

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

WEDNESDAY, NOVEMBER 19, 2014

4:00 p.m.

-Consider approval of the minutes for September 24, October 29, and November 4, 2014

CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders;
- (b) Consider acquisition of ROW for project No. 23C-4640-01; Route 1055 between Baldwin City and Vinland, for two parcels (Michael Kelly);
- (c) Consider Authorization to solicit construction bids for Project No. 2013-18, Deck replacement for Bridge No. 08.74N-07.95E Route 1039 bridge over Washington Creek at Lone Star town (Keith Browning);
- (d) Consider contract for county copiers with Ricoh USA, Inc. (Jackie Waggoner);
- (e) Consider accessing the state contract for improving technology in the courtrooms (Jackie Waggoner)

REGULAR AGENDA

- (2) Consider funding NetWork Kansas E-Community E-Accelerator Program (Leslie Herring)
- (3) Consider taking action on three City of Lawrence annexation proposals, sending all three requests back to the City of Lawrence requesting direction from the City Commission (Weinaug).
- (4) Discussion on Facility Needs for Capital Improvement Plan (Sarah Plinsky)
- (5) (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.

- (6) Continued discussion on CUP-14-00304: Consider a Conditional Use Permit for Central Soyfoods LLC, a Value Added Agriculture use, at 1168 E 1500 Rd. Submitted by David Millstein, property owner of record. (PC Item 3; approved 10-0 on 9/22/14), as tabled from the 10/22/14 meeting.

- (7) Adjourn

WEDNESDAY, NOVEMBER 26, 2014-CANCELED

WEDNESDAY, DECEMBER 3, 2014

WEDNESDAY, DECEMBER 10, 2014

6:35 p.m.

- Recognition for Emergency Management Volunteers (Teri Smith)
- Public Hearing for amending the 2014 Budget

WEDNESDAY, DECEMBER 17, 2014

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

MEMORANDUM

To : Board of County Commissioners

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

Date : November 11, 2014

Re : Authorization to solicit construction bids for Project No. 2013-18
Deck replacement for Bridge No. 08.74N-07.95E
Route 1039 bridge over Washington Creek at Lone Star town

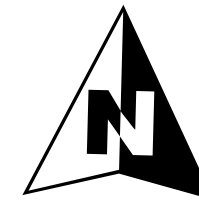
You will recall we opened bids for the referenced bridge replacement project in late August 2014. We received two bids, both of which were significantly higher than the Engineer's Estimate. During the September 3, 2014 meeting, the BOCC rejected both bids. At that time we told the BOCC we planned to re-bid the project in early 2015. We are now seeking authorization to solicit bids with a planned January 2015 bid opening. Construction is planned for fall 2015. We feel soliciting bids this winter will result in more favorable bids than we received in August 2014.

The referenced bridge carries Route 1039 (E 800 Road) over Washington Creek just south of the community of Lone Star. The bridge is a 3-span, 136 feet long, steel bridge with concrete deck constructed in 1980. The concrete deck has been patched numerous times. The latest bridge inspection revealed approximately 60% of the deck is patched or delaminated, and the bottom of deck has several spalled areas with exposed reinforcing steel and some transverse cracks with leaching, a sign of moisture passing through cracks in the slab possibly leading to reinforcing steel deterioration.

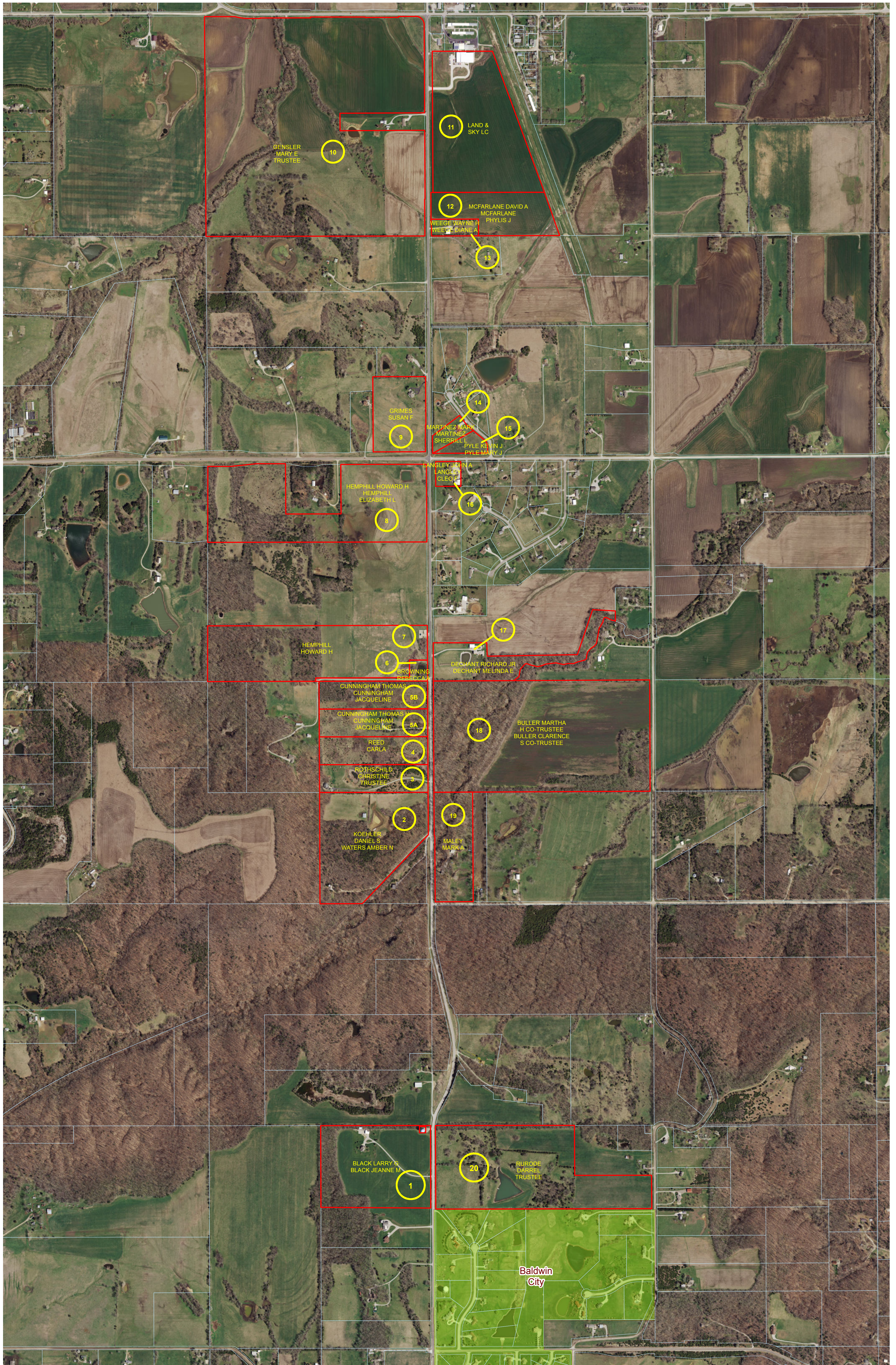
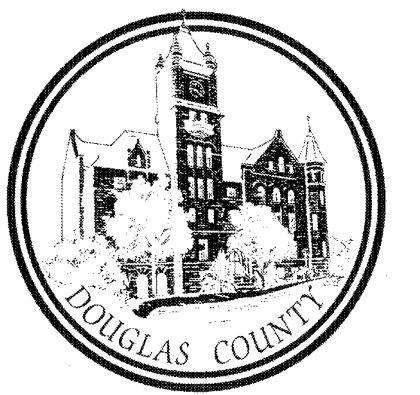
The CIP includes a 2014 bridge rehabilitation project to replace the bridge deck. The CIP allocates \$275,000 for this project. The construction cost estimate prepared for the project prior to the August 2014 bid opening was approximately \$310,000. This estimate will be updated, but we do not anticipate a significant increase in the cost estimate. The CIP can absorb an overrun of this magnitude for this project as many CIP project allocations are underrun.

Action Required: Authorization to solicit bids for Project No. 2013-18, deck replacement for Bridge No. 08.74N-07.95E, which carries Route 1039 over Washington Creek near Lone Star town.

Project No. 23C-4640-01



1 inch = 500 feet
500 250 0 500 Feet



INDEX TO SHEETS

- 1 Title Sheet
- 2 Typical Sections, Quantities, and General Notes
- 3-7 General Layout / R/W
- 8-9 Tree Removal Plan
- 10 Survey Control
- 11 04381700 Crossroad Pipe Plan & Profile
- 12 05291700 Crossroad Pipe Plan & Profile
- 13 05381700 Crossroad Pipe Plan & Profile
- 14 Pond Grading Plan
- 15 05491700 Crossroad Pipe Plan & Profile
- 16 Route 1055 Plan & Profile
Sta. 113+70 to Sta 118+20
- 17 05861700 Crossroad Pipe Plan & Profile
- 18 06061700 Crossroad Pipe Plan & Profile
- 19 06001701 Crossroad Pipe Plan & Profile
- 20 Cross Sections (Route 1055 - E 1700 Rd.)
Sta. 114+50 to Sta.119+00
- 21 06491700 Crossroad Pipe Plan & Profile
- 22 06901700 Crossroad Pipe Plan & Profile
- 23 Concrete End Section For Concrete Pipes
- 24 Summary of Pipe Culverts
- 25 Summary of Quantities
- 26 Summary of Quantities (Surfacing)
- 27 Ditch Lining
- 28-36 Temporary Erosion and Pollution Control
- 37 Erosion Control Mat Details
- 38 Permanent Seeding
- 39-49 Traffic Control Detail Sheets

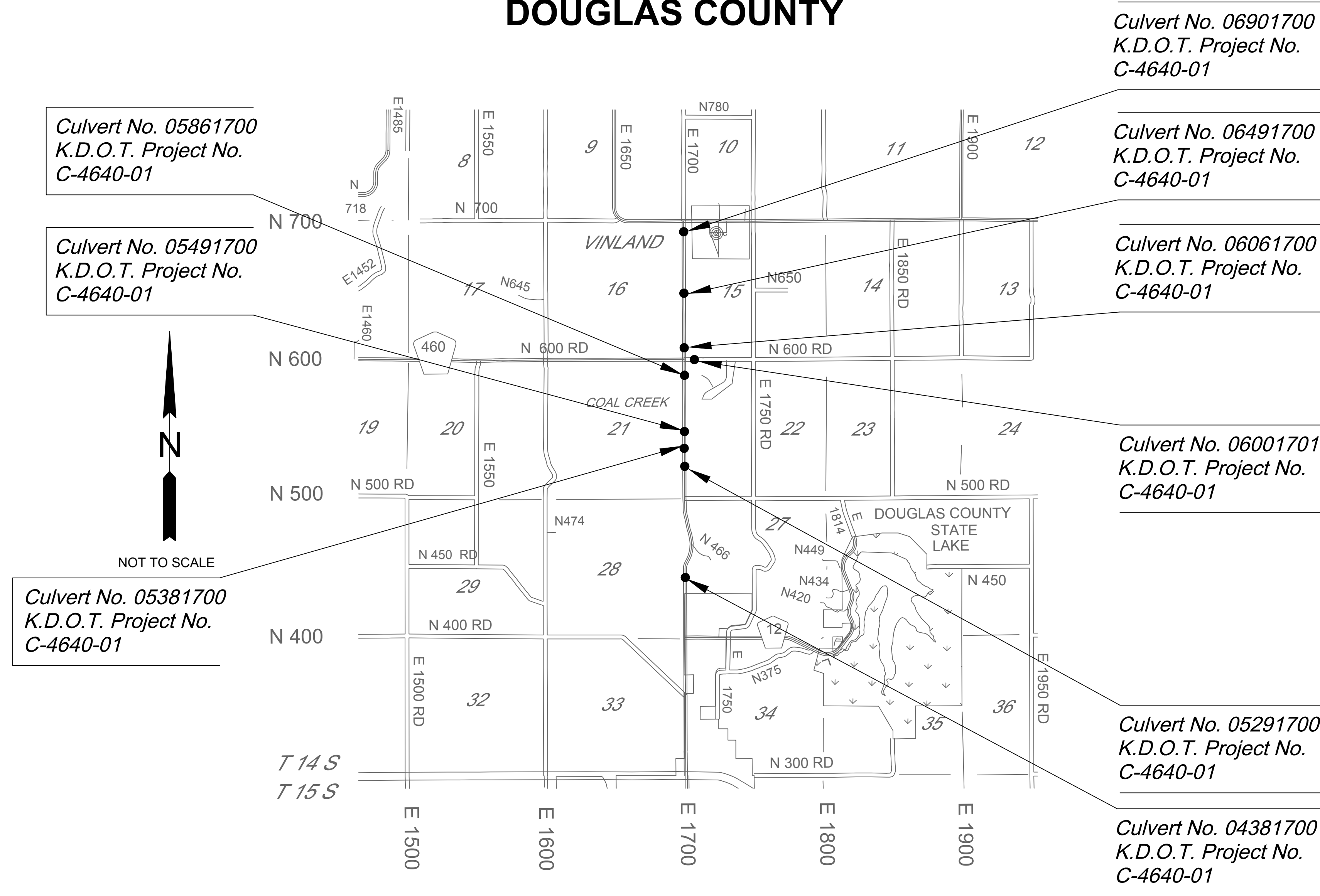
DESIGN DESIGNATION

AADT (2013) = 4779 VPD
 DHV = 513
 D = 50/50
 T = 9%
 V = 55 MPH
 C OF A = NONE
 CLEAR ZONE = 20 FEET

LEGEND

COUNTY LINE	_____	CENTER LINE OF PROJECT	_____
CITY LIMITS	_____	TERRACE	_____
STATE OR NATIONAL LINE	_____	CULVERTS	_____
TOWNSHIP, SECTION OR GRANT LINE	_____	DROP INLET & STORM SEWER	_____
PROPERTY LINE	_____	ACCESS CONTROL	_____
HIGHWAY LINE	_____	POWER POLE	_____
EXISTING FENCE	_____	TELEPHONE POLE	_____
GUARD FENCE	_____	MARSH	_____
CONSTRUCTION LIMITS	_____	HEDGE	_____
EXISTING RIGHT OF WAY LINE	_____	TREES	_____
PROPOSED RIGHT OF WAY LINE	_____	TREES TO BE REMOVED	_____
TRAVELED WAY	_____	PROFILE ELEVATION	_____
RAILROADS	_____	STREAM OR CREEK	_____
WATERLINE	_____	UNDERGROUND TELEPHONE	_____
UNDERGROUND FIBER OPTICS	_____	OVERHEAD ELECTRIC LINE	_____
		GAS LINE	_____

STATE OF KANSAS
DEPARTMENT OF TRANSPORTATION
CULVERT REPLACEMENTS FOR ROUTE 1055
C-4640-01
FEDERAL AID PROJECT
DOUGLAS COUNTY



LOCATION MAP
DOUGLAS COUNTY, KANSAS

Gross Length of Project	13,231.58 L.F.	2.506 MILE
Additions		
Exceptions	12,547 L.F.	2.376 MILE
Net Length of Project	684.58 L.F.	0.130 MILE
Net Length of Bridges		
Net Length of Road	684.58 L.F.	0.130 MILE

Culvert No. 06901700
 K.D.O.T. Project No.
 C-4640-01

Culvert No. 06491700
 K.D.O.T. Project No.
 C-4640-01

Culvert No. 06061700
 K.D.O.T. Project No.
 C-4640-01

Culvert No. 06001701
 K.D.O.T. Project No.
 C-4640-01

Culvert No. 05291700
 K.D.O.T. Project No.
 C-4640-01

Culvert No. 04381700
 K.D.O.T. Project No.
 C-4640-01

STATE	PROJECT NO.	YEAR	SHEET NO.	TOTAL SHEETS
KANSAS	C-4640-01	2014	1	49

Federal Aid No. HSIP-C464(001)

PROJECT NO. C-4640-01
 GRADING
 SURFACING
 SEEDING

TELEPHONE CONTACTS

City of Baldwin	(785) 594-3261
University of Kansas	(785) 864-5620
RWD #4	(785) 594-3847
Kansas Gas Service	(800) 794-4780
KCP&L	(800) 223-0755
Centurylink	(800) 201-4099
Mediacom	(888) 635-5545
Douglas County Public Works	(785) 832 5293
Dig Safe	(800) 334 7233

TRAFFIC DETOURED DURING CONSTRUCTION

PLANS PREPARED AND SUBMITTED BY

Douglas County Public Works
 1242 Massachusetts
 Lawrence, Kansas 66044

RECOM. FOR APPROVAL

KEITH A. BROWNING, P.E.
 DOUGLAS COUNTY PUBLIC WORKS DIRECTOR

DATE

KANSAS DEPARTMENT OF TRANSPORTATION



DOUGLAS COUNTY PUBLIC WORKS

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

MEMORANDUM

To : Board of County Commissioners

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

Date : November 11, 2014

Re : Authorization to solicit construction bids for Project No. 2013-18
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Action Required: Authorization to solicit bids for Project No. 2013-18, deck replacement for Bridge No. 08.74N-07.95E, which carries Route 1039 over Washington Creek near Lone Star town.



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

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

FROM : Jackie Waggoner, Purchasing Director
Division of Purchasing

SUBJECT: Consider Contract for County Copiers with Ricoh USA, Inc.

DATE: November 10, 2014

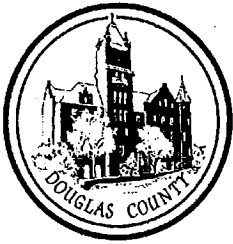
Earlier this year, staff provided the Board of County Commissioners a history of how contracts for multi-function copiers have been established in the past. At that time, staff had asked the Board to consider accessing the U.S. Communities cooperative contract with Ricoh USA, Inc. to develop our next five year lease (2015-2020) for all county multi-function copiers. Commission approval was received to access the U.S. Communities contract.

