

## BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

### WEDNESDAY, OCTOBER 8, 2014

6:35 p.m.

-Consider approval of the minutes for August 13, September 3, September 10 and September 17, 2014.

### CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders;
- (b) Consider approval of Supplemental Agreement No. 1, which corrects typographical errors in the Original Agreement with KDOT dated May 3, 2012 concerning Project No. 23 C-4123-01, the replacement of the Route 1057 bridge over the Wakarusa River (Keith Browning);
- (c) Consider approval of a contract with Stan Hernly in the amount of \$12,000 to complete a natural, cultural and historic survey of Eudora and Kanwaka Townships;
- (d) Direct staff to file order of the County Commission for a decision concerning a fence viewing (Weinaug)

### REGULAR AGENDA

- (2) Delaware Tribe of Indians and Douglas County Partners Cooperative Agreement (Nancy Thellman)
  - (3) **CUP-14-00295**: Consider a Conditional Use Permit to allow a Truck Storage Facility for Creekwood Lawn, located at 1753 N 700 Rd. Submitted by Shelby Franklin, property owner of record. (PC Item 1; approved 10-0 on 9/22/14) (Sandra Day is the Planner)
  - (4) (a) Consider approval of Accounts Payable (if necessary)
  - (b) Appointments
  - Board of Zoning Appeal (2) eligible for reappointment 10/2014
  - Building Code Board of Appeals (1) eligible for reappointment 12/2014
  - Fire District No. 1 – 12/2014
  - 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
- (5) Adjourn

### TUESDAY, OCTOBER 14, 2014

5:30-7:00 p.m. – Reception for Kansas University new faculty, administration, deans, department chairs and program directors at the Lied Center Pavilion.

### WEDNESDAY, OCTOBER 15, 2014

4:00 p.m.

### CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders;
- (b) Consider a contract with Treanor Architects for the jail expansion (McGovern/Weinaug)

### REGULAR AGENDA

- (2) Consider a request from the City of Lawrence for a NRA 9 Del Lofts NRA (Britt Crum-Cano)
- (3) Presentation on CarmaHop, a road side ride sharing program (Jenny O'Brien)
- (4) (a) Consider approval of Accounts Payable (if necessary)
- (b) Appointments
- Board of Zoning Appeal (2) eligible for reappointment 10/2014

- Building Code Board of Appeals (1) eligible for reappointment 12/2014
- Fire District No. 1 – 12/2014
- 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

## **RECESS**

## **RECONVENE**

6:35 p.m.

- (5) Annual review of Hamm-Buchheim Quarry/Hamm Quarry No. 69, Conditional Use Permit CUP-11-5-76, a Mining and Excavation use located on approximately 73 acres at 1453 E 550 Road. Mary Miller is the Planner.

- (6) Adjourn

## **WEDNESDAY, OCTOBER 22, 2014**

-CUP-14-00304 Central Soyfoods LLC

## **WEDNESDAY, OCTOBER 29, 2014**

## **WEDNESDAY, NOVEMBER 5, 2014 –Light Agenda**

**4:00 p.m. only**

-Recognition for Emergency Management Volunteers (Teri Smith)

## **WEDNESDAY, NOVEMBER 12, 2014-CANCELED**

## **THURSDAY, NOVEMBER 13, 2014**

-9:00 a.m. – General Election Canvass

## **WEDNESDAY, NOVEMBER 19, 2014**

## **WEDNESDAY, NOVEMBER 26, 2014-CANCELED**

*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.*



## DOUGLAS COUNTY PUBLIC WORKS

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

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

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### MEMORANDUM

To : Board of County Commissioners

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

Date : September 22, 2014

Re : Consent Agenda approval of Supplemental Agreement No. 1  
Project No. 23 C-4123-01  
Replacement of Bridge No. 13.00N-19.00E  
Route 1057 bridge over Wakarusa River

In an agreement approved by the BOCC during the April 11, 2012 meeting and dated May 3, 2012 by KDOT, Douglas County agreed to allow KDOT to capture future federal obligation authority awarded to Douglas County to cover the additional monies Douglas County owed KDOT for the referenced bridge replacement project. In that agreement, there was a typographical error in Article I, paragraph 4, indicating the amount of federal obligation authority available to Douglas County was \$1,897,430. The actual amount available to Douglas County at the time was \$1,879,430. The typographical error in Article 1, paragraph 4 was propagated to Article II, paragraph 18 of the original agreement.

The attached Supplemental Agreement No. 1 simply corrects the typographical errors to indicate the correct amount of federal obligation authority available to Douglas County at the time of the project.

Action Required: Consent Agenda approval of Supplemental Agreement No. 1, which corrects typographical errors in the Original Agreement with KDOT dated May 3, 2012 concerning Project No. 23 C-4123-01, the replacement of the Route 1057 bridge over the Wakarusa River. |

PROJECT NO. 23 C-4123-01  
BRS-C412(301)  
BRIDGE REPLACEMENT  
DOUGLAS COUNTY, KANSAS

**S U P P L E M E N T A L   A G R E E M E N T   N o . 1**

This Agreement, made and entered into effective the date signed by the Secretary or designee, is by and between **MICHAEL S. KING, Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the “Secretary”) and **Douglas County, Kansas** (“County”), **collectively**, the “Parties.”

**RECITALS:**

- A. The Parties entered into an Agreement dated May 3, 2012 for bridge replacement in the County on RS-1374 approximately ½ mile south of K-10 (the “Original Agreement”).
- B. The Parties mutually desire to supplement the Original Agreement to accurately reflect the maximum federal funds allowed for the Project.

**NOW, THEREFORE**, the Parties agree as follows:

1. On page 2 of the Original Agreement, Article I, paragraph 4, be replaced in its entirety to read as follows:

4. To be responsible for eighty percent (80%) of the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering, but not to exceed \$1,879,430.00 for the Project. The Secretary shall not be responsible for the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering that exceeds \$2,349,287.00 for the Project. The Secretary shall not be responsible for the total actual costs of preliminary engineering, rights of way, and utility adjustments for the Project.

2. On page 6 of the Original Agreement, Article II, paragraph 18, be replaced in its entirety to read as follows:

18. To be responsible for twenty percent (20%) of the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering, up to \$2,349,287.00 for the Project. In addition, the County agrees to be responsible for one hundred percent (100%) of the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering that exceeds \$2,349,287.00 for the Project. Further, the County agrees to be responsible for one hundred percent (100%) of the total actual costs of preliminary engineering, rights of way, and utility adjustments for the Project.

**THIS SUPPLEMENTAL AGREEMENT** shall not be construed to alter, modify, or void the terms, provisions or conditions of the Original Agreement, incorporated herein by reference, except as herein specifically provided.

***The signature page immediately follows this paragraph.***

**IN WITNESS WHEREOF**, the Parties have caused this Supplemental Agreement to be signed by their duly authorized officers.

ATTEST:

DOUGLAS COUNTY, KANSAS

\_\_\_\_\_  
COUNTY CLERK (Date)

(SEAL)

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
MEMBER

\_\_\_\_\_  
MEMBER

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

By: \_\_\_\_\_  
Jerome T. Younger, P.E. (Date)  
Deputy Secretary and  
State Transportation Engineer



## DOUGLAS COUNTY ADMINISTRATIVE SERVICES

### Division of Purchasing

1100 Massachusetts Street  
Lawrence, KS 66044-3064  
(785) 832-5286 Fax (785) 838-2480  
www.douglas-county.com

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

FROM: Jackie Waggoner, Purchasing Director  
Bobbi Rahder, Heritage Council Coordinator

SUBJECT: Consider Contract for Historic Resources Survey

DATE: October 8, 2014

In March 2014, the Douglas County Commission approved the Heritage Conservation Council to submit an HPF grant application to the Kansas State Historical Society to support the 2014 Historic Preservation Fund (HPF) Intensive Surveys of Eudora and Kanwaka Townships. The HPF grant was awarded in the amount of \$13,483.70 for this project.

We solicited proposals from qualified individuals/firms to complete a natural, cultural and historic resources survey of the Eudora and Kanwaka Townships. Two proposals were received. Dale Nimz proposed doing the project for \$25,000. Stan Hernly proposed doing the project for \$12,000.

A committee of three (Bobbi Rahder, Michael Thompson, and Shelley Hickman Clark) reviewed the proposals. The Historic Survey Committee and Heritage Conservation Council both agreed that Mr. Stan Hernly had the best proposal. Mr. Hernly is highly qualified as evidenced by his expertise, extensive experience and of local knowledge.

