff with request for more information; or
 - 4) Deny the registration.
- ~~e. 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.~~

12-309-7.09 Duration/Review

The Douglas County Agritourism Use registration coincides with the State Registration. Re-registration with the County is required when the State registration is renewed, every 5 years.

- a. The Agritourism Use may continue as long as the use complies with the conditions and standards that were applied with the registration.

Memorandum

City of Lawrence and Douglas County Planning and Development Services

TO: Planning Commission

FROM: Mary Miller

Date: For February 26, 2014 meeting

RE: TA-13-00451 Revised Agritourism Regulations

Attachments:

- A: Revised Draft Language
- B: Introductory Brochure
- C: Communications

This memo outlines the process of the amendment referenced above and includes a summary of the comments that were provided on the draft language presented to the Planning Commission at their January meeting, noting all changes made to the language (with the exception of minor housekeeping changes).

PROCESS:

October 16, 2013 Board of County Commissioners Meeting

The Board of County Commissioners established a temporary moratorium on registration of Agritourism uses and initiated a text amendment to revise the Agritourism regulations in the *Zoning Regulations for the Unincorporated Territory of Douglas County*. These actions were in response to concerns regarding the off-site impacts that could occur with Agritourism activities.

November 6, 2013 Board of County Commissioners Study Session

The Board of County Commissioners provided the following direction for the revised regulations:

- Develop clear standards to differentiate between the differing intensities of use beyond the size of attendance expected. This would include the development of criteria or parameters to categorize activity levels so that potential off-site impacts from the more intense activities could be evaluated more closely. Possible parameters include:
 - 1) The general nature of the Agritourism activity.
 - 2) Distance of the Agritourism activity from residences.
 - 3) Size and use of the property where the Agritourism activity is proposed.
 - 4) Size of facilities (such as structures and parking areas) being proposed for the Agritourism activity.

- 5) Whether the Agritourism operator lives on the site.
 - 6) Whether the Agritourism activity is compatible with the rural character of the area.
- Develop standards such as parking, screening, and buffering requirements for all Agritourism activities. Provisions related to transportation should also be made for the more intense Agritourism activities such as traffic studies and possible improvements to the roads, if necessary, to accommodate the use.
 - Additionally, the standards should clarify that re-registration due to a change of use would require public notification and County Commission approval.

January 27, 2014 Planning Commission

Staff provided revised regulations to the Planning Commission based on this direction. The Planning Commission noted that few Agritourism operators had been involved in the drafting of the revised regulations and expressed concern that the revisions could have a significant impact on existing Agritourism operations. The Commission directed staff to contact all the Agritourism operators that are currently registered with the State. Staff emailed the proposed regulations and requested input from the operators listed on the State Agritourism website <http://www.ravelks.com/industry/agritourism/registered-companies/>. One comment was received as a result of this mailing.

All comments received on the proposed revised regulations are included with this memo as Attachment A. In addition, staff met with the County sub-committee of the Douglas County Food Policy Group and received verbal comments from them. This memo summarizes the concerns noted in the comments and explains the changes which were made to the draft language, or the reasoning if no changes were made. Staff initiated some changes to the language and these revisions are noted in the final section of this memo.

IMPORTANT POINTS ABOUT AGRITOURISM REGULATIONS

- 1) The intent of these revisions is to achieve a balance between the goals of fostering and promoting Agritourism and protecting the public health safety, and welfare while observing the direction of the County Commission.
- 2) The Tier 2 process is the same process that is currently required for other permitted uses in the A District (with the exception of agriculture and residential). These uses require County Commission approval through the site planning process as outlined in Section 12-319A of the Zoning Regulations. This is a less intensive process than the Conditional Use Permit (CUP) that most of the Tier 2 uses would require without the Agritourism provisions.
- 3) If the proposed Agritourism activity will be infrequent, the Special Event Permit outlined in Section 12-319-8 of the Zoning Regulations may be another option.
- 4) Agritourism uses which are agricultural are encouraged to register, but registration is not required. Section 20-304-6.01 of the Zoning Regulations states: *"No land may be used except for a purpose permitted in the district in*

which it is located, provided, however; that no regulations shall apply to the use of land for agricultural purposes nor for the erection or maintenance of buildings thereon as long as such buildings are used for strictly agricultural purposes." (emphasis added). The County Commission adopted Resolution No. 08-25 to provide guidance to County staff when determining if a use is considered 'agricultural'. It is recommended that anyone interested in pursuing Agritourism contact the Zoning & Codes Department to determine if their use meets the standards to be considered 'agricultural'.

- 5) A supplemental brochure has been created to accompany these revised regulations to explain the process and the agricultural exemption in simpler terms.

DISCUSSION OF COMMENTS RECEIVED AND REVISIONS MADE

(with staff discussion following in *italics*)

1. **Section 12-319-7.03(a)(ii)** Increase the number of vendors permitted in an Farmer's Market. The City Farmer's market has 90 vendors, 4 seems very limited. The Food Policy sub-committee suggested 10 vendors.
Revised to change the limit for Tier 1 at '10' vendors.
2. **12-319-7.03(a)(xii)** Assembly type uses permitted as Tier 1 should be titled 'small assembly type uses' as the size is limited by the 25 parking space restriction or all assembly type uses should require County Commission approval.
The title was revised to clarify that these are 'small' assembly type uses. An example of a small assembly type use would be a business meeting or a child's birthday party.
3. **12-319-7.03(b)(i)** The Agritourism use should not be required to be an accessory use to a farm as this could be misinterpreted to mean accessory to a residence.
Removed requirement that the use be accessory to a parcel with agricultural land uses.
Not fair to penalize farms whose parcels are not contiguous.
No change. Living on the property was seen as a major tool to limit the impact of the Agritourism operation. If a parcel is not contiguous, the item must be registered with County Commission approval. Same process as required for all permitted uses (except ag and residential) in the A District and more streamlined that the Conditional Use Permit or rezoning option.
Requirement for operator to own the land is not appropriate for low impact uses.
No change. The operator must be the landowner, or the operator of the land (tenant farmer, renter, etc) and can include their family members or employees. The intent is for there to be a link between the operator and the property.
Agricultural Land Uses should be defined or it may be confused with all the uses that are permitted in the Ag District.
This has been revised to note the Ag Uses are as specified in Section 12-306-2.01 of the Zoning Regulations and as determined by the Zoning and Codes Director.

4. **12-319-7.03(b)(iii) and 12-319-7.07(b)(i)** Limiting the size of an activity by its parking area.
It is difficult to know how many people will come to your Agritourism operation. Perhaps your use is an orchard and you have very limited traffic year round, but on good days in the harvest season you have very large crowds. Don't think you should be required to install a 50 car parking lot for those good days.
No change. The parking limit is seen as a better tool for limiting the size of an Agritourism use rather than restricting the number of attendees that can be on site at a time as it is more enforceable. If an Agritourism use expects to have occasionally larger crowds, they could show an overflow parking area so they aren't creating a gravel parking lot for that infrequent parking and (if more than 25 spaces are planned—both regular and overflow) the use would be considered a Tier 2 and would require County Commission approval. (If they have very infrequent larger events, they could obtain Special Event Permits for those events, as an alternative.)
5. **12-319-7.03(b)(iv) and 7.07(b)(ii)** Restriction on motors or motorized vehicles.
What is the purpose of the restriction of motorized vehicles? Would golf carts that are used to access an apple orchard be included? Or a lawn mower that has been designed to look like a train engine?
The intent is to limit the nuisance factor of an Agritourism activity. A lawn mower that runs 8 hours a day could be a nuisance to a nearby property owner. Allowing electric motors may be an option as they are typically quieter. Revised to note that electric motors are excluded from this requirement.
6. **12-319-7.03(b)(vi)** Why would activities that occur outside of daylight hours require County Commission approval?
Activities that occur outside of daylight hours could have more of an impact on nearby properties than activities in the daylight hours. In order to keep the regulations as simple as possible, all activities that occur outside of daylight hours require County Commission approval. This would add a week or two to the registration timeline but would allow conditions to be placed on the activities, if necessary. Per the Planning Commission's discussion at the January meeting, this was revised to exclude the 'Farm Stays' and 'Bed and Breakfast' uses.
7. **12-319-7.04(a) and 7.08(a)** The term 'immediate family' is confusing.
This was revised to 'family members'. There are definitions of family in state regulations, but these are very complicated. The intent is to create a link between the operator and the property. Also revised to note that employees would include both paid and unpaid employees.
8. **12-319-7.04(a)(i) and 7.08(a)(i)** Definitions should be more clear.
'Agritourism Operator' definition: 'individual(s) with financial and legal responsibility for the Agritourism activity' has been added. Other proposed definitions are not needed, in staff's opinion (Agritourism site, Agritourism hours).
9. **12-319-7.04(b) and 7.08(b)** People should be allowed to park on adjacent roads.

No change. This is a safety issue. Uses should provide adequate parking so parking on the roadway is not necessary.

ADA parking may not always be required for outdoor activities.

These sections have been revised to say ADA parking, where applicable, is required.

10. **12-319-7.04(c) and 7.08(c)** Screening for parking lots. A variance should continue to be required for any fencing in the front setback until this requirement is revised with the updated Zoning Regulations.

Language regarding fencing in the setback has been removed.

Several commented that the 3 ft high shrubs for the parking area may not be adequate screening.

This has been revised to note that the shrubs and fencing will be provided 'as needed to provide adequate screening.'

Would overflow parking areas be required to be screened as well?

Revised to note that the screening does not apply to overflow parking areas as these are expected to be used infrequently.

Requiring permanent screening for seasonal activities may require farmers to utilize agricultural land for screening.

The screening requirement was revised to allow for 'alternative means' of screening. This could include hay bales, agricultural equipment, or other means as approved by the Zoning and Codes Director.

11. **12-319-7.04(d)** 'No exterior lighting' is much too broad.

This requirement was removed as Tier 1 uses are to occur only in daylight hours (with the exception of Farm Stays and Bed & Breakfasts). There would be no need for exterior lighting except for these uses.

12. **12-319-7.04(e—now d) and 7.08(e)** Adequate information should be provided to allow a person to find the sanitary requirements.

No change. The Douglas County Sanitary Code is maintained by the Health Department. They are the appropriate party to speak with for accurate, up-to-date information.

13. **12-319-7.05(a)(iii)(f) and 7.08(b)(ii)** The parking/attendance ratio of 1 parking space per 2 attendees may not be accurate as many cars may carry more than 2 attendees and some events may use busses.

The ratio, 1 space per 2 attendees, is meant as a tool for an operator to estimate how many parking spaces they may need. The number of parking spaces is a means to limit the size of the activity, but is not meant to be a strict limit on the number of attendees. This has been revised to provide clarification.

14. **12-319-7.05(b) and 7.09(b)(ii)** The 1000 ft notification radius should note it would be 200 ft if city limits are within the notification area.

This was revised to include the 200 ft notification requirement if the city limits were within the notification area and also to note that property owners in an adjacent county must be notified if they are in the notification area.

Clarify that the 20 day notification period is the property owner's notification time, not the amount of time the operator needs to notify the Zoning and Codes Office.

Revised to clarify that.

The Zoning & Codes Director indicated a preference that the applicant send out the notification letters for both the Tier 1 and 2 registration.

12-319-7.05(b) was revised to require the registrant to mail out the notification letters. As Tier 2 letters are to note the date of the County Commission meeting, the mailing was left as the responsibility of the Zoning & Codes Office. Further discussion with the Zoning and Codes Director may be needed on this item and this can be worked out as the amendment progresses to the County Commission.

15. **12-319-7.05(c)(1)** The intent and purpose of the Tier 1 Definition should be spelled out.

No change. Section 12-319-7.03(a) explains 'Tier 1, or low intensity Agritourism uses, are not expected to generate noise, or other impacts, to the level that they would have negative impacts on surrounding properties.'

16. **12-319-7.06** In response to Planning Commission comment, included a re-registration section for Tier 1 uses rather than referring to the Tier 2 process.

17. **12-319-7.08(f)** 200 ft separation from property lines seems severe. Many orchards are within 30 ft of the property line. Also the requirement is worded so it applies to property lines of parcels in a contiguous set of parcels.

This requirement does not apply to agricultural activities, such as U-pick orchards. The separation was reduced to 50 ft with a caveat that the County Commission may vary this separation requirement depending on the nature of the use. Also revised to note it applies to the perimeter of a contiguous set of parcels.

18. Concern that some of the regulations could affect businesses already in existence.

No change. The regulations may affect Agritourism businesses when the register or re-register with the County. A use may be required to move further from the property line (unless the separation is varied by the County Commission) or a parking area may be required to be screened, for instance. Other conditions may be placed on the use, if necessary, to insure compatibility with nearby land uses.

Agritourism businesses with more than 100 parking spaces or that use motors or motorized vehicles as part of the Agritourism activity (ag equipment or vehicles and electric motors exempt) would be required to seek approval through the CUP process. None of the currently registered Agritourism uses would be affected.

19. What happens to the limited liability assumption of risk, under Kansas Statute, KS 74-50,169 et seq., if Douglas County disapproves of an activity as a matter of purely local zoning law?"

No change. The County Counselor indicated that the Kansas zoning regulations do not affect the state liability protections.

20. Clarify that agricultural Agritourism uses are not required to register.
Supplemental brochure clarifies this.
21. Confused that some uses are permitted in various ways. For instance a commercial riding stable is a permitted use in the A District but could also be permitted as an Agritourism use. "If regulated as Agritourism, the use would be subject to privacy fences, limit on parking spaces, the operator must be the resident etc."
No change. Permitted uses in the A District, such as a Commercial Riding Stable, require approval through the site planning process. (Exceptions to site planning are agricultural and residential uses.) Screening, parking, etc. would be considered with the site plan review; however, the site plan review would not require the operator to reside on site.
22. Both Tier 1 and Tie 2 applicants should be required to submit IRS Schedule F or other proof of farm business activity.
No change. Tier 2 uses are required to occur on agricultural land. The Zoning and Codes Department has criteria they use to determine if a land use is considered 'Agricultural'.
23. Tier 1 users must show proof that the use will be accessory to the agricultural uses.
No change. It is possible that the Agritourism use will grow to be the primary use on the property if accessory and principal uses are measured by income. Being 'accessory' is not a requirement.
24. Agritourism or Special Event Permits should be required for some private events.
No change. This is beyond the scope of this amendment.
25. Proposed parameter of number of hours per day and number of days per week the activity may occur for the different levels of Agritourism.
No change. This may be an effective parameter but would be very difficult to enforce.
26. Recommended enforcement provisions for Agritourism.
No change. This is beyond the scope of this amendment.
27. Specify in the regulations that infrequent Agritourism activities could also be approved with a Special Event Permit.
Noted in brochure.
28. Create a flow chart or decision tree to simplify these regulations.
Supplemental brochure created which includes a form of decision tree to clarify when Agritourism uses require registration, and what process is required for each.

STAFF REVISIONS

- A. **12-319-7.03(a)(xvi)** *'Ancillary retail sales' was added to the list of Tier 1 Agritourism uses as this had been omitted from the earlier list.*
- B. **12-319-7.05(c)(v) and 7.09(c)(iv)** *Changed the requirement that the nature of the Agritourism use is to 'enhance' the rural nature to 'enhance or maintain' the nature.*
- C. **12-319-7.09(c)(v)** *Added a provision for Tier 2 uses that improvements to the existing road network may be required based on the amount of traffic to be generated by the use. This would be determined by the County Engineer.*
- D. **12-319-7.10(b)** *Added a provision to the re-registration of a Tier 2 use, that it may be done administratively if there are no changes from the previous registration and no unresolved complaints.*
- E. **12-319-7.10(c)(ii)(a)** *Added a provision that 'minor changes' to a Tier 2 registration could be processed administratively.*

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 are 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:
 - i. Farm markets/roadside stands,
 - ii. U-pick operations,
 - iii. Farm winery tours and tastings,
 - iv. Corn mazes,
 - v. Farm-related interpretive facilities, exhibits, and tours,
 - vi. Historical, cultural, or agriculturally related educational and learning experiences, including volunteer workers,
 - vii. Farm stays,
 - viii. Bed and Breakfast establishments,
 - ix. Recreation related operations (fishing, hunting, bird watching, hiking, etc),
 - x. Horseback riding,
 - xi. Garden, nursery tours and exhibits,
 - xii. Pumpkin patch visits and activities,
 - xiii. Assembly type uses such as fairs or festivals which are historical, cultural, or agriculturally related; weddings, receptions; etc,
 - xiv. Ancillary retail sales,
 - xv. Other uses that may be determined on a case by case basis if it meets the purpose and intent of the regulations.
- c. 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; Section 12-319A, Site Plan Regulations; or Section 319.8 , Special Event Permits, although other State and local regulations shall apply.
- b. Sections 12-319-7.03 and 12-319-7.06 establish the parameters for Tier 1 (low intensity), and Tier 2 (medium intensity) Agritourism uses.

- i. Tier 1 (low intensity) Agritourism uses may be registered administratively by the Zoning and Codes Director.
 - ii. Registration of Tier 2 (medium intensity) Agritourism uses requires approval by the Board of County Commissioners.
 - iii. Agritourism uses which do not meet the definition or parameters of a Tier 1 or Tier 2 use require approval through a Conditional Use Permit, Special Event permit, or rezoning.
- c. Registration forms shall be jointly reviewed by the Director of 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.

12-319-7.03 TIER 1 (LOW INTENSITY) AGRITOURISM USES DEFINED

- a. Tier 1, or low intensity Agritourism uses are not expected to generate noise, or other impacts, to the level that they would have negative impacts on surrounding properties. Examples of Tier 1 Agritourism uses include, but are not limited to:
- i. Farm Stands;
 - ii. Farmers Markets with **4 10** or fewer vendors;
 - iii. U-Pick Operations;
 - iv. Farm Winery Tours and Tastings;
 - v. Corn Mazes and Pumpkin Patches visits and activities;
 - vi. Farm Related Interpretative Facilities, Exhibits, and Tours;
 - vii. Historical, Cultural, or Agriculturally Related Educational and Learning Experiences, including volunteer workers;
 - viii. Farm Stays and Bed and Breakfasts with no more than 3 guestrooms;
and

- ix. Recreation Related Operations (Fishing, Hunting, Bird Watching, Hiking, etc.)
 - x. Equestrian Facilities;
 - xi. Garden, Nursery Tours and Exhibits;
 - xii. **Small scale** assembly type uses such as weddings, receptions; etc,
 - xiii. Christmas Tree Sales;
 - xiv. Farm Tours and Demonstrations;
 - xv. Small scale entertainment such as the integration of music, theatre, or arts to enhance the rural experience.
 - xvi. Ancillary Retail Sales**
 - xvii. Other uses that may be determined on a case by case basis to meet the intent of the Tier 1 definition.
- b.** In addition to meeting the definition above, a proposed use must meet all the following parameters to be considered a Tier 1 Agritourism use:
- i. The Agritourism use is ~~accessory to and~~ located on a parcel, or one of a number of contiguous parcels under the same ownership, as agricultural land uses **listed in 12-306-2.01** or a working farm or ranch **as determined by the Zoning and Codes Director**;
 - ii. The Agritourism operator resides on the parcel, or one of a number of contiguous parcels, containing the Agritourism use;
 - iii. Parking for the Agritourism use is limited to 25 parking spaces;
 - iv. No motors or motorized vehicles, with the exception of agricultural machinery and vehicles **or electric motors**, will be utilized for the Agritourism Use;
 - v. No amplification of noise is proposed: such as auctioneering speakers or amplified music (with the exception of a stereo or radio); and
 - vi. **All** Agritourism activities will occur in the daylight hours **with the exception of the Farm Stays and Bed and Breakfast uses.**

12-319-7.04 TIER 1 AGRITOURISM USES STANDARDS:

The following standards apply to all Tier 1 Agritourism uses:

- a.** The operators of the Agritourism use shall be limited to the property owner or operator, his/her **immediate** family **members** and employees **(whether paid or unpaid)**.
 - i.** **'Operator' refers to the person with the financial and legal responsibility for the Agritourism activity.**

- b. Adequate parking shall be provided on-site for the use, including ADA parking **(where applicable)**. No parking may occur on adjacent roads.
- c. Landscaping or fencing shall be provided along the perimeter of parking areas **(excluding overflow areas)** that are within view of residences or the road right of way. Landscaping shall consist of one of the following: a continuous hedge of shrubs or other vegetation at least 3 ft in height, berms that are a minimum of 3 ft in height with a slope of 3:1, or opaque fencing, **of a height determined by the Zoning and Codes Director to provide adequate screening for the parking area** ~~Fencing to screen a parking area from adjacent residences may be between 4 and 6 ft in height. Fencing or walls between the parking lot and the street right-of-way may be between 3 to 6 ft in height. (In these instances, the location of fencing within the required setback will not require a variance from the Board of Zoning Appeals.) Fencing taller than 3 ft must be located behind the required setback.~~ **Alternate forms of screening may be utilized, provided the Director of Zoning and Codes determines they will provide effective screening of the parking area.**
- d. ~~No exterior lighting shall be provided for the Agritourism use.~~
- e. Sanitary facilities shall be provided in accordance with Lawrence Douglas County Health Department requirements **for the use and expected attendance.**

12-319-7.05 TIER 1 AGRITOURISM REGISTRATION PROCESS

- a. The Agritourism operator shall submit the following materials to the Zoning and Codes Office:
 - i. Approved State Agritourism Registration.
 - ii. Completed Douglas County Agritourism Registration form.
 - iii. Site plan
The agritourism site plan does not need to meet all the requirements in Section 12-319A, but must be adequate to illustrate the use and its conformance with the Zoning Regulations as well as the relationship of the use to the surrounding properties or right-of-way. At a minimum, the following items must be included:
 - a. All structures to be utilized for the agritourism use **identified on the plan** with dimensions, including the distance to the nearest property line.
 - b. Areas where the agritourism use will occur and any areas where visitors would be allowed **marked on the plan.**
 - c. Access and parking areas shown and dimensioned, noting the number of spaces provided.