Staff requested to evaluate efficiencies on the devices and bring a final recommendation back to the Board. One of the areas looked at was the necessity of having the fax function which is currently on all of devices. To assess this, staff met with department representatives to understand their needs and requirements. A number of the departments were either mandated by law to fax, or based on their operations felt the function was necessary. After evaluating the need for this function, staff was able to reduce the number from 58 – 48. This reduction equates to a monthly savings of \$130/\$7,800 over the five years. Other efficiencies that staff evaluated looked at volumes and usage for each device which in some cases resulted in making model changes.

Based on the changes Ricoh provided a revised annual lease cost of \$71,887.56/\$359,437.80 over the five years, along with an estimated annual service cost of \$25,952 which is based on current volumes. Service costs are based on actual cost per copies (CPC) at a black/white rate of \$0.005 and a color rate of \$0.0491. All consumables (toner, staples, etc.) are included in the service cost except for copy paper. These costs reflect a lease savings of \$10,598 compared to the current five year agreement, and a 10.8-25.4% savings on service cost.

To allow for any changes over the course of the contract, staff is asking the Commission to authorize Administrative approval (County Administrator or Assistant County Administrator) in an amount up to \$20,000. Cost exceeding this amount over the five years would be brought back to the Board for consideration.

RECOMMENDATION: The Board of County Commissioners approves accessing the U.S. Communities contract with Ricoh USA, Inc. for a 60-month lease of 58 multi-function copiers for an annual cost of \$71,887.56 with service at a cost per copy rate of \$0.005 for black/white and \$0.0491 for color, and authorizes changes in an amount up to \$20,000 to be approved administratively.



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

FROM: Jackie Waggoner, Purchasing Director
Division of Purchasing

SUBJECT: Consider Accessing State Contract for Improving Technology in Courtrooms

DATE: November 13, 2014

In 2007 staff explored different technology options, and found courtrooms to be a perfect match for the capabilities found in the Pointmaker Video Makers. This allows evidence that needs to be viewed by the judge, jury, witnesses, lawyers, and sometimes public. It is important for everyone involved to have clarity about what portion of diagrams, pictures, or documents being discussed are important. The Pointmaker makes it easy to achieve clarity with evidence presentations. With this technology, you can:

- Focus attention to evidentiary details.
- Provide control to the judge as to whether the evidence is admissible.
- Allow attorneys to precisely make points for the entire room to plainly see through multiple devices (VCR, DVD, document camera, software).
- Enable witnesses or attorneys to make annotations and/or point over video and computer evidence.

Over the past seven years we have phased this equipment into all the courtrooms as funds were available, except Division IV (formerly Division III) Courtroom. This acquisition will complete the installation of the Pointmaker in all courtrooms. Mission Electronics is the awarded State contractor for this equipment. Following review of the equipment needs for Division IV Courtroom, our quote with the State pricing is \$62,738.

Additionally the District Court has allocated funds to add video conferencing to Division III, V, and VI Courtrooms. Video conferencing has been installed in the other courtrooms as we added equipment. This technology is essentially a televised telephone call that allows witnesses and experts to appear in court without the added time and travel expenses, which are sometimes absorbed by the County. The cost to add this equipment under the State contract is \$69,096 (\$23,032 per courtroom).

RECOMMENDATION: The Board of County Commissioners waive the formal bidding process and authorize staff to access the State contract with Mission Electronics Inc. for technology improvements in the following courtrooms:

Division IV Courtroom	\$ 62,738
Division III Courtroom	\$ 23,032
Division V Courtroom	\$ 23,032
Division VI Courtroom	<u>\$ 23,032</u>
Total Contract	\$131,834



**Memorandum
Douglas County, Kansas
Administration**

To: Board of County Commissioners
Craig Weinaug, County Administrator
From: Leslie Herring, Intern to the County Administrator
Date: November 10th, 2014

RE: NetWork Kansas E-Community E-Accelerator Program

Background: Douglas County E-Community

The NetWork Kansas Entrepreneurship Community (E-Community) program is geared towards identifying and developing resources to assist local entrepreneurs in starting or growing a business. Through NetWork Kansas – a statewide network of non-profit business-building resources – the E-Community partnership aims to: (1) grow a flourishing, sustainable entrepreneurial environment supportive of business startups and expansions; (2) engage and/or develop entrepreneurial resources to meet identified community and business needs; and (3) create a revolving loan fund to provide matching loans to entrepreneurs and small businesses with local control of decisions and terms. The Douglas County E-Community initiative is a joint venture among the City of Baldwin City, the City of Eudora, the City of Lecompton, and Douglas County, Kansas. The initiative was formed in 2011 to assist aspiring entrepreneurs and current business owners located in Douglas County with additional resources, both financial and technical. Of the Douglas County E-Community's \$150,000 revolving loan fund, \$115,000 is currently loaned out to six (6) separate area businesses; with the most recent loan executed in the spring of 2014 and the first loan closed in the summer of 2014.

E-Accelerator Program

The E-Accelerator program offered through NetWork Kansas offers an opportunity for the Douglas County E-Community to maintain its momentum. E-Accelerator pairs E-Communities with a private consultant/coach who would facilitate an individualized assessment of our communities' (1) resources, (2) current assets of existing businesses, and (3) leaders/contacts to act as point people for businesses success. After performing initial assessments, the private consultant would assist the E-Community in prioritizing preferences and strategizing goals to then begin a dialogue within the communities to meet these preferences and goals. A timeline is attached for a more detailed explanation of the program's objectives.

Possible Funding Sources

Historically, funding for participation in E-Accelerator is provided by NetWork Kansas. However, funding through NetWork Kansas is not available to Douglas County this fiscal year as funds have already been distributed. E-Accelerator coach Jack Newcomb, of Advancing Rural Prosperity, has offered his services to the Douglas County E-Community on a self-pay basis. Mr.

Newcomb is available to begin the E-Accelerator assessment process with Douglas County as early as January 2015 for a total fee not to exceed \$10,000.

Currently, the 2015 Economic Development budget includes \$30,000 set aside for the Douglas County E-Community revolving loan fund, none of which has been allocated for any specific projects so far. The 2015 budget also includes unrestricted economic development funds of \$63,700.

Recommendation

Consider funding the Douglas County E-Community's participation in NetWork Kansas' E-Accelerator program on a self-pay basis not to exceed \$10,000 with work to begin January 2015.

COMMUNITY E-ACCELERATOR

Year 1 Timeline

MARCH-MAY

Pre-ORGANIZING

- Identify Community point person
- Participate in community meetings
- Provide general overview
- Gauge interest and readiness
- Identify host and potential champions

JUNE-AUGUST

ORGANIZING and Orientation

- Identify leadership team
- Lead overview presentation
- Provide overview webinar
- Establish community agreement

SEPTEMBER-OCTOBER

Preliminary ASSESSMENT

- Initiate leadership team
- Involvement in face-to-face interviews
- Provide input on finalist selection

OCTOBER-JANUARY

E-Accelerator ASSESSMENT

- Coaching assessment
- External opportunity
- E-talent mapping
- Development resources and stakeholders
- Preferences

FEBRUARY-MARCH

Initiate STRATEGY DEVELOPMENT

- Prioritize preferences
- Strategy considerations
- Vet considerations
- Identify e-coach

APRIL-MAY

Initiate E-accelerator IMPLEMENTATION

- Action planning
- Prioritization
- E-targeting

JUNE-FORWARD

E-Accelerator IMPLEMENTATION

- E-outreach
- Visitation/surveys
- E-coach mentoring
- Circuit rider coaching
- Intake/Screening
- Referrals
- Tracking

MEMORANDUM

TO: Board of County Commissioners
Craig Weinaug

FROM: Evan Ice, County Counselor

DATE: May 20, 2014

RE: Island Annexation Cases

BACKGROUND:

As you know, Douglas County has been involved in litigation arising out of the Board of County Commissioner's approval of three separate island annexations, given pursuant to K.S.A. 12-520c. Before the City can annex land through an island annexation, the County Commission must determine that the annexation "will not hinder or prevent the proper growth and development of the area or that of any other incorporated city located within such county." The County Commission made the necessary finding in connection with three separate proposed island annexations, generating the following three cases:

1. *Baggett v. Bd. of County Comm'rs*, Douglas County District Court Case No. 08 CV 371 ("Case 1"), dealing with 155+/- acres.
2. *Scenic Riverway v. Bd. of County Comm'rs*, Douglas County District Court Case No. 11 CV 034 ("Case 2"), dealing with Venture Properties land.
3. *Scenic Riverway v. Bd. of County Comm'rs*, Douglas County District Court Case No. 11 CV 572 ("Case 3"), dealing with Rothwell land.

In Case 1, the County Commission (none of the three sitting County Commissioners were on the County Commission at the time) made the necessary finding permitting the City to annex the subject property. The plaintiffs appealed the decision to Douglas County District Court and Judge Fairchild affirmed the County Commission's decision. The Plaintiffs appealed to the Kansas Court of Appeals and the Kansas Court of Appeals reversed Judge Fairchild's decision and reversed the County Commission's decision. A copy of that decision is enclosed with this Memorandum. The County and the City petitioned the Kansas Supreme Court to review the Kansas Court of Appeals' decision. The Kansas Supreme Court ultimately denied the petition for review, the Kansas Court of Appeals decision became final, and the case was sent back to Douglas County District Court.

In Case 2, the County Commission also made the necessary finding permitting the City to annex a second tract of property. The plaintiffs appealed the decision to Douglas County District Court and Judge Malone was initially prepared to affirm the County Commission's decision for the same reasons that Judge Fairchild affirmed the decision in Case 1. Before his order was finalized, however, the Kansas Court of Appeals entered its decision in Case 1. The City and County filed briefs with Judge Malone, arguing that the facts and process in Case 2 were different from Case 1 and, therefore, the Kansas Court of Appeals decision in Case 1 was not

controlling and Judge Malone should still affirm the County Commission's determination. Judge Malone did not accept this argument and, when the Kansas Supreme Court denied our petition for review in Case 1 and the Kansas Court of Appeals decision became final, Judge Malone reversed his initial determination and ruled in favor of the plaintiffs.

In Case 3, the County Commission once again made the necessary finding permitting the City to annex a third tract of property. The plaintiffs appealed the decision to Douglas County District Court and nothing happened because we were waiting to see if the Kansas Supreme Court would grant review of the Kansas Court of Appeals decision in Case 1. After the Kansas Supreme Court denied our petition for review in Case 1, the Court of Appeals decision became final, and Judge Malone had already ruled that Case 2 should go back to the County Commission, it became apparent that it was not good use of judicial resources to continue litigating Case 3.

A copy of the Journal Entry entered in each of the three cases, remanding the case back to the County Commission, is enclosed with this Memorandum.

CONTENT OF JOURNAL ENTRIES:

The Journal Entry in each of the three Cases remands the Case back to the County Commission for further determination consistent with the decision of the Kansas Court of Appeals.

KANSAS COURT OF APPEALS DECISION:

In Case 1, the landowner could not provide a specific proposed use because no end-users had yet been identified. Rather, the landowner said that the proposed use was any use permitted by City Zoning Category "IG." The County Commission did not individually review each and every permissible use in this zoning category. Rather, the County Commission determined that, because the proposed use was industrial, it fit within the amendment, then in draft form, to Horizon 2020. Because use as an industrial park was consistent with the long-range plan, the County Commission considered that an industrial park at that location would not "hinder or prevent the proper growth and development of the area." Rather, the County Commission determined that a proposed industrial park was entirely consistent with proper growth and development of the area.

Rather than looking at the general plan of creating an industrial park on the subject land, and concluding that this was consistent with the long-range plans for the area, the Kansas Court of Appeals concluded that the County Commission should look at each and every possible deleterious use. The court held as follows:

Where the developer of land in an island annexation cannot specify the intended uses of the land, but provides only a category of potential uses, the Board of County Commissioners must examine those potential uses - or at least the most potentially deleterious use - and determine whether those uses would "hinder or prevent the proper

growth and development of the area.” Failing that examination, the annexation cannot survive judicial scrutiny under K.S.A. 12-520c.

Baggett v. Bd. of County Comm'rs, 46 Kan. App. 2d 580; 266 P.3d 549, Syl. # 7 (2011). The court invalidated the annexation and required further consideration of the matter. Thus, on remand, either the landowner will have to put some limitations on the proposed use or the County Commission will have to individually consider the potential uses in City Zoning Category “IG.”

POSSIBLE ACTION:

There are two possible courses of action.

I. The first possible course of action can be made by motion and majority vote, followed by a letter from the County to the City. This course of action is to send all three annexation requests back to the City Commission. If the City Commission still desires to pursue these annexations, it can resubmit the matter to the County Commission. There are a number of reasons to support this course of action, including but not limited to the following:

1. The island annexation statute requires that the County Commission make its determination within 30 days after receipt of a resolution from the City Commission. It has now been several years since the requests were received, and the requests could rightfully be called “stale.”

2. The current County Commission is completely different than the members of the County Commission who made the initial annexation decision.

3. The City Commission has changed a couple of times since the initial annexation request. The current City Commission may not even want to annex the property if the County Commission makes the necessary finding.

4. The initial annexation decision was made more than five years ago and a lot of changes have taken place since then that may affect the County Commission’s decision.

5. Ownership of one of the properties has changed and the new landowners may have different plans for the property.

6. Given the decision of the Kansas Court of Appeals, the landowners may want to revise their applications and reduce the scope of the potential uses of the property.

7. If the matter is sent back to the City Commission, the City Commission can follow its annexation policy and refer the matter to Planning Staff and the Planning Commission to investigate the matter, and make a recommendation that incorporates requirements of the Court of Appeals decision, any change that the landowners have in

the potential uses of the property, and other changes that have taken place in the past five years. This will provide the County Commission with a much better record upon which to base its decision.

II. The second possible course of action should be made by resolution. This course of action is for the County Commission to hold another hearing, consider comments of proponents and opponents of the annexation, and make a decision as to whether the annexation will hinder or prevent the proper growth and development of the area or that of any other incorporated city located within Douglas County. This decision must be made consistent with the requirements in the Court of Appeals decision in *Baggett*. If this course of action is followed, the resolution should outline findings and reasons for the decision.

IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS

SCENIC RIVERWAY COMMUNITY)
ASSOCIATION; and JAMES BAGGETT)
and MARGUERITE ERMELING; and)
JAMES HAINES and CYNTHIA HAINES;)
and DAVID J. ROSS;)
Plaintiffs,)
and)
THE BOARD OF DOUGLAS COUNTY)
COMMISSIONERS,)
Defendant.)

Case No.: 2011 CV 00572
Division No.: 1

JOURNAL ENTRY OF JUDGMENT AND ORDER OF REMAND

NOW on this 19th day of July, 2013, this matter comes before the Court.

Plaintiffs appears by and through their attorney Ronald Schneider. Defendant Board of Douglas County Commissioners appears by and through County Counselor, Evan Ice.

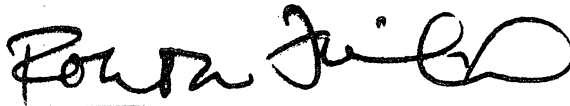
WHEREUPON, the Court finds that judgment should be granted to Plaintiffs, and that this matter should be remanded to the Board of Douglas County Commissioners, consistent with the decision rendered by the Kansas Court of Appeals in *James Baggett, et. al. v. The Board of County Commissioners of Douglas County, Kansas*, Appellate No. 104,441, and judgment entered in *Scenic Riverway Community Association, et. al v. The Board of Douglas County Commissioners, et. al*, Douglas County District Case No.: 2011CV00034.

8/8/13

cc: [unclear]

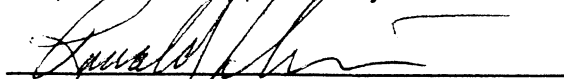
IT IS THEREFORE ORDERED AND DECREED that this matter is remanded to the Board of Douglas County Commissioners, and that the Board is instructed to examine whether all potentially deleterious uses would "hinder the proper growth and development of the area," and other matters, consistent with the Court of Appeals decision rendered in *Baggett*, supra.

IT IS FURTHER ORDERED that costs are assessed against Defendant, Board of Douglas County Commissioners.



Robert W. Fairchild
Judge of the District Court

Prepared and Approved by:



Ronald Schneider #10386
Ronald Schneider, P.A.
900 Massachusetts, Suite 600
Lawrence, Kansas 66044
(785) 841-2040 Telephone
(785) 856-0243 Facsimile
Attorney for Plaintiffs

Approved by:



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County Counselor
Stevens & Brand LLP
900 Massachusetts S., Suite 500
Lawrence, Kansas 66044
TEL: (785) 843-0811
FAX: (785) 843-0341
Attorney for Defendant Board of Douglas County Commissioners

FILED
DOUGLAS COUNTY
DISTRICT COURT

2013 JUL 15 A 9:34

IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS

SCENIC RIVERWAY COMMUNITY)
ASSOCIATION; and JAMES BAGGETT)
and MARGUERITE ERMELING; and)
JAMES HAINES and CYNTHIA HAINES;)
and DAVID J. ROSS;)
Plaintiffs,)
and)
THE BOARD OF DOUGLAS COUNTY)
COMMISSIONERS,)
Defendant,)
and)
CITY OF LAWRENCE,)
Intervenor/Defendant)
_____)

BY _____

Case No.: 2011 CV 00034
Division No.: 4

JOURNAL ENTRY OF JUDGMENT AND ORDER OF REMAND

NOW on this 19th day of July, 2013, this matter comes before the Court for a Status Conference. Plaintiffs appear by and through their attorney Ronald Schneider. Defendant Board of Douglas County Commissioners appears by and through County Counselor, Evan Ice. Intervenor/Defendant, City of Lawrence, appears by and through its attorney, Randall F. Larkin.