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

**RECOMMENDATION:** The Board of County Commissioners approves a contract with Stan Hernly in the amount of \$12,000 to complete a natural, cultural and historic survey of Eudora and Kanwaka Townships.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF DOUGLAS COUNTY**

**DECISION CONCERNING A CERTAIN FENCE VIEWING  
IN DOUGLAS COUNTY, KANSAS**

On this \_\_\_\_\_ day of \_\_\_\_\_, 2014, the Board of County Commissioners of Douglas County, Kansas, convenes to render its decision concerning a certain fence viewing by the person designated by the Board for that purpose, and which occurred in Douglas County, Kansas on June 11, 2014. Having reviewed the written report of the person designated by the Board to conduct the fence viewing and the materials provided by the parties and having conducted the fence viewing and heard the verbal comments of the parties, the Board hereby makes the following findings and conclusions:

**FINDINGS OF FACTS**

1.) Kansas Statutes Annotated (K.S.A.) 29-201 *et seq.* provides that the Board of County Commissioners in each county shall be fence viewers in each township of such county. The Board has the authority to, and did duly appoint Richard W. Hird, an attorney and a resident of Douglas County, Kansas, as the designated fence viewer, as that term is used in K.S.A. 29-201.

2.) K.S.A. 29-301 *et seq.* provides that when any controversy shall arise about the rights of the respective owners in partition fences, or their obligations to keep up and maintain the same in good repair, that if said owners cannot agree among themselves, then either party may apply to the fence viewers of the county in which such fence may be situated to view such fence, and assign to each party, in writing, such party's equal share or part of such partition fence which shall thereafter be kept up and maintained in good repair by the parties.

3.) Natalya Lowther (hereinafter "**Lowther**") is the current owner of a tract of land in Douglas County, Kansas described as

A tract of land located in the South Half (S½), of the Southeast Quarter (SE¼) of Section Nineteen (19), Township Twelve South (T12S), Range Twenty East (R20E) of the 6<sup>th</sup> P.M., Douglas County, Kansas, more particularly described as follows: Commencing at the Southeast corner of the Southeast Quarter (SE¼); thence North 90° 00' 00" West a distance of 992.95 feet, said point being on the South line of the Southeast Quarter (SE¼); thence North 00° 32' 15" West a distance of 331.00 feet to the point of beginning; thence South 89° 42' 37" West a distance of 199.77 feet; thence North 89° 30' 40" West a distance of 130.79 feet; thence North 00° 30' 11" West a distance of 331.10 feet; thence North 89° 57' 47" West a distance of 264.28 feet; **thence North 00° 28' 32" West a distance of 91.75 feet**; thence North 28° 07' 48" East a distance of 235.87 feet; thence North 19° 02' 34" East a distance of 383.26 feet, said point being on the North line of the South Half (S½), of the Southeast Quarter (SE¼); thence along said North line South 89° 55' 37"

East a distance of 352.93 feet; thence South 00° 32' 15" East a distance of 993.00 feet to the point of beginning, containing 9.80 acres more or less, subject to easements of record.

(hereinafter collectively, the "**Lowther Property**"). Generally, the Lowther Property is on the East side of the Common Fence and is rural pasture land, currently used by Lowther for pasturing sheep.

4.) Kenneth Sloan (hereinafter "**Sloan**") is the current owner of a tract of land in Douglas County, Kansas, described as:

6 Acres off the East side of the South 24 Acres of the West 64 Acres of the Southeast Quarter of Section Nineteen (19), Township Twelve South (T12S), Range Twenty East (R20E) of the 6th P.M., Douglas County, Kansas.

(hereinafter collectively, the "**Sloan Property**"). Generally, the Sloan Property is on the West side of the Common Fence and is rural, undeveloped residential and pasture land, with a small pond near the Common Fence, as defined below.

5.) The Lowther Property and Sloan Property are located within the unincorporated portion of Douglas County.

6.) The Lowther Property and the Sloan Property are contiguous and share a 91.75 foot section of common fence, described in the bold and underlined call of the Lowther Property, above, as "**thence North 00° 28' 32" West a distance of 91.75 feet**" (hereinafter, the "**Common Fence**").

7.) On or about May 28, 2014, Lowther submitted an Application to the Board of County Commissioners to act as fence viewers and settle the controversy between the parties.

8.) On or about May 28, 2014, the Board appointed Richard W. Hird, a resident of Douglas County and an attorney at law (hereinafter, the "**Fence Viewer**"), to act as the Board's designated fence viewer, as that term is used in K.S.A. 29-201, et seq.

9.) The Fence viewer gave due notice to Lowther and Sloan of his intent to view the fence on June 11, 2015.

10.) On June 11, 2015, the Fence Viewer personally walked and viewed the Common Fence. Lowther was present and gave her verbal comments to the Fence Viewer during the viewing. Sloan was not present.

11.) Prior to the initiation of this proceeding and apparently in response to Lowther's complaints regarding the adequacy of the previous fence, Sloan installed a new Common Fence made of 48" welded wire, consisting of 13 horizontal strands of 14 gauge wire with vertical strands every two inches, resulting in 2" x 4" welded wire rectangles. The fence is standard welded wire fencing available at most farm supply stores in 50' and 100' rolls and is typically used for garden and lighter weight agricultural purposes. Sloan installed new "t" posts on approximately 7' centers, with standard wire clips holding the



welded wire to the posts. The welded wire is installed on Lowther's side of the posts. The fence appears to be on, or approximately on, the property line. At the South end, there is a substantial wooden end post, to which the welded wire is attached; and at the North end, the welded wire is attached to a "t" post located at the survey pin. Lowther has installed yellow plastic insulators on the "t" posts and a single electric fence wire on her side of the fence.

12.) Lowther contends the Common Fence does not satisfy the statutory minimum requirements. She has requested the installation of a "durable agriculturally standard fence." The parties have been unable to reach an agreement regarding the adequacy of the Common Fence, as constructed by Sloan, and the improvements to the Common Fence requested by Lowther.

13.) The requirements for a fence composed of posts and wires are set forth in K.S.A. 29-103:

Fences composed of posts and wires. In fences composed of posts and wires, the posts shall be of ordinary size for fencing purposes, and set in the ground at least two feet deep and not more than twelve feet apart, with holes through the posts or staples on the side not more than fifteen inches apart, to admit four separate strands of fence wire not smaller than No. 9, and shall be provided with rollers and levers, at suitable distances, to strain and hold the wire straight and firm.

14.) K.S.A. 29-104 provides the Commission with authority to find that "constructions which shall be equivalent thereto" may be deemed legal and sufficient.

15.) K.S.A. 20-109 provides that an electric fence may be deemed a legal fence unless the County Commission has, by resolution, declared otherwise. The Board has not declared otherwise by resolution.

16.) The use of welded wire fence fabric for a legally sufficient fence is not mentioned in K.S.A. 29-103, but it is described in the Douglas County Code, Section 3-13.5, Exhibit D, which specifically refers to welded wire fencing as an appropriate material to fence around sewage lagoons. The statute requires 4 horizontal strands of 9 gauge wire, while the welded wire fencing has 13 horizontal strands of 14 gauge wire and vertical strands every 2 inches. The statute requires posts to be placed at least every 12 feet, while the present construction of the Common Fence has posts approximately every 7 feet.

17.) In addition, the Common Fence, as currently constructed, combines welded wire fencing and an electric fence. Douglas County Code, Section 3-13.5 (e) provides that, for the purpose of fencing around sewage lagoons, welded wire combined with an electric fence is a suitable legal fence where contact with livestock is anticipated.

18.) The electric wire installed by Lowther is closer to the ground than at the top of the fence, but the livestock in this case is sheep, not cattle or horses, and it is appropriately located. The insulators are appropriately attached to the "t" posts.

19.) Based upon the foregoing facts, the Commission finds that the use of the welded wire fabric and “t” posts for the Common Fence, as currently constructed, is the equivalent of the wire fence described in the statute.

20.) Based upon the foregoing facts, the Board finds that the Common Fence, as presently constructed, meets the requirements for a legal fence.

21.) The Board finds that the owners of the adjacent tracts must share equally in the maintenance and/or replacement of the Common Fence.