- d. **The** water and sanitation facilities provided per the County Health Department approval.
 - e. Hours of operation noted.
 - f. Anticipated attendance noted.
 - i. **For determination of parking requirements**, parking is calculated at a rate of 1 parking space per 2 attendees. **Attendance is limited to that which can be served by available parking as participants may arrive by bus or alternative forms of transportation.**
- b. A 20 day **property owner** notification period is required.
- i. **The applicant shall obtain a list of property owners within 1000 ft of the property on which the Agritourism activity is to occur from the Douglas County Clerk's Office. If the notification area includes land within the corporate limits of a city, the list shall include owners of property within the 1000 ft notification area that extend 200 feet into the city. If the notification area extends into the adjacent County, notice must be sent to property owners in the adjacent County.**
 - ii. **The applicant shall mail a letter which contains the information below to the property owners on the list to advise them of the proposed Agritourism use and provide them the opportunity to contact the applicant or the Zoning and Codes Department if they have any questions.**

"An Agritourism use located at _____ is in the process of being registered with Douglas County. The Agritourism use will consist of (brief description of the event). Please contact me at (phone number, email) with any questions regarding this registration or the Douglas County Zoning and Codes Department at 785-331-1343."
 - iii. **The registrant must provide a copy of the letter, the property owner list, and certification of the date the letters were mailed to the address on the list with their registration materials.**
- c. The registration materials shall be reviewed by the Director of Zoning and Codes with the following approval criteria:
- i. The proposed use and layout meets the intent and purpose of the Tier 1 definition;

- ii. The proposed arrangement of buildings, off-street parking, access, lighting is compatible with adjacent land uses;
 - iii. Adequate screening is provided between the parking area and adjacent residences or road right-of-ways.
 - iv. The vehicular ingress and egress to and from the site provides for safe, efficient and convenient movement of traffic;
 - v. The nature of the use is compatible with adjacent land uses and enhances **or maintains** the rural character of the unincorporated portion of the county.
- d. The Zoning and Codes Director may apply conditions to the registration, such as limitation on the hours, location, or the activity itself if, in the Director's opinion, the conditions are necessary to mitigate off-site impacts.

~~e. Re-registration is required as noted in Section 12-309-7.09.~~

12-319-7.06 DURATION/RE-REGISTRATION

The Douglas County Agritourism use registration coincides with the State Registration. Re-registration with the County is required when the State registration is renewed, every 5 years.

- a. **The Agritourism Use may continue as long as the use complies with the conditions and standards that were applied with the registration.**
- b. **Only those activities specifically listed in the registration form and approved by the Directors are allowed to occur as Agritourism. Any change in proposed uses such as a new activity, increased parking, or expanded area of activity would require:**
 - i. **The modification of the registration with the State, if necessary.**
 - ii. **Resubmittal of the revised registration form and revised site plan to the Zoning and Codes Office for a determination of compliance with the definition of Agritourism (if a new use is proposed) and re-registration through the processes established in this section.**

12-309-7.07 TIER 2 (MEDIUM INTENSITY) AGRITOURISM USES- DEFINED

- a. Tier 2 uses include higher intensity activities or have higher attendance than Tier 1 uses. Examples of Tier 2 Agritourism uses include, but are not limited to:
 - i. Uses that would be considered a Tier 1 use that do not meet the Tier 1 parameters;

- ii. Farmers Markets with more than ~~4~~ **10** vendors;
 - iii. Bed and Breakfasts or Farm Stays with more than 3 guest rooms;
 - iv. Assembly type uses such as fairs or festivals which are historical, cultural, or agriculturally related.
- b. In addition to meeting the definition above, a proposed use must meet all the following parameters to be considered a Tier 2 Agritourism use:
- i. Parking for the Agritourism use is limited to 100 parking spaces.
 - ii. No motors or motorized vehicles, with the exception of agricultural machinery and vehicles **or electric motors**, will be utilized for the Agritourism Use.

12-319-7.08 TIER 2 AGRITOURISM USE STANDARDS

The following use standards apply to all Tier 2 Agritourism uses:

- a. **Operators of the Agritourism activity shall be limited to the property owner or operator, his/her immediate family members and employees (paid or unpaid).**
 - i. **'Operator' refers to the person with the financial and legal responsibility for the Agritourism activity.**
- b. **Adequate parking, including ADA parking (when applicable), must be provided on-site. No parking may occur on adjacent roads.**
 - i. **For the purpose of calculating parking requirements, Parking is calculated at a rate of 1 parking space per 2 attendees unless visitors are expected to utilize busses or alternative forms of transportation.**
- c. Landscaping or fencing shall be provided along the perimeter of parking areas **(excluding overflow areas)** that are within view of residences or the road right of way. Landscaping shall consist of one of the following: a continuous hedge of shrubs or other vegetation ~~at least 3 ft in height~~, ~~berms that are a minimum of 3 ft in height with a slope of 3:1~~, or opaque fencing, **of a height determined by the Zoning and Codes Director to provide adequate screening for the parking area** ~~Fencing to screen a parking area from adjacent residences may be between 4 and 6 ft in height. Fencing or walls between the parking lot and the street right-of-way may be between 3 to 6 ft in height. (In these instances, the location of fencing within the required setback will not require a variance from the Board of Zoning Appeals.) Fencing taller than 3 ft must be located behind the required setback.~~ **Alternate forms of screening may be utilized, provided the Director of Zoning and Codes determines they will provide effective screening of the parking area.**

- d. If Agritourism activities are to occur outside of daylight hours, a plan shall be provided which shows the location of lighting for the Agritourism activity and the type of lighting fixtures being used as well as means taken to shield the lighting to insure no trespass or glare to adjacent properties.
- e. Sanitary facilities shall be provided in accordance with Lawrence Douglas County Health Department requirements **for the proposed use and anticipated attendance.**
- f. With the exception of agricultural activities, no activities associated with the Agritourism use may occur within ~~200~~ **50** ft of a property line **of the subject parcel or the perimeter of a group of contiguous parcels. The County Commission may vary this separation requirement depending on the nature of the Agritourism activity and the adjacent property.**

12-309-7.09 TIER 2 AGRITOURISM USES REGISTRATION PROCESS

- a. The Agritourism operator shall submit the following materials to the Zoning and Codes Office:
 - i. Approved State Agritourism Registration.
 - ii. Completed Douglas County Agritourism Registration form.
 - iii. Site plan meeting the requirements outlined in Section 12-319-7.05(a)(3).
 - iv. Information from the applicable fire department regarding access to the proposed Agritourism Activity area.
- b. A minimum 20 day notification period is required. The Commission will hold a public hearing on the proposed use at the time and place listed in the public notice.
 - i. 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.
 - ii. **If the notification area includes land within the corporate limits of a city, the list shall include owners of property within the 1000 ft notification area that extend 200 feet into the city. If the notification area extends into the adjacent County, notice must be sent to property owners in the adjacent County.**
 - iii. For Agritourism uses that will be located on an unpaved road, the Zoning and Codes Office shall mail notice to all property owners of residentially developed property on an unpaved road which would be considered the most direct route to the nearest hard-surfaced road..

- c. The Director of Zoning and Codes shall review the registration application with the criteria noted in this section and provide a report with recommendation to the Commission.
 - i. The proposed arrangement of buildings, off-street parking, access, lighting is compatible with adjacent land uses;
 - ii. Adequate screening is provided between the parking area and adjacent residences or road right-of-ways.
 - iii. The vehicular ingress and egress to and from the site provides for safe, efficient and convenient movement of traffic including emergency vehicles;
 - iv. The nature of the use is compatible with adjacent land uses and enhances **or maintains** the rural character of the unincorporated portion of the county.
 - v. **Suitability of the existing road network suitable for the traffic expected to be generated by the Agritourism use. Road improvements may be required in some cases.**

- d. The Board of County Commissioners may take one of the following actions on the registration:
 - i. Approve the registration;
 - ii. Approve the registration with conditions/restrictions such as limitation on the size of buildings and parking areas, establishment of operating hours; establishment of buffering, limitation on activities; road improvements; etc;
 - iii. Return the registration to staff with request for more information; or
 - iv. Deny the registration.

12-309-7.10 Duration/Review

The Douglas County Agritourism Use registration coincides with the State Registration. Re-registration with the County is required when the State registration is renewed, every 5 years.

- a. The Agritourism Use may continue as long as the use complies with the conditions and standards that were applied with the registration.

- b. **A Tier 2 use that received County Commission approval may be re-registered administratively by the Zoning and Codes Director if the use remains the same as on the original registration and no unresolved complaints are on file.**

- c. Only those activities specifically listed in the registration form and approved by the Directors are allowed to occur as Agritourism. Any change in proposed uses such as a new activity, increased parking, expanded area of activity would require:
 - i. The modification of the registration with the State, if necessary.
 - ii. Resubmittal of the revised registration form and revised site plan 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 and re-registration through the processes established above.
 - a. **Minor changes to the plan (changes that do not include an additional use or an increase in agritourism activity or parking area above 25% of the previous activity or parking area) may be approved administratively by the Zoning and Codes Director following notification of neighbors within 1000 ft.**
- d. Engaging in any activity not listed on the registration or operating out of compliance with the plans and conditions approved with the registration would be considered a violation subject to the enforcement provisions of Section 12-329.

12-319-7.11 STRUCTURES AND CONSTRUCTION CODES

Structures for Agritourism uses are required to comply with Douglas County Construction Codes, adopted by HR-12-11-5, and amendments thereto.

Tier 2 (medium intensity) registration requires **County Commission approval**

If your use meets the criteria below, it is a Tier 2 use:

- Size limitation: up to 100 parking spaces, more than 3 guestrooms for Bed and Breakfast or a Farm Stay, more than 10 vendors for Farmer’s market.
- No motors or motorized vehicles (except agricultural machinery and vehicles) to be utilized for the use.
- No noise amplification (except for radios or stereos.)
- Agritourism Operator is the property owner or operator or their family and employees (whether paid or volunteer).

Is your use a Tier 2 use?

Yes---

Provide State Registration, site plan, and other information regarding your use to the Zoning and Codes Director. Public will be notified and registration placed on County Commission Agenda.

No---

Contact the Zoning and Codes Director to determine if your use is permitted with a CUP or if it would require rezoning.

This brochure contains introductory information on Agritourism.

**For more information on the registration process and requirements, please contact:
Zoning and Codes Office
785-331-1343
2108 W 27th Street, Lawrence.**

AGRITOURISM IN DOUGLAS COUNTY

“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 Douglas County in keeping with the State of Kansas policy of encouraging agritourism, while ensuring the public health, safety and welfare is protected.”

(Section 12-319-7 Zoning Regulations)



The Agritourism regulations provide a streamlined review/approval process for Agritourism uses.

Before the Regulations were revised, all Agritourism uses which were subject to the Zoning Regulations required approval as a Conditional Use Permit or rezoning.

Now:

- **Low Intensity uses** (uses which are not expected to impact neighboring properties) can be registered by the Zoning and Codes Director administratively.
- **Medium Intensity uses** (uses which have the potential to impact neighboring properties) can be registered following approval of the County Commission.
- **High intensity uses** (uses which could have significant off-site impacts) require CUP approval or rezoning.

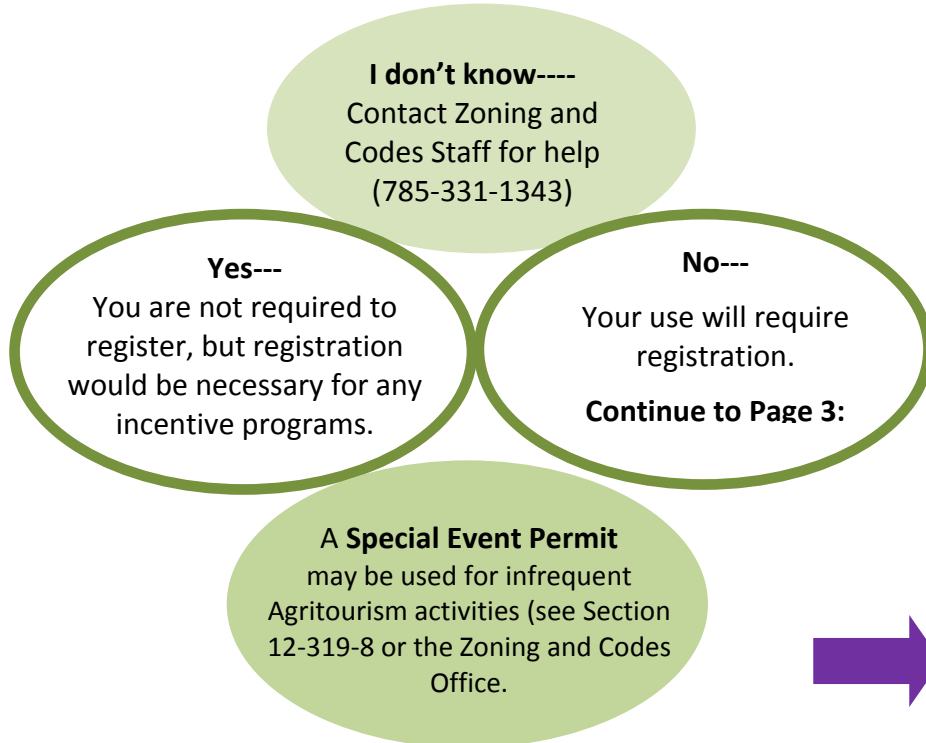
FAQ # 1:

Do the regulations apply to my Agricultural use?

The regulations do not apply to agricultural purposes.. (Per K.S.A. 12-758 and Douglas County Zoning Regulation Section 12-304-6.01, land used for agricultural purposes and buildings used exclusively for agricultural purposes are exempt from County Zoning Regulations.)

For instance: a U-Pick Berry Patch on a 40 acre farm, with the sale of no ancillary products that are not agriculturally produced on-site, would be considered an agricultural use. If the U-Pick Berry Patch decided to also sell jelly jars and t-shirts, the use would be considered ‘retail’ rather than agriculture. The Kansas courts have decided a wide variety of cases involving whether a particular use was or was not an agricultural purposes. The Zoning and Codes Office at 2108 W 27th Street, Lawrence (785-331-1343) can assist in making the determination as to whether the proposed use is considered Agriculture.

Does my Agritourism use meet the County definition/criteria for Agriculture?



FAQ # 2:

How do I register?

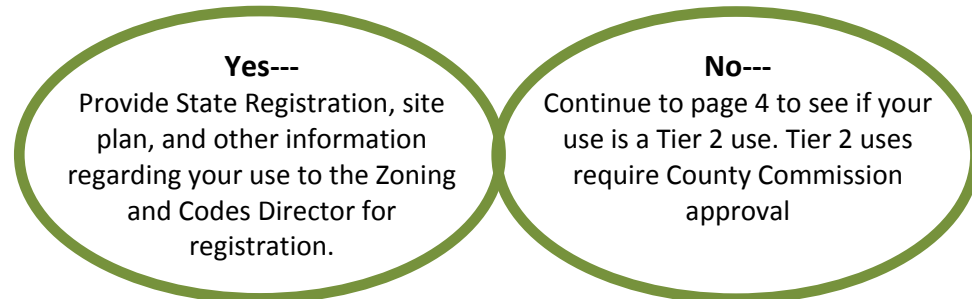
Step 1: Where does your use fit?

Tier 1 (low intensity) can be registered **administratively**.

If your use meets the criteria below, it is a Tier 1 use:

- The use is on a parcel, or one of a number of contiguous parcels as agricultural land uses or a working farm or ranch.
- The Agritourism operator lives on the property.
- Size limitation: no more than 25 parking spaces, no more than 3 guestrooms for Bed and Breakfast or a Farm Stay, no more than 10 vendors for Farmer’s market.
- No motors or motorized vehicles (except agricultural machinery and vehicles) to be utilized for the use.
- Activities occur in the daylight hours.
- No noise amplification (except for radios or stereos.)
- Agritourism Operator is the property owner or operator or their family and employees (whether paid or volunteer).

Is your use a Tier 1 use?



PC Minutes 12/16/13

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

TA-13-00451: Consider a Text Amendment to Section 12-319-7 of the Zoning Regulations for the Unincorporated Territory of Douglas County, Kansas to establish criteria and review process for Agritourism uses which may have significant off-site impacts. *(Amendment was initiated by the Board of County Commissioners at their October 16, 2013 meeting.)*

STAFF PRESENTATION

Ms. Mary Miller presented the item.

PUBLIC HEARING

Mr. Jim Hendershot expressed concern about the Kansas City Pumpkin Patch. He said at a stakeholder meeting in November one of the items that came up was looking at tiers of classification for different types of events. He said County Commissioner Flory was concerned about the arbitrary number of 100 people. He stated 20 people could be just as disruptive to a neighborhood as 100 people. He felt the County Commission was struggling with their ability or authority to impose conditions upon an application. He felt the Conditional Use Permit process worked and allowed everyone the flexibility of imposing conditions or looking at conditions that may be important for one application but not another. He felt it was important to distinguish between agritourism and a commercial business operating under the disguise of an agritourism business.

Ms. Michelle Kooz felt the guidelines were vague and would allow people to have a 24/7 party house. She said the Kansas City Pumpkin Path was allowed to have paintball on the property under the current guidelines and regulations. She did not feel that paintball had anything to do with agriculture.

Mr. Rick Hird said he was involved in forming the agritourism committee about four years ago. He said for the majority of agritourism businesses it has worked perfectly. He said there had only been one applicant that had caused a problem, the Kansas City Pumpkin Patch. He said it was his understanding that the Kansas City Pumpkin Patch was denied by the County Commission and paintball was not approved. He named some agritourism businesses that had registered in Douglas County; Pinwheel Farm, Washington Creek Lavender Farm, Pendleton's Farm & County Market, Schaake's Pumpkin Patch, Prairie Elf Christmas Tree Farm, and Strawberry Hill Christmas Tree Farm. He said he had not heard of any complaints about any of these agritourism businesses. He said the only agritourism that had complaints was Kansas City Pumpkin Patch. He said the Kansas City Pumpkin Patch was denied by the County Commission and the process worked perfectly in that case. He said when the agritourism committee was formed all stakeholders were included in the process; state, local, operators, and townships. He said the current text amendment protects the neighbors in several ways. He said if it was an activity of more than 100 people it required notice to neighbors within a 1000', required notice to all neighbors on a gravel road up to an improved road, and required adherence to noise ordinances, parking ordinances, and sanitation rules. He said the goal of the agritourism text amendment was to foster and encourage agritourism, not to include additional layers. He stated if a tiered approach was used they should keep in mind that the average wedding was probably around 100 people. He said the agritourism committee discussed a much higher number than 100 people. He said the committee rejected the idea of a Conditional Use Permit for agritourism uses. He said when considering further amendments they should ask themselves whether the actions would be making agritourism easier and fostering it or adding more layers of rules.

COMMISSION DISCUSSION

Commissioner Josserand asked Mr. Hird about any benefits that a Conditional Use Permit may provide.

Mr. Hird discussed the issue of the Conditional Use Permit and why the agritourism committee felt it was not appropriate. He said he owned a vineyard south of town and would like to build a winery and be an agritourism operator someday. He said while studying that and talking to other wineries he discovered that the winery and tasting room were allowed by right and did not require a permit. Although the minute a wine glass was sold it would require a Conditional Use Permit, which he did not feel made sense. He said in dealing with the stakeholders in the agritourism committee meetings they felt the worst part would be the Conditional Use Permit process, which would be a 4-6 month process to get through. He said agritourism was meant to be a simple process and the time, expense, and trouble could be avoided.

Commissioner Josserand asked if Mr. Hird felt the County Commission already had the tools to make the decisions they needed to.

Mr. Hird said he did not feel the County Commission was trying to skirt the issue. He said County Commissioner Flory was justifiably concerned about the lack of legal standards for imposing conditions and tweaking it may make sense.

Commissioner Josserand said a 25 member rock band could be more noxious than a 100 person wedding. He wondered how they should create or judge standards.

Mr. Hird said the existing noise ordinance would cover a rock band. He said he did not want to see another set of rules covering the same territory. He said noise had not been an issue with the one exception of the Kansas City Pumpkin Patch.

Commissioner von Achen asked if the agritourism committee wanted to avoid Conditional Use Permits for any level of use.

Mr. Hird said there may have been a point when the agritourism committee considered a Conditional Use Permit.

Ms. Miller said the agritourism committee had a lot of trouble figuring out the dividing line of when a Conditional Use Permit would be needed versus a Site Plan. She said since the committee was not able to find a dividing line they left it at 100 people with County Commission approval, which included a public hearing.

Mr. Hird said some members of the agritourism committee wanted the amount of people to be 250 so 100 people was a compromise.

Commissioner Denney said he wanted to avoid reinventing the wheel since the agritourism committee spent a lot of time and effort on the issue. He asked if staff was looking at text amendments that would give the County Commission some guidelines to use in making decisions or if staff was looking to open it up widely to any kind of agritourism.

Ms. Miller said the County Commission wanted parameters to set the dividing line of what activities needed additional review by the County Commission, not just 100 people. She said it could be the activity, such as a rock band, since it had the potential for noise. She said the proximity of neighbors could also be taken into account, as well as if the rock band would be in the middle of 180 acres,

which would be different than being adjacent to small lots. She said the County Commission could also benefit from general standards, such as exterior lighting late at night. She said they weren't trying to reinvent the wheel, just add to it.

Mr. McCullough said the issue started out with all permitted uses requiring a Conditional Use Permit. He said the State was advocating for encouraging agritourism and a Conditional Use Permit could be an onerous process for the applicant. He said the agritourism committee came up with the "mini Conditional Use Permit" process where it would go directly to the County Commission which was a quicker process and would require notice for over 100 people. He said if there were less than 100 people there would be no notice or process past the administrative process. He said there had been six administrative ones so far.

Commissioner Culver said he would like to see in the draft language the general nature of some of the activities and taking that a little further beyond the threshold of 100 people. He felt there should be a balance so as not to make this too much of an onerous process. He said looking at some of the impacts could be helpful for Planning Commission when looking at draft language.

Commissioner Josserand said the frequency of use was one parameter to help distinguish between them. He said for example, a wedding of 300 people could happen once or a wedding facility could have six weddings a year. He said that was different than a pumpkin patch that was really a commercial use. He said the connection to agritourism for such an ongoing facility should have a stronger case that it was agricultural. He agreed with Mr. Hird's observation that a 100 people may be too low for infrequent uses.

Commissioner von Achen inquired about the difference between seasonal sale of products raised on site and a fruit and vegetable stand.

Ms. Miller said there wasn't a whole lot of difference. She said seasonal sale of products raised on site could be done by any farmer at any time. She said a fruit and vegetable stand doesn't necessarily need to be grown on site.

Ms. Kooz said she was familiar with noise ordinances because she was a police officer. She said noise ordinances were near impossible to enforce without the proper equipment, such as decibel readers. She would like to see some sort of regulation added about products being grown on the property and not resold.

Mr. Hird said Ms. Kooz was correct, noise ordinances were hard to enforce. He said there was no requirement as an agritourism operator that anything be grown on the land. He said there were agritourism operators on the edge of the Flint Hills who provided walking trails and did not grow anything, but instead provide an experience in the country. He asked them not to confuse a requirement of growing something with agritourism. He said they may or may not have anything to do with each other.

Commissioner Josserand said to a degree an application for agritourism was being described as crop related. He said Ms. Kooz made a good point. He said it wasn't necessarily related to a crop but if that is what the business is, such as a pumpkin patch, they should be grown on site and not trucked in.

Mr. Hird said there were wineries in Kansas that did not own a single grapevine and it was still agritourism. He said it was agriculturally exempt unless they sell an item such as a wine glass.

Commissioner Josseland said he did not feel that wineries that did not grow their own grapes were agritourism. He felt they would be wine producers.

Commissioner Denney asked if any thought was given to when something stopped being agritourism and started being an amusement park. He wondered if an amusement park with cow rides in the county would be considered agritourism.