WHEREUPON, the Court finds that judgment should be granted to Plaintiffs, and that this matter should be remanded to the Board of Douglas County Commissioners, consistent with the decision rendered by the Kansas Court of Appeals in *James Baggett, et. al. v. The Board of County Commissioners of Douglas County, Kansas*, Appellate No. 104,441.

Scenic Riverway Community Assoc., et. al., v. Board of Douglas County Commissioners, et. al.
Case No.: 2011CV000034: Journal Entry of Judgment and Order of Remand

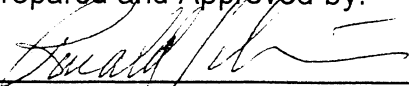
IT IS THEREFORE ORDERED AND DECREED that this matter is remanded to the Board of Douglas County Commissioners, and the Board is instructed to examine whether all potentially deleterious uses would "hinder the proper growth and development of the area," and other matters, consistent with the Court of Appeals decision rendered in *Baggett*, supra.

IT IS FURTHER ORDERED that costs are assessed against Defendant, Board of Douglas County Commissioners.



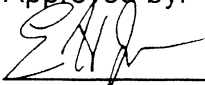
Michael J. Malone
Judge of the District Court

Prepared and Approved by:

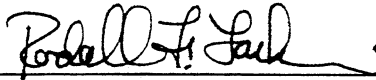


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Attorney for Intervenor/Defendant City of Lawrence

No. 104,441

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

JAMES BAGGETT, *et al.*,
Appellants,

v.

THE BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, KANSAS,
Appellee,

and

MASTERCRAFT CORPORATION,
A Kansas Corporation,

and

CITY OF LAWRENCE, KANSAS,
Intervenors/Appellees.

SYLLABUS BY THE COURT

1.

Our standard of review in an administrative review where the first level of review occurs in the district court requires us to first determine whether the district court observed the requirements placed upon it and then conduct a similar review of the board of county commissioners' action.

2.

In reviewing a quasi-judicial decision, we must determine whether, as a matter of law, the board of county commissioners: (1) acted fraudulently, arbitrarily, or capriciously; (2) issued an order supported by substantial evidence; and (3) acted within the scope of its authority. The appellate court should not substitute its judgment for that

of the members of the board of county commissioners, who act as elected representatives and are able to observe and hear those who testify. The appellate court's role in annexation decisions is limited.

3.

Under K.S.A. 12-520c, the governing body of any city may by ordinance annex land not adjoining the city if, among other conditions, the board of county commissioners of the county finds and determines that the annexation of such land will not hinder or prevent the proper growth and development of the area or that of any other incorporated city located within such county. A finding that annexation will not hinder proper growth is more than just a legislative decision that annexation is advisable; it is a quasi-judicial finding.

4.

The statutory requirements of K.S.A. 12-521 and K.S.A. 12-520c are to be viewed separately; K.S.A. 12-520c is applicable to island annexations, and K.S.A. 12-521 is an alternative statutory route to annexations where no more specific procedure applies.

5.

The city officials making the decision on how to zone land proposed for annexation do not represent the residents in outlying areas of the county. For the residents of outlying areas to have a voice in the land use, there must be some initial consideration of land usage and whether it hinders proper growth and development of the area by the board of county commissioners.

6.

The proposed uses or reasons for a requested annexation must be considered by the board of county commissioners because the uses or reasons for annexation will affect

the future growth of the area. In almost every case where there has been a request for island annexation, there will be a proposed use.

7.

Where the developer of land in an island annexation cannot specify the intended uses of the land but provides only a category of potential uses, the board of county commissioners must examine those potential uses—or at least the most potentially deleterious uses—and determine whether those uses would hinder or prevent proper growth and development of the area. Failing in that examination, the annexation cannot survive judicial scrutiny under K.S.A. 12-520c.

Appeal from Douglas District Court. ROBERT W. FAIRCHILD, judge. Opinion filed September 30, 2011. Reversed and remanded.

Ronald Schneider, of Ronald Schneider, P.A., of Lawrence, for appellants.

Evan H. Ice and *Laura E. Seaton*, of Stevens & Brand, L.L.P., of Lawrence, for appellee Board of Douglas County Commissioners.

Michael M. Shultz, of Kaup & Shultz, Attorneys at Law, LC, of Lawrence, for intervenor/appellee City of Lawrence.

Before GREENE, C.J., MARQUARDT and STANDRIDGE, JJ.

GREENE, C.J.: James Baggett and a group of similarly situated individual landowners (Baggett Group) appeal the district court's decision to affirm the approval by the Board of Douglas County Commissioners (Board) of an island annexation of property to the City of Lawrence (City). The Baggett Group argues the district court erred by permitting the intervention of the developer of the property to be annexed and by failing to enforce certain discovery against that intervenor. They also challenge the Board's

decision as arbitrary, capricious, and unlawful, as unsupported by substantial competent evidence, and as contaminated by procedural error and ex parte communications. Concluding that the Board's decision is not adequately supported by evidence in the record, we reverse the district court's decision affirming the Board's annexation approval and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

On January 30, 2008, the business owners (the applicants) of approximately 155 acres of land (the property) in Douglas County (the County) petitioned the City for the voluntary annexation of the property, which lies northwest of the Lawrence city limits, immediately north of the intersection of K-10 and the Farmer's Turnpike, near the Lecompton interchange of the Kansas Turnpike, later seeking rezoning for industrial development. The property does not adjoin the contiguous boundaries of the City, and therefore the proposed annexation constitutes an island annexation pursuant to K.S.A. 12-520c. Before the annexation request, the property was undeveloped agricultural property used as pastureland and was zoned County A (Agricultural).

The Baggett Group consists of individual homeowners adjacent to or located within 1/2 mile of the property. Their property is zoned County A, with rural residential homes located along the existing county roads. Mastercraft Corporation, which successfully intervened in the proceeding in district court, is the developer of the property and has pursued the annexation and zoning in question on behalf of the applicants.

Among the initial actions reflected in the record, a staff report to the City Planning Commission recommended that annexation be deferred until a sector plan could be completed. Its report pointed out that sanitary sewer services, water services, and private utilities were needed for the property, and that a regional detention plan for each

watershed on the property was needed but not yet developed. Finally, the report noted that the property was outside the existing service response districts.

On March 26, 2008, despite this strong recommendation from its staff, the City Planning Commission recommended annexation to the City Commission on a 6-2 vote. On April 15, 2008, pursuant to K.S.A. 12-520c, the City adopted Resolution No. 6764 (City Resolution) requesting that the Board find and determine that the annexation of the described property into the City would not hinder or prevent the proper growth and development of the area or that of any other incorporated city located within the County.

On May 14, 2008, the Board met in regular session to consider the City Resolution. After presentation by the Lawrence-Douglas County Metropolitan Planning Commission staff, the issue was opened for public comment, and many witnesses spoke either for or against the annexation. Jane Eldredge and Matthew Gough represented the applicants and Mastercraft, and Eldredge stated that annexation was sought by the owners: (1) to bring the property under the jurisdiction of the City and thereby regulate the development more stringently to protect the neighbors; (2) to provide for much needed industrial space for the long-term growth of the County; and (3) to provide more jobs and more tax revenue.

Ron Schneider, the attorney for the Baggett Group, stated that island annexations are rare. He argued that Eldredge had glossed over the critical determination to be made by the Board, stating, "Your determination is not whether or not this is a good zoning or bad zoning. It's precisely K.S.A. 12-520c, whether or not this will hinder or prevent the proper growth and development of the area or that of any other incorporated city located within such county." He asked that the Board refrain from making a decision due to the present lack of adequate water or sewage. He also emphasized that the Board was unaware of what type of development was going to occur on the property.

Eldredge responded that she was unable to be specific as to the intended use of the property, only that it will be within the permissible uses under the industrial zoning classifications. Indeed, the applicants' initial letter to the Board had stated that "[t]he proposed uses of the Property are . . . limited to those uses permitted *within industrial zoning classifications* by the City." (Emphasis added). Although there was discussion about a distribution center of 100,000 to 500,000 square feet, Eldredge warned that "we're not talking about probably a single use on this site."

On May 21, 2008, the Board adopted Resolution No. 08-18 by a 2 to 1 vote, finding that the proposed annexation should be approved. In its findings, relevant to the proposed use, the Board stated:

"h. The reason for the proposed annexation is to construct an industrial park, which will help mitigate the shortage of available industrial space.

"i. The owners of the Property, as developers, cannot reasonably identify the specific uses within the future industrial park, as such uses will be dictated by the demands of future businesses that elect to purchase or lease all or some portion of the Property; however, they do anticipate an initial warehouse distribution.

"j. The potential future uses of the Property *may include all uses permitted within the industrial zoning classifications and the Development Code of the City.*

"k. The use of the Property as an industrial park does not conflict with any other established development plan for the area." (Emphasis added.)

The Board concluded that the proposed annexation would not hinder or prevent proper growth and development of the area.

The Baggett Group appealed to the district court, which affirmed the Board's annexation decision. The Baggett Group appeals that decision.

WAS THE BOARD'S DECISION UNSUPPORTED BY SUFFICIENT EVIDENCE OR OTHERWISE
ARBITRARY, CAPRICIOUS, AND UNREASONABLE?

Standards of Review

The Baggett Group argues that the Board's annexation decision cannot be supported by substantial evidence and is otherwise arbitrary, capricious, and unreasonable. Our standard of review requires us to first determine whether the district court observed the requirements placed upon it and then conduct a similar review of the Board's action. *City of Topeka v. Board of Shawnee County Comm'rs*, 252 Kan. 432, 434, 845 P.2d 663 (1993). In considering such quasi-judicial decision making, we must determine whether, as a matter of law, the Board: (1) acted fraudulently, arbitrarily, or capriciously; (2) issued an order supported by substantial evidence; and (3) acted within the scope of its authority. 252 Kan. 432, Syl. ¶ 1. The appellate court "should not substitute [its] judgment for that of the members of the [Board] 'who act as elected representatives and are able to observe and hear those who testify.' [The appellate court's] role in annexation decisions is limited. 252 Kan. at 439." *In re Petition of City of Kansas City for Annexation of Land*, 253 Kan. 402, 403-04, 856 P.2d 144 (1993). Our Supreme Court has held that "the determination of whether a board acted arbitrarily or capriciously depends 'entirely on whether the Board's conclusion on manifest injury was based upon substantial evidence.'" *Petition of City of Kansas City*, 253 Kan. at 408. Because the manifest injury judicial finding is analogous to a finding that annexation will not hinder proper growth, the question of whether annexation hinders proper growth similarly depends entirely on whether the Board's conclusion on this issue was based on substantial evidence. See *Cedar Creek Properties, Inc. v. Board of Johnson County Comm'rs*, 249 Kan. 149, Syl. ¶ 2, 815 P.2d 492 (1991).

The Board issued its decision on May 21, 2008, before the amendments to K.S.A. 2010 Supp. 77-621 became effective on July 1, 2009. Because the agency finding in this

case was made before the 2009 amendments became effective, we apply the standard of review under K.S.A. 77-621(c)(7), which was in effect when the Board issued its resolution. See *Redd v. Kansas Truck Center*, 291 Kan. 176, 177, 239 P.3d 66 (2010). Thus, we review the agency's determination for evidence "that is substantial when viewed in light of the record as a whole." K.S.A. 77-621(c)(7). In Kansas, substantial evidence to support a quasi-judicial finding is defined as

"evidence which possesses both relevance and substance, and which furnishes a substantial basis of fact from which the issues can reasonably be resolved. [Citation omitted.] . . . [the court noted that] "[i]t is not the function of an appellate court to reweigh the evidence; we are concerned only with the evidence which supports the findings below, and not the evidence which might have supported contrary conclusions. [Citation omitted.]. . . If there is substantial evidence in the record supporting the Board's determination of manifest injury, that decision must be affirmed and . . . annexation stricken down." *In re Petition of City of Shawnee for Annexation of Land*, 236 Kan. 1, 21, 687 P.2d 603 (1984).

See *Jones v. Kansas State University*, 279 Kan. 128, Syl. ¶ 5, 106 P.3d 10 (2005); *City of Topeka*, 252 Kan. at 440.

Overview of Island Annexation Law

K.S.A. 12-520c governs island annexations and provides, in relevant part:

"(a) The governing body of any city may by ordinance annex land not adjoining the city if the following conditions exist:

- (1) The land is located within the same county as such city;
- (2) The owner or owners of the land petition for or consent in writing to the annexation of such land; and
- (3) The board of county commissioners of the county *find and determine that the annexation of such land will not hinder or prevent the proper growth and development of*

the area or that of any other incorporated city located within such county." (Emphasis added.)

"A finding that annexation will not hinder proper growth is more than just a legislative decision that annexation is advisable. It is analogous to finding that annexation will not cause manifest injury, which is a judicial finding." *Cedar Creek Properties*, 249 Kan. 149, Syl. ¶ 2.

The Baggett Group argues that K.S.A.12-521, the alternate annexation procedure requiring county commission approval, see 249 Kan. at 155, and particularly the listed criteria for manifest injury therein "are clearly of value for the Board of County Commissioners and this Court for determining what is relevant, and what should be considered to determine if a proposed island annexation will hinder or prevent proper growth and development." We disagree. K.S.A. 12-521 has application to specific categories of proposed annexation that are not at issue here. The statute sets forth a different procedure with separate requirements from K.S.A. 12-520c, which relates specifically to island annexations such as the one proposed here. See Parnacott, *Annexation in Kansas*, 70 J.K.B.A. 28, 30-33 (Nov./Dec. 2001).

Analysis of the Evidence

We begin our review of the evidence by analyzing the staff report to the City Planning Commission. The Baggett Group urges us to consider this evidence as "the most important source of information for the [Board] to consider." Our Supreme Court has admonished that the ultimate authority in such matters is the elected officials, not an appointed advisory commission. *Manly v. City of Shawnee*, 287 Kan. 63, 70-71, 194 P.3d 1 (2008). Nevertheless, we find the staff report to contain virtually undisputed evidence regarding the property characteristics and other considerations that served to focus the debate before both the City Commission and the Board. The report's references to current

development plans for the area are of particular interest because those plans must surely be a key factor in deciding whether the proposed annexation would "hinder or prevent the proper growth and development of the area."

First, the report notes that the annexation request "is not consistent with" the growth management policies found in "Horizon 2020," the City's formal planning policy statement, which is referred to "as the primary tool for ensuring timely and orderly growth." The property "lies outside of the designated Urban Growth Area" and had not been planned to support urban densities of development during the planning period. The report also notes that the proposed annexation request was inconsistent with the recommendations for annexation reflected in the formal planning policy document. The report concludes with a statement that any development in this area should include "a plan [to] be tied directly to specific uses for development to mitigate harm to the surrounding area and to assure that adequate provisions are provided for integrating the development into the ultimate system when appropriate."

The relative importance of the City's formal plan for development was best stated by one member of the Baggett Group, who wrote to the Board prior to the open hearing and stated in material part:

"I am not writing to insist that this property should not be annexed or rezoned. I am writing to insist that the city and county operate per statute (K.S.A. 12-747), policy (Horizon 2020) and precedent (Joint City County Ordinance No. 8218). As a property owner within a 1000 feet of the property to be discussed . . . I made an investment based on the City/County Comprehensive plan which stated that this area would not be in line for development for another 10 to 15 years. [That] Plan states:

'The Comprehensive Plan provides a vision for the community. It is used as a policy guide that identifies the community's goals for directing future land use decisions. The Plan is also used by property owners to identify where and how development should occur; by

residents to understand what the city and county anticipates for future land uses within the community; and by the city, county and other public agencies to plan for future improvement to serve the growing population of the community.

' . . . The Comprehensive Plan is used most often as a tool to assist the community's decision makers in evaluating the appropriateness of land development proposals.'

The concern that "specific uses" be designated for consideration of the statutory criteria is a theme of the appellants on appeal. The Baggett Group argues that because there were no specific uses indicated for the proposed land—other than "within industrial zoning classifications"—the Board failed to consider how those broad uses would affect the existing uses in the area surrounding the land to be annexed. As referenced in our factual summary above, there was mention of some intentions for an industrial park, but Eldredge repeatedly warned that the proposed uses could only be identified as "within the industrial zoning classifications." As we have noted above, the applicants' initial letter to the Board stated that proposed uses were to be with all industrial zoning classifications and could not be further specified:

"The Property will be used for industrial purposes, but the exact uses can not be identified at this time. In *Cedar Creek*, the Court stated that 'in almost every case where there has been a request for island annexation, there will be a proposed use.' 249 Kan. at 158. In this case, unlike *Cedar Creek*, the Applicant is a developer, not an end-user of the Property. The specific uses that will occur on the subject property will be dictated by the demands of employers that are interested in the site (and further subject to applicable zoning, subdivision and other use restrictions)."

Those industrial classifications for the City include "industrial/business park district (IBP)," "limited industrial district (IL)," and "general industrial district purpose (IG)." Of greatest concern to the landowners are the potential uses that would be permitted under the IG classification, as they include uses "that would create any of the

commonly recognized nuisance conditions or characteristics" including continuous, frequent, or repetitive noises or vibrations; noxious or toxic fumes, odors, or emissions; electrical disturbances; or night illumination into residential areas. Examples of permissible activities within the IG classification include explosive storage (including blasting operations) and intensive industrial usages such as ready mix operations. The classification standard for IG zoning includes a statement that "[t]he district is generally incompatible with residential areas and low-intensity commercial areas."