22.) The Board finds that the presently constructed Common Fence will need periodic maintenance and eventual replacement. K.S.A. 29-301 provides that the owners of the adjoining parcels shall “...keep up and maintain in good repair all partition fences between them in equal shares, so long as both parties continue to occupy or improve such lands, unless otherwise agreed.”

23.) The Board finds that the following duties and obligations shall apply to the parties and their successors and assigns:

- a. Maintenance of the currently constructed Common Fence is and shall be the equal responsibility of the owner of the Lowther Property and the owner of the Sloan Property.
- b. When the currently constructed Common Fence eventually fails, the owner of the Lowther Property and the owner of the Sloan Property shall equally share the cost of replacing the Common Fence. Those costs shall include, without limitation:
  - i. Bracing of the existing end post on the South end and a properly braced end post on the North end; and
  - ii. Four strands of 9 gauge wire with strainers, rollers or levers for keeping the wire tight.
  - iii. If either the Lowther Property or the owner of the Sloan Property desires to install fencing that exceeds the statutory requirements, the difference in cost will be that party’s responsibility. For example, if Lowther desires to install woven wire fencing instead of four single strands, the difference in the cost will be her responsibility.

**CERTIFICATION**

We, the undersigned members of the Board of County Commissioners of Douglas County, Kansas, do hereby certify that the Findings designated above were rendered by us on \_\_\_\_, day of October, 2014, and a copy hereof shall be filed and recorded with the offices of the Douglas County Register of Deeds in such book as is provided for that purpose.

BOARD OF COUNTY COMMISSIONERS  
OF DOUGLAS COUNTY, KANSAS

\_\_\_\_\_  
Nancy Thellman, Chairman

\_\_\_\_\_  
Jim Flory, Member

\_\_\_\_\_  
Mike Gaughan, Member

Attest:

\_\_\_\_\_  
Jameson D. Shew  
County Clerk

# Cooperative Agreement: Delaware Tribe Land North of Lawrence

## Background

The Delaware Tribe of Indians and the undersigned organizations have undertaken a collaborative planning process to envision an agricultural, educational, and cultural center on a portion of the 90 acres north of Lawrence purchased by the Delaware Tribe. The property was purchased by the Delaware Tribe in July 2013 to facilitate their re-establishment in their ancestral lands in northeast Kansas. In the spirit of cooperation, the Tribe reached out to community leaders to engage in dialogue about the future potential use of the property.

Interested parties from the City of Lawrence, KS; Douglas County, KS; Unified School District 497 Lawrence, KS Public Schools; Haskell Indian Nations University; the University of Kansas; Kansas State Research and Extension; USDA Natural Resources Conservation Service; the Douglas County, KS Conservation District; and the Lawrence, KS Chamber of Commerce have all participated in the creation of the *Vision Outline: Delaware Tribe Land North of Lawrence* that describes the potential use of this site. This Vision Outline demonstrates a shared interest in creating a community asset that provides educational opportunities, tribal economic benefit, agricultural conservation, and contributes to a healthy tribe and community.

## Purpose

This Agreement codifies the intent of these organizations to continue to engage in a collaborative planning process that supports the Delaware Tribe's desire to create an agricultural, educational, and cultural center for their tribal members and the broader Douglas County community. The Delaware Tribe and the undersigned organizations agree to:

- Participate in collaborative planning efforts for the future use of the 90 acre Delaware Tribe property, including a facilitated design charrette process to further refine the plan for the project.
- Support grant writing needed to ensure the viability of the project.
- Dedicate a representative from their organization to continue with the project in an Advisory Council capacity.

This agreement is effective when executed and will remain in effect until amended and agreed upon by all parties.

## Vision Outline: Delaware Tribe Land North of Lawrence

Over the course of four facilitated meetings in August, 2014, the Delaware Tribe of Indians and local Lawrence and Douglas County, KS representatives met to discuss the potential use of the Delaware Tribe-owned 90 acres of agricultural land in Douglas County located just north of Lawrence. These parties came together for discussions with the expressed goal of finding ways they could work together to best meet the interests of the Delaware Tribe in Kansas and the broader community. The vision that emerged for the site included two key components.

### 1. Multi-purpose cultural/education center:

This center would be located on the west thirty acres of the tribal land, utilize some of the existing buildings, and would serve multiple purposes, including:

- tribal headquarters and offices
- classroom space for Tribe, Haskell, University of Kansas, Kansas State University and other educational partners to collaborate in the teaching of food production methods
- internships and job training
- public interface (profit-generating)
- kitchen to feed elderly tribal members
- classroom space for cooking demonstrations and culinary students
- general meeting spaces
- classes in Native American culture

Meeting participants agreed that the components of the center listed above are examples of appropriate uses, but it is not an all-inclusive list. The design of the west 30 acres should begin before pursuing the agricultural uses on the east 60 acres of land, and the vision may need to accommodate the construction of a new building or buildings.

### 2. Agricultural component:

In addition to the multi-purpose cultural/education center, participants suggested appropriate agricultural uses and strategies for the tribal land:

- make the best use of soil on the west thirty acres of land before planning for the east sixty acres
- multi-level education to include traditional and modern production methods
- sustainable (which includes profitable) agricultural enterprises
- on-site, collaborative agricultural education classes
- a variety of complementary agricultural uses, ranked by the group in the following order:
  - food hub
  - food-based botanical garden
  - experimentation or demonstration agriculture
  - hoop houses
  - food sovereignty (native and heirloom foods and seeds)
  - horticultural gardens, orchards and fruit stands
  - tribal extension agent (*tie with item above*)
  - holistic health center
  - orchard, farm-to-plate restaurant, monarch and pollinator preservation center, livestock production (*all unranked*)

Once again, participants agreed that the items listed above are examples of appropriate agricultural land uses. Items may or may not be included in a final plan as the vision is pursued in greater detail.

**Signatures from participating entities:**

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**The Delaware Tribe of Indians:**

\_\_\_\_\_  
(signature of representing official)

\_\_\_\_\_  
(printed name and title)

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**The City of Lawrence, KS:**

\_\_\_\_\_  
(signature of representing official)

\_\_\_\_\_  
(printed name and title)

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**Douglas County, KS:**

\_\_\_\_\_  
(signature of representing official)

\_\_\_\_\_  
(printed name and title)

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**USD 497 Lawrence, KS Public Schools:**

\_\_\_\_\_  
(signature of representing official)

\_\_\_\_\_  
(printed name and title)

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**Haskell Indian Nations University:**

\_\_\_\_\_  
(signature of representing official)

\_\_\_\_\_  
(printed name and title)

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**The University of Kansas:**

\_\_\_\_\_  
(signature of representing official)

\_\_\_\_\_  
(printed name and title)

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**Kansas State Research and Extension:**

\_\_\_\_\_  
(signature of representing official)

\_\_\_\_\_  
(printed name and title)

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**USDA Natural Resources Conservation Service:**

\_\_\_\_\_  
(signature of representing official)

\_\_\_\_\_  
(printed name and title)

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**Douglas County, KS Conservation District:**

\_\_\_\_\_  
(signature of representing official)

\_\_\_\_\_  
(printed name and title)

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**Lawrence, KS Chamber of Commerce:**

\_\_\_\_\_  
(signature of representing official)

\_\_\_\_\_  
(printed name and title)

**PLANNING COMMISSION REPORT**  
**Regular Agenda – Public Hearing Item**  
**Joint Hearing with Baldwin City Planning Commission**

PC Staff Report  
9/22/14

**ITEM NO. 1      CONDITIONAL USE PERMIT FOR CREEKWOOD LAWN; 1753 N 700 RD (SLD)**

**CUP-14-00295:** Conditional Use Permit request for a Truck Storage Facility for Creekwood Lawn, located at 1753 N 700 Road. Submitted by Shelby Franklin, property owner of record. *Joint meeting with Baldwin City Planning Commission.*

**STAFF RECOMMENDATION:** Staff recommends approval of a Conditional Use Permit for a Truck Storage Facility and forwarding of it to the County Commission with a recommendation for approval, based upon the findings of fact presented in the body of the staff report, and subject to the following conditions:

1. Provision of a note on the face of the site plan stating, "The Conditional Use Permit shall expire on December 31, 2019."
2. The applicant shall obtain from Douglas County a building permit as a condition of continued operation.
3. The applicant shall work with the Douglas County Public Works Office to widen the driveway per County specifications.
4. The applicant shall obtain from Douglas County a local floodplain development permit.