Mr. Hird said those questions were valid and the agritourism committee struggled with those types of questions. He said the example used in the committee was that nobody wanted to see a Tractor Supply pop up in the country contending it was an agritourism use. He said a petting zoo that involved farm animals for children to visit would be an agritourism use. He said it would be a difficult call in some circumstances. He hoped that in writing guidelines for the County Commission that they would be given something to latch onto with abusive situations, while preserving agritourism in Douglas County.

NO ACTION TAKEN

DRAFT

COMPREHENSIVE REVIEW OF PROPOSED REVISED AGRITOURISM REGULATIONS

OUTLINE

- Summary
- Complications to the review process
- Adverse effects of the regulatory revision process
- Point-by-point analysis of proposed changes
- Proposed alternative regulatory scenario

SUMMARY AND DISCLAIMER

These comments have been prepared in a very short period of time with inadequate opportunities to discuss intentions with Planning staff or County officials. There has also not been adequate time for final editing and proofreading. The haste required to even draft a complicated review in one weekend may have resulted in inconsistencies, redundancies, and overall poor editorial work for this review. Please accept in advance my apologies for not being able to complete a properly finished product, and please overlook any typographical errors, grammatical mistakes, stylistic inconsistencies, or small errors of fact.

The proposed regulations, while very problematic, have some good points, especially the idea of monitoring parking spaces rather than attendance. However, the proposed regulations are generally irregular in the degree of detail (i.e., type parking surface is never mentioned, but very specific details for parking screening is included). Many vague and undefined terms are used. In some cases, interpretation of the regulations as written may hinge on regulatory interpretations that are already being debated by the County with the possibility that past County determinations may need to be overturned (definition of “employees” and how it applies to volunteers). In other cases, overly broad terms interpreted literally could be overwhelmingly restrictive (i.e. the ban on “motors” for Tier 1).

The proposed regulations do not seem to fully allow for integration of agritourism activities into a farming operation. This is likely to create significant difficulties for enforcement of these regulations where distinctions are made between “agricultural” and “agritourism” activities.

Taken as a whole, the proposed regulations could end up forcing many very small-scale, agriculturally-focused agritourism operations into a Conditional Use Permit scenario. This is the opposite of the desired outcome of the agritourism regulations, which is to promote agritourism as a “tool for sustaining the family farm.” Requiring Conditional

Use Permits for low-impact, thoroughly integrated agritourism activities will in many cases result in fewer, yet higher-impact, agritourism opportunities in Douglas County because the expense and difficulty of the Conditional Use Permit process will discourage its use for minor agritourism operations. This could reduce the number of affordable opportunities for Douglas County citizens to enjoy Douglas County farms.

A proposed alternative regulatory scenario is presented at the end of this analysis, in hopes of suggesting a positive approach to achieving the desired ends of these regulations.

COMPLICATIONS TO THE REVIEW PROCESS

On the afternoon of Thursday, January 22, 2014, I was sent the draft language for the proposed new Agritourism regulations. Due to a busy farm and work schedule this week, I couldn't actually open it until late that evening. This is the first I knew that this issue would be on the Planning Commission agenda for Monday, January 27 for a public hearing. The deadline for written comments is 10 a.m. Monday morning.

This is totally inadequate lead time for someone who has invested a great deal of time, energy and money in the agritourism regulation and registration process—both regulatory development and farm registration—to do a thorough review and comment on a 7 page document that extensively revamps the mere 2 pages of regulations under which my farm is registered. Furthermore, it seems inadequate time for the Planning Commission to do a thorough review. I ask that the Planning Commission delay the Public Hearing on this matter until such time as the Planning Commission and stakeholders such as myself can have adequate time to carefully review the proposed changes, research their ramifications for existing operations, and prepare comments.

The review process is further complicated because the material that was sent out was inaccurate. One version was marked "Changes Shown," but the strike-out portions had altered numbering systems and omitted or added words that made it difficult to compare the documents. This exacerbates the difficulty in reviewing the proposed changes on such short notice by necessitating a word-for-word comparison to determine actual effects on existing agritourism operators.

ADVERSE EFFECT OF REGULATORY REVISION PROCESS

As one of the first registered Agritourism operators in Douglas County, I cannot begin to adequately express my dismay at the prospect of spending the next year or more once again focusing on regulatory development and registration processes, when I have barely had time to begin activities under my existing registrations. Because my state registration was completed several years prior to my County registration, my County registration will need renewed, and thus will be subject to, the new regulations within a couple years.

Meanwhile, I will have to spend my time following the regulatory development process instead of operating my farm or planning and carrying out actual agritourism activities

under my current registration. Unlike those in the local government who are making these changes, I don't receive a salary for this specialized and arduous work. Thus, this process of entirely revamping the agritourism regulations barely a year after they were originally promulgated has a significant negative economic impact on my farm business. This is the opposite of what the regulations are intended to do.

Furthermore, as a business operator, it is hard to make future plans with confidence when it appears impossible to predict a stable regulatory foundation on which to build. Quality agritourism activities take years to plan, build, and grow. If the regulations are subject to this degree of change after initial permits have been granted, thoughtful operators are not likely to invest their future in an enterprise where years of hard work might be for nothing if the regulations are rewritten again.

The proposed regulations are complicated. One result is that many farmers simply will not register their activities and hope to not get caught. Another result may be that mainly non-farmers or "get-rich-quick" operators will try to go through the registration process, potentially resulting in overall lower quality agritourism activities that don't adequately reflect the rich history and diversity of Douglas County land and farms.

OVERALL CONTEXT OF PROPOSED REGULATIONS

As one studies the overall zoning codes, it becomes apparent that there are many inconsistencies and gaps in the existing regulatory context. Because of such gaps and limitations in the code surrounding the Agritourism regulations, a situation is created where agritourism is actually regulated much more strictly than uses with much greater adverse effect on neighbors and motorists.

Furthermore, the enforcement context of both existing general zoning and land use regulations, enforcement of regulations is piecemeal and structured in a way that allows it to be used in a harassing or discriminatory manner.

There are several distinct aspects to any land use: activities to be carried out; buildings and other infrastructure to support the activities; and services (including roads, transportation, emergency services, sanitation, water, electricity, etc.) needed to support the activities. These must each be addressed in a manner that is consistent and appropriate across all land uses to assure the long-term orderly development of Douglas County as a desirable place to live and work.

POINT-BY-POINT ANALYSIS OF PROPOSED CHANGES

This section gives point-by-point comments on the proposed regulations, generally in the order of the written proposed regulations. As much as possible, I've tried to include specific examples of possible unintended consequences, especially from the perspective of how these proposed regulations could materially affect my farm's agritourism registration. Citations are from the "Draft Language (Changes Shown)" version that was emailed on 1-22/2014. I have tried to title each separate issue for ease of reference.

TYPOGRAPHICAL ERRORS AFFECTING REVIEW PROCESS

Starting on page 6, all sections are incorrectly designated, making computerized searches ineffective for navigating through the document. “12-309-7.____” should be “12-319-7.____”. The existing code at 2-309-7 contains a reference to “Supplementary height and area regulations.”

For purposes of this review, all references to the Agritourism codes will be referenced as “12-319-7.____.”

REQUIRED CONDITIONAL USE PERMIT

12-319-7.02(b)(3) requires a Conditional Use Permit for agritourism uses that don't fit the Tier 1 or Tier 2 parameters, yet there are many reasons a very low-impact agritourism use might not fit either Tier 1 or Tier 2 parameters. For instance, the incidental or ancillary use of non-farm motorized vehicles (i.e. a personal vehicle or a motorized electric mobility device kept by the agritourism operation to provide ADA accessibility) to provide accessibility to persons with disabilities would conflict with 12-319.7.06(b)(2). The overly broad ban on all motors in this same subsection would also throw many agritourism operations into the Conditional Use Permit process. Likewise, property line setbacks, hours of operation, etc. can all disqualify an operation from Tier 1 and Tier 2.

Requiring agritourism operators to go through the expensive, time-consuming and potentially contentious Conditional Use Permit process is counter-productive to the Agritourism regulations' stated goal of fostering and promoting agritourism as a means of economic development and sustaining the family farm.

My understanding was that the Agritourism registration process for Douglas County was intended to provide relief to farmers from going through the confusing, expensive and time-consuming Conditional Use Permit process for agritourism activities. In fact, I removed “Events” and “Farmer’s Market” from my attempted Conditional Use Permit precisely because these activities would no longer require a Conditional Use Permit under the then-new Agritourism regulations. Now I find I should have continued to pursue them through a CUP...in which case I might be several years ahead of where I am now in the implementation process. A new CUP (with new fees) will have to be done. However, I'm not allowed to submit a CUP for a year because my previous one (which started out including Events and a Farmer’s Market) was denied. The previous CUP process took over 4 years and was determined to not require a CUP after all.

LIST OF TIER 1 USES

12-319-7.03(a) includes a list of examples that is nearly synonymous with the full list of agritourism uses. However, some of the listed uses seem very likely to generate traffic greater than 25 cars:

(5) Corn mazes and Pumpkin Patches visits and activities

...

(12) Assembly type uses such as weddings, receptions; etc.

...

(14) Farm tours and demonstrations.

The regulation could be shortened and simplified by omitting this list, since it is not comprehensive anyhow (“but are not limited to” in 7.03(a); “7.03(a)(16) Other uses that may be determined on a case by case basis to meet the intent of the Tier 1 definition”). The focus should simply be on the low-impact nature of the proposed activities.

It is puzzling that while these potentially very high volume uses are included as Tier 1 uses, Farmer’s Markets are limited to only 4 vendors. Enumerating Farmer’s Market vendors can be problematic. Various markets and similar venues count them differently. Some go by the individual, regardless of relationship to other vendors or whether they are sharing a space or have a joint business. Some count individual business entities, even if they share a booth space. Some simply allocate square footage of space without concern for how many people or businesses use the space. If a limit on the size of Farmer’s Market is really appropriate, then it must be clearly defined.

However, it seems inappropriate to limit the number of vendors at a Farmer’s Market, when a pumpkin patch with a single “vendor” could have much higher traffic and sales, and be open all day, seven days a week, compared to a Farmer’s Market with many vendors that is open only a short time part of the week.

Perhaps it would make more sense, and be easier to enforce, to limit the number of days and/or number of hours per day that an activity can occur, rather than placing limits on, and trying to define, highly variable business relationships.

“NOT EXPECTED TO GENERATE...NEGATIVE IMPACTS...”

Estimating the impact of activities that haven’t yet occurred is a risky business. It is too easy for people who have not properly educated themselves on the details of a planned activity to fantasize imaginary worst case scenarios and make decisions based on what could happen, rather than what is actually planned or likely to happen. Neighbors alleging negative impacts without taking

Who gets to define “negative impacts”? The slightest thing could be perceived as a “negative impact” by a sensitive or oppositional neighbor...in one documented case, a landowner’s failure to rake fall leaves from a natural wooded area.

Distinguishing between agricultural activities (which are protected by state law from being considered “nuisances”) and agritourism activities can be very difficult and subjective, especially in areas of the county where mixed (residential, industrial, business, and agricultural) zoning and uses already exist.

“ACCESSORY TO ...A PARCEL”

12-319.7.03(b)(1) The idea that agritourism should be an accessory use to a farm is a sound principle, given the agritourism regulations’ stated goal of supporting farms. However, there are already outstanding regulatory interpretation and enforcement issues where Douglas County is not clear what it means for an activity to be a use “accessory to a farm” (in interpreting the Agricultural Zoning regulations at 12-306-2.17, “Ag Worker Mobile Home Exemption”). As of this writing, to my knowledge, Douglas County Zoning and Codes staff and Douglas County legal counsel continue to insist that “accessory use to a farm” is synonymous with “accessory use to a residence”, thereby preventing use of this mandatory permitted right in some cases. In the case of Agritourism, this sort of misinterpretation might prevent beneficial agritourism activities on parcels without residences.

I can only imagine that “accessory use to a parcel” will be just as problematic, and this wording could be used to prevent agritourism activities on farms comprising multiple parcels.

“CONTIGUOUS PARCELS”

Furthermore, it is not fair to penalize farm operators who have not been so fortunate as to find contiguous parcels, or who have bona fide agricultural reasons for creating a working farm that consists of scattered plots. One organic grower that I know relies on plots spaces several miles apart to rotate crops with enough separation to prevent spread of pests from one area to another. The requirement of contiguous parcels would force him to get Tier 2 approval from the County Commission in order to do U-Pick activities on scattered plots, or to do farm tours visiting more than one plot.

If the goal is to use Tier 1 (low impact) agritourism as a means of supporting farms operated by Douglas County residents, then this could simply be stated.

Noncontiguous parcels may still be very close together, and could easily be part of one agritourism operation, especially for very low impact activities such as those listed at 12-319-7.01(b)(9) or (10). The County may also need to address the reality that many farmers may operate farm businesses on land located in more than one county. I know of several cases where farm families actually changed their residence from one county to another according to the seasons of the year, summering with their livestock on Flint Hills pastures in the summer while moving themselves and their livestock to their Douglas County farmsteads during the winter.

“UNDER THE SAME OWNERSHIP”

Many farms are operated all or in part on rented ground, and some farmers may reside in rented residences. Land ownership can be further complicated by land held by trusts, etc. This restriction could exclude many bona fide farmers from accessing the liability protection of state Agritourism registration for very low impact activities. A requirement

of land ownership for low-impact agritourism creates an undue hardship for already disadvantaged farmers (young, women, minority, persons with disabilities, etc., who may have less access to land ownership).

12-319-6.03 addresses various forms of ownership in relation to Rural Home Businesses by stating “*If a business owner does not currently own the real estate on which the Rural Home Business Occupation is conducted, an affidavit of equitable interest or a copy of a lease evidencing a leasehold interest can be submitted as a substitute for fee simple ownership of the real estate.*” A similar approach could be used for the Agritourism regulations.

“AGRICULTURAL LAND USES”

This phrase needs to be defined, or else it could be construed as any use permitted under 12-306 “A” AGRICULTURAL DISTRICT REGULATIONS. This would include churches, colleges, country clubs, golf courses, etc.

“AGRITOURISM OPERATOR”

This phrase used at 12-319-7.03(b)(2), 12-319-7.05(a), 12-319-7.07(a), etc., needs to be clarified. As written, it may prevent multi-generational farm operations where adjacent homes are not available from allowing a subsequent generation of the family to start an agritourism operation on the family farm as part of a farm’s succession plan. However, in protecting the right of families by blood or marriage to use agritourism as a part of a generational succession plan, it is important to avoid discrimination against farmers whose successors are not related by blood or marriage.

“MOTORS OR MOTORIZED VEHICLES”

12-319.7.03(b)(2) references “motors or motorized vehicles” in a very broad sense. This would technically include all electrical, gas or diesel motors, including the cooling fan in a computer, a diesel generator to supply power for non-agricultural purposes (such as a food vendor providing concessions), refrigeration and HVAC motors, etc.

In many cases, it will be hard to determine whether a motor is used for an agricultural purpose or not, especially when motors are used for a variety of purposes.

What is the purpose of this restriction? Risk management? It is any business operator’s obligation to provide adequate and appropriate insurance for all activities, whether involving motors or not. Noise control? Then this section needs to focus clearly on limiting noise, rather than motors. Non-agricultural-use vehicles that have electric motors may be virtually silent, and should be allowed.

“DAYLIGHT HOURS”

12-319-7.03(b)(6) mandates that very low impact agritourism activities that must be conducted at night for agricultural or natural reasons (owl calling, lambing participation, sunrise religious service) must go through at least the Tier 2 process of review by the County Commission. Many would likely fall into the Conditional Use Permit category.

“LIMITED TO PROPERTY OWNER” [12-319-7.04(a) and 12-319-7.07(a)]

“Property...operator” is undefined, and is unfamiliar usage. Does this refer to a farm operator who leases instead of owns land?

Could an agritourism operator be a volunteer associated with an agricultural operation? Is this included in the concept of “employees”...i.e., how is “employees” defined for the purpose of this regulation? Since the county is still in the process of considering whether someone “employed on” a farm is the same as someone “employed by” or “an employee of” a farm, similar confusion could result from this requirement.

There are valuable agricultural lands that are not suited to residential use for many reasons—terrain (too steep, flood prone, ravines or creeks, too rocky, no water, no space for wastewater disposal, etc.), lot size, lack of frontage, etc. These sites may still be suitable for certain agritourism uses, yet the impossibility of having a home sited on them would seem to require that they go through the Conditional Use Permit process for any agritourism activity. This seems excessive for relatively solitary activities such as hunting, fishing, hiking, etc., that are required to register as Agritourism uses because they are not permitted by right agricultural activities, yet are unlikely to be significant income-producing enterprises for a farm.

“Immediate family” should be defined. Does this include cousins or aunts/uncles? Grandparents/grandchildren? Stepchildren? Ex spouses? What about same sex couples? What about farms that are organized as partnerships, cooperatives, LLCs, or corporations? How can this restriction be stated in a way that does not penalize people who don’t have conventional “immediate family” but who may have friends or business partners in lieu of family?

“NO PARKING MAY OCCUR ON ADJACENT ROADS” [12-319-7.04(b) and 12-319-7.07(b)]

No one can control where people park their cars, and I’m not sure that it’s even legally defensible to tell people that they can’t park in an area that isn’t designated “No Parking”. This should not be expected of Agritourism operators. The regulations should simply state that cars parked on public rights of way for purpose of attending an agritourism activity may be ticketed or towed as deemed necessary by the Douglas County Sheriff, and require the agritourism operator to inform participants that off-site parking is not allowed (via sign onsite or verbiage in advertising media). It isn’t fair to penalize the

agritourism operator for their guests' bad parking choices. In extreme cases, someone could deliberately park on the road in order to get the agritourism operator in trouble.

For agritourism operations where onsite parking is only occasionally scarce, temporary "no parking" signs could be used (hopefully with a streamlined system compared to the onerous City of Lawrence system requiring 4 different visits to two different, non-adjacent city offices.) For agritourism operations that frequently have a high parking demand, the operators could request that the county post permanent "No parking" signs along the road.

In a county where football and basketball games regularly lead to extreme parking shortages and very congested traffic, resulting in thousands of illegal parking situations that are routinely ignored but significantly inconvenience people living in those neighborhoods, it seems disingenuous to forbid parking on county roads that would be legal parking if the car were not being used as transportation to an agritourism event. All over town, students, store customers, and employees park on city streets because of inadequate parking lots provided for businesses and institutions.

On-site parking should be strongly encouraged because it is more convenient and safer for attendees, and agritourism operators should attempt to realistically correlate the size of events with the onsite parking available, as well as make plans for overflow parking that will not block traffic. I see no reason why this shouldn't include parking on one side of a road where it is legal to do so and traffic safety is not unduly compromised.

"PARKING IS CALCULATED...1...SPACE PER 2 ATTENDEES"

This requirement appears relative to Tier 1 registrations at 12-319-7.04(b) and 12-319-7.05(a)(3)(vi) and the corresponding Tier 2 sections.

Many agritourism activities are designed to appeal to families, resulting in an average of more than 2 people per vehicle...in some cases, as many as 7 or even more per family van for activities at my farm. A single school bus making a single field trip could carry enough students to mandate 15 parking places, yet there not be any parking place adequate to park the one vehicle! Agritourism operators can't control what vehicles people use.

Although many agritourism sites will be primarily accessed by motor vehicles, there are a several existing agritourism sites that are regularly accessed by people on bicycle, public transportation, or even on foot. This will significantly affect parking space requirements for some sites.

Each site and type of activity will be unique, and will have unique parking considerations. While it is reasonable that adequate parking be provided by the agritourism operation, setting one standard for correlating attendance with parking is not appropriate. Application for registration should include adequate information to determine a reasonable estimate for parking needs.

Allocating more parking space than necessary could create an eyesore, especially given the overly-specific yet inadequate screening requirements.

SCREENING OF PARKING AREAS [12-319-7.04(c) and 12-319-7.07(c)]

Screening of parking for agritourism activities can be problematic in many ways.

In many cases, it is simply not possible to screen a site from the road right of way because of driveway entrances, need for sun to grow crops or provide proper light for livestock, etc. Screening can obstruct vision and present traffic safety hazards. Law enforcement recommends trimming bushes and shrubs to prevent hiding places. The required types of screening may obstruct a neighbor's view of a treasured landscape year around for the purposes of concealing cars parked there just a few times a year. The required types of screening may all be out of character with the existing landscape, or not well suited to a particular site.

The degree of screening and landscaping proposed for Agritourism uses far exceeds that required for industrial uses on industrial zoned land. Agritourism operations located in areas near non-residential zoning and uses should not be subject to more stringent landscaping and screening requirements than more intensive uses.

Screening as specified may also be impossible to maintain in areas that are used for parking part of the year and for livestock or crops the rest of the year. Permanent screening for seasonal agritourism activities could require an operator to forego agricultural use of part of the farm, making the agritourism less of an "accessory use."

As an aside, the County should revisit screening requirements and their enforcement for Business and Industrial zoning districts. Many of these are written to require screening only from the street, not from residences or from side or rear lot lines. Such business therefore can have a significant depreciating effect on otherwise high quality agricultural environments.

"LANDSCAPING SHALL CONSIST..."

The specificity of this subsection is daunting and out of character with the rest of the agritourism regulations, especially in the context of other similar regulations such as the Rural Home Business regulations.

Rural Home Business regulations (Type II), at 12-319-6.02, require the following: *All parking spaces shall be located a minimum of 50 feet from property lines and public rights-of-way, and shall be screened by landscaping, a fence, or buildings so it is not visible from the public rights-of-way or from adjacent residences.* There is no need for agritourism regulations to spell out required screening in more detail than that...especially when the screening specified for agritourism would not even meet the performance criteria for a rural home occupation.

Since the Rural Home Business regulations already are not enforced, to the detriment of residential and agricultural neighbors, it seems unfair to put these restrictions on agritourism operators, who may have far less intensive uses.

Depending on the location of a farm, and on weather conditions and water availability, establishment of natural vegetative screening may be difficult, expensive or impossible. At best, it may take years for vegetation to reach the required screening specifications. Berms may cause or exacerbate drainage issues. Fencing and walls may not be harmonious with the rural landscape or with the agritourism activity, may be extremely expensive for a large site in proportion to the level of agritourism use, and may be vulnerable to wind damage in exposed locations.

Berms, walls, fences, and vegetative screening can all either improve or exacerbate snow drift conditions, potentially creating serious hazards to the public health and safety especially in remote rural areas.

A height of three feet seems insufficient to significantly screen a parking area in terms of “hiding” it within a rural landscape, especially in hilly terrain. Requiring such inadequate screening may have little effect other than increasing costs to the agritourism operator and creating an eyesore and hazards.

12-319-7.04(d) “NO EXTERIOR LIGHTING”

This ban is much too broad. As stated, it would preclude the use of small solar walk lights to demarcate paths or illuminate tripping hazards. Also, for enforcement purposes it could be very difficult to distinguish between lights installed for agritourism uses and lights installed for residential or agricultural uses.