The evidence reflects that there are as many as 11 homes directly adjacent to the proposed area of annexation and 63 homes are located within 3/4 of a mile from that area. The area is primarily composed of residential and agricultural use. In fact, the record indicates that the area to be annexed was currently zoned agricultural and 40% of that acreage was designated as "prime farmland." These characteristics of the existing properties within, adjacent to, and near the proposed acreage are not disputed within the record.

Numerous witnesses appeared before the Board, and some of them noted that the impact of the annexation was impossible to determine without knowing more about the intended usage of the land. One such witness challenging the annexation stated that part of the problem is that "we don't know what their [*sic*] suggesting." Another witness noted that it was difficult if not impossible to assess impact without knowing more about usage:

"Not only would that harm existing residents, but it seems to me inconceivable that anyone else would ever build out there. Any kind of property whether it was residential, commercial or industrial absent some assurance that they wouldn't have to undergo water rationing. Now, in fact, we cannot say water rationing is inevitable. And the reason we can't say that is we don't know what's going in there. . . . [H]ow can the commission make a finding that this annexation will not hinder or prevent the proper growth and development of the area without knowing specifically what the water usage, at least in the ball park area, might be when the city has stated this is a[n] island annexation, they

have an interim utility plan which would in fact require our WD6 [Rural Water District No. 6] to have some uh input here."

The attorney for the Baggett Group stated to the Board:

"[Y]ou have a right to know on annexation . . . what is the proposed use and what is the reason. . . I think you must demand to know what the use is. And if not, you have the responsibility to make a finding you can't determine whether or not it will harm or adversely affect the nearby property."

Analysis of the Board's Decision

The Board's decision acknowledges that the potential future uses of the property "may include all uses permitted within the industrial zoning classifications and the Development Code of the City." Despite this rather broad finding, the record is silent on any consideration by the Board of the impact on the current area of those more potentially deleterious uses that would be permitted under the IG zoning classification.

In *Cedar Creek Properties*, our Supreme Court faced a situation where Johnson County precluded evidence of the intended usage of the proposed acreage. In reversing the board of county commissioners, the court noted the critical need for the board to know of the intended usage in order to perform its function.

"[S]hould the BOCC consider the proposed land use? Defendants argue that the answer is no, because this would usurp the function of the city zoning authority, and that plaintiff's remedy lies with the city. This is unpersuasive. The city officials making the decision on how to zone the land do not represent the residents in outlying areas. For the residents of outlying areas to have a voice in the land use, there must be some initial consideration by the BOCC.

"The proposed use or the reason for the requested annexation must be considered by the BOCC because the use of reason for annexation will affect the future growth of the

area. In almost every case where there has been a request for island annexation, there will be a proposed use.

....

"The BOCC's refusal to consider land use was contrary to the legislative intent and purpose of K.S.A. 12-520c" *Cedar Creek Properties*, 249 Kan. at 158, 160.

Here, we have a variation on these facts; the Board did not refuse evidence on the proposed uses for the property to be annexed, but rather the developer specified only a broad category of proposed uses—all of which do not appear to have been considered by the Board. We see in the record no indication that the Board considered, discussed, made findings, or entered conclusions on the question whether the uses of the property for activities "incompatible with residential areas" would hinder or prevent proper development of the area. In fact, one might conclude that the potential uses predesignated by formal zoning classification as incompatible with residential areas would hinder or prevent proper development as a matter of logic. If the proposed uses include those uses that are *incompatible* with residential areas, and the existing uses include residential areas both adjacent to and near the property, would not the annexation hinder development? If the proposed uses include uses that would create commonly recognized nuisance conditions, would not the annexation acreage be precluded from proper development? (*E.g.*, who would place their business park next to such nuisances?) At a minimum, would we not expect the Board to have considered how such uses could somehow be made compatible by accommodation, restrictions, placement, or otherwise? No such discussion or findings can be found in the record.

We also note the complete absence of any record evidence suggesting that the most deleterious of the permitted IG uses would *not* hinder proper development. Despite the persistent protestations of some witnesses that the intended uses for the property were critical to the Board's decision and that the potential impact could not be assessed without more specificity, we find no evidence to support a finding that *any* use that might be

permitted by the various industrial zoning classifications would not "hinder or prevent" proper growth and development of this agricultural/residential area. None.

In other words, for the Board to approve the annexation by a mere conclusory finding without a more careful and deliberative consideration of the extent that any of the proposed uses might hinder proper development of the area under consideration is both unsupported by this record and inherently arbitrary and capricious. We do not substitute our judgment for the Board, but rather conclude that, with all due respect, the Board failed to perform its function under the law. Where the developer of land in an island annexation cannot specify the intended uses of the land but provides only a category of potential uses, the Board must examine those potential uses—or at least the most potentially deleterious uses—and determine whether those potentially deleterious uses would "hinder or prevent the proper growth and development of the area." Failing in that examination, the annexation cannot survive judicial scrutiny under K.S.A. 12-520c. We are compelled to reverse the district court's order affirming the annexation of the Board and to remand for further proceedings consistent with this opinion.

The Baggett Group has made additional claims of error on appeal, but our conclusion above renders the balance of such claims moot.

Reversed and remanded.

MANDATE

FILED

MAY 28 2013

(Handwritten initials)

COURT OF APPEALS,
STATE OF KANSAS,

Appellate Court No. 10-104441-A **Clerk Of The District Court**
District Court No. 08CV371

**The State of Kansas, to the District Court within and for the County of DOUGLAS
in the State of Kansas, Greeting:**

WHEREAS, In a certain civil action lately pending before you, wherein JAMES BAGGETT, et al., appellants, and, THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS, appellee, AND MASTERCRAFT CORPORATION, A KANSAS CORPORATION, AND CITY OF LAWRENCE, KANSAS, intervenors/appellees, a judgment was rendered by you against the appellants from which judgment appellants prosecuted an appeal in the Court of Appeals within and for the State of Kansas;

AND WHEREAS, on September 30, 2011, on consideration of the appeal, it was ordered and adjudged by the Court of Appeals that the judgment of the District Court be reversed and remanded and that pursuant to Rule 7.07(a) the appellant shall recover against the appellee \$135.00 filing fee and cost of transcripts, if any, for costs herein expended and have execution therefor. An attested true copy of opinion attached.

YOU ARE THEREFORE COMMANDED, That without delay you cause execution to be had of the judgment of the Court of Appeals, according to law.

Costs

Fees of Clerk of the Appellate Courts	\$ 135.00
Other Costs	\$
Total	\$

WITNESS my hand and the seal of the Court of Appeals affixed hereto, at my office, in the City of Topeka, on MAY 22 2013.

Carol G. Green

CAROL G. GREEN, Clerk of the Appellate Courts

**MANDATE RECEIVED BY CLERK
TRIAL JUDGE NOTIFIED**

Date: May 28, 2013

FILED

JUL 24 2013

CLERK OF THE DISTRICT COURT

IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS

JAMES BAGGETT and MARGUERITE ERMELING;
DENNIS W. BEACH and PATRICIA L. BEACH;
FRANCIS FOLEY and RETA FOLEY;
DONALD M. FUSTON and MARGARET G. FUSTON, Trustees;
JAMES HAINES and CYNTHIA HAINES;
NELDA HODSON and PHILIP HODSON;
BILLY C. HODSON;
RICHARD STEIN and MARY HOWE;
STEVEN H. MCDOWELL and KATHY MCDOWELL;
DAVID J. ROSS;
STANLEY UNRUH and JANE UNRUH;
FRANCES WEMPE; and ROB ZIMMERMAN,
Plaintiffs/Appellants,

Case No.: 2008 CV 371
Division 1

v.

THE BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, KANSAS,
Defendant/Appellee,
and

THE CITY OF LAWRENCE, KANSAS,
Intervenor/Defendant

JOURNAL ENTRY AND ORDER OF REMAND

NOW on this 28th day of May 2013, the Mandate from the Court of Appeals, Appellate Court No. 10-10441-A, involving the above entitled case is received by the Clerk of the District Court of Douglas County, Kansas.

IT IS THEREFORE ORDERED AND DECREED that this matter is remanded to the Board of Douglas County Commissioners and that the Board is instructed to examine whether all potentially deleterious uses would "hinder the proper growth and

Jim Baggett, et. al., v. Board of Douglas County Commissioners, et. al.
Case No.: 2008CV371: Journal Entry and Order of Remand

8/8/13

cc: Clients

development of the area," and all other matters, consistent with the decision rendered by the Court of Appeals and the Mandate issued herein.

IT IS FURTHER ORDERED that Appellees shall pay Appellants \$135.00 filing fees, and costs of transcripts, if any.

IT IS SO ORDERED.



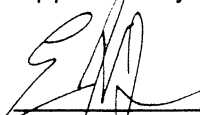
Robert W. Fairchild
Judge of the District Court

Prepared and Approved by:

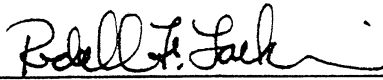


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2015 -2019 CIP - FACILITIES PROJECTS - Draft - for Discussion Purposes only

Project	CIP Proj. #	Expense Begin Yr.	Constr. Yr.	Dg. Co. Cost	Balance Payable as of	Funds in Reserve	2014 Budget	TOTAL AVAILABLE	Projected 2015	Projected 2016	Projected 2017	Projected 2018	Notes
CIP General Contingency	1					\$1,201,376		\$1,201,376	\$200,000	\$200,000	\$200,000	\$200,000	Finance Jail and Youth Services Space needs studies - There is \$2,114,648 in allocated reserve funds to be allocated by the BOCC
Jail Expansion Design Studies		2014	2014	\$184,650									
BTBC Roof		2014	2014	\$125,000		\$125,000		\$125,000					
JLE Chiller	102	2014	2014	\$200,000		\$94,000	\$106,000	\$200,000					Underway
Jail Roof Repair	160	2014	2014	\$140,000		\$140,000		\$140,000					Underway
Jail Temperature Control	142	2014	2014	\$180,000		\$180,000		\$180,000					
Public Works Facility	139	2014	2014			\$2,628,366		\$2,628,366					
Public Works Facility - Earth Work	139	2014	2014	\$269,000		\$269,000		\$269,000					
United Way Roof		2014	2014	\$433,429									There is \$75,000 in equipment reserve for this project. The valleyview fund has just under \$100,000.
Fire Station #1	144	2016	2016	\$520,000					\$254,939	\$265,061			Co. portion of repairs and renovations to Station #1 - Project being evaluated by the City
Jail Chiller Replacement	143	2017	2017	\$250,000					\$125,000	\$125,000			replacement of both chillers
Courthouse Chiller		2015	2015	\$150,000									
Fairgrounds	65			\$6,500,000		\$2,000,000	\$415,133	\$2,415,133					
Downtown Space Needs				\$1,500,000									This would either be a renovation of JLE if LPD vacates or a renovation of the Public Works Administration space
Courthouse Stonework Renovation	64			\$3,000,000									
Courthouse Conceal Carry update		2017	2017	\$1,250,000									
Jail Expansion		2017	2017	\$20,000,000									
Youth Services expansion				\$5,200,000									Multiphase project
TOTALS				\$40,207,401		\$6,637,742	\$521,133	\$4,743,742	\$454,939	\$465,061	\$200,000	\$200,000	

Future Issues:
Dive Team Storage
Evidence Storage

Memorandum

To: Board of County Commissioners

Cc: Craig Weinaug, Mary Miller, Jim Sherman

From: Evan Ice

Date: November 6, 2014

RE: Questions Concerning Value-Added Agricultural Business Conditional Use Permits

Background

On October 22, 2014, a hearing was held before the Board of County Commissioners concerning CUP-14-00304. This is an application for a conditional use permit that Central Soyfoods LLC filed for a Value-Added Agricultural Business. The Board referred several questions to me concerning some of the requirements of a Value-Added Agricultural Business conditional use permit. This Memorandum contains my responses.

Questions

The full text of the applicable Zoning Regulations is reprinted in Exhibit A. The possibility of conditional use permit for a Value-Added Agricultural Business was added to the Zoning Regulations on September 15, 2008, when the Board of County Commissioners adopted Resolution 08-39. A conditional use permit for a Value-Added Agricultural Business was added as number 35, after 34 other possible types of conditional use permits (Exhibit A does not include the other 34 possible types of conditional use permit).

- 1. Question: Vested Properties. The Subdivision Regulations state that a vested parcel can be used for single-family homes and for any uses permitted in the district. Does this apply to Conditional Uses or only uses which are permitted by right?**

Short Answer: A vested parcel is not automatically exempt from development standards applicable to Conditional Uses and other permitted uses. The text and intent of the applicable conditional use permit or other permitted use should be consulted to determine the requirements that apply.

More Detailed Answer: In my opinion, a vested parcel loses its protection during the conditional use permit process. Section 11-101(e)(2)(iv) (emphasis added) of the Subdivision Regulations contains the following provision:

“For property in the Unincorporated Areas of Douglas County, a Lot of Record or a Parcel lawfully created within the A (Agricultural) District, A-1 (Suburban-Home Residential) District, or R-1 (Single-Family Residential) District in the Unincorporated Area of Douglas County on or before December 31, 2006, that has been maintained in individual Ownership, **may be used for residential purposes for a single-family home or for another use allowed within the District the property is located in, without further review under this Article, until such Lot of Record or Parcel is further Subdivided.”**

The full text of 11-101(e) is reprinted in Exhibit B. This provision specifically grandfathers continued use of tracts of land that were legally created/subdivided in accordance with the Subdivision Regulations in effect when the current Subdivision Regulations were adopted in 2006. This relates to uses that are allowed as a matter of right in a particular district, not uses which may be allowed if the property is rezoned to a different district. If a property owner chooses to rezone his property, new uses are allowed as a result of the new zoning and will have to comply with the then-applicable regulations, which may include platting the subject property. Because a conditional use permit is treated the same as a rezoning and allows the owner to do something on his property that he could not otherwise do, I conclude that the grandfathering protection does not automatically continue to apply with respect to the new use that the conditional use permit allows. The text and intent of the applicable conditional use permit provision should be consulted to determine the requirements that apply.

A similar analysis applies to temporary business uses authorized pursuant to 12-319-5.01 of the Zoning Regulations. A temporary business use is not permitted by right, but rather requires approval of the Board. The Board may condition this approval upon compliance with a number of development standards. In my opinion, a parcel vested pursuant to Section 11-101(e)(2)(iv) of the Subdivision Regulations does not *automatically* exempt the parcel from the development standards of a temporary business use.

For clarification, other uses allowed in the zoning district as a matter of right may also require minimum frontage, minimum site area, and/or other development standards. For instance, a Rule Home Business Occupation established after August 16, 2000 must have a minimum site area of 5 acres. In my opinion, Section 11-101(e)(2)(iv) of the 2006 Subdivision Regulations does not supersede this development standard that was added to the Zoning Regulations six years earlier. Another example is a fireworks stand. Although there is not currently a minimum site area, there are a number of other development standards. A “vested parcel” under the 2006 Subdivision Regulations is not *automatically* exempt from these development standards. If the Board chooses to add a minimum site area requirement to the fireworks stand regulations at some point in the future, a vested parcel will have to comply unless the Board expresses an intent to grandfather then-existing parcels. Finally, if the Board amends the Zoning Regulations to eliminate a permitted use from the Agricultural District, a vested parcel would no longer have the right to that use (except as a non-

conforming use). Bottom line, the text of the applicable regulation and the intent of the Board must be consulted to determine the extent to which development standards apply to a vested parcel.

- 2. Question: Minimum Site Area. Does an existing “vested parcel” automatically satisfy the minimum site area requirement or does a site seeking a Value-Added Agricultural Business conditional use permit have to satisfy the minimum agricultural site area then in effect? If the property must satisfy the minimum agricultural site area then in effect, what does this mean?**

Short Answer: The minimum site area requirement applies to a parcel that is “vested” under the Subdivision Regulations. There is no objective minimum site area for a Value-Added Agricultural Business, but 5 acres should be sufficient.

More Detailed Answer: Section 12-319-4.35.g provides a Value-Added Agricultural Business must satisfy the following:

“Minimum Site Area: A minimum site area is consistent with the County adopted policy for agricultural uses.”

Admittedly, this is a gray area. There is no discussion in this staff report, Planning Commission Meeting Minutes, or County Commission Meeting Minutes that indicates any intent to exempt “vested parcels” from this requirement. For the reasons stated above in my response to Question #1, I believe that the minimum site area requirement *does* apply to a Value-Added Agricultural Business located on a “vested parcel.”

The question, then, turns to what does the requirement mean? The following is a brief overview of the progression of the minimum site area requirement:

- When staff initially submitted the proposed regulation to the Board on April 16, 2008, the minimum site area presented was 80 acres.
- The April 16, 2008 County Commission Meeting Minutes do not reveal that this 80 acre minimum site area was discussed.
- The July 25, 2008 Planning Commission Meeting Minutes reveal that the proposed minimum site area had been reduced to 40 acres before it was submitted to the Planning Commission. Staff discussed the 40 acre minimum and suggested that it be changed so that a certain specific acreage was not required. Staff explained that the number of acres is often consulted when determining whether a building is an agricultural building, exempt from the Zoning Regulations and the Building Codes and, if the parcel is at least 40 acres, staff usually does not require further evidence of an agricultural use. Staff went on to say, however, that 40

acres is not a hard and fast rule. For parcels less than 40 acres, staff requires income tax returns or other evidence that the parcel is truly being used for an agricultural use. Staff informed the Planning Commission that the Board had recently adopted a policy on this issue.

- Based upon this discussion, the Planning Commission instructed staff to eliminate the 40 acre minimum site area and amend the requirement such that the minimum site area is “consistent with the County adopted policy for agricultural uses.” The Planning Commission sent this language to the Board with a recommendation for approval.
- The Board adopted this language, which is the language in the current regulations, on September 15, 2008. The County Commission Meeting Minutes do not reveal that the minimum site area requirement was discussed.