**Attachments:**

- Attachment A: Area Map
- Attachment B: Site Plan
- Attachment C: Floodplain Boundary Map

**Reason for Request:** *To store my equipment/trucks for my business. [Previous application] I failed to get the information in on time and last year's CUP expired.*

**KEY POINTS**

- Site includes existing building used for storing equipment related to business activity.
- Conditions of approval of original 2003 CUP not met including execution of a local floodplain development permit and historic environs review.
- Historic Environs review no longer applicable. State law was revised in July 2013 eliminating requirement for review of project impact on historic property for properties located in the environs of a listed property.
- Local Floodplain Development Permit is required for this property. Applicant is working with County staff.

**DESCRIPTION OF USE**

This property is used for storage of trucks, equipment and materials related to a landscape business. Site activity includes some exterior storage. The purpose of this request is to permit the storage of vehicles and equipment as allowed, with a Conditional Use Permit, in the A (Agricultural) District.

The existing building was originally constructed as an agriculture building and exempt from building inspection review. The applicant has stated the intent to construct a residence at this location and

the building would then be an accessory building to the residence. To date a residence has not been constructed at this site.

This business could potentially operate as a home occupation if the applicant resided at this location. Currently this building is considered an accessory structure with no primary use (residence).

### **ASSOCIATED CASES/OTHER ACTION REQUIRED**

- CUP-12-17-02: Creekwood Lawn Company Storage Shed
  - PC approved on 1/22/03
  - BOCC approved on 2/24/03
  - Conditions of approval not met, application expired on 2/24/2004.
- CUP-12-00030: Conditional Use Permit for a *Truck Storage Facility* for Creekwood Lawn
  - PC approved on 8/20/12
  - BOCC approved on 9/13/12
  - Conditions of approval not met, application expired on 9/13/2013
- Board of County Commissioner's approval of this Conditional Use Permit, CUP-14-00295
- Release of Conditional Use Permit by the Douglas County Zoning and Codes Office

### **PUBLIC COMMENT**

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

## **I. Zoning and uses of Properties nearby**

Current Zoning and Land Use: A (Agricultural) District; existing building and exterior storage on 3.87 acres.

Surrounding Zoning and Land Use: A (Agricultural) District in all directions. Rural residential homes located along township roads. Surrounding uses include:

- Public school building and Vinland Fairgrounds located to the northwest.
- Rural residential homes along the north side of N 700 Road to the north and along E 1750 Road to the south.
- Agricultural field to the east and west.

**Staff Finding** – this property is surrounded by A (Agricultural) zoning. Surrounding uses include both residential and non-residential uses.

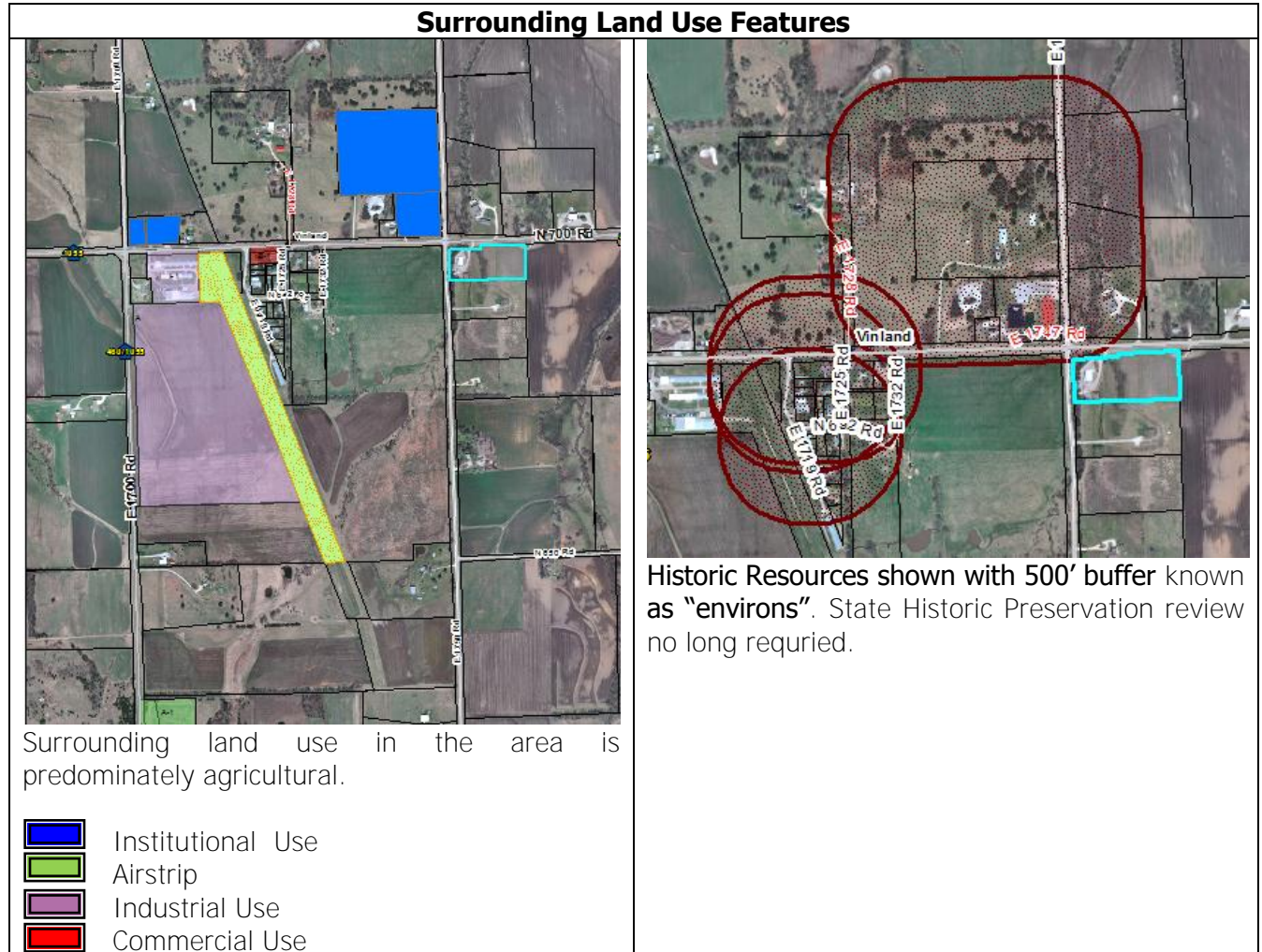
## **II. CHARACTER OF THE AREA**

The property is located within 3 miles of Baldwin City and within the unincorporated area of the Vinland community in Douglas County. This unincorporated portion of Douglas County includes predominantly rural residences clustered along the County roads. McFarlane Aviation, a manufacturing business, a private grass air strip, and several other non-residential uses are also located in the immediate area. Several properties in the area are of historic significance.

The subject property is located within the proximity of a designated historic building (the Vinland Fair Grounds Exhibit Building). Changes in State regulations no longer subject this property to review by the State Historic Preservation Office. Previous approval required historic design review by



the State Historic Preservation Office as a condition of approval. Based on changes to State law this condition is no longer applicable to this request.



Additionally, the property is encumbered by the Coal Creek Tributary floodplain. The applicant is working with county staff to meet the requirements for a local floodplain development permit.

**Staff Finding –** This portion of Douglas County includes a rich variety of uses and activities. The area is within 3 miles of Baldwin City but is identified as Vinland, an unincorporated town in Douglas County. The overall character of the area is rural with a mix of rural residential homes on smaller lots and larger agricultural tracts in the immediate area. The area includes several historically listed buildings and properties as well as extensive floodplain generally located west of E 1750 Road.

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

Applicant's response: *"The property is perfectly suitable for my needs."*

A Conditional Use Permit (CUP) does not change the base, underlying zoning. The suitability of the property for agricultural or rural residential use will not be altered. The subject property is located within the community of Vinland and within 3 miles of Baldwin City. The subject property area is

zoned for agricultural uses. The applicant has expressed a desire to ultimately construct a residence in this location. If or when that happens, a Conditional Use Permit for Truck Storage would no longer be required since the use could qualify for home occupation registration

The A (Agricultural District) is the predominant zoning district for the unincorporated portions of Douglas County. The purpose of this district is intended to *"provide a full range of agricultural activities, including processing and sale of agricultural projects raised on the premises, and at the same time, to offer protection to agricultural land from the deprecating effect of objectionable, hazardous and unsightly uses. The district is also intended for purposes of protecting watersheds and water supplies to provide for spacious development, to protect forest areas, and scenic areas, and to conserve fish and wildlife, to promote forestry, growing of natural crops and grazing and to prevent untimely scattering of more dense urban development."* Section 12-306-1.