The worst case scenario is that an operator trying to avoid the onerous registration process of appearing before the County Commission for a Tier 2 registration might choose to not install lights in a situation where safety and common sense would dictate the use of lights.

12-319-7.07(d) requires that light for agritourism activities be shielded. However, exterior lighting for residential use and Rural Home Business use is not restricted from encroaching on other residences, agricultural operations, or agritourism sites. Likewise, any business and industrial zoning uses don’t require shielding from properties to the side or rear, but only from the street. In all cases, whatever regulations exist are not enforced. It is unfair to expect a higher standard from agritourism operations.

If 12-319-7.03(b)(6) is retained, specifying that all Tier 1 agritourism activities occur during daylight hours, there is no need to address lighting at all for Tier 1 agritourism registration, because any lights would not be associated with the agritourism.

“200 FOOT SETBACK”

12-319-7.07(f) prohibits agritourism-related activities that are not agricultural from occurring within 200 feet of a property line for Tier 2 registrations. Since many very low impact agritourism uses will fall into Tier 2 due to relatively minor shortcomings such as activities after dark, it is unfair to apply a 200 foot setback to all agritourism related uses. Consideration must be given to the site characteristics, surrounding land uses, and nature of agritourism activities. A 200' setback is unnecessary for a small intimate poetry reading around a campfire in a secluded valley far from any residences...especially if the adjoining property is a gravel quarry used only by day.

This requirement also in many cases would prevent an agritourism operator from scaling up a Tier 1 agritourism operation to Tier 2. For example, a Tier 1 Farmer's Market (4 vendors, not after dark) that expanded to a Tier 2 Farmer's Market (5 vendors, open until 6 p.m. in December) might need to be significantly relocated to meet the 200' setback. Small agricultural parcels, especially those that don't have residences, might not even have any space that would meet the 200' setback from all sides.

It is also important to keep in mind that "agricultural uses" can be construed to include all uses permitted in the "A" Agricultural District. In this, many high-impact uses would be allowed while low-impact agritourism uses would not be.

Since this restriction would bump many smaller sites into the Conditional Use Permit category, it would disproportionately affect disadvantaged farmers who may be more likely to have small properties.

Some non-agricultural activities may be carried out in pre-existing buildings such as homes or barns that may be located less than 200' from a property line. Ponds, woods, etc. may also naturally exist closer than 200' to a property line. It would be unfair to preclude the use (and often, therefore, preservation) of historic buildings, or to prevent birdwatchers from hiking within 200' of the property line.

Also, this is worded so that the 200' setback would be from each property line of individual parcels within a contiguous multi-parcel site.

12-319-7.04(e) SANITARY FACILITIES

Adequate information should be provided for the potential agritourism operator to be able to find the applicable requirements.

"AGRITOURISM REGISTRATION PROCESS"

Both Tier 1 and Tier 2 applicants should be required to submit IRS Schedule F or other proof of farm business activity.

Tier 1 applicants should be required to show that the agritourism activity will be operated in such a manner that it is truly accessory to the agricultural uses carried out by the operator.

“1000 FOOT NOTICE RADIUS”

12-319-7.05(b) and 7.08(b) require notices to be sent to all property owners within a 1000 foot radius of the proposed agritourism site.

Conditional Use Permits and similar processes require a 1000 foot radius outside the city limits, but only a 200 foot radius within City Limits. There are already more than one agritourism sites (whether registered or not) that are adjacent to City Limits. Tier 1 and 2 registrations should not be sent to more people than a rezoning or Conditional Use Permit notice; this is an unnecessary expense for the County.

“INTENT AND PURPOSE OF TIER 1 DEFINITION” [12-319-7.05(c)(1)]

If these are to be used as a standard for review, they need to be clearly spelled out.

“COMPATIBLE WITH ADJACENT LAND USES” [12-319-7.05(c)(5)]

In some cases, the screening required under 12-319-7.04(c) and 12-319-7.07(c) may make the agritourism less compatible with adjacent land uses, and may not enhance the rural character of the landscape.

“LIGHTING TRESPASS OR GLARE” [12-319-7.07(d)]

Shielding requirement is more stringent than for any other use. No shielding is required for residences or street/highway lights. This creates a situation where agritourism activities requiring a dark nighttime environment can be impinged upon by others, but agritourism activities may not be able to effectively light their own premises. There is apparently no way to enforce any existing light regulations because inspectors don't work at night and the sheriff says it's a civil matter that they can't do anything about.

PROPOSED ALTERNATIVE REGULATORY SCENARIO

Agritourism regulations should provide a framework that:

- Allows Douglas County farmers to add agritourism enterprises to their farms in a sustainable and incremental manner that is relatively free from additional regulatory restrictions or burdens;
- Provides assurance to neighbors that agritourism activities will not unreasonably interfere with their peaceful enjoyment of their property;
- Protects agritourism operators from unreasonable harassment from neighbors;
- Provides measurable, clearly defined standards so that agritourism operators can properly plan their agritourism enterprises.

- Allows enough County oversight to ensure orderly implementation of agritourism uses, and also
- Spells out clear enforcement criteria and responsibilities, as well as problem-solving strategies for minor disputes and consequences for willful or repeat violations, so that any problems can be solved on a timely basis while respecting property rights of all parties.

The regulations should be as general as possible to apply to a wide range of agritourism activities and encourage innovation. In many cases, the best agritourism operations are well-integrated with actual agricultural enterprises, thus truly connecting farm visitors with a hands-on Kansas agriculture experience. Care should be taken to preserve and encourage this intimate connection, while encouraging farm operators to allow the public onto their farms through support such as the State's Agritourism Liability Waiver.

Agritourism regulations should provide a means of allowing Douglas County farmers to have additional economic enterprises utilizing existing farm resources, while having a reasonably minimal, but not necessarily non-existent, effect on neighbors to the agritourism site.

It must be remembered that in many cases, non-agricultural residential uses were "new" uses in rural Douglas County and impose their own set of nuisances on agricultural neighbors, including many of the same types of nuisances which agritourism regulations attempt to minimize. This means that the regulations must be stated in terms of easily measured criteria, with clear enforcement criteria and consequences for violations. Neither the existing nor proposed regulations adequately achieve this.

12-319-7.01 should include a full range of definitions, including but not limited to:

--Agritourism activities: [definition and list from existing code].

--Agritourism operator(s): the individual(s) with financial and legal responsibility for the agritourism activity. Describe acceptable relationships to farm operation, to landowner, and to land/residential tenants.

--Agritourism site: The physical location of the agritourism activities, i.e., where people will be. This may include one or more parcels owned or leased by the agritourism operator. Parcels need not be contiguous if the agritourism use of non-contiguous parcels would not result in significantly increased adverse effects to neighbors. No minimum size, either implied or express.

--Agritourism hours—include all hours that guests/customers/visitors are present at the farm, but do not include preparation or clean-up times by agritourism operators or their employees, contractors, vendors or volunteers. Hours for overnight guests are considered separately from guests not sleeping at the agritourism site.

--Overnight guests—Paying guests sleeping at the agritourism site. Should not include guests present only for night-time waking activities such as sunrise services, astronomical observations, wildlife experiences, birthing experiences, etc.

--Volunteers—

PRIVATE ACTIVITIES PERMITTED BY RIGHT

Nothing in the agritourism regulations should be construed as restricting the rights of landowners, tenants, family members and personal friends of landowners and tenants to exercise the full range of uses of their agricultural property permitted under the “A” Agricultural District, including the right to hike, hunt, fish, picnic, camp and otherwise enjoy the recreational, educational, natural, spiritual, cultural and agricultural resources of their land, when these opportunities are shared with no charge to people personally known to the landowner or tenant and no site modifications or permanent infrastructure are provided by the landowner/tenant to support the activities. Agritourism registration is not required for the incidental enjoyment of the rural landscape.

Conversely, registration/regulatory oversight is entirely appropriate for private events of certain types and scales. It is very difficult to distinguish between large private events and small agritourism activities. In the past year, a neighbor’s “private event” included an intensive fireworks display on a 4-acre lot with hundreds of attendees and large numbers of vehicles parked unsafely on the street. No sanitary facilities seemed to be provided. Smoke and noise, as well as traffic, caused significant distress to the neighboring agricultural operation. Activities were very close to neighboring residences. Parking was set up in a manner that would not have allowed emergency vehicle access. However, full Tier 2 type agritourism, including a ban on street parking, proper parking and lane layout, etc. was required for the agricultural operation to host its traditional Sheep Shearing Open Farm Day.

Agritourism registration or special event permits should be required for some private events otherwise permitted by right due to potential for adverse effects on neighbors and motorists. Landowners should consult with the Dept. of Zoning and Codes if they are planning a large group event (greater than 30 people expected attendance?) or an event that is likely to generate nuisance to the neighbors or passing motorists.

Landowners/tenants must ensure that:

- The private landowner/tenant event is held entirely on land owned or rented by the host/organizer of the event;
- The private landowner/tenant event does not create nuisance conditions outside of their own property due to dust, noise, or lights impinging on neighbors or on the public road;
- Parking for a private landowner/tenant event does not create or exacerbate unsafe driving conditions due to roadside parking;

- Provisions adequate for the expected attendance are made for sanitation, safe drinking water, fire safety, and emergency vehicle access;
- No more than one event requiring parking of more than 10 cars is held per week.

Private landowner events are not covered by the state agritourism liability waiver.

[This is no more of a restriction on personal freedom than is a building permit for constructing a home or other permitted-by-right improvements.]

AGRICULTURAL EVENTS

State agritourism registration is often used by innovative farmers to allow the public to participate in agricultural activities without incurring liability for personal injuries sustained by guests on the farm. State agritourism has thus significantly helped farmers to access volunteer help for intensive agricultural operations while making agricultural experiences accessible to the public. The County agritourism regulations should enhance this, not discourage farmers from allowing the public to their farm by way of onerous parking screening requirements, Conditional Use Permits, restrictive time frames (i.e.e, daylight hours), etc.

Volunteers who assist with essential farm operations should not be considered agritourism participants, but certain ancillary activities such as a harvest party that is open to families and friends of volunteers as well as the volunteers could be considered an agritourism event. Thus, context of a person's presence on the farm may determine whether their hours count towards a Tier designation in the following scheme. Agritourism registration regulations should never interfere with farmers accepting volunteers to help with their farm business operations.

To better segregate Agritourism into tiers based on potential impact and need for regulatory oversight, I suggest the following divisions:

--TIER 1 AGRITOURISM—defined as agritourism activities limited to:

5 or fewer days per week, less than 4 hours per day, AND/OR
3 or fewer days per week, less than 12 hours per day,

AND with parking provided for 25 or fewer vehicles,

AND no overnight guests,

AND operated as an accessory activity to an existing farm business, as documented by ___ years of IRS Schedule F or other reasonable documentation of a farm business associated with BOTH the agritourism operator and the agritourism site.

This allows weekend and long-weekend all-day events, as well as morning or evening events, reassuring neighbors that inconveniences or minor nuisances will not be

constant. This scale of operation is easily done as an accessory use to a farm within the framework of a farm family or small business operation.

--TIER 2 AGRITOURISM

7 or fewer days per week, less than 4 hours per day, OR
5 or fewer days per week, less than 12 hours per day, OR
3 or fewer days per week, more than 12 hours per day.

AND/OR parking provided for 100 or fewer vehicles at any one time,

AND/OR overnight accommodations consisting of [5] or fewer guest rooms/guest room equivalents.

AND operated as an accessory activity to an existing farm business, as documented by ___ years of IRS Schedule F or other reasonable documentation of a farm business associated with EITHER the agritourism operator or the agritourism site.

This scale allows for a larger, more stand-alone agritourism operation, while still giving neighbors and operators some “days off” from the agritourism operation. More planning and oversight is appropriate for situations with more guests, overnight guests, etc. This level also allows for a looser connection between the farm operation and the agritourism operation, acknowledging that this scale of agritourism might start to become a full-time job for the operator rather than a sideline to farming.

--AGRITOURISM REQUIRING CONDITIONAL USE PERMIT

More than 5 days per week with 4-12 hours per day, OR
More than 3 days per week with more than 12 hours per day.

AND/OR provisions for more than 100 vehicles at any one time,
AND/OR overnight accommodations consist of more than 5 guest rooms/guest room equivalents,

AND/OR agritourism activity is not associated with an existing farm business

AND/OR farm business is not primarily located in Douglas County

AND/OR agritourism operator is not associated with an existing farm business.

[These definitions of the levels prioritize Agritourism as an opportunity for existing farmers to utilize their existing resources in innovative ways, while still allowing new operations not associated with farms to operate agritourism activities through Conditional Use Permits.]

12.319.7.02 REGISTRATION AND APPROVAL PROCESS

Generally as currently promulgated, modified to reflect the “Tier 1” and “Tier 2” designations.

12-319-7.0_ STANDARDS

All agritourism activities must meet the following standards:

- Be registered with the State Agritourism program.
- Be carried out on land zoned “A” Agricultural.
- Complete the appropriate application process for Douglas County agritourism registration.
- Develop and comply with a site- and activity-specific drinking water plan in cooperation with the Douglas County Health Dept.
- Develop and comply with a site- and activity-specific sanitation (wastewater disposal) plan developed in cooperation with the Douglas County Health Dept.
- Develop and comply with a site plan and/or narrative description detailing how any anticipated adverse effects on surrounding properties or residents will be mitigated. Site plan and/or narrative must show, at a minimum:
 - Proposed agritourism use(s). There is no limit to the number of uses that are allowed for a permit, but the most stringent applicable registration level will apply to all uses (Tier 1, Tier 2, or Conditional Use Permit).
 - All structures to be utilized for the agritourism use, including dimensions and distance to the nearest property line, and their status as Ag Exempt buildings if applicable;
 - Areas where the agritourism use will occur and areas where agritourism participants will be allowed.
 - Access and parking areas shown and dimensioned, noting the total number of spaces.
 - Means by which participants will be prevented from parking on public roads;
 - Means by which lights, dust, noise and other potential nuisances to neighbors will be abated to meet neighbor concerns;
 - Proposed hours of operation;
 - Expected attendance.
 -
- Develop and comply with an emergency response plan [in cooperation with ____?].
- Comply with any applicable local, State or Federal regulations, including but not limited to regulations pertaining to Sales and other taxes; Weights and Measures; labor; building codes; food service; overnight accommodations; nuisance ordinances; fire codes; liquor licenses; etc.
- Re-register with both the State and County every time the State requires re-registration.
- Amend State and County agritourism registrations whenever significant changes are made to the agritourism activities; operators; site, water and sanitation plans; etc.

- Notify the County whenever a minor change (days or hours not resulting in a change between Tier 1 and Tier 2;) in agritourism activities might result in additional effects on surrounding property owners, such as increased hours of operation.

Agritourism uses requiring a Conditional Use Permit shall meet all of the above standards as well any other requirements of the Conditional Use Permit.

All documents (registrations, plans, etc.) pertaining to the Agritourism registration shall be a matter of public record and available to the public online or by request at the Douglas County Zoning and Codes office.

On-site burning to dispose of refuse, rubbish or trash from agritourism activities shall not be permitted unless special facilities are constructed consistent with EPA standards. Only normal recreational fires using conventional natural fuels; burning of natural materials as part of an agricultural process; and disposal by burning of normal agricultural waste; are allowed. Waste from agritourism activities must be transported to a licensed landfill for proper disposal.

ENFORCEMENT

Enforcement shall be based on compliance with the plans required by the Agritourism standards.

Unless the complainant can demonstrate a compelling reason not to do so, complainants shall discuss (in person or via phone or email) and attempt to work out resolutions to problems directly with the agritourism operator before bringing complaints to the County Zoning and Codes office.

If a satisfactory resolution can't be reached by the complainant and the agritourism operator, the complainant may file a written complaint, along with documentation of previous attempts to resolve the matter, with the Douglas County Zoning and Codes office. Complaints should clearly specify the standard being violated and the adverse effect on the complainant.

Zoning and Codes office shall determine whether a standard has been violated and specify remedial action as needed, including reasonable deadlines and standards for compliance. Zoning and Codes office will inform both the complainant and the agritourism operator of the determination and any required remedial action. If possible, Zoning and Codes office will meet together with complainant and agritourism operator to work out an acceptable solution to the situation.

If an agritourism operator fails to comply with the request for remedial action within the specified time, or repeatedly violates applicable standards, the County may revoke the Agritourism registration permit. Once the Agritourism registration has been revoked, then

any violations of “A” Agricultural District codes may be addressed according to the means provided for by that code.

Mary Miller

From: Ifinger@douglas-county.com
Sent: Monday, January 27, 2014 10:16 AM
To: Mary Miller
Cc: weinaug@douglas-county.com
Subject: Comments on Agritourism proposed text amendment

Mary,

I think the proposed amendments are on target with and substantially address the concerns raised by neighbors and the County Commission.

I do have a few specific comments/suggestions about the proposed language:

- 12-309-7.03 – Assembly type uses such as weddings; receptions; etc.
 - This use is written rather broadly and all encompassing, opening it to misinterpretation and misunderstanding. As I understand the proposed language, there is a parking limit of 25 spaces. It would seem this needs to be reflected in this “use” section as “small” weddings and receptions, to reflect the limitations imposed by the parking lot maximum.
 - It also may be that assembly uses of any kind should be under the Tier 2. I think that would more adequately address concerns raised with assembly type uses
- 12-319-7.05 – Agritourism Registration Process
 - Under b., the notification should be made by the agritourism operator similar to what is required with Special Events Permits.
 - This would address a primary concern raised by neighbors that the owner of the agritourism use could not or would not meet with them or communicate with them. For an administratively approved use, we need to encourage the open and on-going communication between property owners.
- 12-319-7.04 –Agritourism Use Standards
 - Under c., if a 3-6’ fence is to be allowed/permitted in the front of the property it needs to be behind the front yard setback to address sight distance and ditch maintenance issues.
 - If the fence is to be above 3’, which is permitted by the Zoning Regulations, I think it does need to go to the BZA. Writing an exception in a Zoning Regulations is not the way I would recommend addressing this issue. Neighbors need to have a say in how this will impact their property and use of their property.

*The fencing and notification comments should be read as applying to both Tier 1 & Tier 2 uses, although I only cite the sections for Tier 1.

I won’t be able to attend tonight’s public hearing and hope you can convey this to the Planning Commission.

Thank you for the opportunity to comment. Please let me know if you have received this communication in time to be distributed to the Planning Commission. If not, I will find another individual to read my comments at tonight’s meeting.

Linda M. Finger, AICP, CFM, RLA

Interim Director, Douglas County Zoning & Codes Department

Planning Resource Coordinator

lfinger@douglas-county.com

785.331.1343

785.331.1347

Mary Miller

From: Nuts2sell@aol.com
Sent: Friday, January 31, 2014 12:20 AM
To: Mary Miller
Subject: PS to draft revisions to Agritourism Regulations in DG County Zoning Regulations

Ms. Mary Miller, AICP
City/County Planner
Douglas County, KS

Re: your message about Agritourism Regulations

Dear Ms. Miller:

I am very pleased with your reply and your appreciation of the problem I mentioned.

As a post script to my earlier message, after inquiring to a Kansas agritourism administrator about my upcoming (December) renewal of registration, Sue Stringer offered the following advice:

Be sure to list all of the activities/experiences for visitors when renewing. Those listed are what are covered under the limited liability protection of the Kansas Agritourism statute. Douglas County reviews the state registration now for approval in Douglas County.

It occurred to me that an even more serious problem could arise from the attempted inter-linking of Douglas County land use laws with the Kansas Agritourism Promotion Act. See draft Sec. 12-309-7.09(b)(1)--personal injury liability.

What happens to the limited liability/assumption of risk under Kansas Statute, KS 74-50,169 et seq., if Douglas County disapproves of an activity as a matter of purely local zoning law? This is much more serious than zoning law violations. Please don't mess with our limited liability.

Furthermore, the definition of agritourism by Douglas County Zoning Sec. 12-319-7.01 is not the same as the definition of agritourism under the Kansas Agritourism Promotion Act, KS 74-50,167. The State law is a voluntary program to encourage and promote. The County's interest is to restrict and regulate. Apples and oranges. Unless the definition of 'agritourism' is identical in both laws, inter-linking one as a condition for the other makes little sense and more confusion.

Since yesterday I have had the time to review Linda Finger's testimony and other testimony in regards to this issue and suggest language needs to be inserted into this part to effectuate what Linda and other staff represented, to remove any doubt. I suggest:

Insert, in Zoning Code part 12-319-7, Agricultural Supplemental Use Regulations, preamble:

1. Nothing in this part shall be interpreted to restrict or regulate any land use which is otherwise lawful under any other subsection of Part 12-306, "A" Agricultural District Regulations;
2. Nothing in this part shall be construed to affect any rights, liability, or defenses which may be granted to any registered operator of any registered agritourism activity on a registered agritourism location under the Kansas Agritourism Promotion Act, KSA 74-50,165, et seq,
3. Any operator conducting a lawful activity or use which is allowed on its location under any other section of this Zoning Code and which may also, incidentally, be characterized as "agritourism" may, but shall not be required to, register that activity with Douglas County under this part, in which case the operator shall voluntarily comply with all the additional applicable conditions and restrictions imposed by this part for the duration of such Douglas County registration or until registration shall expire or be surrendered.

This is my additional suggestion. Having reviewed the record more completely, I am very impressed how much work has already been done on this issue. Thank you.

Charles NovoGradac

In a message dated 1/30/2014 8:33:40 A.M. Central Standard Time, mmiller@lawrenceks.org writes:

Charles,

Thank you for your comments. I have not had a chance to read them thoroughly yet, but I will and will work to address your concerns.

The language should perhaps be more clear that uses which are 'Agricultural' are not regulated by the Zoning Regulations and therefore no registration is required, but is encouraged. If you have an agricultural use that is also agritourism, such as your agritourism uses, you are not required to register but are encouraged to. (I agree, with the new regulations, you may not want to since there would be additional requirements.) A new tier for those Agritourism uses which are solely Agricultural uses---with no additional requirements--- might be appropriate.

We will work to revise the language and I will send new draft language out in a few weeks. I will compile all the comments I receive and provide these to the Commission so they will have that information to consider as well as the staff report and draft language.

Thank you very much for your input!

Mary

Mary K Miller, AICP, City/County Planner- mmiller@lawrenceks.org

Planning Division | www.lawrenceks.org/pds

P.O. Box 708, Lawrence,KS 66044

Office (785) 832-3147 | Fax (785) 832-3160

"Your opinion counts! Customer feedback helps us serve you better. Please tell us how we're doing by completing this short online Customer Satisfaction Survey: <http://lawrenceks.org/pds/survey/satisfaction>."