As staff informed the Planning Commission July 25, 2008 meeting, the Board adopted a policy for agricultural use shortly before the meeting. The Board adopted the policy on July 2, 2008, by Resolution No. 08-25. The full text of this Resolution is reprinted in Exhibit C. Section 1 of this Resolution provides the following policy:

“Administrative Policy Ratified and Affirmed. The following administrative policy for the determination of eligibility as an agricultural building, exempt from the Zoning Regulations, as amended, and eligible for an exemption from the Building Code, as amended or superseded by a subsequent code, is ratified and affirmed:

a. If the premises on which the proposed building is located consists of 40 or more contiguous acres, the Department of Zoning & Codes will generally rely upon the owner’s certification that the building is (if already constructed) and will be used solely for agricultural purposes, without further documentation.

b. If the premises on which the proposed building is located consists of less than 40 contiguous acres, the owner shall provide the Department of Zoning & Codes additional documentation to establish to its satisfaction that the owner or tenant of the premises uses the premises for an agricultural use and that the building is (if already constructed) and will be used as an accessory to such agricultural use. Such additional documentation shall generally include a copy of Schedule F to the owner’s most recent IRS Form 1040, and may include additional documentation.”

This County policy is established as a guide for determining when a use is exempt from the Zoning Regulations and a building on the property is an agricultural building, exempt from the Building Code. The problem here is that it is unclear how to apply the adopted County policy when the use is not an “agricultural” use, but rather is a Value-Added Agricultural Business. One thing that is clear: this is not the minimum acreages identified the table in Section 12-318 of the Zoning Regulations, because the various acreages in that Table have nothing to do with acreages to determine whether a use and building is agricultural and exempt from the Zoning Regulations and the Building Code.

Furthermore, that Table is not what Linda Finger referenced in her remarks to the Planning Commission on July 25, 2008, when she stated the Board had recently adopted a policy and requested this standard be changed from “40 acres” to “County adopted policy.” She was referencing Resolution No. 08-25 and the policy language quoted above, which was adopted about three weeks before that Planning Commission Meeting.

As stated in the policy, the necessary acreage determination is made on a case-by-case basis, depending upon whether the Zoning & Codes Department concludes that there is truly an agricultural use. The disconnect here, however, is that a Value-Added Agricultural Business does not require any underlying agricultural use. In other words, the applicant does not need to prove that the site is being used for an agricultural use. Therefore, the applicant does not need to file income taxes as a farmer and does not need to provide other documentation evidencing an agricultural use on the subject property. The result is that the minimum acreage requirement for a Value-Added Agricultural Business does not mesh with County policy on agricultural uses.

The minimum site area requirement must mean something. The most reasonable analysis is to look at the requirements of the other comparable uses in the Zoning Regulations. A Rural Home Business Occupation is somewhat comparable, in that it also permits the operation of a business in the Agricultural District and also has a limitation of 4 full-time equivalent employees. The minimum site area for a Rural Home Business Occupation is 5 acres. Based upon the ambiguities discussed above, it is reasonable to conclude that a 5-acre site satisfies the minimum site area for a Value-Added Agricultural Business. It is possible that a smaller acreage could also satisfy the minimum site area requirement, but I am not addressing that issue at this time.

- 3. Question: Minimum Frontage Requirement. Does an existing “vested parcel” automatically satisfy the frontage requirement or does a site seeking a Value-Added Agricultural Business conditional use permit have to satisfy the Access Management Regulations then in effect?**

Short Answer: The minimum frontage requirements in the Access Management Regulations do not apply to tracts of land that are vested under the Subdivision Regulations.

More Detailed Answer: Section 12-319-4.35.h provides a Value-Added Agricultural Business must satisfy the following:

“Road Access and Frontage: The site must have direct access to a full maintenance public road and the site shall meet the minimum frontage requirements in accordance with the Access Management Regulations.”

It can be argued that road frontage must satisfy the current Access Management Regulations, even for “vested parcels,” for the reasons discussed above. There

are, however, several differences reasons which lead me to believe that the conditional use permit should not be automatically denied based upon lack of frontage. In other words, a tract of property that was legally divided on or before December 31, 2006 and is vested for a single-family home is not automatically prohibited from receiving a Value-Added Agricultural Business conditional use permit based solely upon frontage. Therefore, this is an exception to the general rule that development standards generally apply to vested parcels.

First, the subject property already has an entrance onto the adjacent public road and no additional entrance is being sought. The County Engineer has confirmed the limited traffic generated by the Value-Added Agricultural Business will not create any traffic hazards. Therefore, there is no policy reason to interpret the regulation in a manner so as to automatically deny the conditional use permit.

Second, and more importantly, the Board specifically made an interpretation of the frontage requirement on April 16, 2008, when it initiated the text amendment to authorize conditional use permits for a Value-Added Agricultural Businesses. At that meeting, the Board concluded that the frontage requirement would be satisfied for a "vested parcel" if the access was determined to be safe. Excerpts from the April 16, 2008 County Commission Meeting Minutes are reprinted in Exhibit D. The proposed text amendment was initiated in response to a specific request for a proposed use at a specific site. Without this interpretation, the new regulations, drafted in response to a specific request for a specific proposed use at a specific site, would be interpreted to require denial of a Value-Added Agricultural Business conditional use permit at that site. This result would be directly contrary to what the Board was attempting to accomplish when it initiated the text amendment. As a result, the road access and frontage requirement should not be interpreted in such a way.

If the County Engineer or Board determine that the available access and frontage will create traffic hazards or other deleterious effects, the Board can impose additional conditions to ameliorate the safety problems or, if additional conditions cannot ameliorate the safety problems, the Board can deny the conditional use permit altogether.

- 4. Question: Additional Conditions. Can planning impose an extra set of more stringent requirements (such as comparing rule home business occupation requirements to the Value-Added Agricultural requirement and choosing the most stringent of the two on each point) when the application is for a Value Added Agricultural Business conditional use permit?**

Short Answer: Yes, the Board can add conditions in addition to the items that the Zoning Regulations specifically require for a Value-Added Agricultural Business.

More Detailed Answer: And this is a conditional use permit. As with all conditional use permits, the *Golden* factors and other relevant criteria should be addressed.

According to Section 12-319-1.02 of the Zoning Regulations, the Board can approve a conditional use permit “*with or without conditions, provided that the public health, safety, morals, and general welfare will not be adversely affected, that ample off-street parking facilities will be provided, and that necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.*” The Board can impose any conditions it determines necessary to minimize off-site impact of the conditional use. Or, if the Board determines that conditions are not sufficient, it can deny the conditional use permit based upon the *Golden* factors and other reasons.

Recommendation

I recommend that the Board consider amending the requirements for a Value-Added Agricultural Business conditional use permit. First, the Board could clarify the ambiguities discussed above to avoid future misunderstandings and/or challenges. Second, the Board may not agree with the requirements imposed by that Board in 2008 or may disagree with the results discussed above. In any event, this Board is free to initiate a text amendment to impose the requirements that this Board desires.

Exhibit A

[From Zoning Regulations]

12-319-1. CONDITIONAL USES AND CONDITIONAL USE PERMITS

12-319-1.01. Recognizing 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, certain conditional uses listed in section 12-319-4 below, 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.

12-319-1.02. Before the establishment of, or before any changes in a conditional use, the application shall be filed with the Planning Commission requesting such establishment or change. The Planning Commission shall hold a public hearing as provided for in section 12-324, and shall review such plans and statements and shall, after a careful study thereof, and the effect that such buildings, structures, or uses will have upon the surrounding territory, submit a recommendation with findings of fact to the Board of County Commissioners within thirty days following said hearing, which shall include, but not be limited to, the following criteria:

- a. Zoning and Uses of Properties Nearby;
- b. Character of the Area;
- c. Suitability of Subject Property for the Uses to Which It has been Restricted
- d. Length of Time Subject Property has Remained Vacant as Zoned;
- e. Extent to Which Removal of Restrictions will detrimentally affect Nearby Property;
- f. 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;
- g. Conformance with the Comprehensive Plan; and,
- h. Professional Staff recommendation.

Following receipt of the Planning Commission's recommendation and Findings of Fact, the Board of County Commissioners may within the specifications herein provided, permit such buildings, structures, or uses, with or without conditions, provided that the public health, safety, morals, and general welfare will not be adversely affected, that ample off-street parking facilities will be provided, and that necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood valued.

12-319-1.03. Application for a Conditional Use Permit shall be made to the Planning Commission upon appropriate forms available from the Director of Planning. Such application shall be made at least forty-five days prior to a regularly scheduled Planning Commission meeting.

12-319-1.04. Each application for a Conditional Use Permit shall be accompanied by twenty-eight copies of such plans and accompanying data as to demonstrate its conformance with the requirements of the Zoning Regulations.

12-319-1.05. Regardless of whether or not the Planning Commission approves or disapproves a Conditional Use Permit, if a protest petition against such amendment is filed in the office of the County Clerk within 14 days after the date of the conclusion of the public hearing pursuant to the publication notice, signed by the owners of record of 20% or more of any real property proposed for a Conditional Use Permit or by the owners of record of 20% or more of the total area required to be notified by this act of the proposed Conditional Use Permit for a specific property, excluding streets and public ways, the Conditional Use Permit shall not be approved except by at least a 3/4 vote of all the members of the Board of County Commissioners.

12-319-1.06. The proposed use shall meet all applicable State and Federal regulations.

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[Sections 12-319-2 and 12-319-3 Omitted]

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12-319-4. CONDITIONAL USES ENUMERATED

The following conditional uses may be approved by the Board of County Commissioners as provided in this section:

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[Sections 12-319-4.1 through 12-319-4.34 Omitted]

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12-319-4.35. Value-added Agricultural Business. A business that economically adds value to an agricultural product as a result of a change in the physical state of an agricultural commodity that is not produced on the site, by manufacturing value-added products for end users instead of producing only raw commodities. Value-added products may include:

- a.** A change in the physical state or form of the product (such as milling wheat into flour or making strawberries into jam).
- b.** The physical segregation of an agricultural commodity or product in a manner that results in the enhancement of the value of that commodity or product (such as an identity preserved marketing system).

Agricultural value-added businesses shall meet each of the following location and development standards:

- a.** Employees: A maximum of 4 full-time equivalent employees shall be allowed.
- b.** Buildings or Structures: The total square footage for all buildings used in the operation, production, and storage of materials shall not exceed 10,000 sq feet. Structures are required to be upgraded to meet commercial building code requirements if used for more than storage of raw agricultural materials.
- c.** Deliveries to/from the site: Commercial vehicles that exceed 5 tons (gvw) in capacity shall be limited to two trips (to and from the site) per day.
- d.** Environmental considerations: No part of the production of the value-added product may result in dispersal of smoke or particulate matter emissions that exceeds federal EPA standards.
- e.** Equipment: All equipment used in the production of the value-added product shall be located wholly within a building or structure, or be screened from public rights-of-way and adjacent residential buildings. In either case, the associated noise, light and vibrations from the production operation shall not be perceptible at the site boundary/property lines.
- f.** Storage of products: Shall be enclosed within a building or structure so that it is not visible from the site boundary/property lines.
- g.** Minimum Site Area: A minimum site area is consistent with the County adopted policy for agricultural uses.
- h.** Road Access and Frontage: The site must have direct access to a full maintenance public road and the site shall meet the minimum frontage requirements in accordance with the Access Management Regulations.
- i.** Signage: One sign, limited to no more than 6 square feet in area, shall be visible from a public road, identifying the business. The sign shall be located no closer than 10 feet from the road easement/right-of-way line. No other signs may be posted or erected on the property.

Exhibit B
[From Subdivision Regulations]

Section 11-101 General Provisions

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[Sections 11-1101 (a) through (d) Omitted]

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(e) **Vested Rights**

(1) A division of land created in conformance with this Article, or created in conformance with the Exemption section of the adopted Subdivision Regulations that were in effect prior to December 20, 2006, and said division of land was filed and recorded as a Plat of survey, deed, or affidavit of equitable interest identifying the division as a separate Tract of real estate at the Register of Deeds office:

- (i) On or before June 1, 2005; or
- (ii) After June 1, 2005, and as of December 31, 2006, provided a division of land made after June 1, 2005, met the 10 acre requirement and other requirements for a residential building permit pursuant to Douglas County Resolution No. 05-6-5 and resolutions extending such Resolution, shall remain lawfully existing, retaining established rights to the issuance of a building permit, subject to additional regulatory authority of the Governing Body.

Such legally created Parcel shall not be subject to further review under this Article; unless or until it is further divided.

(2) Lot of Record or Non-Conforming Lots/Parcels

- (i) In the City of Lawrence, a Lot of Record or Parcel created before the Effective Date of this Article that has been maintained in individual Ownership, may be used for residential purposes for a detached Dwelling or for another use that is allowed in the UR (Urban Reserve) District without further review under this Article, until such Lot of Record or Parcel is further Subdivided.
- (ii) In the City of Lawrence, Nonconforming Lots/Parcels that meet the requirements of Section 20-1504 of the Land Development Code may be used in accordance with Article 15 without further review under this Article, until such Lot/Parcel is further Subdivided.
- (iii) In the City of Lawrence, properties which include partial Lot descriptions or multiple Lot descriptions which were created prior to December 19, 2006, are not subject to review under this Article if the property meets the standards of either the zoning district that it was governed by when the property was created or the current zoning district in which it is located unless the development pattern of the property is altered.
- (iv) For property in the Unincorporated Areas of Douglas County, a Lot of Record or a Parcel lawfully created within the A (Agricultural) District, A-1 (Suburban-Home Residential) District, or R-1 (Single-Family Residential) District in the Unincorporated Area of Douglas County on or before December 31, 2006, that has been maintained in individual

Ownership, may be used for residential purposes for a single-family home or for another use allowed within the District the property is located in, without further review under this Article, until such Lot of Record or Parcel is further Subdivided.

- (3) For property in the Unincorporated Areas of Douglas County, a Parcel created to divide off an existing residential building and grounds from a larger Parcel pursuant to Section 11-101(d)(2)(ix) through the recording of a Homestead Exemption Survey, when the principal building on the Parcel is for single-family residential purposes, shall have no further review under this Article until such Parcel is further Subdivided only when:
- (i) The residential building existed on site on or before December 31, 2006;
 - (ii) It is served by a Potable Water source located on the Parcel that includes the existing residential building improvement;
 - (iii) The Parcel conforms with the County's Sanitary Code; and,
 - (iv) That Parcel is zoned either A (Agricultural), A-1 (Suburban Home Residential), VC (Valley Channel), or R-1 (Single-Family Residential).

Upon the recording of a Final Plat, development rights in land covered by that Plat shall vest in accordance with K.S.A. 12-764. This vesting shall be effective only so long as the same general category of residential uses is continued; any significant change of use shall subject the property to additional review and the applicability of additional regulations, which may affect some rights that are vested as to the particular use and the particular pattern of development. The development rights for a single-family residential Subdivision shall expire in accordance with K.S.A. 12-764.

Exhibit C

RESOLUTION NO. 08-25

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS, RATIFYING AND AFFIRMING THE ADMINISTRATIVE POLICY TO ASSIST IN THE DETERMINATION OF AN AGRICULTURAL USE FOR GRANTING AN AGRICULTURAL BUILDING EXEMPTION

WHEREAS, on September 23, 1966, the Board of County Commissioners of Douglas County, Kansas (the "Board") adopted the Douglas County Zoning Resolution which applied to the unincorporated territory of Douglas County, Kansas (the "County").

WHEREAS, on September 11, 1985, by Resolution 85-46, the Board codified such zoning regulations, together with all amendments that had previously been made thereto, which zoning regulations have been subsequently amended in certain respects and such zoning regulations, as previously amended, are hereinafter referred to as the "Zoning Regulations."

WHEREAS, Section 4-6.02 of the Zoning Regulations prohibits the erection, conversion, enlargement, reconstruction, structural alteration, or use of a building, except for a use permitted in the zoning district in which the building is located.

WHEREAS, as a general rule, the Zoning Regulations do not permit a storage shed or other similar building on a premises unless it is accessory to another building or use that is specifically permitted.

WHEREAS, Section 4-6.01 of the Zoning Regulations, however, provides that the Zoning Regulations do not apply to the erection or maintenance of buildings as long as such buildings are used strictly for agricultural purposes.

WHEREAS, Section 3-1.03a of the Zoning Regulations defines an "agricultural building" as follows:

A structure designed and constructed to house farm implements, hay, grain, poultry, livestock, or other horticultural products. Such structure shall not be a place of human habitation or a year-round place of employment where agricultural products are processed, treated or packaged; nor shall it be a building or structure open year-round for use by the public. A "farmer's market" building will be considered an agricultural building so long as it is located on the farmstead where the products are grown.

WHEREAS, on June 9, 1999, by Home Rule Resolution No. 99-6-2, the Board, adopted "The Uniform Building Code - 1997 Edition" (the "Building Code"), as published by the International Conference of Building Officials, with various amendments thereto, which the Board has subsequently further amended and codified at Article 1 of Chapter III of the County Code, and which the Board may further amend or replace by a different building code.

WHEREAS, the Building Code generally requires a building permit for the erection, construction, alteration, moving, converting, extension or enlargement of a building, except a building permit is not required for a building to be used solely for agricultural purposes if the owner completes and files with the building official certain specified certificates and applications.