This district allows a variety of land uses including traditional agricultural uses, but also detached residential structures and *"Accessory open or enclosed storage of farm materials, products or equipment, accessory farm buildings, including barns, stables, sheds, tool rooms, shops, bins, tanks, and silos, and other accessory buildings and uses, including but not limited to accessory private garages, servants' quarters, guest houses, swimming pools, home barbecue grills, customary church bulletin boards or identification signs not exceeding 30 square feet in area for permitted public and semi-public uses, accessory storage, and accessory off-street parking and loading spaces."* Section 20-306-2.19.

In this application the building is not accessory structure as there is no primary structure currently built on this site. The building is considered to be a primary use. As a commercial use Truck Storage is allowed in the A (Agricultural) District subject to a Conditional Use Permit.

The applicant has stated multiple times that the long term plan for the property is as a future residence with the business qualifying and registering as a home occupation. To date no building permit has been requested for residential construction on this site. The subject property is 3.8 acres and consistent with the rural residential development pattern for parcel sizes in this area.

This property has a history of non-compliance and complaints from adjacent property owners regarding exterior storage of materials. The 2012 CUP application was revised to add landscaping along the south and east sides of the property to increase the buffer between the subject property and the adjacent residential uses. The scope of the business has expanded and contracted since 2002 when the building was constructed. At one time, the applicant had employees that were dispatching from this site, leaving their personal vehicles at site and taking job vehicles to their destinations. This clearly commercial activity was included as part of the violations and complaints. There are no current complaints regarding this property.

Previous review of this application found the existing zoning to be suitable to the area. The *Truck Storage* use was approved in 2003 and 2012 subject to conditions. Conditions of approval were not met and the approvals expired.

The expectation of this use was that a residence would be constructed as the primary use and the business activity would become secondary. Active residential use is anticipated to curtail complaints because the applicant would be residing at this location.

**Staff Finding** – Approval of the Conditional Use Permit does not alter the base zoning district. The existing A (Agricultural) District is suitable for this location.

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

The subject property includes a **60' by 40'** building constructed in 2002 but no residence. The structure was constructed as an agricultural building; therefore no building permit was issued. The original CUP was approved by the Planning Commission on January 22, 2003. The County Commission approved the CUP on February 24, 2003. The original conditions of approval were not met and thus expired. A second CUP was considered in 2012 with approval. This application also included conditions that were not met and thus expired. The applicant has operated a business from this location [storage of equipment and materials] from this site since 2002. In addition to the enclosed building, exterior storage of material is located along the west property line. City and County staff have worked with the applicant to establish an area outside of the regulatory floodplain for this exterior storage.

This application represents the final attempt by County Zoning staff to implement full compliance with this property owner.

**Staff Finding** – The subject property is developed with an existing building used for storage of equipment related to a landscape business. The County Zoning Regulations were adopted in 1966, **this property has been zoned "A (Agricultural)" since that time.**

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

Applicant's Response: *"Nothing will affect nearby properties."*

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

-4.24 Conditional Uses Enumerated, of the County Zoning Regulations listed as a **"Truck Storage Facility"** use. The Regulations describe a *Truck Storage Facility* as follows:

*12-319-4.24. Truck Storage Facility ancillary uses, open or enclosed, provided that wholesale and retail sales not be permitted on the premises. Open storage must meet the minimum yard requirements of the district in which it is located and must be screened by a view reducing wall, fence or landscaping material from adjacent public roads and adjoining properties.*

**The existing building has been used for equipment storage of the applicant's lawn service business.** The plan shows an area for external storage of mulch and an area for vehicle (employee) and equipment storage along the west side of the property.

Notes on the face of the plan address the limitation of the use to the storage of equipment and materials for the lawn care business. Storage of equipment for other purposes or businesses is prohibited. This plan shows screening along the south side to address the standards of the use stated above. The existing vegetation along the west property line provides adequate screening. This area also includes floodplain. The site plan shows that the storage areas are outside of the

regulatory floodplain. The applicant is working with County staff to complete the local Floodplain Development Permit required for this property.

Approval of the CUP will provide an opportunity for the applicant to be compliant with the minimum zoning regulations and standards. As a Conditional Use Permit, the issues of screening and buffering to reduce undesirable impacts such as noise and view on residential properties to the south can and should be provided and maintained.

**Staff Finding** – Approval of this request will not detrimentally impact adjacent property owners so long as adequate screening is maintained and encroachment into the regulatory floodplain with exterior storage of materials is avoided.

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

**Applicant's Response:** *"There is no destruction of value in my property. I am just following protocol for having a building on my property."*

The purpose of this criterion is to compare the effect of denial of the request on the public health, safety and welfare to the effect of denial on the individual landowner. If the request were denied, the existing business would be required to relocate to a commercial or industrially zoned location. The impact to the existing building would be significant in that the investment could not easily be reused except as a strictly agricultural use or with the construction of a residence as a primary use.

Approval of the subject property neither directly benefits the community nor harms the public health, safety and welfare, as the underlying A (Agricultural) zoning district is unchanged. Approval allows an existing business to remain in Douglas County operating from its current location. The impact of the use for storage of trucks and lawn equipment is comparable to other similar requests for *Truck Storage Facilities*.

**Staff Finding** – There is no significant gain to the public's health, safety and welfare by permitting the continued use as a Conditional Use Permit. The underlying A (Agricultural) zoning remains unchanged. Denial of the request would prevent the applicant from continuing to operate a business from this location. Approval of the request benefits the applicant by allowing continued operation the business.

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

**Applicant's Response:** *"I still plan on building a home on my property"*

This property is not located within the Baldwin City Urban Growth Boundary. It is, however, located within 3 miles of the city limits of Baldwin City. The comprehensive plan recommends that agricultural uses continue to be the predominant land use within the areas of the county beyond the designated urban growth areas. *Horizon 2020* encourages the support of local businesses to *"ensure their retention and to facilitate expansion plans for the future."* Industrial uses are directed to urban areas where services such as sewer, water and transportation options are available. *Horizon 2020* does not address conditional use permits as a tool to achieve specific policies. This use does not have a high demand for water and sewer services as a storage facility.

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

## STAFF REVIEW

### Joint Hearing

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

### Site Summary:

Subject Property: 3.8 acres  
Existing Building: 2,400 SF (40'x 60')  
Off Street Parking Required: 1 space per two employees—[No on-site employees]  
Employees leave personal vehicles on site while business vehicles are taken to specific job sites.  
**28' by 23' space provided for employees parking** – approximately 3 spaces are provided.

## STAFF REVIEW

### Development History

- 2001 Building constructed.
- 2002 **CUP-12-17-02:** *Truck Storage Facility* for Creekwood Lawn was approved by the Planning commission and County Commission subject to conditions and to expire February 2013.
- 2003 Application expired since conditions of approval were not met within 12 months of approval.
- 2012 **CUP-12-00030:** *Truck Storage Facility* for Creekwood Lawn was approved by the Planning Commission and County commission subject to conditions and to expire December 2017.
- 2013 Application expired since conditions of approval were not met within 12 months of approval.
- 2013 Changes in state law no longer require environs review for historic properties.
- 2014 **CUP-14-00295:** *Truck Storage Facility* for Creekwood Lawn -- new application

Between 2001 and 2005 the County Zoning staff had engaged in communications with the applicant regarding various violations. Communications between County staff and the applicant also occurred in 2012 seeking resolution.

The subject property is located in the southeast portion of Douglas County within the Vinland area. The original 2002 application was the result of a change in the County Zoning Regulations relating to Home Occupations. This business could not operate as a home occupation use without a primary residential structure on site.

The existing building has never had an inspection because it was constructed under the Agricultural Building exemption. In the past the applicant indicated to County Staff that he would like electrical



service extended to the building. A Douglas County inspector visited the site and did a cursory review of the building, notifying the applicant of additional information needed to bring the building into compliance with minimum building codes. The building is not an **"agricultural building"**. As a condition of approval, staff recommends the applicant obtain a commercial building permit for the existing structure and that the building be improved to meet current code requirements.