From: Nuts2sell@aol.com [mailto:Nuts2sell@aol.com]

Sent: Wednesday, January 29, 2014 10:27 PM

To: Mary Miller

Subject: draft revisions to Agritourism Regulations in DG County Zoning Regulations

(Novogradac
comments on Jan. Draft)

Ms. Mary Miller, AICP

City/County Planner

Douglas County, KS

Re: your message about Agritourism Regulations

Dear Ms. Miller:

I find the proposed Agritourism regulations for Douglas County confusing and overreaching. I fear they will burden my existing, formerly lawful agricultural project.

I hesitate to criticize knowing the Herculean effort which has gone into this project. I appreciate the effort to simplify and facilitate agritourism as an adjunct to existing farms--the intention was good. The result no so good.

As an operator of a State registered agritourism operation in two counties, looking at the Douglas County regulations and trying to harmonize all proposed and existing Douglas County zoning regulations applicable to "A" Agricultural, I fear it is time to concede that the pre-existing C.U.P. procedure was the best solution after all.

I am presently overseas and unable to confer with you by telephone, so there may be some transparent misunderstandings on my part. But the defining examples of agritourism in the supplemental regulations, being specific, encroach upon the otherwise lawful uses elsewhere permitted.

If "Agritourism is the intersection of agriculture and tourism," which has the right of way.

You state in your letter, "Please note this does not affect those Agritourism uses which are agricultural. These do not require registration." I have searched the materials you sent me for authority backing

up this statement and find none. How do you resolve basic uncertainties, such as: What about occasional hunting? Wild crop gathering? Farm stands and on-farm sales? When all the regulations are read together and harmonized, including Sec. 12-306-1, with the current and proposed agritourism regs, there is too much room for distrust and confusion and over-regulation by the Director.

For a hypothetical instance, "Commercial Riding Stable" is a permitted use under 12-306-2.06 subject to 200' building setbacks. But "horseback riding" is "agritourism" under 12-319-7.01, and "equestrian facilities" is specifically listed as a Tier 1 use. 12-319-7.03(a)(10). If regulated as agritourism, the riding stable would be subject to privacy fences, berms, or hedges, to less than 25 spaces parking, the operator must be resident, etc. If the Tier1 status conditions cannot be met, then there is the additional condition of review by the County Commissioners and whatever conditions they deem appropriate. And the permit is for 5 years only. If you say section 12-306-2.06 controls, then the words "horseback riding" and "equestrian facilities" become totally superfluous in the supplemental chapter, mere empty verbiage. Contrarywise, section 12-319-7.01, being more specific and later in time, must control, ergo amending Section 12-306-2.06 becomes null and void.

Back to a real case, my case, my wife and I own three State registered agritourism locations. I registered these three properties with Kansas not to start new businesses but to receive the benefits of limited liability under state law. I had no need to register with Douglas County, which worked this whole thing up subsequently.

Our Douglas County farm is on "A" Agricultural zoning. It is a nut orchard with inter-planted fruits, berries, and Christmas trees where customers buy on-farm, including U-pick, and enjoy the surroundings. We sell only what we grow there, so we needed no C.U.P. From about 1995, we followed the advice of City/County staff, interpreting what is now Sec. 12-306-1 which allows, "the processing and sale of agricultural products raised on the premises." Furthermore, Sec.12-306-2.01 specifically allows, in our zoning, "temporary stands for seasonal sale of products raised on the premises." That implies a "farm stand". And customers may also harvest their own nuts and cut their own Christmas trees.

But U-pick and farm stands are now specifically enumerated on a list defining agritourism activities. (Remember the basic rule of legal construction: the specific controls the general, and the later controls the earlier.) U-pick and farm stands are, under the existing 13-319 regulations, as proposed to be amended, subject to and conditioned upon an additional county registration under Sec. 13-319-7.02, with all the "shall do this", etc., etc. all as outlined in your proposed regulations.

I don't think the agritourism regulations in principle intended to restrict or place burdensome regulations upon on-farm sales. But they do just that. In our case, your proposed regulations go even further to make us Tier 2, the more intensive disturbing kind of operation permitted only by the County Commission, which is utterly ridiculous considering the scale of our operation..

Under Sec.12-309-703 (b)(2), our Douglas County farm cannot be a Tier 1 agritourism because we do not "reside" on our orchard. We have three separate farms registered with the State. (We live in town.) Therefore, any agritourism use would be subject to extraordinary conditions, including that we must get permission from the County Commission. And meet all the other burdensome conditions. See Sec. 12-309-7.08.

This proposed regulation that an operator must reside on the parcel seems particularly bizarre. Two of our farms (outside Douglas County) are State registered for including the agritourism activity of "hunting." An operator's residence around hunters would be particularly disadvantageous, even imprudent, considering wildlife habits not to mention safety. The residence requirement does not meet even the minimal "rational relationship" test.

A further issue is building permits and codes. It is pretty clear that agritourism facilities need to meet building codes and inspections. 12-319-7.10. But buildings for agricultural use are not subject to inspection in Douglas County. Where does the farm-stand stand when crossing the "intersection of agriculture and tourism."

I suspect many other problems with the regulations, as proposed, will arise as individual cases and situations are discussed.

This system is not acceptable. Normal agricultural uses have to be defined and protected. Everything need to be written more clearly. I recognize the epic struggle and heroic effort to get this far, and all the good intentions, but not every situation is foreseeable and it may be that the CUP procedure was the right answer all along.

Insomuch as I have increasing requests for U-Pick, farm visits, and farm sales, which the proposed new regulations purport to touch, I do now wish to join the discussion. However, we cannot be available for any meetings in Lawrence until spring, when we return from overseas. If you would be so kind to forward these comments to the record and to keep me informed by email I would be grateful.

Thank you for notifying us of this new regulatory scheme and giving us the opportunity to comment.

Charles NovoGradac

Chestnut Charlie's Organic Tree Crops

Mary Miller

From: bdwood@ksu.edu
Sent: Wednesday, February 19, 2014 11:33 AM
To: amalia.graham@gmail.com; montanastan62@gmail.com; johjossrand@gmail.com; pkelly@usd497.org; bculver@bankingunusual.com; denney1@sunflower.com; squampva@aol.com; clay.britton@yahoo.com; bruce@kansascitysailing.com; eric.c.struckhoff@gmail.com
Cc: Mary Miller; amiller@cilawrence.ks.us; smccullough@lawrence.ks.org; Eileen Horn
Subject: Agritourism Revisions
Attachments: Attachment information; AgritourismLetter2-18-14.pdf

Members of the Planning Commission,

I trust your day is going well. Thank you for serving on the Planning Commission.

Attached is a letter from the Douglas County Food Policy Council subcommittee that has interacted with Mary Miller concerning the Agritourism revisions that are presently being worked on. The letter spells out our comments from a meeting we had with Mary recently.

I know Mary has already started work on a "decision tree" publication that is looking good.

Thanks for your consideration of our comments. We appreciate your work on the Agritourism regulations.

Billy D. Wood
County Extension Director
Douglas County Fairgrounds 785-843-7058
2110 Harper Fax 785-843-6745
Lawrence, KS 66046-3240 bdwood@ksu.edu

"What we really need to pursue in life is not success, but excellence. Success is attained at the expense of someone else's failure, but excellence is doing the best you can with what God has given you."

Steve Largent- NFL Record Holder

February 18, 2014

Dear Members of the Planning Commission:

The County Policies Subcommittee of the Douglas County Food Policy Council has an interest in the Agritourism zoning regulations. Bill Wood represented the committee at the November 21, 2013-stakeholder meeting.

Eileen Horn, Douglas County Food Policy Council staff member, and Mary Miller of the Planning Department updated the committee on the revisions process.

Mary Miller met with the subcommittee on February 7. She explained the current draft language in the 12-329-7 Agritourism Supplemental Use Regulations. The committee gave feedback on the draft language.

The following points were discussed:

- Clarify at the beginning of section 12-319 which agriculture uses are exempt. The committee is concerned landowners may think these activities now require registration.
- Clarify early in the section if you host agritourism activities infrequently, you can use a special event permit.
- Change the Tier 1 (low intensity) Agritourism Uses Defined 12-30907.03 # 2 to Farmers Market with 10 or fewer vendors. It is believed this still represents a very low-impact and low-traffic generating activity at 10 vendors.
- ADA parking on page 4, letter b may need to be explained. There may be confusion about the type and amount of parking needed.
- The notification process on page 5, letter b was difficult to understand; it may need to be written differently. In particular, it was unclear who was required to notify whom within the 20 day window.

One suggestion which seemed to be well received was to create a separate handout with a decision tree. This would help people ask questions and determine whether they fit into Tier 1, Tier 2, Special Event, or Conditional Use permits. A visual tool in addition to a brochure explaining the process would alleviate many questions.

The committee appreciated Mary Miller's time and cooperation.

Sincerely,

Food Policy Council County Subcommittee Members -
Brenna Wulfkuhle, Diane Fishburn, Greg Shipe, Jason Hering, Bill Wood, and Eileen Horn

Mary Miller

From: Karen Pendleton [karenp@pendletons.com]
Sent: Wednesday, February 26, 2014 1:37 PM
To: Mary Miller
Subject: Re: revised Agritourism regulations for February PC meeting Feb 26 2014

Mary,

I'm so sorry to just now, be responding to the revised agritourism regulations that are being put forth at tonight's meeting. Since "Spring has sprung" on our farm, we will not be able to attend tonight's meeting, and am sorry that these comments are late and probably not very eloquent.

We're concerned about **limiting the size of the operation by limiting the parking.** We understand that if you want over 100 parking spaces, you get a CUP. Shouldn't we encourage our agritourism operators to provide ample and safe parking? Many customers tend to see the "side of the road" as a perfectly fine parking lot.

No noise amplification (except for radios or stereos.) We have often had small musical combos out to our farm, and even the smallest of groups usually plug in a keyboard. There are definitely different levels of amplification. We also have tour groups and educational workshops, which use amplified microphones so the entire group can hear the speaker or tour guide.

Landscaping or fencing shall be provided along the perimeter of parking areas. This seems imperative if you have your parking within a certain distance of another home, but making every parking area be fences or screened, may be a bit excessive. We actually have a problem, in that our new customers don't know where our parking is, because they can't see it from the road.

Lots of hard work was put into this revision, thank you for listening to our previous concerns.

John and Karen Pendleton
1446 E 1850 Rd
Lawrence, KS 66046
785-843-1409

February 25, 2014

Lawrence-Douglas County Planning Commission
City Hall
6 East 6th Street
Lawrence, Kansas 66044

Re: Agritourism Text Amendment

Dear Commissioners,

Due to a conflict, I won't be able to attend the Planning Commission meeting Wednesday evening to deliver my comments in person. I hope you will take my comments in the positive manner they are intended.

The first Agritourism Committee meeting was held January 12, 2010, more than 4 years ago. I was excited to chair the committee because I saw an opportunity to do something that would benefit all residents of Douglas County. The committee worked hard to create a text amendment that had as its purpose the facilitation and promotion of agritourism in Douglas County. It was designed to cut through pages of regulations and months of CUP proceedings to simplify the process.

The committee was comprised of Planning Commissioners, Planning Staff (I want to specifically thank Mary Miller for all of her hard work), County administrators, State officials and agritourism operators. We met with county and township officials to discuss road dust and other potential impacts of agritourism and at the end of the long and tedious process, produced a text amendment that was simple, easy to understand and did exactly what we intended – it promoted agritourism.

After the text amendment was first adopted by the County Commission, several agritourism operators registered and things went smoothly. (For one example, the Washington Creek Lavender Farm near Lone Star registered and has operated without any problems whatsoever.) Then, last year, the KC Pumpkin Patch application was filed. It went before the County Commission – just as contemplated by the text amendment then in effect – but the County Commission apparently didn't like having to make a decision and instead, declared a moratorium on agritourism registrations. The County Commission asked for additional regulations and sent it back to the Planning Commission.

I'm very disappointed that four years after we started, the text amendment you are now considering bears almost no resemblance to what the committee drafted. Four years of work has

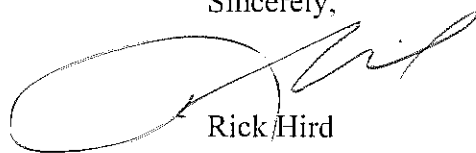
resulted in a text amendment that more closely resembles every other chapter of the code, including pages of requirements and processes and hoops to jump through for agritourism operators. It's not what the committee wanted, it's not what the Planning Commission originally passed and it's not what the County Commission originally passed.

The proposed text amendment does very little to promote agritourism, but does much to control or stop it. Some specific comments:

1. Controlling the tiers by the number of parking spaces will result in 99% of the applications falling into Tier 2 because more often than not, agritourism operators have no idea how many people will show up on a particular day. If an agritourism operator has 25 parking spaces and 50 cars show up, what then?
2. The 1,000 foot/20 day notice requirement for Tier 1 activities is the best example of the type of requirement the committee was trying to get rid of.
3. I didn't understand the reference to a 40 acre U-Pick Berry Patch in FAQ#1 on page 2 of the brochure? Is 40 acres required? Are there any U-Pick Berry Patches that large in the entire State of Kansas?
4. The limitation to daylight hours will eliminate watching sunsets and some bird watching (think owls). I don't understand the logic or reason. Again, it forces most applications into Tier 2.
5. I don't agree with the prohibition against noise amplification except for stereos and radios. I couldn't have a bluegrass band at relatively low volume, but I could have a 500 watt stereo? We already have a noise ordinance.
6. Requiring a site plan for lower impact uses is something the committee specifically did not want to impose.

I wish you the best and hope that Douglas County will do something to promote agritourism in a meaningful way. One of our very best assets is some of the prettiest countryside in all of Kansas and we should be able to use that for the benefit of all. This is an opportunity to do something that is not "business as usual" in Douglas County. Agritourism doesn't require tax incentives or public funding. The visitors and their dollars will follow if we allow agritourism to happen without volumes of regulations.

Sincerely,



Rick Hird
856 E 1150 Road
Baldwin, KS 66006

DOUGLAS COUNTY AGRITOURISM REGISTRATION FORM

Zoning & Codes Department
2108 W 27th Street, Suite I, Lawrence, KS 66047
785.331.1343 | Fax: 785-331-1347 | www.douglas-county.com/depts/zc/zc_home.aspx



Following registration of your agritourism use with the State of Kansas, please provide a copy of the approved State Agritourism Registration form with this completed County registration form to the Douglas County Zoning and Codes Department.

Office Use:
Registration No. AgT _____ - _____

SECTION A: Registration Name and Contact Information

| | | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|------------------------------------------|----------------------------------------------|----------|
| Business Name | Phone Number | Email Address | Website | |
| Physical Address of Agritourism Business | | City | State | Zip Code |
| Owner Name And Mailing Address | | | | |
| Type of agritourism experience offered (please check all that apply): | | | | |
| <input type="checkbox"/> Ranch vacation | <input type="checkbox"/> Horseback Riding | <input type="checkbox"/> Hunting/Fishing | <input type="checkbox"/> U-Pick Gardens | |
| <input type="checkbox"/> Vineyards/Wineries | <input type="checkbox"/> Seasonal Events | <input type="checkbox"/> Farm Tours | <input type="checkbox"/> Education Vacations | |
| <input type="checkbox"/> Farmers Markets/Product Sales | <input type="checkbox"/> Other _____ | | | |
| List services, activities, facilities and amenities provided: | | | | |
| Please give a detailed description of all agritourism experiences offered to your guests: (attach a separate page if additional space is needed) | | | | |

SECTION: B – Assembly Types of Uses [RE: Section 12-319-7.02c]

(Only complete this section if one or more of the uses proposed in Section A above and on your State Agritourism Permit include assembly type uses such as; weddings, receptions, fairs, festivals, or similar attendance-generating uses.)

1. Is the attendance anticipated to be generated over 100 persons?

Yes No

(If you answered No, please skip to SUPPLEMENTAL INFORMATION. If you answered Yes, please complete the following questions.)

2. Describe the activities associated with the assembly type use(s) listed in Section A.

3. Will the assembly use occur within an existing or new structure? Yes No

(If you answered Yes, please check with the County Zoning & Codes Department regarding the sections of the Construction Code that will apply.)

4. What is the nearest paved road/ County Route to the agritourism property? _____

5. What driving route is proposed from the nearest paved road to the agritourism property? Are there any physical impediments to road access to the site e.g. steep slopes, sharp curves, minimum maintenance roads, one-lane bridges, etc.?

6. How many assembly type events are anticipated per year? _____

| | |
|--------------------------------|---------------|
| _____ Applicant's Signature | _____ Date |
|--------------------------------|---------------|

SECTION C-REGISTRATION CHECKLIST AND APPROVAL

- Section A completed
- Section B completed
- Supplemental information attached
- Reviewed by Planning Director and Director of Zoning & Codes date: _____
- Approval date: _____

REVIEW COMMENTS: (Comments that extend to a separate page are incorporated into approval)

| | |
|----------------------------------------------|-------------------------------------------|
| Approved: _____ | Date: _____ |
| _____ Director, Zoning & Codes Department | _____ Director, Planning & Development |

PLEASE NOTE THIS APPROVAL IS TIED TO THE STATE AGRITOURISM APPROVAL FOR THE SAME LOCATION'S AGRITOURISM ACTIVITIES. THIS PERMIT IS NON-TRANSFERRABLE TO ANOTHER OPERATOR OR ANOTHER PROPERTY LOCATION.

EXPIRATION DATE: 5 YEARS FROM ISSUANCE OF STATE OF KANSAS AGRITOURISM PERMIT FOR THE ACTIVITIES STATED IN THE REGISTRATION FORM.

*Engaging in any activity not listed on the registration form will be considered a violation subject to the enforcement provisions of Section 12-329 of the County Zoning Regulations.

RESOURCES and CONTACT INFORMATION

Douglas County Zoning & Codes: (785) 331-1343 phone (785) 331-1347 fax
http://www.douglas-county.com/depts/ad/docs/pdf/ad_countycode_chapter12.pdf
http://www.douglas-county.com/depts/ad/docs/pdf/ad_countycode_chapter13.pdf

Douglas County Health Department: (785) 843-3060 phone (785) 843-3161 fax
http://www.kdheks.gov/nps/lepp/county_codes/douglascounty.pdf

SUPPLEMENTAL INFORMATION

Other State and Local Regulations that Apply [RE:section12-319-7.02.a]

ACCESS:

1. Will a new road entrance be needed for the agritourism use? Yes No

(If you answered YES, depending on the road classification, you will need to contact the Township Trustee*, Douglas County Public Works, or KDOT for a new entrance permit.)

(A copy of the entrance permit will be required before the Agritourism use may be registered.)

*For Township Trustee contact information, please visit the following website:

http://www.douglas-county.com/local_govt/townships.aspx

2. Will the access be from an approved private road that serves more than one property?

Yes No

(If you answered YES, please provide a copy of the recorded access restriction agreement that supports your use of this road your proposed use.)

STATE AND FEDERALLY REGULATE LAND USE ISSUES [Floodplains, Stream Crossing & Wetlands]:

1. Will there be any building or other structure, mining, fill, dredging, grading, paving, excavation, drilling operations, storage of equipment or materials in the FEMA floodplain located on the property?

Yes No

(If you answered YES, a floodplain development permit must be obtained from the County Zoning and Codes Office, 785-331-1343/ 2108 W 27th Street, Suite I, Lawrence KS, before the agritourism use can be registered. If grading is proposed in the floodplain a permit from KS Department of Agricultural may also be required before the local floodplain development permit can be issued.)

2. Will the agritourism use require a new or improved stream or low water crossings?

Yes No

(If you answered YES, a permit from KS Department of Agricultural is required before the agritourism use can be registered.)

SITE DEVELOPMENT AND SANITARY CODE INFORMATION :

(Site planning and Conditional Use Permits do not apply to Agritourism uses, however, other site development regulations do apply, including building setbacks from property lines, off-street parking area location and designation, compliance with ADAAG provisions for accessibility and accessible parking spaces, "A" (Agricultural) zoning sign regulations, and screening of outdoor lighting requirements. Other county regulations that may apply are the: county construction codes, county sanitary code, county noise regulation and other sections of the County Code – such as fireworks, road entrance permits and burn permits.)

A scaled, aerial map of the agritourism property will be custom generated by County Zoning & Codes staff for each Agritourism applicant and Registration Form. Please provide the following information with approximate areas and/or dimensions on this map.

- A. ACTIVITYLOCATION – Provide approximate location and dimension of each activity proposed.
- B. STRUCTURES – Include only buildings to be used in the agritourism activities.
- Existing Building – What portion of the existing building is proposed to be used. Will there be a need for electrical, plumbing, or building addition to serve the agritourism use? Is the building proposed for lodging purposes (farm stay, bed & breakfast, or similar)
 - New Building – What are the dimensions of the proposed building and where will it be located on the property. Will there be electrical or plumbing in the new building? Is the building proposed for lodging purposes (farm stay, bed & breakfast, or similar)

PLEASE NOTE THE FOLLOWING BUILDING SETBACKS WILL APPLY.

The Base Setback Line is measured from the center of the abutting road(s). It includes both : ½ the road right-of-way and the front or side yard setback listed in section 12-318.

The side setback for an accessory building from an interior property line is 3' and the rear setback is 5'.

Example: From a township road with a LOCAL Road classification, the base setback line is 90' for a front yard or 60' from a side yard abutting a road. This is the closest a building can be located to a public road.

- C. PARKING – Provide approximate location and approximate number of parking spaces. Please indicate the aisle width that provides access to the spaces and if the circulation is proposed to be one-way or two-way. One accessible parking space is required for lots with 1-25 spaces. An additional accessible parking space is required for each additional 26-50, 51-75, and 76-100 spaces. Accessible spaces are required to be signed in accordance with ADAAG requirements.
- D. SANITARY CODE COMPLIANCE – Please provide the Director of Environmental Health at the County Health Department the proposed plan for sanitary facilities and provide with your Registration Form the Health Department's written approval of your proposed plan. If chemical toilets are to be used, please provide the location and number of toilets as well as the scheduled for maintenance of these facilities.
- E. OUTDOOR LIGHTING – If activities are proposed for before sunrise or after sunset please provide the location of proposed outdoor lighting, including information on the height of pole, light type and illumination (wattage).
- F. NOISE REGULATIONS – Please be aware when planning and scheduling your agritourism activities that Douglas County has adopted regulations governing the generation of noise that a reasonable person could consider to be a disturbance. For more information, please refer to Chapter VII, Article 2 of the County Code, which is at the following web address:
http://www.douglas-county.com/depts/ad/docs/pdf/ad_countycode_chapter7.pdf

ASSEMBLY TYPES OF USES FOR OVER 100 PERSONS ATTENDING [RE: Section 12-319-7.02C]

Please check mark all that apply for assembly types:

- Farm markets/roadside stands
- U-pick operations
- Farm winery tours and tastings
- Farm stays
- Corn mazes
- Bed & breakfast establishments
- Horseback riding
- Pumpkin patch visits and activities
- Garden, nursery tours and exhibits
- Farm-related interpretive facilities, exhibits, and tours
- Historical, cultural, or agriculturally related educational and learning experiences, including volunteer workers
- Recreation related operations (fishing, hunting, bird watching, hiking, etc.)
- Assembly type uses such as fairs or festivals which are historical, cultural, or agriculturally related; weddings; receptions; etc.
- Other (please describe) _____

INFORMATION REQUIRED WITH REQUEST FORM: (attach a separate page)

1. The expected attendance (over a 24 hour period and highest at any one time)
2. Description of assembly activity:
 - a. Location of activity on the site
 - b. Use of a building/structure for the activity
 - c. Location of portable toilets
 - d. Potable water source and distribution method
 - e. Outdoor lighting: temporary or permanent, type of lighting fixture, wattage, direction of illumination, how it will be screened from public roads and adjacent properties,
 - f. Location of parking and parking surface
 - g. What the accommodations are for accessible parking
 - h. Ingress/egress points from the property to the public road that will serve the assembly activity
 - i. If there is floodplain on your property, please indicate if the proposed activity will occur within the portion of your property located in the floodplain.
3. Description of anticipated routes to the event from the public road network and any limitations (e.g., single lane bridge, low water crossing, sight distance issue) that exist along this route.
4. Information from the applicable fire department regarding access to the site/assembly use.
5. Date or dates for the assembly activity

Please be aware in your planning for the agritourism assembly event, that there is a 20 day mailed notification requirement before your application can be placed on a County Commission agenda for consideration.