WHEREAS, Section 106.2 of the Building Code (Section 3-105.1 of the County Code) defines an "agricultural building" and a "building to be used solely for agricultural purposes" as follows:

For purposes of this Section, an "agricultural building" and a "building to be used solely for agricultural purposes" is a structure designed, constructed, and used solely to do any one or combination of the

following: (a) to house hay, grain, poultry, livestock, or other agricultural or horticultural products; (b) to sort, grade, wash, weigh, package, or otherwise prepare agricultural or horticultural products produced on site for market; (c) to prepare, sort, or house agricultural inputs if such agricultural inputs are to be planted or otherwise used in connection with agricultural pursuits (i) on site, (ii) on other property under common control of the owner or tenant of the property on which the building is located, or (iii) on other property if the use on other property is ancillary to the use of such agricultural inputs on property under (i) or (ii); or (d) to house farm implements, tools and equipment used in connection with any of the foregoing.

Except as expressly provided above, a building is not an “agricultural building” or a “building to be used solely for agricultural purposes” if it is a place of human habitation or a place of employment where agricultural or horticultural products not produced on site are processed, treated or packaged; nor is it an agricultural building if it is a place used by the public (other than a temporary “farmer’s market” predominantly for the sale of agricultural or horticultural products produced or grown on site).

WHEREAS, the County Department of Zoning & Codes is regularly faced with requests for owners of property to permit the construction of a storage shed or similar building not accessory to another permitted building, which requires a determination of whether the premises is used for agricultural purposes and building is or will be an agricultural building.

WHEREAS, to aid in the determination of whether a building is or will be an agricultural building, the County Department of Zoning & Codes has adopted an administrative policy, which the Board desires to ratify and affirm.

NOW, THEREFORE, the Board of County Commissioners of Douglas County, Kansas, sitting in regular session this 2nd day of July, 2008, does hereby resolve as follows:

1. Administrative Policy Ratified and Affirmed. The following administrative policy for the determination of eligibility as an agricultural building, exempt from the Zoning Regulations, as amended, and eligible for an exemption from the Building Code, as amended or superseded by a subsequent code, is ratified and affirmed:

a. If the premises on which the proposed building is located consists of 40 or more contiguous acres, the Department of Zoning & Codes will generally rely upon the owner’s certification that the building is (if already constructed) and will be used solely for agricultural purposes, without further documentation.

b. If the premises on which the proposed building is located consists of less than 40 contiguous acres, the owner shall provide the Department of Zoning & Codes additional documentation to establish to its satisfaction that the owner or tenant of the premises uses the premises for an agricultural use and that the building is (if already constructed) and will be used as an accessory to such agricultural use. Such additional documentation shall generally include a copy of Schedule F to the owner’s most recent IRS Form 1040, and may include additional documentation.

2. Applicability of Other Regulations. The foregoing administrative policy does not mean that the actual use of the building need not satisfy the other requirements or prohibitions of an agricultural building or any other applicable governmental regulations. The use of any building, even though previously determined to be an exempt agricultural building, in a manner not in accordance with applicable definitions shall constitute a violation of the applicable regulations.

3. Not Exclusive Policy. The foregoing policy is not exclusive of other administrative policies the Douglas County Department of Zoning & Codes may adopt and apply from time to time in furtherance of its oversight and enforcement of the Zoning Regulations and the Building Code.

4. Effective Date. This Resolution shall take effect and be in force from and after its adoption.

IN WITNESS WHEREOF, the foregoing Resolution was adopted this 2nd day of July, 2008.

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

Bob Johnson, Chair

Jere McElhaney, Member

Charles Jones, Member

ATTEST:

Jameson Shew, County Clerk

Exhibit D

[From April 16, 2008 County Commission Meeting Minutes]

BOCC Minutes -- related to Access Management Stds MISCELLANEOUS & ACCESS REQUIREMENT 04-16-08

Linda Finger, Planning Resource Coordinator, and Keith Browning, Director of Public Works, asked the Board for an interpretation regarding application of the Access Management Regulations to the proposed new conditional use of "Value Added Agriculture Businesses". Browning stated the property owned by Bill Schaetzel was purchased prior to October 25, 2006. The property has 1074 feet, not the required 1320 feet of road frontage on a minor collector. Using the Access Management Regulations, the existing parcel would be eligible for a road cut for a single-family residence. Browning stated the Access Management Regulations were not restricted to application of only residential properties and that he would apply the same process to any use proposed on a `vested' parcel of land. He asked if the Board would agree with this interpretation of the regulations. The Board discussed whether the access, if determined safe, to a `value- added agriculture business' property should have to meet the minimum frontage requirements or be considered as having vested rights to a road cut with less than the minimum road frontage. The Board broadened the discussion to all conditional use requests, not just requests for value-added agricultural businesses. Johnson stated he felt Board created the access dilemma for existing parcels when the new regulations were adopted and that parcels with less than the required road frontage should be permitted access.

PLANNING COMMISSION REPORT
Regular Agenda –Public Hearing Item

PC Staff Report
9/22/14

**ITEM NO. 3 CONDITIONAL USE PERMIT FOR CENTRAL SOYFOODS LLC; 1168 E
1500 RD (MKM)**

CUP-14-00304: Consider a Conditional Use Permit for Central Soyfoods LLC, a Value Added Agriculture use, at 1168 E 1500 Rd. Submitted by David Millstein, property owner of record.

STAFF RECOMMENDATION: Staff recommends approval of the Conditional Use Permit, CUP-14-00304, for *Value Added Agriculture* subject to the following conditions:

1. The following standards shall apply to the use:
 - a. A maximum of 4 full-time equivalent employees are permitted.
 - b. The structure in which the use is conducted may be up to 3,600 sq ft.
 - c. No equipment that creates noise, vibration, electrical interference, smoke or particulate matter emission perceptible beyond the property lines or in excess of EPA standards is allowed.
 - d. All equipment and materials used in the business must be stored indoors.
 - e. No retail sales of products shall occur on the site.
 - f. Deliveries from trucks with a GVWR (Gross Vehicle Weight Rating) of more than 5 tons are limited to no more than 2 per week. This does not apply to incidental deliveries such as Fed Ex and UPS.

2. Provision of a revised CUP plan with the following changes:
 - a. General CUP notes added per Planning approval.
 - b. Parking area expanded to 5 parking spaces, with one being ADA accessible, and dimensions of the parking area noted on the plan.
 - c. Evergreen trees added to screen the south side of the parking area.
 - d. Location of holding pond/lagoon shown on the plan.
 - e. Standards listed in Condition No. 1 noted on the plan.
 - f. Addition of the following note: *"The Conditional Use Permit will be administratively reviewed by the Zoning and Codes Office in 5 years and will expire in 10 years from the approval date noted on the plan unless an extension is approved by the County Commission prior to that date."*

Reason for Request: *"We are making this request to modify the existing structure at this proposed location to house a new facility for Central Soyfoods LLC, a producer of organic tofu in Lawrence since 1978. The current facility is located at 710 E 22nd Street and has proven to be difficult to maintain the sanitary standards necessary for continued use."*

KEY POINTS

- The subject property is located on and takes access from E 1500 Road, which is classified as a Principal Arterial in the Douglas County Access Management Road Classification Map.
- The property is located within the Urban Growth Area of the City of Lawrence.

ATTACHMENTS

- A --CUP Plans
- B --Public Communications

ASSOCIATED CASES/OTHER ACTION REQUIRED

- Approval of the Conditional Use by Board of County Commissioners.
- Applicant shall obtain a permit for the Conditional Use from the Zoning and Codes Office prior to commencing the use.
- Applicant shall obtain a building permit from the Zoning and Codes Office for the conversion of the residence to a soybean processing facility prior to construction.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- The owner of the adjacent property to the south visited the planning office to discuss the project and expressed concern with possible impacts it could have on her property and property value.
- Email received from Wayne and Nancy Othick, property owners in the area, which expressed concern that allowing the use could lead to other types of factories or businesses in the area. They were also concerned with the possibility that the business might grow larger than currently proposed and that a lagoon for wastewater might contaminate the ground water.
- Phone call from Linda Long discussing possible impacts and conditions that could be applied.
- Email and phone calls from Michael Manley, property owner in the area, expressing opposition to the proposal.

GENERAL INFORMATION

Current Zoning and Land Use: A (Agricultural) District; vacant residence.

Surrounding Zoning and Land Use: A (Agricultural) District in all directions;
V-C (Valley Channel), F-F (Floodway Fringe Overlay), and F-W (Floodway Overlay) Districts to the north;
Surrounding land uses include agriculture, rural residences, the Wakarusa River, and woodlands.
(Figure 1)



Figure 1a: Zoning of the area. Subject property is outlined.



Figure 1b: Regulatory Floodplain in the area. The dark area is the regulatory floodway, the lighter colored area is the regulatory floodway fringe.



Figure 1c: Land use in the area.

Site Summary

Subject Property:	Approximately 5 acres
Existing structure:	1,756 sq ft
Proposed structure:	2,812 sq ft
Bean bin	6 ft x 14 ft: ~320 sq ft (500 bushel capacity)

Summary of Request

The Conditional Use Permit is requested to accommodate a *Value Added Agricultural Use* on the subject property. The proposed use, a soybean processing facility, meets the definition of *Value Added Agriculture* provided in Section 12-319-7.35 of the County Zoning Regulations:

"A business that economically adds value to an agricultural product as a result of a change in the physical state of an agricultural commodity that is not produced on the site, by manufacturing value-added products for end users instead of producing only raw commodities. Value-added products may include:

- a. A change in the physical state or form of the product (such as milling wheat into flour or making strawberries into jam).*
- b. The physical segregation of an agricultural commodity or product in a manner that results in the enhancement of the value of that commodity or product (such as an identity preserved marketing system)."*

The proposed use, processing soybeans into tofu and tempeh, is a change in the physical state of the product and would fit example 'a' of the definition above.

The residence would be converted into a processing facility and a bean bin would be installed to the rear of the house. The on-site septic system would serve the employees; however, the water used in the processing and washing of the soybeans would be kept in a holding pond or lagoon. The holding pond will be engineered and will be regulated by the Kansas Department of Health and Environment (KDHE).

I. ZONING AND USES OF PROPERTY NEARBY

The subject property and surrounding area are zoned A (Agricultural) District. V-C (Valley Channel) zoning is located to the north in generally the same location as the F-F (Floodway Fringe Overlay) and F-W (Floodway Overlay) Districts associated with the Wakarusa River (Figure 1). Land uses in the nearby area include rural residences, agricultural land and riparian woodland.

Staff Finding – The area is rural in character and is zoned A (Agricultural) District with land to the north along the Wakarusa River also being zoned V-C (Valley-Channel) District and F-F (Floodway Fringe Overlay) and F-W (Floodway Overlay) Districts. Surrounding uses are predominantly rural residential and agricultural. A *Value Added Agriculture Use* could be compatible with the existing uses if conditions were applied to the use to insure compatibility with nearby residences.

II. CHARACTER OF THE AREA

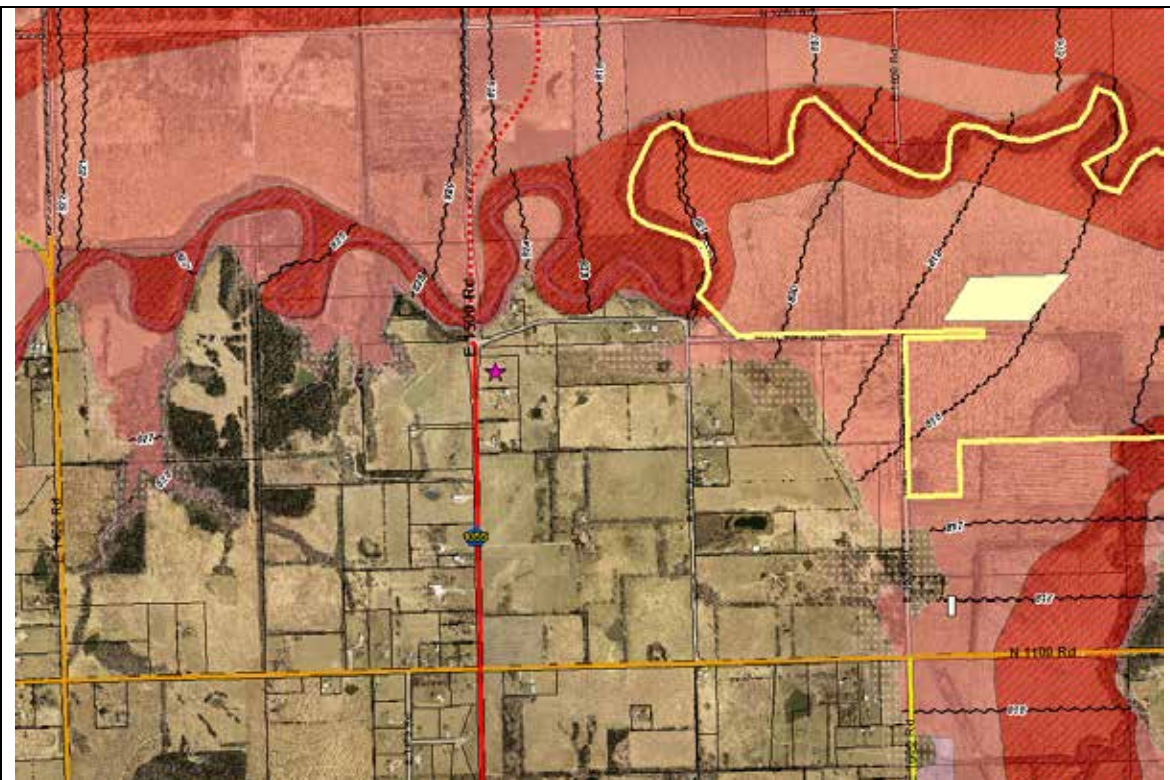


Figure 2: Characteristics of the area: Street network: Principal arterials shown in red, major collectors in orange, minor collectors in yellow. Boundary of the city property to the east with the proposed site of the Wakarusa Wastewater Treatment Plant shown in yellow. Floodplain shown in red. Subject property identified with a star.

The area is bounded on the north by the Wakarusa River and its associated floodplain, and contains primarily agricultural and rural residential land uses. Large parcel residential properties are located throughout the area and are adjacent to the south of the subject property on E 1500

Road. E 1500 Road, designated as County Route 1055 in the Douglas County Access Management Map, is classified as a principal arterial. Approximately one-half mile to the east of the subject property is property (approximately 530 acres) that has been annexed into the City and rezoned for development of the Wakarusa Wastewater Treatment Plant. The plant is expected to utilize approximately 16 acres of the property and the remainder will remain in agricultural use. (Figure 2).

Staff Finding – This is an agricultural area with rural residences. A city wastewater treatment plant will be located on a 530 acre lot to the east, but the majority of this lot will remain in agricultural production. County Route 1055, a principal arterial, provides access through the area. A *Value Added Agriculture* use should be compatible with the character of the area.

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

Applicant's response:

"The subject property is suitable for Central Soyfoods for several reasons: We now share a building with a roofing company on one side and a body shop on the other making pest control difficult and because of the nature of the materials used in the body shop, paint etc, fumes are a problem. A stand alone facility would be a step forward. Central is an agricultural enterprise based on value added agricultural processes. Its by-products are used by several local organic producers as fertilizer for the vegetables they grow and that are consumed by Lawrencians. This location allows us to have the flexibility to use any excess okara (the by-produce) in our own gardens to enrich the soil. The rural nature of this location will also provide our employees with a better working environment."

The subject property is zoned A (Agricultural) District. Section 12-306 of the County Zoning Regulations notes *"...the purpose of this district is to provide for a full range of agricultural activities, including processing and sale of agricultural products raised on the premises, and at the same time, to offer protection to agricultural land from the depreciating effect of objectionable, hazardous and unsightly uses."* The A District is associated with a majority of the unincorporated portion of Douglas County.

Uses allowed in the A District include: farms, truck gardens, orchards, or nurseries for the growing or propagation of plants, trees and shrubs in addition other types of open land uses. It also includes residential detached dwellings, churches, hospitals and clinics for large and small animals, commercial dog kennels, and rural home occupations. In addition, uses enumerated in Section 12-319 which are not listed as permitted uses in the A District, may be permitted when approved as Conditional Uses. The property has been developed with a residence and is well suited for uses which are permitted in the A District.

The existing structure will be enlarged to 2,812 sq ft and the processing facility will be located entirely within the structure. The facility has 5 part-time employees and produces tofu and tempeh for Lawrence and the surrounding area. Given the small scale of the proposed processing facility, the property is also well suited for the proposed conditional use, *Value Added Agriculture*. A Conditional Use Permit (CUP) does not change the base, underlying zoning.

Staff Finding – The property is suitable for the uses which are permitted within the A (Agricultural) District. The property is also suitable for the proposed *Value Added Agriculture* use,

a soybean processing facility, when approved as a Conditional Use, given the small scale of the facility.

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

Staff Finding – The subject property was developed with a 1,756 sq ft residence in 1989. The proposal is to convert the existing structure into a soybean processing facility.

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

Applicant's Response:

"I see no detrimental impacts affecting adjacent property owners. Central Soy is a very small business and our business model is designed to restrict our growth to this region, freshness and responsive delivery restrict our size. At this point in time, we produce around 100,000 pounds of tofu per year. We employ 5 part time people and produce 3 times per week. We deliver the tofu using our own Transit Connect Van. At the current location we receive few deliveries; consisting of around 70 bushels of organic Kansas grown soybeans per month and other sundry items germane to the business. This location will allow us to install a bean storage bin to further reduce traffic. All of these facts translate to a very low impact on the location and the neighbors."

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 the Conditional Uses enumerated in Section 12-319-4 of the Zoning Regulations for the Unincorporated Territory of Douglas County as *Value Added Agriculture*.

Staff visited the existing production facility at 710 E 22nd Street to become familiar with the nature of the use. As the applicant noted, the facility shares a building with other uses. (Figure 3) The production machinery and the delivery vehicle are shown in Figures 5 and 6.