Approval of this request would allow a commercial type business. The subject property is not located within any urban growth area. It should be noted that if the applicant resided on this property, this use may qualify as a Home Occupation and a CUP would not be required.

**Setback Requirements** - Building setback requirements for the "A" District are as follows: Front Yard - 50'; Side Yard - 15'; Rear Yard - 50'. Setback requirements are measured from the property lines. The building is accessed from N. 700 Road. The existing structure complies with the minimum yard requirements. The subject property is described by metes and bounds; it is not a platted property. **The storage areas are generally setback from the west property line 15' or more.** Additionally, since this area is encumbered by regulatory floodplain staff required the applicant to show that the storages areas were also located outside of the floodplain.

**Access to the site** - Specific access to the site is provided via a driveway from N. 700 Road. The record for this property includes a discussion between the property owner and the Public Works Director regarding the existing access to the property. It is recommended that the driveway be made wider – **to 30' to accommodate trucks**. The applicant has been notified that when a residence is constructed that access will be required to be relocated opposite of the entrance on the north side of Route 460 at 1758 N. 700 Road. A separate access for a residence will not be permitted for this property.



**Screening and Outdoor Storage-** The site plan drawing shows that the area is substantially screened by dense vegetation along the county roadways. Additional screening was added to the site to screen the exterior areas from adjacent property to the south and east.

**Floodplain-**As noted in the description of the neighborhood above, a portion of this property is encumbered by the regulatory floodplain of Coal Creek. There is no floodplain development permit for this property. From the site plan and visual inspection by Douglas County inspection staff, it appears that development of the site has occurred outside the limits of the floodplain. Prior to the adoption of the August 2010 FEMA maps, the property was not in the regulatory floodplain. The applicant is working with county staff to acquire a local floodplain development permit for the current use of the property.

**Time Limit -**This use is clearly a business. The existing building is not used for any agricultural purpose. This property has been the subject of zoning violations and complaints from nearby residents. At present, complaints appear to be resolved. Staff recommends, based on comments from the Douglas County Zoning and Codes office this approval should be limited to 5 years at this location. If the applicant wishes to intensify the use (e.g. include a business office, expand employees, include more storage of materials and supplies) then an appropriate commercial or industrial zoning district would be required or the business would need to be relocated to an appropriately zoned property. The applicant could reapply for another Conditional Use Permit. Staff will consider the compliance and any complaints in review of a future application. If a residence is constructed on this property the use would be required to be registered as a home occupation.

A Conditional Use Permit with a time limit is recommended to expire on one of two dates to allow better administration of enforcement by County Staff. These date ranges are:

- January 1/December 31 or
- June 30/July 1.

Staff recommends this CUP expire on December 31, 2019. This time limit is intended to provide the applicant adequate time to make permanent arrangements for the continued operation of this business.

### **Conclusion**

A Conditional Use Permit does not allow the range of uses found in commercial or industrial districts. Approval of a CUP can be tailored to address specific issues such as intensity or frequency of use, include time limitations, and provide screening requirements.

This use could have existed as an extension of a Home Occupation if a single-family residence was already constructed on this property. The applicant has indicated a long term plan to establish a residence on this property. Denial of the request would result in the relocation of the business to another commercial or industrially zoned location. The access to the property is immediately adjacent to a paved road and county highway network. The County Public Works Director indicated that the existing driveway width should be widened.

All vehicles and equipment are intended to be stored within the existing building or in designated areas on the site. It is assumed that only minor maintenance of these vehicles will also be provided within this building. Service to vehicles or storage of vehicles not associated with this business are prohibited.

This Conditional Use Permit (CUP-14-00295) would allow the continued operation of an existing landscape business in Douglas County for a limited time.



Shelby D. Franklin Property,  
1753 N 700 Road  
Baldwin City, KS

CUP-12-17-02

- a. Topography shown as 2' intervals
- b. Employees shall not work on property except to pick up, drop off and/or service vehicles, equipment and for machinery
- c. Portajohn on west side of building serviced by A-1
- d. water is the only utility on the property
- e. Dimensions of adjacent roadways shown
- f. "The approved use for this site is an interior equipment storage facility for vehicles and all related lawn care machinery. Repair and/or servicing stored vehicles and/or all related lawn care machinery other than that necessary for standard maintenance/upkeep is prohibited"
- g. "Any exterior storage of material shall be located completely screened per section 19-4(24) of the City Zoning Regulations"
- h. "The addition of exterior storage of materials shall first require a revision to the site plan portion of the CUP."
- i. Existing landscaping shown. Barn shown is in the process of being completed and will be planted with Evergreen trees for screening in September/October.

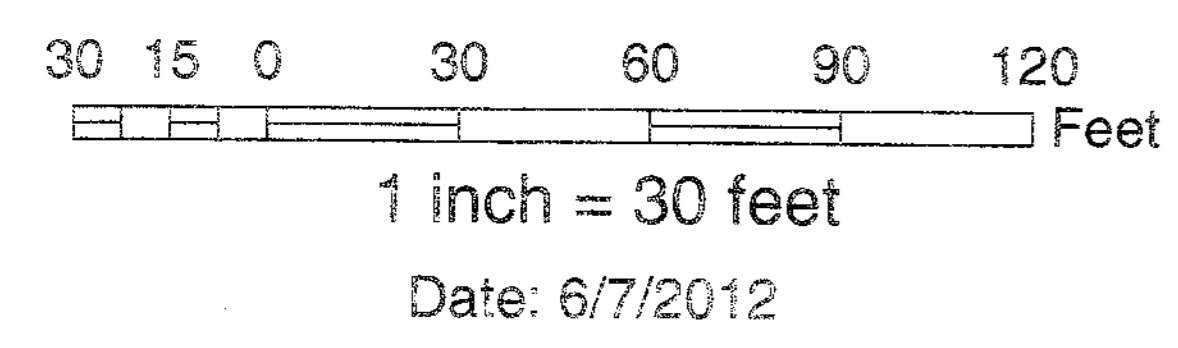
- \* When employees are not working, there are company trucks in these spaces. \*
- \* Mulch is not stored year round, I bring it in for spring and then again for fall \*
- \* We dump a majority of our grass clippings + brush at the city compost, we report monthly to Cassanda Ford \*

Legal Description

S21A 15-14-20 B25 W NW Cor  
NE 1/4 TH N89°40'7" E 659.25' 50 PT  
Being on N Line NE 1/4; TH S 0° 5' 9" E  
602.7 FT TH S89°40'7" W 659.25' 50 PT  
Being on W Line NE 1/4; TH N 0° 5' 9" W 602.11' to Pt B25, Less S21A DEEM/39  
1 W/55' (P/D 2005 70011015)