Applicant's Signature

Date

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 are 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:
 - 1) Farm markets/roadside stands,
 - 2) U-pick operations,
 - 3) Farm winery tours and tastings,
 - 4) Corn mazes,
 - 5) Farm-related interpretive facilities, exhibits, and tours,
 - 6) Historical, cultural, or agriculturally related educational and learning experiences, including volunteer workers,
 - 7) Farm stays,
 - 8) Bed and Breakfast establishments,
 - 9) Recreation related operations (fishing, hunting, bird watching, hiking, etc),
 - 10) Horseback riding,
 - 11) Garden, nursery tours and exhibits,
 - 12) Pumpkin patch visits and activities,
 - 13) Assembly type uses such as fairs or festivals which are historical, cultural, or agriculturally related; weddings, receptions; etc,
 - 14) Ancillary retail sales,
 - 15) Other uses that may be determined on a case by case basis if it meets the purpose and intent of the regulations.
- c. These Agritourism provisions do not apply to camping.

12-319-7.02 REGISTRATION AND APPROVAL PROCESS

- 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; Section 12-319A, Site Plan Regulations; or Section 319.8 , Special Event Permits, although other State and local regulations shall apply.
- b. Sections 12-319-7.03 and 12-319-7.06 establish the parameters for Tier 1 (low intensity), and Tier 2 (medium intensity) Agritourism uses.

- 1) Tier 1 (low intensity) Agritourism uses may be registered administratively by the Zoning and Codes Director.
 - 2) Registration of Tier 2 (medium intensity) Agritourism uses requires approval by the Board of County Commissioners.
 - 3) Agritourism uses which do not meet the definition or parameters of a Tier 1 or Tier 2 use require approval through a Conditional Use Permit, Special Event permit, or rezoning.
- c. Registration forms shall be jointly reviewed by the Director of 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.
- 1) 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.
 - 2) If the Directors are unable to make a determination, the registration will be referred to the Board of County Commissioners.
 - 3) 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.

12-319-7.03 TIER 1 (LOW INTENSITY) AGRITOURISM USES DEFINED

- a. Tier 1, or low intensity Agritourism uses are not expected to generate noise, or other impacts, to the level that they would have negative impacts on surrounding properties. Examples of Tier 1 Agritourism uses include, but are not limited to:
- 1) Farm Stands;
 - 2) Farmers Markets with 10 or fewer vendors;
 - 3) U-Pick Operations;
 - 4) Farm Winery Tours and Tastings;
 - 5) Corn Mazes and Pumpkin Patches visits and activities;
 - 6) Farm Related Interpretative Facilities, Exhibits, and Tours;
 - 7) Historical, Cultural, or Agriculturally Related Educational and Learning Experiences, including volunteer workers;
 - 8) Farm Stays and Bed and Breakfasts with no more than 3 guestrooms;
and
 - 9) Recreation Related Operations (Fishing, Hunting, Bird Watching, Hiking, etc.)

- 10) Equestrian Facilities;
- 11) Garden, Nursery Tours and Exhibits;
- 12) Small scale assembly type uses such as weddings, receptions; etc,
- 13) Christmas Tree Sales;
- 14) Farm Tours and Demonstrations;
- 15) Small scale entertainment such as the integration of music, theatre, or arts to enhance the rural experience.
- 16) Ancillary Retail Sales
- 17) Other uses that may be determined on a case by case basis to meet the intent of the Tier 1 definition.

b. In addition to meeting the definition above, a proposed use must meet all the following parameters to be considered a Tier 1 Agritourism use:

- i. The Agritourism use is located on a parcel, or one of a number of contiguous parcels (**contiguous shall mean lands that are adjacent and road, rail, and other rights-of-way and easements shall not exclude parcels from being contiguous**), under the same ownership, as agricultural land uses listed in 12-306-2.01 or a working farm or ranch as determined by the Zoning and Codes Director;
- ii. The Agritourism operator resides on the parcel, or one of a number of contiguous parcels (**as defined in this section**), containing the Agritourism use;
- iii. Parking for the Agritourism use is limited to ~~25~~**50** parking spaces;
- iv. **To restrict Agritourism uses which may generate noise to the level that it would negatively impact neighboring properties, the following are prohibited:** ~~no~~ motors or motorized vehicles, with the exception of agricultural machinery and vehicles or electric motors, ~~will be utilized for the Agritourism Use;~~ **and no outdoor amplification of noise sound:** such as auctioneering speakers or amplified music (with the exception of a stereo or radio) ~~is proposed.~~ (moved to standards)
- v. ~~All Agritourism activities will occur in the daylight hours with the exception of the Farm Stays and Bed and Breakfast uses.~~

12-319-7.04 TIER 1 AGRITOURISM USES STANDARDS:

The following standards apply to all Tier 1 Agritourism uses:

- a. The operators of the Agritourism use shall be limited to the property owner or operator, his/her family members and employees (whether paid or unpaid).
 - i. 'Operator' refers to the person with the financial and legal responsibility for the Agritourism activity.

- b. Adequate parking shall be provided on-site for the use, including ADA parking (where applicable). No parking may occur on adjacent roads.
- c. **In order to minimize noise from the agritourism use the following are prohibited:** ~~no~~ motors or motorized vehicles, with the exception of agricultural machinery and vehicles **or electric motors**, will be utilized for the ~~Agritourism Use~~; **and no outdoor amplification of noise sound:** such as auctioneering speakers or amplified music (with the exception of a stereo or radio) ~~is proposed.~~
(moved from previous section)
- d. Landscaping or **opaque** fencing shall be provided along the perimeter of parking areas (excluding overflow areas) that are within view of residences or the road right of way. Landscaping shall consist of one of the following: a continuous hedge of shrubs or other vegetation or opaque fencing, of a height determined by the Zoning and Codes Director to provide adequate screening for the parking area. Alternate forms of screening may be utilized, provided the Director of Zoning and Codes determines they will provide effective screening of the parking area.
- e. ~~No exterior lighting shall be provided for the Agritourism use.~~ **Exterior lighting used in conjunction with the Agritourism use shall be prohibited** with the exception of the Farm Stays and Bed and Breakfast uses. **Lighting for these uses shall be located and shielded to prevent glare or trespass on to adjacent properties.**
- f. Sanitary facilities shall be provided in accordance with Lawrence Douglas County Health Department requirements for the use and expected attendance.

12-319-7.05 ADMINISTRATIVE WAIVER PROVISION

The Director of Zoning & Codes may waive these standards only if it can be demonstrated that the Agritourism use, by virtue of the size or type of use proposed, the location of the use, or other site specific characteristics, will not generate noise or other impacts that negatively impact surrounding properties.

12-319-7.06 TIER 1 AGRITOURISM REGISTRATION PROCESS

- a. The Agritourism operator shall submit the following materials to the Zoning and Codes Office:
 - i. Approved State Agritourism Registration.
 - ii. Completed Douglas County Agritourism Registration form.
 - iii. Site plan
The agritourism site plan does not need to meet all the requirements in Section 12-319A, but must be adequate to illustrate the use and its

conformance with the Zoning Regulations as well as the relationship of the use to the surrounding properties or right-of-way. At a minimum, the following items must be included:

- a. All structures to be utilized for the agritourism use identified on the plan with dimensions, including the distance to the nearest property line.
 - b. Areas where the agritourism use will occur and any areas where visitors would be allowed marked on the plan.
 - c. Access and parking areas shown and dimensioned, noting the number of spaces provided.
 - d. The water and sanitation facilities provided per the County Health Department approval.
 - e. Hours of operation noted.
 - f. Anticipated attendance noted.
 - i. For determination of parking requirements, parking is calculated at a rate of 1 parking space per 2 attendees. Attendance is limited to that which can be served by available parking as participants may arrive by bus or alternative forms of transportation.
- b.** A 20 day property owner notification period is required.
- i. The applicant shall obtain a list of property owners within 1000 ft of the property on which the Agritourism activity is to occur from the Douglas County Clerk's Office. If the notification area includes land within the corporate limits of a city, the list shall include owners of property within the 1000 ft notification area that extend 200 feet into the city. If the notification area extends into the adjacent County, notice must be sent to property owners in the adjacent County.
 - ii. The applicant shall mail a letter which contains the information below to the property owners on the list to advise them of the proposed Agritourism use and provide them the opportunity to contact the applicant or the Zoning and Codes Department if they have any questions.

"An Agritourism use located at _____ is in the process of being registered with Douglas County. The Agritourism use will consist of (brief description of the event). Please contact me at (phone number, email) with any questions regarding this registration or the Douglas County Zoning and Codes Department at 785-331-1343."

- iii. The registrant must provide a copy of the letter, the property owner list, and certification of the date the letters were mailed to the address on the list with their registration materials.
- c. The registration materials shall be reviewed by the Director of Zoning and Codes with the following approval criteria:
- i. The proposed use and layout meets the intent and purpose of the Tier 1 definition;
 - ii. The proposed arrangement of buildings, off-street parking, access, lighting is compatible with adjacent land uses;
 - iii. Adequate screening is provided between the parking area and adjacent residences or road right-of-ways.
 - iv. The vehicular ingress and egress to and from the site provides for safe, efficient and convenient movement of traffic;
 - v. The nature of the use is compatible with adjacent land uses and enhances or maintains the rural character of the unincorporated portion of the county.
- d. The Zoning and Codes Director may apply conditions to the registration, such as limitation on the hours, location, or the activity itself if, in the Director's opinion, the conditions are necessary to mitigate off-site impacts.

12-319-7.07 DURATION/RE-REGISTRATION

The Douglas County Agritourism use registration coincides with the State Registration. Re-registration with the County is required when the State registration is renewed, every 5 years.

- a. The Agritourism Use may continue as long as the use complies with the conditions and standards that were applied with the registration.
- b. Only those activities specifically listed in the registration form and approved by the Directors are allowed to occur as Agritourism. Any change in proposed uses such as a new activity, increased parking, or expanded area of activity would require:
 - i. The modification of the registration with the State, if necessary.
 - ii. Resubmittal of the revised registration form and revised site plan to the Zoning and Codes Office for a determination of compliance with the definition of Agritourism (if a new use is proposed) and re-registration through the processes established in this section.

12-309-7.08 TIER 2 (MEDIUM INTENSITY) AGRITOURISM USES- DEFINED

- a. Tier 2 uses include higher intensity activities or have higher attendance than Tier 1 uses. Examples of Tier 2 Agritourism uses include, but are not limited to:
 - i. Uses that would be considered a Tier 1 use that do not meet the Tier 1 parameters;
 - ii. Farmers Markets with more than 10 vendors;
 - iii. Bed and Breakfasts or Farm Stays with more than 3 guest rooms;
 - iv. Assembly type uses such as fairs or festivals which are historical, cultural, or agriculturally related.
- b. In addition to meeting the definition above, a proposed use must meet all the following parameters to be considered a Tier 2 Agritourism use:
 - i. Parking for the Agritourism use is limited to ~~400~~ **200** parking spaces.
 - ii. No motors or motorized vehicles, with the exception of agricultural machinery and vehicles or electric motors, will be utilized for the Agritourism Use. (moved to the standard section)

12-319-7.09 TIER 2 AGRITOURISM USE STANDARDS

The following use standards apply to all Tier 2 Agritourism uses:

- a. Operators of the Agritourism activity shall be limited to the property owner or operator, his/her family members and employees (paid or unpaid).
 - i. 'Operator' refers to the person with the financial and legal responsibility for the Agritourism activity.
- b. Adequate parking, including ADA parking (when applicable), must be provided on-site. No parking may occur on adjacent roads.
 - i. For the purpose of calculating parking requirements, Parking is calculated at a rate of 1 parking space per 2 attendees unless visitors are expected to utilize busses or alternative forms of transportation.
- c. No motors or motorized vehicles, with the exception of agricultural machinery and vehicles or electric motors, will be utilized for the Agritourism Use. (moved from previous section.)
- d. Landscaping or **opaque** fencing shall be provided along the perimeter of parking areas (excluding overflow areas) that are within view of residences or the road right of way. Landscaping shall consist of one of the following: a continuous hedge of shrubs or other vegetation or opaque fencing, of a height determined by the Zoning and Codes Director to provide adequate screening for the parking

- area. Alternate forms of screening may be utilized, provided the Director of Zoning and Codes determines they will provide effective screening of the parking area.
- e. If Agritourism activities are to occur outside of daylight hours, a plan shall be provided which shows the location of lighting for the Agritourism activity and the type of lighting fixtures being used as well as means taken to shield the lighting to insure no trespass or glare to adjacent properties.
 - f. Sanitary facilities shall be provided in accordance with Lawrence Douglas County Health Department requirements for the proposed use and anticipated attendance.
 - g. With the exception of agricultural activities, no activities associated with the Agritourism use may occur within 50 ft of a property line of the subject parcel or the perimeter of a group of contiguous parcels. The County Commission may vary this separation requirement depending on the nature of the Agritourism activity and the adjacent property.

12-309-7.10 The Board of County Commissioners may waive these standards if they determine that the Agritourism use, by virtue of the size or type of use proposed, the location of the use, other site specific characteristics, will not significantly impact surrounding properties.

12-309-7.11 TIER 2 AGRITOURISM USES REGISTRATION PROCESS

- a. The Agritourism operator shall submit the following materials to the Zoning and Codes Office:
 - i. Approved State Agritourism Registration.
 - ii. Completed Douglas County Agritourism Registration form.
 - iii. Site plan meeting the requirements outlined in Section 12-319-7.05(a)(3).
 - iv. Information from the applicable fire department regarding access to the proposed Agritourism Activity area.
- b. A minimum 20 day notification period is required. The Commission will hold a public hearing on the proposed use at the time and place listed in the public notice.
 - i. 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.
 - ii. If the notification area includes land within the corporate limits of a city, the list shall include owners of property within the 1000 ft notification area that extend 200 feet into the city. If the notification area extends

into the adjacent County, notice must be sent to property owners in the adjacent County.

- iii. For Agritourism uses that will be located on an unpaved road, the Zoning and Codes Office shall mail notice to all property owners of residentially developed property on an unpaved road which would be considered the most direct route to the nearest hard-surfaced road..
- c. The Director of Zoning and Codes shall review the registration application with the criteria noted in this section and provide a report with recommendation to the Commission.
- i. The proposed arrangement of buildings, off-street parking, access, lighting is compatible with adjacent land uses;
 - ii. Adequate screening is provided between the parking area and adjacent residences or road right-of-ways.
 - iii. The vehicular ingress and egress to and from the site provides for safe, efficient and convenient movement of traffic including emergency vehicles;
 - iv. The nature of the use is compatible with adjacent land uses and enhances or maintains the rural character of the unincorporated portion of the county.
 - v. Suitability of the existing road network suitable for the traffic expected to be generated by the Agritourism use. Road improvements may be required in some cases.
- d. The Board of County Commissioners may take one of the following actions on the registration:
- i. Approve the registration, **including waiving any standard deemed reasonable to waive;**
 - ii. Approve the registration with conditions/restrictions such as limitation on the size of buildings and parking areas, establishment of operating hours; establishment of buffering, limitation on activities; road improvements; etc;
 - iii. Return the registration to staff with request for more information; or
 - iv. Deny the registration.

12-309-7.12 Duration/Review

The Douglas County Agritourism Use registration coincides with the State Registration. Re-registration with the County is required when the State registration is renewed, every 5 years.

- a. The Agritourism Use may continue as long as the use complies with the conditions and standards that were applied with the registration.
- b. A Tier 2 use that received County Commission approval may be re-registered administratively by the Zoning and Codes Director if the use remains the same as on the original registration and no unresolved complaints are on file.
- c. Only those activities specifically listed in the registration form and approved by the Directors are allowed to occur as Agritourism. Any change in proposed uses such as a new activity, increased parking, expanded area of activity would require:
 - i. The modification of the registration with the State, if necessary.
 - ii. Resubmittal of the revised registration form and revised site plan 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 and re-registration through the processes established above.
 - a. Minor changes to the plan (changes that do not include an additional use or an increase in agritourism activity or parking area above 25% of the previous activity or parking area) may be approved administratively by the Zoning and Codes Director following notification of neighbors within 1000 ft.
- d. Engaging in any activity not listed on the registration or operating out of compliance with the plans and conditions approved with the registration would be considered a violation subject to the enforcement provisions of Section 12-329.

12-319-7.13 STRUCTURES AND CONSTRUCTION CODES

Structures for Agritourism uses are required to comply with Douglas County Construction Codes, adopted by HR-12-11-5, and amendments thereto.

AD - Crabtree, Robin

From: bdwood@ksu.edu
Sent: Monday, March 17, 2014 3:15 PM
To: AD - Crabtree, Robin
Cc: AD - Weinaug, Craig
Subject: Agritourism Regulations thoughts for County Commissioners

County Commissioners Gaughan, Thellman and Flory,

We understand you will be discussing the revised Agritourism Regulations this Wednesday evening at the County Commissioner meeting.

The Food Policy Council "County" sub-committee met with Mary Miller of the Planning Department on February 7 to visit with her about the Agritourism Regulation revisions. We had a good discussion and shared several suggestions with her on ways we believe they could be improved.

We also suggested creating a simple brochure to help people determine whether their activities are in need of registration, and if so, which tier do they fit into.

It appears from the most current draft of the regulations that Mary incorporated many of our suggestions into the revised regulations. She also created a brochure which should be helpful to folks just getting started in exploring agritourism possibilities for their property.

Thank you, County Commissioners, for your conscientious work in helping promote the value of agritourism in our county.

Food Policy County "County" Sub-committee

| | | |
|--------------|-------------------|----------------|
| Greg Shipe | Brenna Wulffkuhle | Diane Fishburn |
| Jason Hering | Teresa Flory | Bob Lominska |
| Bill Wood | | |

Billy D. Wood
County Extension Director
Douglas County Fairgrounds 785-843-7058
2110 Harper Fax 785-843-6745
Lawrence, KS 66046-3240 bdwood@ksu.edu

"What we really need to pursue in life is not success, but excellence. Success is attained at the expense of someone else's failure, but excellence is doing the best you can with what God has given you."

Steve Largent- NFL Record Holder

ITEM NO. 6 TEXT AMENDMENT TO THE ZONING REGULATIONS; AGRITOURISM (MKM)

TA-13-00451: Consider a Text Amendment to Section 12-319-7 of the Zoning Regulations for the Unincorporated Territory of Douglas County, Kansas to establish criteria and review process for Agritourism uses which may have significant off-site impacts. (*Amendment was initiated by the Board of County Commissioners at their October 16, 2013 meeting.*)

STAFF PRESENTATION

Commissioner Rasmussen disclosed ex parte that he forgot to mention at beginning of meeting. He said when he was reviewing the text amendment he contacted Ms. Karen Pendleton to see what her thoughts were about it but she was unaware of it so he emailed her a copy.

Commissioner von Achen asked who all was notified.

Ms. Miller said a text amendment was difficult to know who to notify. She said she sent it out to the people who were originally involved in the agritourism committee and those that attended the stakeholder meeting. She said she did not have email addresses for people who registered for agritourism so they did not receive it until today. She said the Food Policy Council would like more time to look it over. She said the item could be deferred to allow people more time to review.

Ms. Mary Miller presented the item.

PUBLIC HEARING

Mr. John Pendleton, Pendleton's Country Market, said he had been actively been involved with agritourism for over 30 years. He said Pendleton's has a farm market that sells produce, flowers, plants, and ancillary retail items. He said he also offered pick your own produce, educational school tours, hayrack rides, kids play area, corn maze, and an open air pavilion used by groups. He said the Conditional Use Permit worked well for his business but he did not realize it expired in 2012 and he needed to renew it. He said he came into compliance by applying for the agritourism permit. He said he would now have to apply for a Conditional Use Permit once again under the new regulations. He appreciated the concerns expressed by the neighbors of the KC Pumpkin Patch but did not feel their apprehension should outweigh comments from the rest of the county. He said he was concerned about requiring agritourism operators to reside on the parcel of land containing the agritourism use. He said this regulation would take care of most of the issues of agritourism activities. He did not agree with tying the limit of the size of the business by limiting the parking lot. He said the amount of customers on a rainy day was different than the amount of customers on a really nice warm day.

Ms. Natalya Lowther, Pinwheel Farm, said a power drill would require her to obtain a Conditional Use Permit. She said after daylight activities, such as a group of students using a telescope to look at stars, would also require Tier 2. She said having more than four vendors at a farmers market would require Tier 2. She said exterior lighting such as solar path lights would require Tier 2. She felt a lot of the terms were not defined clearly enough to be enforceable. She said she would have to go to Tier 2 or a Conditional Use Permit. She expressed concern about the lack of consistency between regulations for other types of property uses compared to agritourism uses. She encouraged Planning Commissioners to read the 20 pages she submitted for the packet. She said she started with a Conditional Use Permit four years ago and now it was coming back around to everything that she had done in the past four years was for nothing because she would have to submit another Conditional Use Permit to continue to do what she hadn't even had a chance to start yet.

Mr. Jim Hendershot said several of his neighbors participated in discussions about the KC Pumpkin Patch. He said he supported agritourism but also supported the protection of adjoining, adjacent, and area properties. He said staff had done an admiral job of bringing up various issues at different meetings and taking into account comments from pro and con agritourism. He said he was supportive of the vast majority of the proposed language. He said the proposed language about vehicle safety needed to be clarified more so that staff determined it was needed they had the authority to require a traffic impact study. He said Tier 2 allowed

hours of operation outside of daylight hours and that it addressed lighting but not noise. He suggested that Tier 2 activities with hours after daylight fall under a Conditional Use Permit, such as a large wedding.