Figure 3. Current facility at 710 E 22nd Street. General location of Central Soyfood is circled.

There was no smell or noise from the processing apparent from outside the facility.

The soybeans are processed in the equipment shown in Figure 4a, then the curds are separated from the whey, pressed in the equipment shown in Figure 4b, and packaged in a separate room, behind the film in Figure 4b. There was also a cooler in the building. The applicant indicated the new facility would have a larger cooler.

The applicant indicated that they've been a small business since they began operation and they have no plans to expand. This is an important consideration since the scale and size of the operation is an important consideration in determining off-site impacts. He indicated that they could double production by adding an additional processing day and using the same equipment; however, he said the company serves Lawrence and the nearby area and is not intending to

expand its market. If any major growth to the facility were proposed it would require review to determine if the facility would remain compatible with the adjacent land uses or would need to relocate.



Figure 4a. Processing area



Figure 4b. Processing area for pressing the tofu.



Figure 5. Central Soyfood's delivery vehicle.



Figure 6. Okara, a byproduct of processing. Typically used as livestock feed or fertilizer.

The proposed location is adjacent to, and takes access from, a Principal Arterial. All processing will occur indoors and there will be no exterior storage of products or commodities. Soybean deliveries are from farms in the area and occur typically about once a month. With the installation of the bean bin, deliveries are expected to be less frequent. The facility will receive incidental deliveries, such as Fed Ex, UPS, etc. The owner indicated that the bean deliveries are made by a grain truck (Figure 7).



Figure 7. Example of soybean delivery truck.



Given the proximity of the rural residences (Figure 8), it is appropriate for the standards of a Type II Home Occupation that serve to minimize negative impacts to adjacent properties be applied to this CUP, in those cases where they are more stringent than the *Value Added Agriculture* use conditions. The following is a list of the *Type II Rural Home Business Occupation* standards found in Section 20-319-6.02(b) with staff's discussion following in *red* :

- 1) A maximum of 4 nonresident employees are permitted;
The standard for a Type II Rural Home Business Occupation and Value Added Agriculture are the same.
- 2) The business must be conducted within the dwelling unit or an accessory building that is no greater than 3600 sq ft in area;
The Value Added Agriculture use limits the area of all buildings used in the production to 10,000 sq ft. The Type 2 Rural Home Business Occupation area standard is more stringent in this case.
- 3) The majority of work related to agricultural implement repair or grading and earthwork activities must be conducted off premises;
Not applicable to the proposed use.
- 4) No equipment that creates noise, vibration, electrical interference, smoke or particulate matter emission that is perceptible beyond the property lines of the subject parcel is allowed;
The Value Added Agriculture use does not allow smoke or particulate matter emissions that exceeds EPA standards. Both standards should apply.
- 5) All equipment, materials, and vehicles must be stored indoors or otherwise completely screened from view of adjacent parcels and rights-of-way;
The standards are the same with the exception that vehicles are required to be completely screened with a home occupation.
- 6) No inventory of products can be displayed or sold on the premises except what has been produced on the premises;
There is no limitation on inventory of products or sales for the Value Added Agriculture use. No sales on the site are being proposed with this use but this standard should apply.
- 7) A minimum site area of 5 acres is required;

The *Value Added Agriculture* section notes that a minimum site area is consistent with the County adopted policy for agricultural uses. The Home Occupation standard should apply.

- 8) The site must have direct access to a section line road or highway;
The *Value Added Agriculture* use requires the site to have access to a full-maintenance public road. The Home Occupation standard is more restrictive.
- 9) Outdoor storage buildings and off-street parking spaces must be located at least 50 ft from all property lines and rights-of-way, or be screened so as not to be visible from off-site.
The *Value Added Agriculture* use requires that storage of all products be enclosed within a building or structure so that it is not visible from the site boundary/property lines but does not specify a distance from the property line. The Home Business standard is more restrictive in this case.

Standards that apply to *Value Added Ag* (Section 12-319-4.35) but not Home Occupation Business include:

- 10) Commercial vehicles that exceed 5 tons (gvw) in capacity shall be limited to 2 trips (to and from the site) per day.
The grain truck shown in Figure 7, an example of the typical delivery vehicle for Central Soyfoods, has a GVWR of 52,080 lbs or 26 tons. A typical UPS delivery truck has a GVWR of 5 tons. The standard for limited large truck deliveries should apply, and could be more restrictive given the residences in the surrounding area. The applicant indicated that a limit on deliveries of 2 deliveries by commercial vehicles that exceed 5 tons (GVWR) a week would be acceptable. This restriction would not apply to incidental deliveries by Fed Ex or UPS.
- 11) The site shall meet the minimum frontage requirements in accordance with the Access Management Regulations.
The subject property was created prior to 2006 in accordance with the Subdivision Regulations in place at the time; therefore it is a vested parcel. The County Engineer indicated he was satisfied with the access and frontage provided based on the low volume of traffic to be generated by this use.

To insure compatibility with the surrounding land uses, the following conditions are recommended, based on the standards of the Type 2 Home Occupation Business and the *Value Added Agriculture* use:

1. A maximum of 4 full-time equivalent employees are permitted.
2. No equipment that creates noise, vibration, electrical interference, smoke or particulate matter emission that is perceptible beyond the property lines or in excess of EPA standards is allowed.
3. All equipment and materials used in the business must be stored indoors.
4. The parking area shall be screened from the adjacent residence to the south with evergreen trees, such as cedars.
5. No retail sales of product shall occur on the site.
6. Deliveries from trucks with a GVWR (Gross Vehicle Weight Rating) of more than 5 tons are limited to no more than 2 per week. This does not apply to incidental deliveries such as Fed Ex, and UPS.

PUBLIC COMMENTS

The principle concerns raised by the members of the public that contacted the Planning Office were that this CUP would set a precedent for other businesses such as vehicle repair shops and convenience stores to locate in the area and that the business would have negative impacts such as odor, noise, and traffic that would negatively impact their properties and property values.

- The type of uses which are possible in this area are limited to those that are permitted by right in the A (Agricultural) District and those that are permitted as a Conditional Use. Section 12-319-4 lists the uses which may be permitted as Conditional Uses. A vehicle repair shop and convenience store are not permitted in the A District by right or as Conditional Uses; however, other uses included in the list of conditional uses could be possible if they were approved by the County Commission. The Conditional Use review process allows potential impacts of the use to be evaluated and conditions to be applied to minimize or eliminate impacts. Each Conditional Use Permit is evaluated on its own basis for compatibility with the surrounding area.

The proposed use meets the standards for a Type 2 Rural Home Business Occupation with the exception that the owner does not live on site. As home occupations are expected to occur on site with a dwelling and in close proximity to other dwellings, applying the standards of a Type 2 Home Occupation to the use will minimize negative impacts to insure compatibility with nearby properties.

- The facility will utilize the existing septic system, but wastewater from the soybean processing will be kept in a holding pond which is regulated by the Kansas Department of Health and Environment. The County Health Official indicated that an engineered lagoon or holding pond typically has little, if any, odor.

Staff Finding – The use is small scale and very similar to a *Type II Rural Home Business Occupation*. Applying the standards of a *Type II Rural Home Business Occupation* to the facility should insure compatibility with nearby residences.

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:

"While our current product provides a healthy, renewable foodstuff, a move to this proposed location would enhance our general operation and insure our future prosperity with no hardships imposed on the land or our neighbors."

Evaluation of the relative gain weighs the benefits to the community-at-large vs. the benefit of the owners of the subject property.

Approval of this request would allow the landowner to relocate the business to the subject property.

No benefit would be afforded to the public health, safety, or welfare by the denial of the request as the business operation is small scale, a low traffic generator and would be located on a principal arterial. Application of the Type 2 Rural Home Business Occupation standards should insure compatibility with the nearby residences.

Staff Finding – In staff’s opinion, the approval of this request, with the *Type 2 Home Business Occupation* standards will result in a compatible project that will not harm the public health, safety or welfare. Denial of the request would prevent the relocation of the soyfood processing facility to this location.

VII. CONFORMANCE WITH THE COMPREHENSIVE PLAN

Applicant’s Response:

“I don’t see any reference to value added agriculture in Horizon 2020. There is a current emphasis on local food production and Central has been producing local organic food for over 45 years.”

The proposed use is a component of a local/regional food system: processing locally and regionally grown soybeans into tofu and tempeh for sale in the area. Chapter 16 of the Comprehensive Plan recommends the development of policies to support a sustainable local/regional food system; however, the policies and recommendations have not been developed at this time.

The Comprehensive Plan (Page 1-3, *Horizon 2020*) notes: *“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.”*

Staff Finding –A Conditional Use Permit can be used to allow specific uses that are not permitted in a zoning district with the approval of a site plan. This tool allows development to occur in harmony with the surrounding area and to address specific land use concerns. As conditioned, the proposed use is in compliance with the Comprehensive Plan.

CUP PLAN REVIEW

The proposal is to convert the vacant residence on the property to a soyfood processing facility. Proposed site improvements include a 1056 sq ft addition to the structure, an employee parking area, and a bin for soybean storage.

Parking and Access: The site plan identifies a 625 sq ft parking area east of the drive. Parking required for a Value-Added Agricultural use is 1 space per 2 employees. 5 employees would require 3 parking spaces. Per Section 12-316-4 a parking space must contain 180 sq ft; therefore, 3 parking spaces would require 540 sq ft. While the parking provided on the plan is compliant with the Zoning Regulations, Staff recommends providing a parking space for each employee to insure adequate parking is provided on the site. One ADA accessible parking space is required for this use.

Access to the site is accommodated via a 12 ft wide driveway to E 1500 Road. No change to the access is proposed by the applicant and none were identified as needed in the review of the application.

Landscape and Screening: The equipment and materials will be stored inside. Evergreen species such as cedar trees should be planted along the south side of the parking area to screen it from view of the adjacent residence to the south.

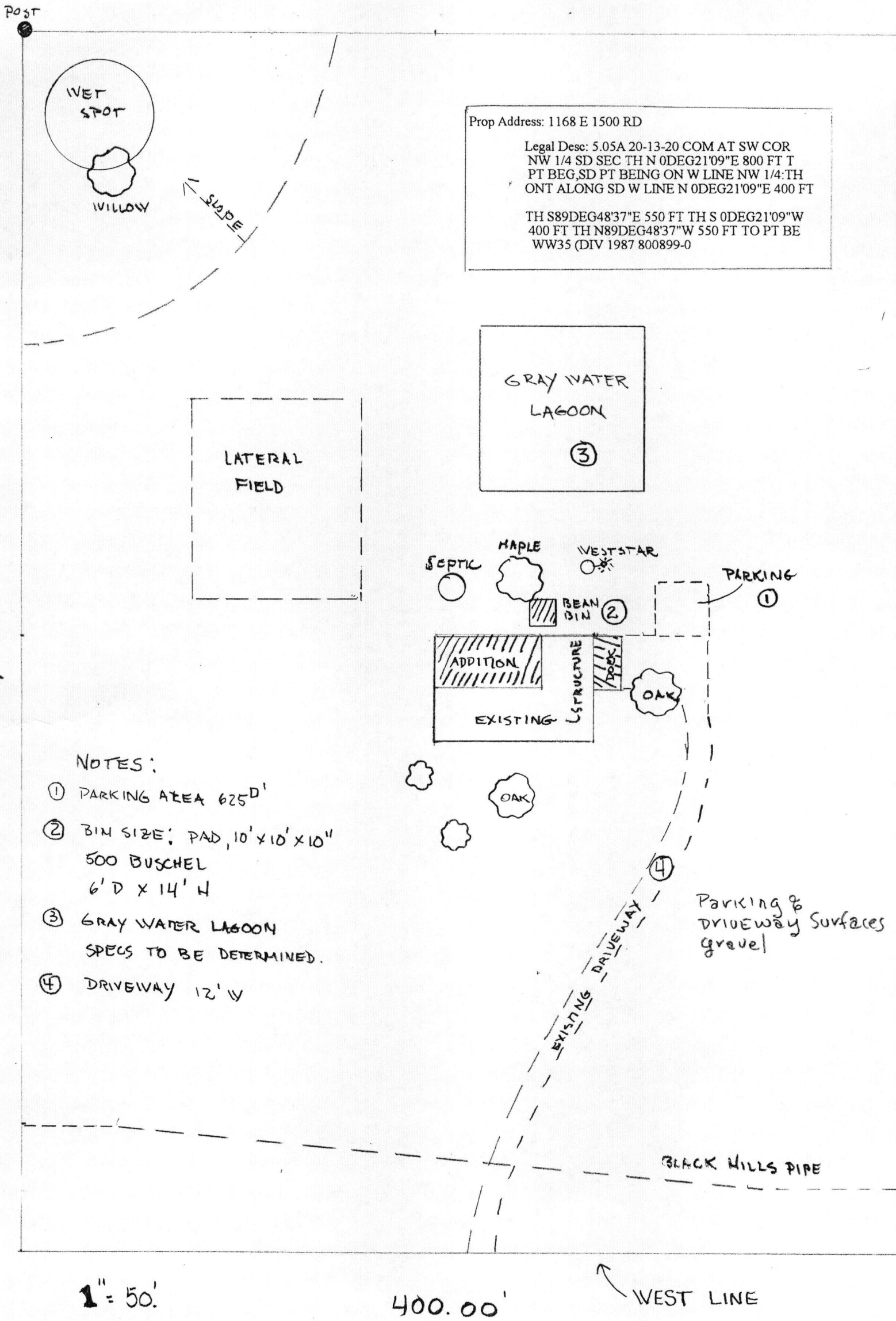
Limits and Conditions:

The standards of a *Type 2 Rural Home Business Occupation* should apply, in addition to the standards for the *Value Added Agriculture* use to insure compatibility with the nearby residential uses. The use should be administratively reviewed by the Zoning and Codes Office every 5 years to insure compliance with the standards of the Conditional Use Permit. Expiration dates are often applied to Conditional Uses so they may be re-evaluated to determine if they remain compatible with the development in the area. A 10 year time limit is recommended for this CUP with an extension possible by the Board of County Commissioners.

Conclusion

The *Value Added Agriculture and Type 2 Rural Home Business Occupation* standards placed on the Conditional Use should insure compatibility with surrounding properties. The use requires a Conditional Use Permit which is obtained from the Douglas County Zoning and Codes Office. The building must comply with minimum building code standards for non-residential uses and a building permit will be required for changes to the structure. The proposed CUP complies with the County Zoning Regulations and the land use recommendation of *Horizon 2020*.

Site Plan Proposed tofu facility



Prop Address: 1168 E 1500 RD

Legal Desc: 5.05A 20-13-20 COM AT SW COR
 NW 1/4 SD SEC TH N 0DEG21'09"E 800 FT T
 PT BEG, SD PT BEING ON W LINE NW 1/4: TH
 ONT ALONG SD W LINE N 0DEG21'09"E 400 FT

TH S89DEG48'37"E 550 FT TH S 0DEG21'09"W
 400 FT TH N89DEG48'37"W 550 FT TO PT BE
 WW35 (DIV 1987 800899-0)

NOTES:

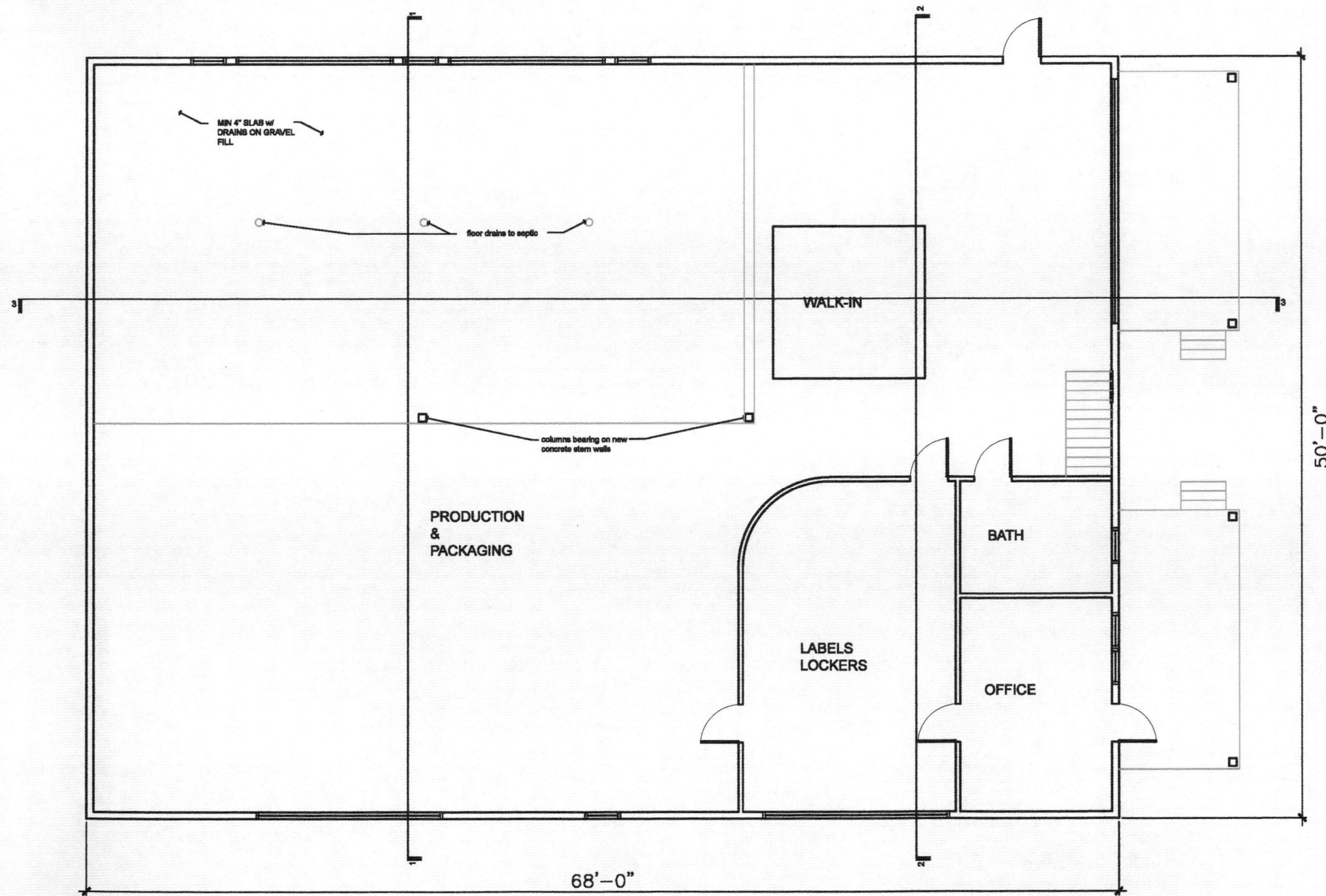
- ① PARKING AREA 625^D
- ② BIN SIZE: PAD, 10' X 10' X 10"
500 BUSCHEL
6' D X 14' H
- ③ GRAY WATER LAGOON
SPECS TO BE DETERMINED.
- ④ DRIVEWAY 12' W