Contour line (2' elevation intervals)  
Parcel Ownership Boundary

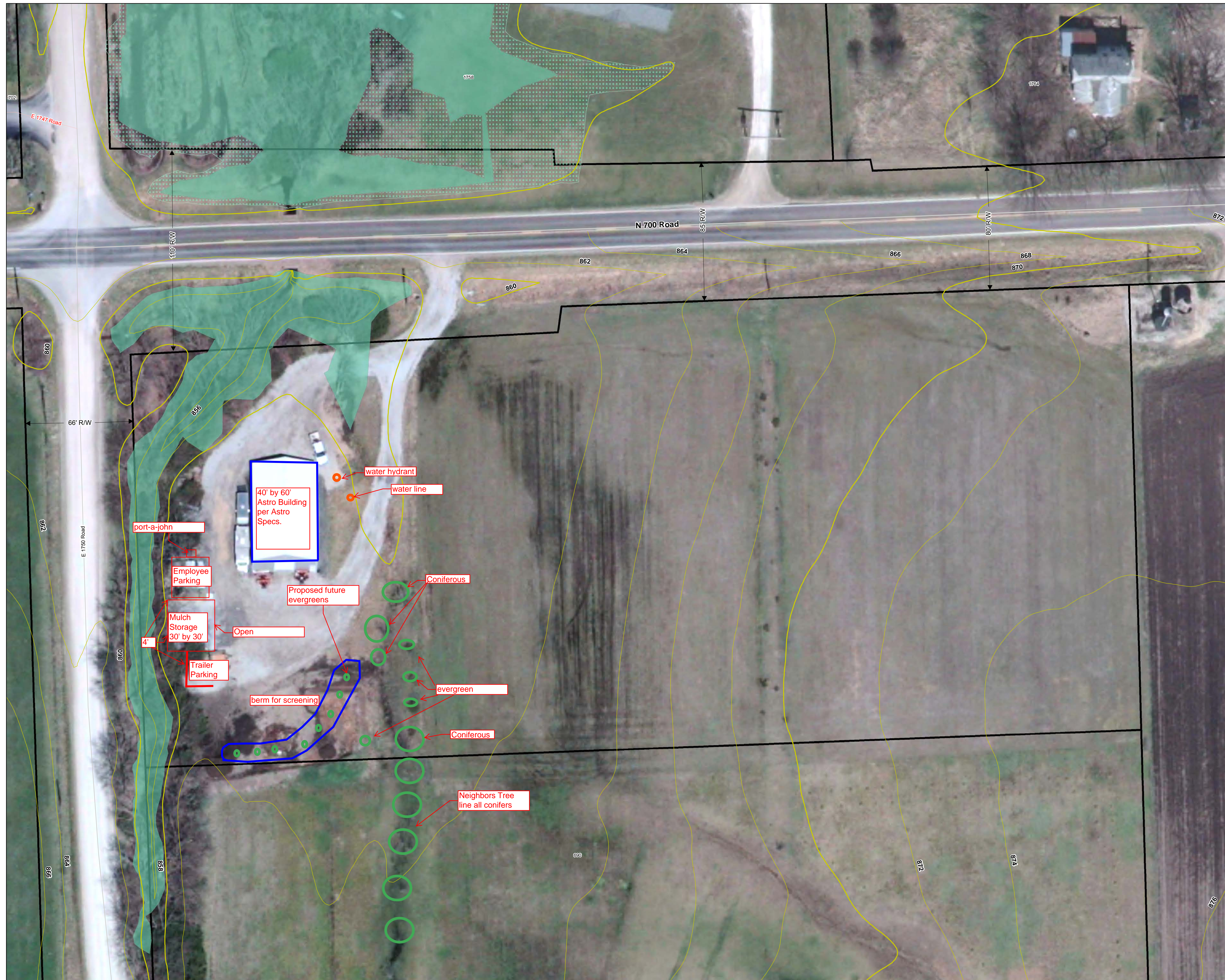
August 5, 2010 FEMA Flood Maps  
500 YEAR, 0.2 POT ANNUAL CHANCE  
100 YEAR, ZONE AE



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**Shelby D. Franklin Property,  
1753 N 700 Road  
Baldwin City, KS**



**General Notes:**

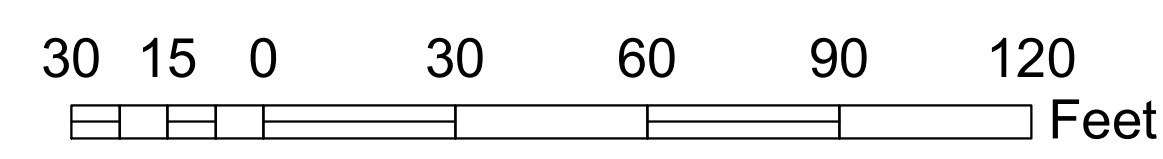
- Topography shown on 2' intervals
- Employees shall not work on property except to pick up, drop off and or service vehicles, equipment and/or machinery
- Portajohn on west side of building serviced by A-1
- Water is the only utility on the property
- Dimensions of adjacent roadways shown
- The approved use for this site is an interior equipment storage facility for vehicles and all related lawn care machinery. Repair and/or services stored vehicles and/or all related lawn care machinery other than that necessary for standards maintenance/upkeep is prohibited.
- Any exterior storage of material shall be located completely screened per section 12-319-4.31 of the County Zoning Regulations.
- The addition of exterior storage of materials shall first require a revision to the site plan portion of the CUP
- Existing landscaping shown, berm shown is in the process of being completed and will be planted with evergreen trees for screening in September/October 2012.
  - When employees are not working, there are company trucks in the spaces
  - Much is not stored year-round. Large deliveries are made to the site for spring and fall.
  - The majority of grass clippings and brush are dumped at the City Compost facility, we report monthly to Cassandra Ford.

**Legal Description:**  
 5.01 Ac., S15-T14-R20 beginning at the north west corner of the NE 1/4 TH N89DEG40'07"E 659.23 FT, SD PT BEING ON N LINE NE 1/4; TH S 0DEG03'09"E 662.1 FT THS89DEG40'07"W 659.23 FT, SD PT BEING ON W LINE NE 1/4; TH N 0DEG03'09"W 662.1 FT TO PT BEG, LESS 5.01A D 804/381 WW35 (DIV2003 7001168)

— Contour line (2' elevation intervals)  
 □ Parcel Ownership Boundary

**August 5, 2010 FEMA Flood Maps**

▨ 500 YEAR, 0.2 PCT ANNUAL CHANCE  
 ■ 100 YEAR, ZONE AE



1 inch = 30 feet

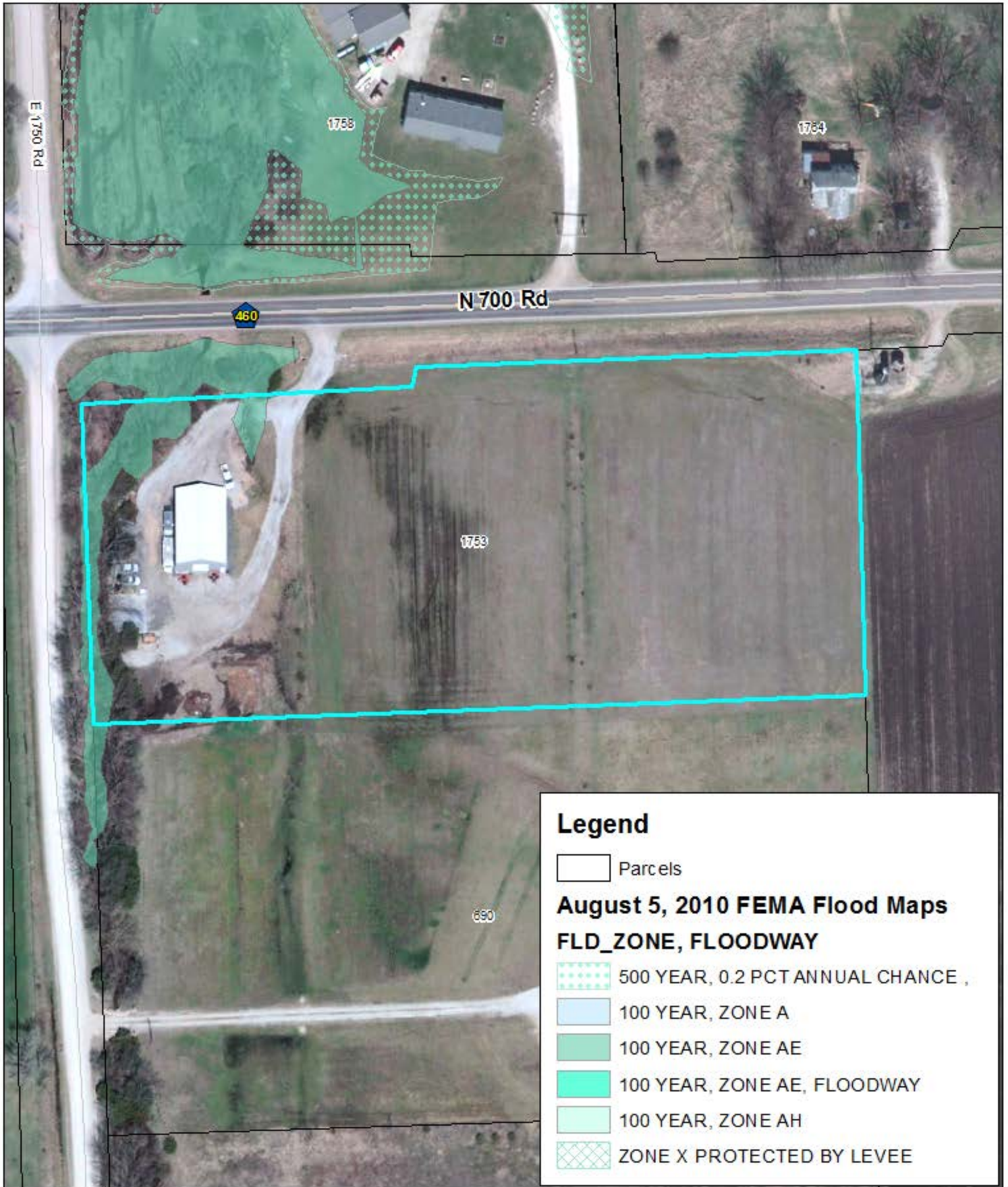
Date: 6/8/2012

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Drawing prepared by Lawrence-Douglas County Planning and Development Services Department  
 Aerial Photo was flown in the spring of 2009  
 June 7, 2012