Ms. Michelle Kooz said she reviewed the proposals and saw some positive changes. She said Tier 2 would allow for more review to make sure things weren't slipping through the cracks. She felt the old process was too vague. She said the guidelines regarding fencing and berm would keep people where they should be. She liked the limit on parking. She felt the issue of noise needed clarification.

Ms. Diane Menzie felt there had not been enough notification about the issue. She asked for clarification regarding the moratorium.

Mr. McCullough said the County Commission directed Planning staff to look at the agritourism amendment process. He stated the County Commission placed a moratorium on receiving applications for any agritourism requests. He said any amendment to the County Code goes through the Planning Commission with a recommendation to County Commission. He said this process was implementing the County Commissions direction.

ACTION TAKEN

Motioned by Commissioner Liese, seconded by Commissioner Graham, to defer the Text Amendment, TA-13-00451, to allow for continued discussion and notification of stakeholders.

Commissioner Liese thanked the audience for attending the meeting.

Commissioner Rasmussen asked if notice sent out to all the registered agritourism businesses in Douglas County.

Ms. Miller said notice was not sent to the ones that were just registered with the State. She said notice was sent to the agritourism businesses registered with the County, which was about six.

Commissioner Rasmussen requested that all agritourism businesses registered with the State and County be notified. He asked if people had to go through the agritourism process or if it was voluntary.

Ms. Miller said an agricultural use did not need to register as agritourism. She said staff did not regulate agriculture. She said a hunting facility, for example, could be agritourism and could register with the State but would not be required to register with the County. She said hopefully in the future there would be incentives to register with the County, such as a County webpage promoting agritourism with links. She said a hunting facility with ancillary retail sales would require a Conditional Use Permit today or registration as an agritourism activity. She said a you-pick berry patch did not need to register because it was agriculture. She said products raised on a farm could be sold as an agricultural use. She said if someone had picnics and live music while people picked berries it would become more of a recreational use.

Commissioner asked about selling jam at a berry patch.

Ms. Miller said if the jam was made it would be a value added agricultural product and could be permitted. She said if items were sold that the commodities were not raised on site it would need a Conditional Use Permit. She said if jam was made with berries that were brought in it would need to be registered.

Commissioner Rasmussen asked if the sugar and pectin in jam would be okay to bring in but not the berries.

Ms. Miller said it would not be expected that all the commodities would be grown on site.

Commissioner Rasmussen asked if an agricultural use, as defined under State law, did not have to go through this process.

Ms. Miller said that was correct.

Commissioner Rasmussen asked if an agritourism use registered with the State had to go through this process.

Ms. Miller said if it was anything besides agricultural it would.

Commissioner Rasmussen asked if a registered agritourism business under the State law had to also register with the County.

Ms. Miller said before agritourism regulations were in place if a business was registered with the State and had ancillary retail sales or wedding receptions a Conditional Use Permit or rezoning would have been required.

Commissioner Rasmussen inquired about future options.

Ms. Miller said the options would be agritourism registration, Conditional Use Permit, or rezoning.

Commissioner Rasmussen asked why pumpkin patches were called out separately because he thought they would be similar to you-pick berry patches.

Ms. Miller said usually pumpkin patches have other activities associated with them, such as hay rack rides and ancillary items. She said if it was just a pumpkin patch it would not need to register.

Commissioner Rasmussen asked about picking chestnuts at a location that also had hay rack rides.

Ms. Miller said it would be a similar use to a pumpkin patch.

Commissioner Rasmussen inquired about the three room limit on a bed and breakfast use. He said a you-pick farm would have way more cars than a three room bed and breakfast.

Ms. Miller said it was partly based on the bed and breakfast being a year round activity. She said she also based it on how the City and the State viewed bed and breakfast facilities that were three or more bedrooms. She said it was more of a building code issue.

Commissioner Rasmussen inquired about landscaping around the parking area.

Ms. Miller said it would just include landscaping the parking area that was visible from a nearby residence.

Commissioner Rasmussen said the Schaake's Pumpkin Patch parking area could be seen from the main road. He asked if they went through this process if they would have to plant shrubs or other landscaping

Ms. Miller said yes, shrubs or vegetation.

Commissioner Rasmussen said not allowing exterior lighting concerned him although he understood the intent. He felt a porch light on an out building should be allowed.

Ms. Miller said there could be lighting on buildings but not for the agritourism use. She said the intention was to stop from having nighttime activities.

Commissioner Rasmussen inquired about the registration process and how applicants would submit site plans.

Ms. Miller said the County usually provides an aerial to the applicant and the applicant can draw over the aerial showing where parking and the agritourism activity would be.

Commissioner Rasmussen said the proposed language says the parking areas have to be dimensioned.

Ms. Miller said that was correct, just like Conditional Use Permits, to give an idea of how big the parking area was. She said the purpose was to be able to calculate how many parking spaces would be there. She said if there were no dimensions it would be hard to know how many parking spaces could be in the parking area.

Commissioner Rasmussen said a Tier 1 applicant would have to prepare a site plan identifying all the structures, where the agritourism use would be, the parking spaces and dimensions, handicap parking, identify water and sanitation facilities, note the hours of operation, identify the anticipated number of attendants, provide notification to all property owners within 1000', have the director of Zoning and Codes review it and possibly apply conditions. He did not feel there was much difference between Tier 1 and Tier 2.

Ms. Miller said site plans were similar because the same general information was requested. She said the notification was a little more with Tier 2 and also required County Commission approval.

Commissioner Rasmussen said under the Tier 1 registration provisions it references section 7.08 Tier 2.

Ms. Miller said that was a typo and that it should reference section 7.09.

Commissioner Rasmussen inquired about imposing more requirements on agritourism and why staff does not think that.

Ms. Miller said staff was trying to be more up front. She said when a person applies for registration the Zoning & Codes Director may request additional descriptive information as needed, such as a site plan. She said the person reading the regulations would know ahead of time what they would need to provide. She said today people do not know ahead of time what was needed.

Mr. McCullough said there was no direct relationship between the State registration of agritourism and local land use code. He said agritourism registration was a vehicle and tool to regulate land use.

Commissioner von Achen asked if someone chose to do a new agritourism Conditional Use Permit would they follow all the requirements of Tier 1 and 2 in addition to other requirements that the Conditional Use Permit might involve.

Mr. McCullough said all the processes let either staff or the County Commission, in terms of agritourism, review the application request and place conditions on it. He said a Conditional Use Permit would come before Planning Commission and then a recommendation would be sent to the County Commission. He said most of the agritourism codes were related to the process versus actual conditions, such as parking and setbacks.

Commissioner Josserand thanked staff for their work on this. He felt in general the Tier 1 and Tier 2 was going in the right direction. He felt a larger group of people needed to be notified.

Commissioner Kelly felt there needed to be ways to define and make it easier to understand the difference between Tier 1, Tier 2, and a Conditional Use Permit. He felt they could reduce the list of descriptions and focus on the activities. He felt a bed and breakfast was different and probably should not include language about only daylight hours. He said regarding motors maybe the language should say motors for entertainment purposes. He said he was not supportive of the language regarding landscaping around parking areas. He would like to see more work on the traffic language. He agreed with Commissioner Rasmussen's comment about there not being much difference between Tier 1 and Tier 2.

Commissioner Liese said the purpose of the regulations was to make agritourism easier but he felt they needed to be careful not to let someone take advantage of the regulations. He thanked staff for their work. He said they needed to be sensitive to plunking a business down in a rural neighborhood. He felt screening of the parking area could be helpful.

Commissioner Culver said it was a tough task to balance having options and being an onerous process. He said it was hard for him to limit members of the community to three minutes when they speak because their information was valuable.

Commissioner Liese said it was helpful when community members write a letter in advance to supplement their public comment.

Motion carried 9-0.

ITEM NO. 8 TEXT AMENDMENT TO THE ZONING REGULATIONS; AGRITOURISM (MKM)

TA-13-00451: Consider a Text Amendment to Section 12-319-7 of the Zoning Regulations for the Unincorporated Territory of Douglas County, Kansas to establish criteria and review process for Agritourism uses which may have significant off-site impacts. *(Amendment was initiated by the Board of County Commissioners at their October 16, 2013 meeting.) Deferred by Planning Commission on 1/27/14.*

STAFF PRESENTATION

Ms. Mary Miller presented the item.

PUBLIC HEARING

Ms. Natalya Lowther, Pinwheel Farm, thanked staff for their work. She referenced the letter she submitted. She felt the parking standards were still unclear and needed more work. She felt the setbacks needed more clarity, as well as overflow parking and screening.

Ms. Kim Hendershot thanked staff for their work. She said agritourism was a business and they should not forget that. She expressed concern about the protection of residents around a business. She said regarding lighting, she felt it would change the lifestyle of living in the country. She also said noise ordinances were hard to enforce. She asked Planning Commission to be practical in their decision making.

Mr. Jim Hendershot wanted to be sure Tier 1 activities were limited to daylight hours with the exception of bed and breakfast.

Ms. Michelle Kooz expressed concern about the removal of parking screening. She felt screening was extremely important. She also stated that noise ordinances were impossible to enforce.

COMMISSION DISCUSSION

Ms. Miller said the screening requirement was not removed, it was changed to allow for different types.

Commissioner Josserand inquired about the comment from Mr. Pendleton regarding the parking threshold being too low. He asked if Mr. Pendleton had suggested a different number.

Ms. Miller said no, Mr. Pendleton just said he thought it was too low.

Commissioner Denney asked if people had to register for agritourism in Douglas County.

Ms. Miller said agritourism registration was required if it was not agriculturally exempt.

Commissioner Denney asked if low intensity and medium intensity uses had to go before the County Commission and a high intensity use would require a Conditional Use Permit.

Ms. Miller said that was correct.

Commissioner Denney asked how the changes would improve the County Commissions ability to make a decision regarding the item that came before them that cause the moratorium to start.

Ms. Miller said before, the first regulations had a section that said the County Commission could impose conditions on the item so they had the ability to impose conditions. She said with these new regulations it would set parameters and criteria.

Commissioner von Achen said it seemed like some of the requirements would be somewhat burdensome to the lower tier of agritourism. She wondered if some of the restrictions could be removed while still protecting the surrounding neighbors. She said a way for after daylight hour activities to occur in Tier 1 would be to

restrict the activity to something low intensity that would not require lights, such as stargazing or owl watching. She asked if the definition of Tier 1 agritourism was that there would not be any impact to neighbors why they had to mail out notice to the neighbors. She did not feel that fencing was needed for the low impact uses on the road side of the parking lot. She said the restriction that the applicant live on the property seemed like a burden on people like Chestnut Charlie.

Ms. Miller said Chestnut Charlie was currently agriculturally exempt.

Commissioner Rasmussen asked why people would want to sign up if it was all voluntary.

Ms. Miller said it was not all voluntary. She said if it was an agriculturally exempt use then future incentives, such as a promotion website, may encourage them to sign up.

Mr. McCullough said the State Statute exempts agricultural use from zoning. He said the purpose of this was that if you're not agriculture and you want to do something that was not seen as agriculture the process in the local code was the Conditional Use Permit process. This is an alternative process for those that voluntarily register with the State as an agritourism to take advantage of the alternative process to get the land use approved.

Commissioner Rasmussen asked if someone met the State statutory definition for agriculturally exempt activity would not be subject to zoning.

Mr. McCullough said that was correct. He said someone could still be registered as an agritourism with the State and not subject to zoning.

Commissioner Rasmussen felt the definition of agriculturally exempt was broad.

Ms. Miller said it was not a definition, it was a list of typical agricultural uses. It would still have to fall within the parameters.

Commissioner Rasmussen inquired about the specific parameters. He asked about the requirement for residing on the parcel or contiguous parcel. He asked how contiguous would be defined.

Ms. Miller said a parcel that was adjacent or abuts.

Commissioner Rasmussen said Pendleton Farm had a railroad track between the property on two different lots. He asked if that was contiguous.

Ms. Miller said she thought it would be considered contiguous.

Commissioner Rasmussen inquired about the motorized vehicles. He asked what they were trying to prevent.

Ms. Miller said four wheelers (ATV's) could cause a lot of noise and impact to neighbors. She said a tractor for hayrack rides would not count.

Commissioner Rasmussen said a tractor would be noisier and felt maybe the regulations should just say that ATV's were restricted.

Mr. McCullough said the idea was to give language to get to the intent of the impact of the issues.

Commissioner Rasmussen said there was a lot of subjectivity to it. He wondered what they were trying to prevent. He said if the real goal was to try and prevent four wheelers and dirt bikes in Tier 1 areas why not just say that.

Mr. McCullough said there were other types of vehicles and the goal was to align with an agricultural use.

Commissioner Rasmussen did not feel it was written well and was unclear. He felt if applicants were required to live on the property they would want to have outdoor lighting for their own purposes. He said he would be supportive of changing the agritourism parking limit for Tier 2 areas to more than 100. He inquired about the language regarding the operator living on the property and wondered who it excluded if it included the operator, property owner, family and employees.

Ms. Miller said she did not have a specific example but said it could exclude someone who wanted to have an agritourism activity on another person's property.

Commissioner Rasmussen wasn't sure what they were trying to solve and did not feel like the provision excluded anyone.

Mr. McCullough gave the example of a national chain of rural putt-putt golf courses. He said the intent was to tie it to an owner who would be responsible for the care of the property and operate the use. He said the KC Pumpkin Patch was a big business with a lot of elements hooked to the use. He said under those circumstances this language could have helped with that situation.

Commissioner Rasmussen felt some of the criteria was confusing and did not seem to be getting at the root problem that was trying to be solved.

Commissioner Josseland felt the Tier 2 parking should be 200.

Commissioner Rasmussen said he would support the 200 parking for Tier 2.

Commissioner Britton asked about the purpose of the notice provisions for Tier 1.

Ms. Miller said it would allow for neighbors to provide input as well as having the knowledge of the agritourism use.

Commissioner Britton agreed with Commissioner von Achen's comments. He saw merit in the idea of removing the daylight hour restriction for Tier 1 and going back to no exterior lighting related to the agricultural use. He felt staff had done a good job with the language.

Commissioner von Achen asked how much leeway there would be to tweak the language for individual applicants.

Mr. McCullough said it would provide criteria by which to judge an application by. He said staff would not have the authority to waive any of the standards but could guide an applicant on the criteria. He said there were avenues for applicants to appeal decisions made.

Commissioner Rasmussen asked for the language about the outdoor lighting to be clear that it was okay for the operation of an agriculture use.

Commissioner Denney felt some of the language was making it more difficult for agricultural businesses.

Commissioner Kelly said it made it easier for anyone who was not agricultural exempt by not having to go through the Conditional Use Permit. He said there were systems in place in the way the applications would be interpreted and could have additional conditions on it. He said the intention was to allow the business but keep the rural way of life. He said he was in favor of increasing the number of parking spaces for Tier 2.

Commissioner Culver asked for consensus on numbers for parking. He asked if everyone was okay with 50 parking spaces for Tier 1 and 200 parking spaces for Tier 2. All of the Commissioners agreed with the

increased parking numbers. He said regarding Commissioner Rasmussen's earlier comment about who was excluded from the operator/family/employees, he said the intent was to address the volunteer aspect.

Commissioner Britton said it would be difficult to get it perfect and the best way to make sure there was a good agritourism section to the county Zoning Code was to get it out there and working and then tweak and amend as things come up in the future.

Commissioner Rasmussen agreed with Commissioner Britton and was in favor of moving this forward.

Commissioner Josserand said Planning Commission had done what the County Commission asked them to do and County Commission could tweak as needed.

Commissioner Denney asked what about this would allow the County Commission to deal with the KC Pumpkin Patch.

Commissioner Josserand said the Conditional Use Permit process.

Commissioner Denney said they were holding people hostage and nothing could go forward.

Mr. McCullough summarized the Planning Commission discussions and suggestions from this evening.

Commissioner Rasmussen asked how to address Mr. Rick Hird's comment about amplified noise.

Commissioner Kelly suggested they change the language to 'no amplification of sound' rather than noise, 'such as auctioneering, speakers, or amplified music, with the exception of stereo or radio.' He felt it should match up with how the no motorized vehicle language was worded. He said someone could do a Special Event Permit for a band.

Commissioner Struckhoff inquired about the scenario of an outdoor structure with music being amplified inside of it.

Commissioner Liese suggested using the word 'outdoor' instead of 'exterior.'

Commissioner von Achen felt they should eliminate the requirement in Tier 1 of fencing the street side.

Commissioner Struckhoff said there may be a neighbor across the road that could be impacted by it.

Commissioner Britton asked if there would be opportunities to exempt someone from a particular requirement through the process, such as an applicant only having 10 parking spaces with Tier 1 and asking not to have screening.

Ms. Miller said a threshold of screening could be added to the language.

Mr. McCullough said the language allowed for some flexibility but that the majority consensus from Planning Commission was to maintain it as is with an administrative waiver.

Commissioner Kelly asked if there was support in removing an employee from being an agritourism operator.

Commissioner Rasmussen said he did not want to remove the employee as an operator.

Commissioner Britton said the language still tied it to the operator who had the financial and legal responsibility for the activity.

Commissioner Liese inquired about enforcement.

Mr. McCullough said the Zoning Code had an enforcement section.

ACTION TAKEN

Motioned by Commissioner von Achen, seconded by Commissioner Britton, to approve the Agritourism Text Amendment with the suggested conditions in the staff memo and that Mr. McCullough summarized earlier.

Commissioner Britton recapped the conditions:

- Increase Tier 1 parking spaces to 50
- Define contiguous
- Remove daylight hour restriction
- Remove exterior lighting prohibition and replace with something that says residential lighting would be allowed
- Change sound amplification language to no outdoor amplification of sound such as auctioneering, speakers, or amplified music, with the exception of a stereo or radio
- Administrative discretion for Tier 1 to waive requirements for equal or better conditions
- Increase to Tier 2 to 200 parking spaces and give County Commission discretion to waive requirements for equal or better conditions

Unanimously approved 10-0.



City of Lawrence
Douglas County

PLANNING & DEVELOPMENT SERVICES

TA-13-00451
Agritourism (revised)

Board of County Commissioners

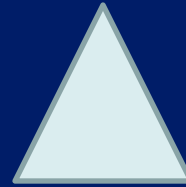
March 19, 2014



INTENT: BALANCE

PROMOTION

PROTECTION



- **PARAMETERS** to categorize uses based on potential off-site impact
- **STANDARDS**



TEXT AMENDMENT

December, 2013: Provided information to PC

January, 2014: Provided draft language to PC

----distributed draft language to all DG County agritourism users registered with the state

February, 2014: Provided revised draft language to PC. PC recommended several changes and forwarded to BoCC with unanimous recommendation for approval



Agritourism Operators Concerns

- Will the proposed regulations affect an existing Agritourism activity that is agriculturally exempt from the Zoning Regulations?

12-304-6.01 “No regulations shall apply to the use of land for agricultural purposes ...”

Does my Agritourism use meet the County definition/criteria for Agriculture?

I don't know----

Contact Zoning and Codes Staff for help
(785-331-1343)

Yes---

You are not required to register, but registration would be necessary for any incentive programs.

No---

Your use will require registration.

Continue to Page 3:

A Special Event Permit

may be used for infrequent Agritourism activities (see Section 12-319-8 or the Zoning and Codes Office.



Key Points – Site Planning

1. Site plans are currently required as part of the registration process.

•Will a new access drive be needed for the activity? **Yes** **No**

(If you answered YES access permits are required from the township for township roads and from the County Public Works Department for county roads. A copy of the access permit will be required before the Agritourism use may be registered.)

•Is floodplain located on the property? **Yes** **No**

(If you answered YES, a floodplain development permit must be obtained from the DG County Zoning and Codes Office, 785-331-1343/ 2108 W 27th Street, Suite 1, Lawrence KS before the agritourism use can be registered)

•Is this an assembly type use? **Yes** **No**

(Fairs, festivals, receptions are typical assembly type uses. If your use is an assembly type use please answer the following questions:

•What activities are associated with the assembly type use? _____

•How many attendees are expected to the assembly type use? _____

•How many assembly type events are anticipated per year? _____

•Will the assembly type use have access on a paved road? **Yes** **No**

Show the following on the aerial:

The location of the agritourism activity.

Any structures to be used for the Agritourism activity.

The following setbacks must be observed for all structures:

(setback information)

The area to be used for parking.

The location and number of chemical toilets, or other sanitary provisions.

The location of any outdoor lighting being proposed. If outdoor lighting is proposed, please provide an example of the fixture type and the lighting type to insure glare and light trespass do not occur on neighboring properties.



Key Points -- Process

Administrative Registration of Tier 1 uses
(Director of Zoning and Codes)

Home Business Occupation

Special Event Permits (meet criteria).



Key Points -- Process

Registration of Tier 2 uses require
County Commission approval

- Site Plans for other non-residential uses permitted in the A District
- Temporary Business Permits
- Special Event Permits



Review of draft language

Establishment of 3 Tiers:

Tier 1 -- Administrative: Zoning and Codes

Tier 2 -- Commission approval

Tier 3 -- Cup or Rezoning



Tier 1 Uses Defined

Most Agritourism uses could be Tier 1, with exception of:

- Assembly uses such as Fairs or Festivals (small scale assembly uses such as receptions, weddings, etc are permitted)
- Farmer's Markets with > 10 vendors
- B&B or Farm Stays with > 3 guestrooms



Tier 1--Parameters

Located on land with agricultural land uses or a working farm or ranch (as determined by Zoning and Codes)

Resident Agritourism Operator

Parking is limited to 50 parking spaces



Tier 1—Standards

Operator:

Adequate parking on-site

No use of amplification and non-ag motors

Parking areas screened

Exterior lighting prohibited-except farm stays

Sanitary facilities provided

ADMINISTRATIVE WAIVER



Tier 1—Process: Submittal

- State & County registration forms
- Site Plan
- Materials related to public notification (NEW)



Tier 1—Process: Review

Review Criteria:

- Intent of Tier 1 (no negative off-site impacts,
- Arrangement compatible with adj land uses,
- Adequate screening,
- Vehicular ingress/egress safe and efficient
- Nature of use is compatible and enhances or maintains the rural character



Tier 1—Process: Duration/Re-registration

Re-register every 5 years/ with State

Use may continue as long as it complies with the conditions/standards in the Registration

Re-register with change such as new activity, more parking, expanding activity area



Tier 2 Uses Defined

- Tier 1 uses which don't meet the Tier 1 parameters or standards
- Assembly uses such as Fairs or Festivals
- Farmer's Markets with > 10 vendors
- B&B or Farm Stays with > 3 guestrooms
- Parking limited to 200 spaces



Tier 2 Uses Standards

Operator

Adequate parking provided on site.

No motors or motorized vehicles

Screening of parking areas

Lighting plan for exterior lighting

Sanitary facilities

Activity (except ag) 50 ft from property line

COMMISSION WAIVER



Tier 2 Uses Process

Submittal:

Registration Forms (State and County)

Site Plan

Information from Fire Department (NEW)

(Zoning and Codes will provide notification)



Tier 2 Uses Process

Director of Zoning and Codes shall review and provide recommendation.

- Arrangement compatible with adj land uses
- Adequate screening
- Vehicular ingress/egress safe and efficient
- Nature of use is compatible
- Suitability of existing road network
(Improvements)



Tier 2 Uses Process

BoCC may take one of following actions:

- Approve: (including any waivers)
- Approve with conditions/restrictions
- Return to staff for more info
- Deny



Tier 2 Uses

Duration/Re-registration

Re-register every 5 years/ with State

May continue as long as the use complies with the conditions/restrictions on registration

Re-register whenever a change in use, parking, or activity area is proposed.

--Administrative re-registration Option

No changes and no unresolved complaints

Minor changes---25% parking or activity area increase



Planning Commission Recommendation:

February 26, 2014 :

Voted unanimously to forward text amendment to the County Commission with recommendation for approval with changes recommended at the meeting.

WEBSTER L. GOLDEN
PETER K. CURRAN
WINTON A. WINTER, JR.
EVAN H. ICE
SHERRI E. LOVELAND
MOLLY M. WOOD
CHRISTOPHER F. BURGER*
WESLEY F. SMITH
BRADLEY R. FINKELDEI
MATTHEW H. HOY*
LESLIE M. MILLER

*ADMITTED IN KANSAS AND
MISSOURI

♠ADMITTED IN KANSAS, MISSOURI
AND CALIFORNIA

STEVENS & BRAND LLP

ATTORNEYS AT LAW
US BANK TOWER

900 MASSACHUSETTS, SUITE 500
POST OFFICE BOX 189
LAWRENCE, KANSAS 66044-0189
PHONE: (785) 843-0811 FAX: (785) 843-0341

EMILY A. DONALDSON
REBECCA J. WEMPE
PATRICIA E. HAMILTON*
JOHN T. BULLOCK[♠]
JEFFREY L. HEIMAN
KRISTIN L. BALLOBIN
KANA R. ROLLER*

OF COUNSEL
THOMAS D. HANEY

RICHARD B. STEVENS
1899-1991
JOHN W. BRAND
1907-1971
JOHN W. BRAND, JR.
RETIRED

March 25, 2014

****Courier Delivery****

Board of County Commissioners
1100 Massachusetts St. 2nd Level
Lawrence, KS 66044

Dear Board of County Commissioners:

I have been asked the question whether compliance with the County's proposed agritourism regulations will adversely affect a property owner's liability limitation under the Kansas Agritourism Promotion Act (K.S.A. 32-1430 et seq.). In short, I am of the opinion that the County's proposed regulations will not adversely affect the liability protection that the Kansas Act provides.

Although the Kansas Act and the proposed agritourism regulations have a similar goal (to promote rural tourism as a form of economic development) they addressed significantly different issues. The Kansas Act encourages agritourism by providing liability protection to the agritourism operator, without the liability protection, and agritourism operator may be reluctant for fear of being sued. The County's proposed agritourism regulations address land use issues, without the agritourism regulations, the agritourism operator may not be able to legally conduct the agritourism use without obtaining a CUP. The fact that the County proposed agritourism regulations require registration with the state does not undercut or eliminate the benefits of the Kansas Act.

If the agritourism operator registers the agritourism activity with the state, posts the statutorily required warning signs, and otherwise complies with the Kansas Act, the operator will enjoy the benefits of liability protection provided in the Kansas Act. If the agritourism operator complies with the requirement of the County agritourism regulations, the operator can legally operate under the County zoning regulations without obtaining a CUP. If the agritourism operator complies with the Kansas Act and the County agritourism regulations, the operator will enjoy both Kansas liability limitation and legal operation under the County zoning regulations.

Very truly yours,
STEVENS & BRAND, L.L.P.



Evan H. Ice
eice@stevensbrand.com

EHI:rb
Cc: Craig Weinaug

① Several sections labeled 12-319 instead of 12-319

12-319-7.04 (c) end at "electric motors."

New section between (c) & (d):

"Any amplified sound (music, auctioneers, stereos, etc.) used in conjunction w/ a Tier 1 Agritourism use shall not be audible from any other property unless that other property owner(s) give written permission ~~as part of~~ as part of the Agritourism registration application."

12-319-7.04 (e) "used solely in conjunction with non-residential or non-agricultural Agritourism uses."

② 12-319-7.07 "Duration / Re-Registration"

12-319-7.12 "Duration / Review"

Substantially equivalent sections with different titles

③ 12-319-7.07 add section similar to 12-319-7.12 (d) addressing enforcement

12-319-7.09 Amplified music should be addressed for Tier 2 since it could be as problematic as motorized vehicles.

④ ~~12-319-7.10~~ (Administrative waiver) Wording should be more similar to 12-319-7.05

⑤ 12-319-7.12 (c) (ii) (a) should reference notification procedures at 12-319-7.11 (b) to include information about 200' notification area and whose responsibility it is.

12-319-7.12 (d) should specify "non-Agricultural, non-residential Agritourism activities." Should specify complaint ~~process~~ & enforcement procedures. No anonymous complaints should be allowed.

into the adjacent County, notice must be sent to property owners in the adjacent County.

- iii. For Agritourism uses that will be located on an unpaved road, the Zoning and Codes Office shall mail notice to all property owners of residentially developed property on an unpaved road which would be considered the most direct route to the nearest hard-surfaced road..
- c. The Director of Zoning and Codes shall review the registration application with the criteria noted in this section and provide a report with recommendation to the Commission.
 - i. The proposed arrangement of buildings, off-street parking, access, lighting is compatible with adjacent land uses;
 - ii. Adequate screening is provided between the parking area and adjacent residences or road right-of-ways.
 - iii. The vehicular ingress and egress to and from the site provides for safe, efficient and convenient movement of traffic including emergency vehicles;
 - iv. The nature of the use is compatible with adjacent land uses and enhances or maintains the rural character of the unincorporated portion of the county.
 - v. Suitability of the existing road network suitable for the traffic expected to be generated by the Agritourism use. Road improvements may be required in some cases.
- d. The Board of County Commissioners may take one of the following actions on the registration:
 - i. Approve the registration, **including waiving any standard deemed reasonable to waive;**
 - ii. Approve the registration with conditions/restrictions such as limitation on the size of buildings and parking areas, establishment of operating hours; establishment of buffering, limitation on activities; road improvements; etc;
 - iii. Return the registration to staff with request for more information; or
 - iv. Deny the registration.

no analog factor

12-309-7.12 Duration/Review

Tier 1 = "Re-Registration"?



City of Lawrence
Douglas County

PLANNING & DEVELOPMENT SERVICES

TA-13-00451
Agritourism (revised)

April 2, 2014

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 are protected.

12-319-7.01 AGRITOURISM

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.

Typical agritourism uses include, but are not limited to, the following:

- b.** Typical agritourism uses include, but are not limited to, the following:
- 1) Farm markets/roadside stands,
 - 2) U-pick operations,
 - 3) Farm winery tours and tastings,
 - 4) Corn mazes,
 - 5) Farm-related interpretive facilities, exhibits, and tours,
 - 6) Historical, cultural, or agriculturally related educational and learning experiences, including volunteer workers,
 - 7) Farm stays,
 - 8) Bed and Breakfast establishments,
 - 9) Recreation related operations (fishing, hunting, bird watching, hiking, etc),
 - 10) Horseback riding,
 - 11) Garden, nursery tours and exhibits,
 - 12) Pumpkin patch visits and activities,
 - 13) Assembly type uses such as fairs or festivals which are historical, cultural, or agriculturally related; weddings, receptions; etc,
 - 14) Ancillary retail sales,
 - 15) Other uses that may be determined on a case by case basis if it meets the purpose and intent of the regulations.
- c.** These Agritourism provisions do not apply to camping.

12-319-7.02 REGISTRATION AND APPROVAL PROCESS

- 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; Section 12-319A, Site Plan Regulations; or Section 319.8 , Special Event Permits, although other State and local regulations shall apply.
- b.** Sections 12-319-7.03 and 12-319-7.06 establish the parameters for Tier 1 (low intensity), and Tier 2 (medium intensity) Agritourism uses.

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- 1) Tier 1 (low intensity) Agritourism uses may be registered administratively by the Zoning and Codes Director.
 - 2) Registration of Tier 2 (medium intensity) Agritourism uses requires approval by the Board of County Commissioners.
 - 3) Agritourism uses which do not meet the definition or parameters of a Tier 1 or Tier 2 use require approval through a Conditional Use Permit, Special Event permit, or rezoning.

- c. Registration forms shall be jointly reviewed by the Director of 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.
- 1) 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.
 - 2) If the Directors are unable to make a determination, the registration will be referred to the Board of County Commissioners.
 - 3) 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.

12-319-7.03 TIER 1 (LOW INTENSITY) AGRITOURISM USES DEFINED

- a. Tier 1, or low intensity Agritourism uses are not expected to generate noise, or other impacts, to the level that they would have negative impacts on surrounding properties. Examples of Tier 1 Agritourism uses include, but are not limited to:
- 1) Farm Stands;
 - 2) Farmers Markets with 10 or fewer vendors;
 - 3) U-Pick Operations;
 - 4) Farm Winery Tours and Tastings;
 - 5) Corn Mazes and Pumpkin Patches visits and activities;
 - 6) Farm Related Interpretative Facilities, Exhibits, and Tours;
 - 7) Historical, Cultural, or Agriculturally Related Educational and Learning Experiences, including volunteer workers;
 - 8) Farm Stays and Bed and Breakfasts with no more than 3 guestrooms; and
 - 9) Recreation Related Operations (Fishing, Hunting, Bird Watching, Hiking, etc.)
-
- 10) Equestrian Facilities;
 - 11) Garden, Nursery Tours and Exhibits;
 - 12) Small scale assembly type uses such as weddings, receptions; etc,
 - 13) Christmas Tree Sales;
 - 14) Farm Tours and Demonstrations;
 - 15) Small scale entertainment such as the integration of music, theatre, or arts to enhance the rural experience.
 - 16) Ancillary Retail Sales
 - 17) Other uses that may be determined on a case by case basis to meet the intent of the Tier 1 definition.

- b.** In addition to meeting the definition above, a proposed use must meet all the following parameters to be considered a Tier 1 Agritourism use:
- 1) The Agritourism use is located on a parcel, or one of a number of contiguous parcels (contiguous shall mean lands that are adjacent and road, rail, and other rights-of-way and easements shall not exclude parcels from being contiguous), under the same ownership, as agricultural land uses listed in 12-306-2.01 or a working farm or ranch as determined by the Zoning and Codes Director;
 - 2) The Agritourism operator resides on the parcel, or one of a number of contiguous parcels (as defined in this section), containing the Agritourism use;
 - 3) Parking for the Agritourism use is limited to 50 parking spaces;

12-319-7.04 TIER 1 AGRITOURISM USES STANDARDS:

The following standards apply to all Tier 1 Agritourism uses:

- a.** The operators of the Agritourism use shall be limited to the property owner or operator, his/her family members and employees (whether paid or unpaid).
 - 1) 'Operator' refers to the person with the financial and legal responsibility for the Agritourism activity.

- b.** Adequate parking shall be provided on-site for the use, including ADA parking (where applicable). No parking may occur on adjacent roads.

- c.** In order to minimize noise from the agritourism use the following are prohibited:
 - 1) Motors or motorized vehicles, with the exception of agricultural machinery and vehicles or electric motors;
 - 2) Outdoor amplification of sound: such as auctioneering speakers or amplified music (with the exception of a stereo or radio).

- d. Landscaping or opaque fencing shall be provided along the perimeter of parking areas (excluding overflow areas) that are within view of residences or the road right of way. Landscaping shall consist of one of the following: a continuous hedge of shrubs or other vegetation or opaque fencing, of a height determined by the Zoning and Codes Director to provide adequate screening for the parking area. Alternate forms of screening may be utilized, provided the Director of Zoning and Codes determines they will provide effective screening of the parking area.
- e. Exterior lighting used in conjunction with the Agritourism use shall be prohibited with the exception of the Farm Stays and Bed and Breakfast uses. Lighting for these uses shall be located and shielded to prevent glare or trespass on to adjacent properties.
- f. Sanitary facilities shall be provided in accordance with Lawrence Douglas County Health Department requirements for the use and expected attendance.

12-319-7.05 ADMINISTRATIVE WAIVER PROVISION

The Director of Zoning & Codes may waive these standards only if it can be demonstrated that the Agritourism use, by virtue of the size or type of use proposed, the location of the use, or other site specific characteristics, will not generate noise or other impacts that negatively impact surrounding properties.

12-319-7.06 TIER 1 AGRITOURISM REGISTRATION PROCESS

- a. The Agritourism operator shall submit the following materials to the Zoning and Codes Office:
- 1) Approved State Agritourism Registration.
 - 2) Completed Douglas County Agritourism Registration form.
 - 3) Site plan
The agritourism site plan does not need to meet all the requirements in Section 12-319A, but must be adequate to illustrate the use and its conformance with the Zoning Regulations as well as the relationship of the use to the surrounding properties or right-of-way. At a minimum, the following items must be included:
 - a) All structures to be utilized for the agritourism use identified on the plan with dimensions, including the distance to the nearest property line.
 - b) Areas where the agritourism use will occur and any areas where visitors would be allowed marked on the plan.

-
- c) Access and parking areas shown and dimensioned, noting the number of spaces provided.
 - d) The water and sanitation facilities provided per the County Health Department approval.
 - e) Hours of operation noted.
 - f) Anticipated attendance noted.
 - i. For determination of parking requirements, parking is calculated at a rate of 1 parking space per 2 attendees. Attendance is limited to that which can be served by available parking as participants may arrive by bus or alternative forms of transportation.

b. A 20 day property owner notification period is required.

- 1) The applicant shall obtain a list of property owners within 1000 ft of the property on which the Agritourism activity is to occur from the Douglas County Clerk's Office. If the notification area includes land within the corporate limits of a city, the list shall include owners of property within the 1000 ft notification area that extend 200 feet into the city. If the notification area extends into the adjacent County, notice must be sent to property owners in the adjacent County.

- 2) The applicant shall mail a letter which contains the information below to the property owners on the list to advise them of the proposed Agritourism use and provide them the opportunity to contact the applicant or the Zoning and Codes Department if they have any questions.

"An Agritourism use located at _____ is in the process of being registered with Douglas County. The Agritourism use will consist of (brief description of the event). Please contact me at (phone number, email) _____ with any questions regarding this registration or the Douglas County Zoning and Codes Department at 785-331-1343."

- 3) The registrant must provide a copy of the letter, the property owner list, and certification of the date the letters were mailed to the address on the list with their registration materials.

- c.** The registration materials shall be reviewed by the Director of Zoning and Codes with the following approval criteria:
- 1) The proposed use and layout meets the intent and purpose of the Tier 1 definition;
 - 2) The proposed arrangement of buildings, off-street parking, access, lighting is compatible with adjacent land uses;
-
- 3) Adequate screening is provided between the parking area and adjacent residences or road right-of-ways.
 - 4) The vehicular ingress and egress to and from the site provides for safe, efficient and convenient movement of traffic;
 - 5) The nature of the use is compatible with adjacent land uses and enhances or maintains the rural character of the unincorporated portion of the county.
- d.** The Zoning and Codes Director may apply conditions to the registration, such as limitation on the hours, location, or the activity itself if, in the Director's opinion, the conditions are necessary to mitigate off-site impacts.

12-319-7.07 DURATION/RE-REGISTRATION

The Douglas County Agritourism use registration coincides with the State Registration. Re-registration with the County is required when the State registration is renewed, every 5 years.

- a.** The Agritourism Use may continue as long as the use complies with the conditions and standards that were applied with the registration.

- b.** Only those activities specifically listed in the registration form and approved by the Directors are allowed to occur as Agritourism. Any change in proposed uses such as a new activity, increased parking, or expanded area of activity would require:
 - 1) The modification of the registration with the State, if necessary.

 - 2) Resubmittal of the revised registration form and revised site plan to the Zoning and Codes Office for a determination of compliance with the definition of Agritourism (if a new use is proposed) and re-registration through the processes established in this section.

12-309-7.08 TIER 2 (MEDIUM INTENSITY) AGRITOURISM USES- DEFINED

- a.** Tier 2 uses include higher intensity activities or have higher attendance than Tier 1 uses. Examples of Tier 2 Agritourism uses include, but are not limited to:
- 1) Uses that would be considered a Tier 1 use that do not meet the Tier 1 parameters;
 - 2) Farmers Markets with more than 10 vendors;
 - 3) Bed and Breakfasts or Farm Stays with more than 3 guest rooms;
-
- 4) Assembly type uses such as fairs or festivals which are historical, cultural, or agriculturally related.
- b.** In addition to meeting the definition above, a proposed use must meet the following parameter to be considered a Tier 2 Agritourism use:
- 1) Parking for the Agritourism use is limited to 100 ~~200~~ parking spaces.

12-319-7.09 TIER 2 AGRITOURISM USE STANDARDS

The following use standards apply to all Tier 2 Agritourism uses:

- a.** Operators of the Agritourism activity shall be limited to the property owner or operator, his/her family members and employees (paid or unpaid).
 - 1) 'Operator' refers to the person with the financial and legal responsibility for the Agritourism activity.

- b.** Adequate parking, including ADA parking (when applicable), must be provided on-site. No parking may occur on adjacent roads.
 - 1) For the purpose of calculating parking requirements, Parking is calculated at a rate of 1 parking space per 2 attendees unless visitors are expected to utilize busses or alternative forms of transportation.

- c.** No motors or motorized vehicles, with the exception of agricultural machinery and vehicles or electric motors, will be utilized for the Agritourism Use.

- d.** Landscaping or opaque fencing shall be provided along the perimeter of parking areas (excluding overflow areas) that are within view of residences or the road right of way. Landscaping shall consist of one of the following: a continuous hedge of shrubs or other vegetation or opaque fencing, of a height determined by the Zoning and Codes Director to provide adequate screening for the parking area. Alternate forms of screening may be utilized, provided the Director of Zoning and Codes determines they will provide effective screening of the parking area.

- e. If Agritourism activities are to occur outside of daylight hours, a plan shall be provided which shows the location of lighting for the Agritourism activity and the type of lighting fixtures being used as well as means taken to shield the lighting to insure no trespass or glare to adjacent properties.
- f. Sanitary facilities shall be provided in accordance with Lawrence Douglas County Health Department requirements for the proposed use and anticipated attendance.
- g. With the exception of agricultural activities, no activities associated with the Agritourism use may occur within 50 ft of a property line of the subject parcel or the perimeter of a group of contiguous parcels. The County Commission may

vary this separation requirement depending on the nature of the Agritourism activity and the adjacent property.

12-309-7.09 TIER 2 ADMINISTRATIVE APPROVALS AND WAIVERS

- a.** The Director of Zoning and Codes may administratively approve a Tier 2 Agritourism Use without further review by the County Commission, if all of the following apply:
 - 1)** The Agritourism use permitted as a Type 1 use in Section 12-309-7.03 a;
 - 2)** The Agritourism use meets all the parameters for a Tier 1 use in Section 12-309-7.03 b. except for parameter 12-309-7.03 b.(2), which requires the operator of the Agritourism use to reside on the parcel; and
 - 3)** The Agritourism use meets all the Tier 1 use standards in Section 12-309-7.04.

- b.** The Board of County Commissioners may waive these standards if they determine that the Agritourism use, by virtue of the size or type of use proposed, the location of the use, other site specific characteristics, will not significantly impact surrounding properties.

12-309-7.11 TIER 2 AGRITOURISM USES REGISTRATION PROCESS

- a. The Agritourism operator shall submit the following materials to the Zoning and Codes Office:
- 1) Approved State Agritourism Registration.
 - 2) Completed Douglas County Agritourism Registration form.
 - 3) Site plan meeting the requirements outlined in Section 12-319-7.05(a)(3).
 - 4) Information from the applicable fire department regarding access to the proposed Agritourism Activity area.

b. A minimum 20 day notification period is required. The Commission will hold a public hearing on the proposed use at the time and place listed in the public notice.

1) 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.

2) If the notification area includes land within the corporate limits of a city, the list shall include owners of property within the 1000 ft notification

area that extend 200 feet into the city. If the notification area extends into the adjacent County, notice must be sent to property owners in the adjacent County.

3) For Agritourism uses that will be located on an unpaved road, the Zoning and Codes Office shall mail notice to all property owners of residentially developed property on an unpaved road which would be considered the most direct route to the nearest hard-surfaced road..

- c. The Director of Zoning and Codes shall review the registration application with the criteria noted in this section and provide a report with recommendation to the Commission.
- 1) The proposed arrangement of buildings, off-street parking, access, lighting is compatible with adjacent land uses;
 - 2) Adequate screening is provided between the parking area and adjacent residences or road right-of-ways.
 - 3) The vehicular ingress and egress to and from the site provides for safe, efficient and convenient movement of traffic including emergency vehicles;
 - 4) The nature of the use is compatible with adjacent land uses and enhances or maintains the rural character of the unincorporated portion of the county.
 - 5) Suitability of the existing road network suitable for the traffic expected to be generated by the Agritourism use. Road improvements may be required in some cases.

- d. The Board of County Commissioners may take one of the following actions on the registration:
- 1) Approve the registration, including waiving any standard deemed reasonable to waive;
 - 2) Approve the registration with conditions/restrictions such as limitation on the size of buildings and parking areas, establishment of operating hours; establishment of buffering, limitation on activities; road improvements; etc;
 - 3) Return the registration to staff with request for more information; or
 - 4) Deny the registration.

12-309-7.12 Duration/Review

The Douglas County Agritourism Use registration coincides with the State Registration. Re-registration with the County is required when the State registration is renewed, every 5 years.

- a. The Agritourism Use may continue as long as the use complies with the conditions and standards that were applied with the registration.
- b. **A Tier 2 use that received County Commission approval may be re-registered administratively by the Zoning and Codes Director if the use remains the same as on the original registration and no unresolved complaints are on file.**
- c. Only those activities specifically listed in the registration form and approved by the Directors are allowed to occur as Agritourism. Any change in proposed uses such as a new activity, increased parking, expanded area of activity would require:
 - 1) The modification of the registration with the State, if necessary.

- 2) Resubmittal of the revised registration form and revised site plan 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 and re-registration through the processes established above.
 - a) **Minor changes to the plan (changes that do not include an additional use or an increase in agritourism activity or parking area above 25% of the previous activity or parking area) may be approved administratively by the Zoning and Codes Director following notification of neighbors within 1000 ft.**
- d. Engaging in any activity not listed on the registration or operating out of compliance with the plans and conditions approved with the registration would be considered a violation subject to the enforcement provisions of Section 12-329.

12-319-7.13 STRUCTURES AND CONSTRUCTION CODES

Structures for Agritourism uses are required to comply with Douglas County Construction Codes, adopted by HR-12-11-5, and amendments thereto.