# Floodplain Boundary Map

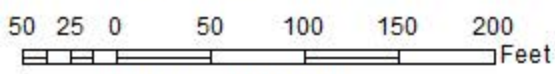


## Legend

Parcels

### August 5, 2010 FEMA Flood Maps FLD\_ZONE, FLOODWAY

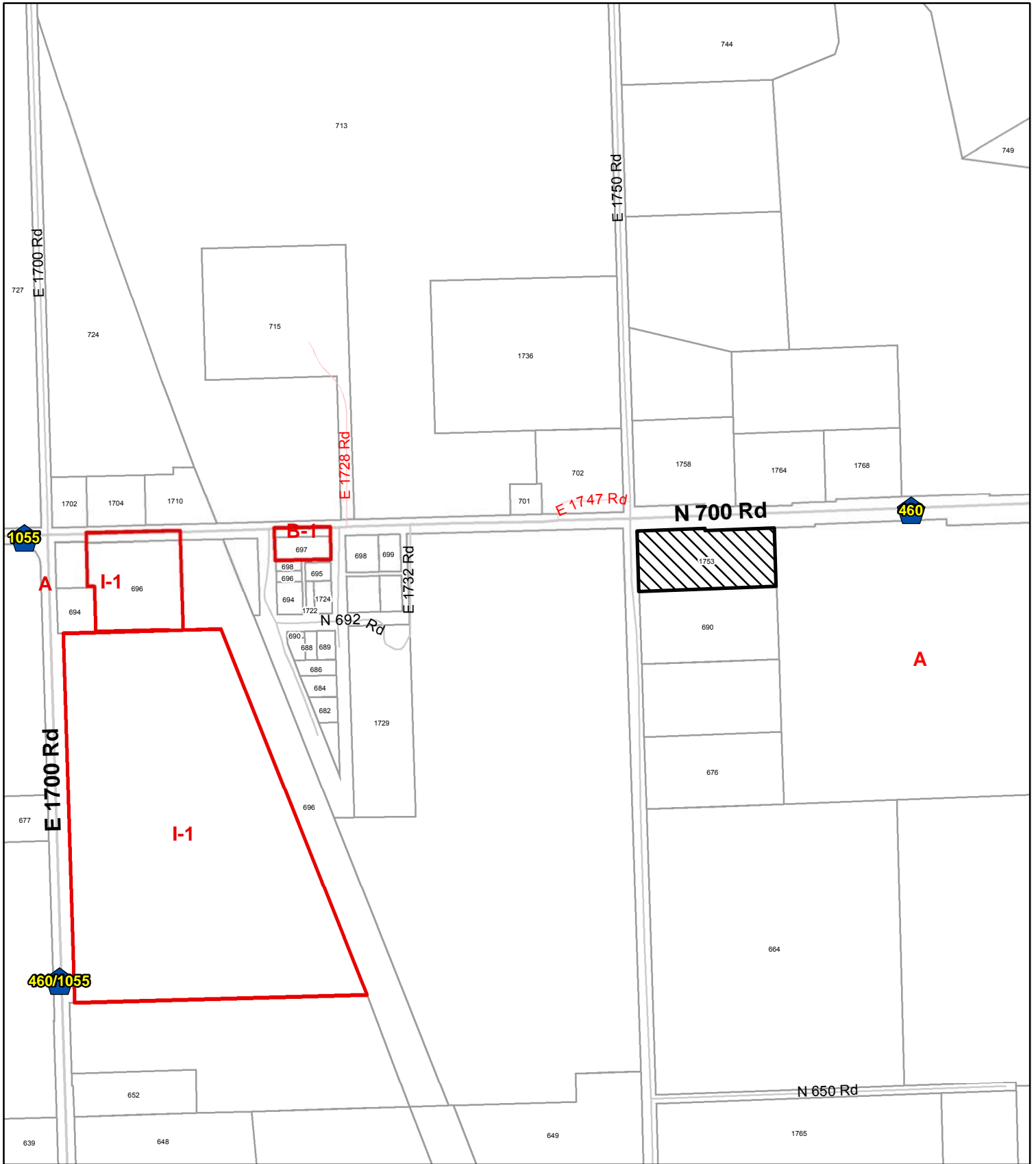
- 500 YEAR, 0.2 PCT ANNUAL CHANCE
- 100 YEAR, ZONE A
- 100 YEAR, ZONE AE
- 100 YEAR, ZONE AE, FLOODWAY
- 100 YEAR, ZONE AH
- ZONE X PROTECTED BY LEVEE



1 inch = 102 feet

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Date: 8/16/2012



CUP-14-00295: Conditional Use Permit for Creekwood Lawn Equipment Storage  
 Located at 1753 N 700 Road

Lawrence-Douglas County Planning Office  
 September 2014



Subject Property



**ITEM NO. 1      CONDITIONAL USE PERMIT FOR CREEKWOOD LAWN; 1753 N 700 RD (SLD)**

**CUP-14-00295:** Consider a Conditional Use Permit to allow a Truck Storage Facility for Creekwood Lawn, located at 1753 N 700 Rd. Submitted by Shelby Franklin, property owner of record. *Joint meeting with Baldwin Planning Commission.*

**STAFF PRESENTATION**

Ms. Sandra Day presented the item.

*No members from Baldwin Planning Commission were present.*

**APPLICANT PRESENTATION**

Mr. Shelby Franklin was present for questioning.

**PUBLIC HEARING**

No public comment.

**COMMISSION DISCUSSION**

Commissioner Josserand asked why the original Conditional Use Permit was not complied with.

Ms. Day said there were some conditions of approval that the applicant failed to meet. She said there were some communication gaps for the applicant. She said there was a requirement that that the applicant obtain a permit from the County after this process and the applicant had some confusion and failed to get the permit.

Commissioner von Achen asked about the building improvements.

Ms. Day said Mr. Jim Sherman, Director of County Zoning & Codes, could answer that.

Mr. Jim Sherman, Director of County Zoning & Codes, said previous staff processed it as an ag-exempt and they were not required to meet set standards. He said with the Conditional Use Permit process they needed to confirm design standards.

Commissioner von Achen asked if trucks would be parked inside and outside the building.

Ms. Day said the building would be used for the storage of rucks and related equipment.

Commissioner Denney asked if the current building on the site met the County Code.

Mr. Sherman said yes but it needed to have a final walk through after the Conditional Use Permit was issued.

Commissioner Culver asked if the applicant resided on the property the Conditional Use Permit would not be required.

Ms. Day said that was correct, there was potential that the applicant could qualify as a Home Occupation.

Commissioner Liese asked what would happen when the Conditional Use Permit expires on December 31<sup>st</sup> in five years.

Ms. Day said the applicant would need to have constructed a residence by that time and pursue the continued use as a home occupation, renew the Conditional Use Permit, or rezone the property for some other kind of district that would allow the use by right.

Commissioner Liese asked how five years was determined.

Ms. Day said that was a number that had come through previous County Commission items. She said it allowed businesses to establish and also allowed staff time to evaluate the uses.

Commissioner Denney asked what would happen if Planning Commission did not approve the Conditional Use Permit.

Ms. Day said Planning Commission was a recommending body to County Commission and that County Commission would have the ultimate decision on the use. She said if the request was denied the applicant would need to relocate the business activity from the site and work with the County to resolve having a building on the property without a primary use.

**ACTION TAKEN**

Motioned by Commissioner Struckhoff, seconded by Commissioner Graham, to approve a Conditional Use Permit, CUP-14-00295, for a Truck Storage Facility and forwarding of it to the County Commission with a recommendation for approval, based upon the findings of fact presented in the body of the staff report, and subject to the following conditions:

1. Provision of a note on the face of the site plan stating, "The Conditional Use Permit shall expire on December 31, 2019."
2. The applicant shall obtain from Douglas County a building permit as a condition of continued operation.
3. The applicant shall work with the Douglas County Public Works Office to widen the driveway per County specifications.
4. The applicant shall obtain from Douglas County a local floodplain development permit.

Unanimously approved 10-0.