Parking & Driveway Surfaces
gravel

1" = 50'

400.00'

WEST LINE



① Plan
1/8" = 1'-0"

1168 EAST 1500

REVISIONS

Permit Documents

ISSUE DATE AUGUST 05, 20

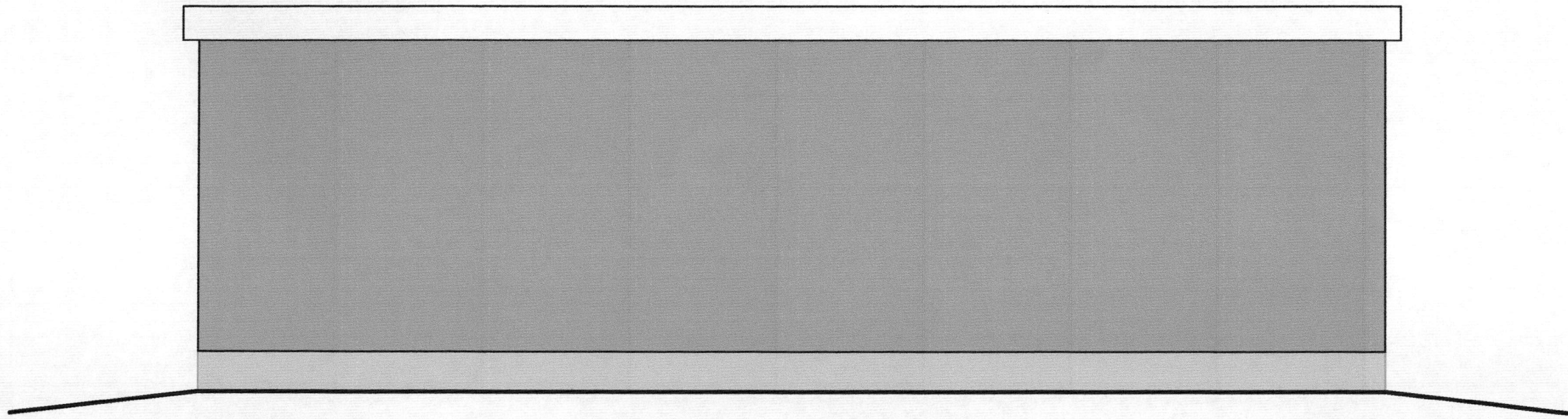
SCALE 1/8" = 1'-0"

PROJECT NO

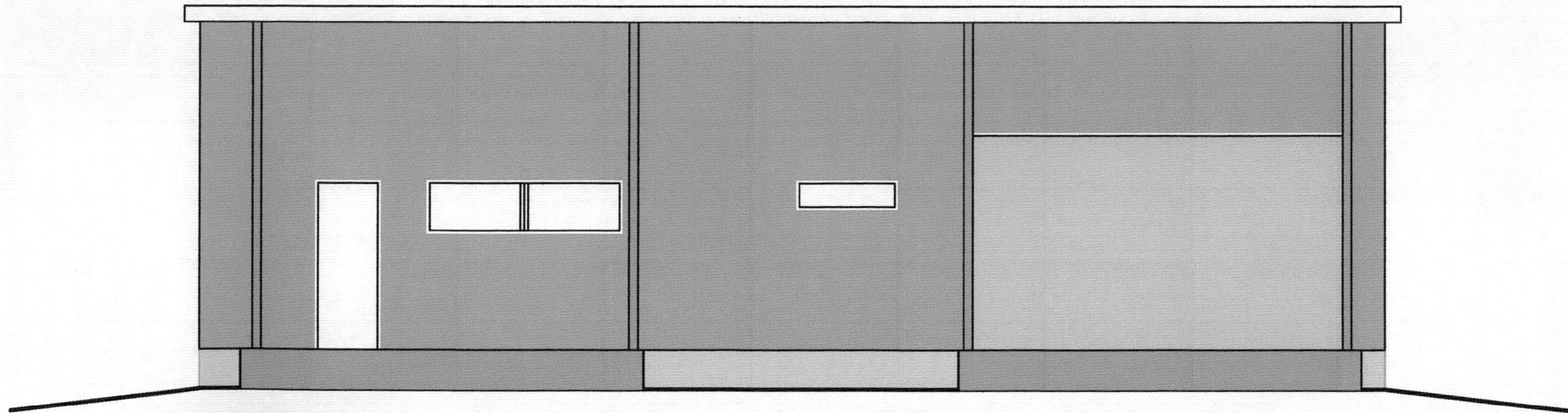
DRAWN BY

TITLE

PLAN



1 North ELEVATION
3/16" = 1'-0"



2 South ELEVATION
3/16" = 1'-0"

1168 EAST 1500

REVISIONS

Permit Documents

ISSUE DATE AUGUST 05, 20

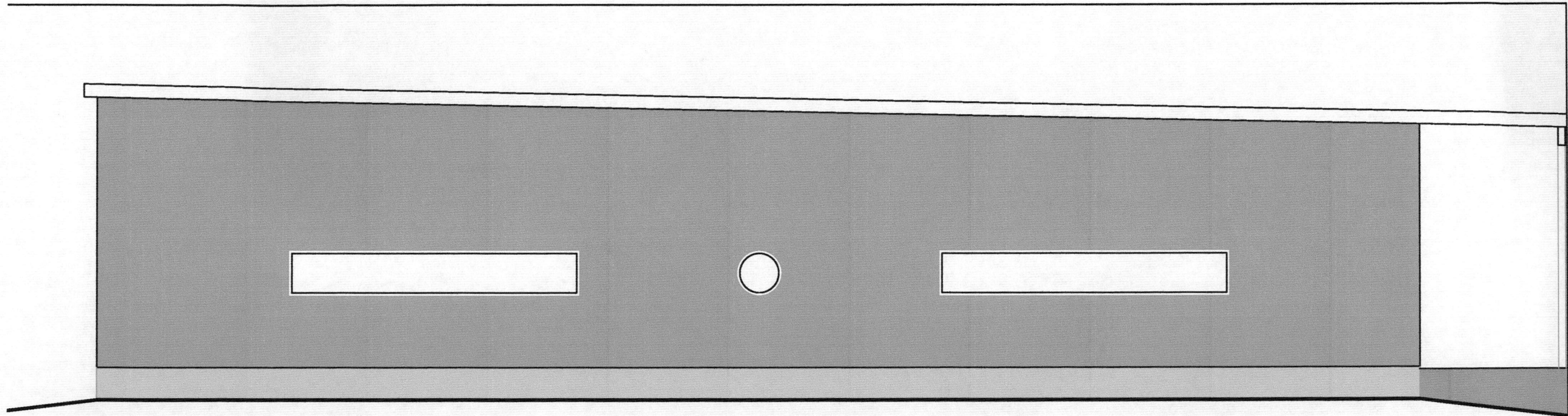
SCALE 3/16" = 1'-0"

PROJECT NO

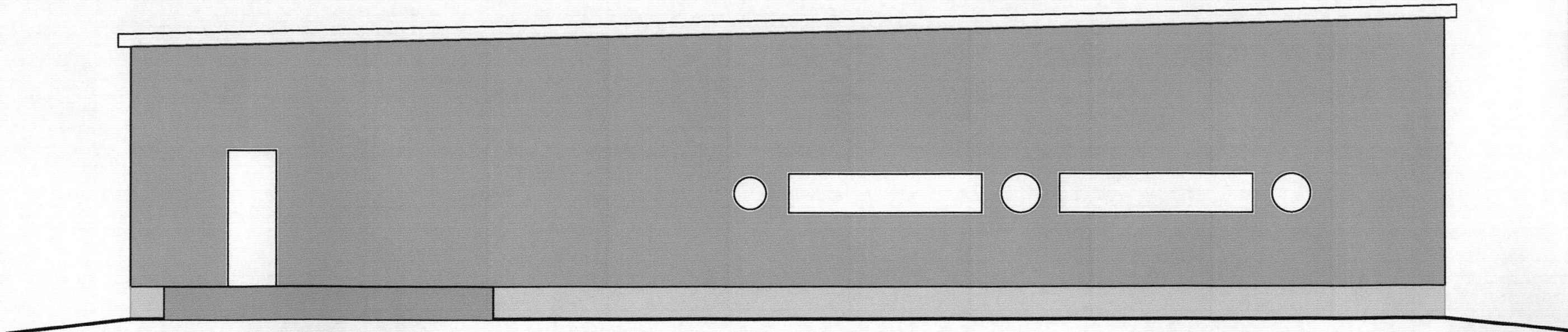
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TITLE

ELEVATIONS



1 West ELEVATION
3/16" = 1'-0"



2 East ELEVATION
3/16" = 1'-0"

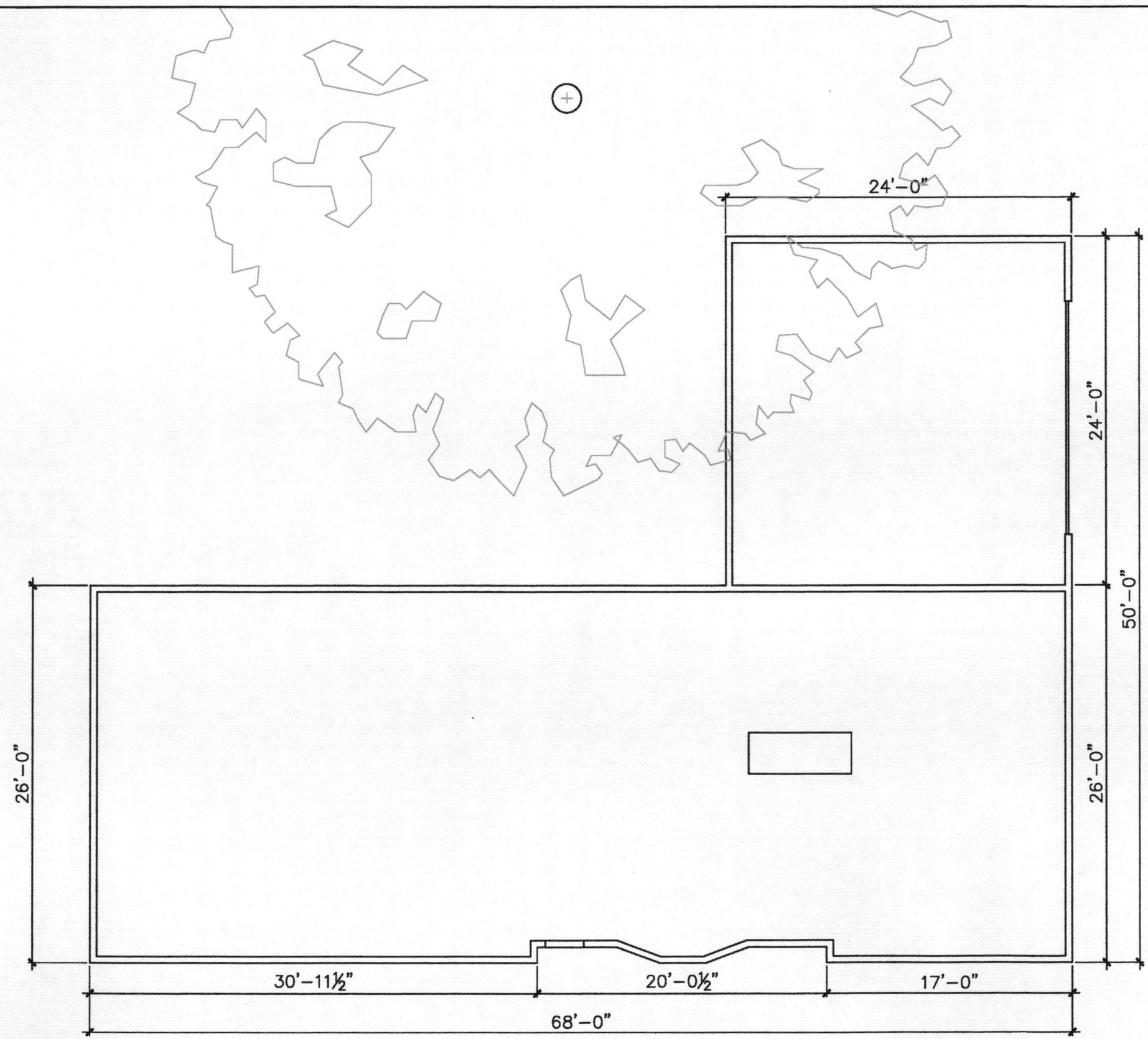
1168 EAST 1500

REVISIONS

NO.	DESCRIPTION	DATE

Permit Documents

ISSUE DATE AUGUST 05, 20
SCALE 3/16" = 1'-0"
PROJECT NO
DRAWN BY
TITLE
ELEVATIONS



1 EXISTING PLAN
1/8" = 1'-0"

1168 EAST 1500

REVISIONS	

Permit Documents

ISSUE DATE	AUGUST 05, 20
SCALE	1/8" = 1'-0"
PROJECT NO	
DRAWN BY	
TITLE	EXISTING PLAN

-----Original Message-----

From: copl28 [<mailto:copl28@peoplepc.com>]

Sent: Tuesday, August 19, 2014 1:30 PM

To: City Hall email

Cc: copl28@peoplepc.com

Subject: Proposed Tofo Factory

Att: Lawrence Douglas County Planning Commission:

Sirs:

We are sending this e-mail in reference to the proposed "factory" that maybe built within an existing modular home at the North corner of 1175 and Haskell Avenue. We have been in this county and this area for over 36 years; we had a home-based business for many years on our property through the county; we are told that this project being proposed will not have anyone living on site, as we were required. We think that by allowing this gentlemen, (we do not want anyone to not be able to make a living), to move to this area, which is sub-ag, this will decrease the values of our homes and become a traffic problem for those living close by. County told us that we had to keep all equipment from view of the road-which we did, is this going to happen with this project? It does seem that by allowing this business to come into our area, that you, as the commission, will be setting our area up for more of these factories or any other type of business; quick shop, auto body anything that maybe wanted to be placed on property in this area. We did not move to the country over 36 years ago to see this happen. We also understand that ,if, this owner wants, he may add onto this existing building to have more room for his products along with hiring more employees. A lagoon maybe a possibility, if, septic is not able to hold the water from this product. Have you given thought to what could happen to any surrounding wells, if, this was to happen?We are not sure it would, but, what if it did cause damage to someones well, if, that is only water source? We appreciate your reading this and we, along with other neighbors are not wanting this project to take place in our area due to many of the mentioned items and of course if the base product of soybeans would be a pollution product; please leave our area free from this.

Thank you. Wayne and Nancy Othick

1144 E 1550 Road

Lawrence, Kansas

Mary Miller

From: Mary Miller
Sent: Tuesday, August 19, 2014 3:41 PM
To: Mary Miller
Subject: RE: Proposed Tofo Factory

-----Original Message-----

From: cop128 [mailto:cop128@peoplepc.com]
Sent: Tuesday, August 19, 2014 1:30 PM
To: City Hall email
Cc: cop128@peoplepc.com
Subject: Proposed Tofo Factory

Att: Lawrence Douglas County Planning Commission:

Sirs:

We are sending this e-mail in reference to the proposed "factory" that maybe built within an existing modular home at the North corner of 1175 and Haskell Avenue. We have been in this county and this area for over 36 years; we had a home-based business for many years on our property through the county; we are told that this project being proposed will not have anyone living on site, as we were required. We think that by allowing this gentlemen, (we do not want anyone to not be able to make a living), to move to this area, which is sub-ag, this will decrease the values of our homes and become a traffic problem for those living close by. County told us that we had to keep all equipment from view of the road-which we did, is this going to happen with this project? It does seem that by allowing this business to come into our area, that you, as the commission, will be setting our area up for more of these factories or any other type of business; quick shop, auto body anything that maybe wanted to be placed on property in this area. We did not move to the country over 36 years ago to see this happen. We also understand that ,if, this owner wants, he may add onto this existing building to have more room for his products along with hiring more employees. A lagoon maybe a possibility, if, septic is not able to hold the water from this product. Have you given thought to what could happen to any surrounding wells, if, this was to happen?We are not sure it would, but, what if it did cause damage to someones well, if, that is only water source? We appreciate your reading this and we, along with other neighbors are not wanting this project to take place in our area due to many of the mentioned items and of course if the base product of soybeans would be a pollution product; please leave our area free from this.

Thank you. Wayne and Nancy Othick
1144 E 1550 Road
Lawrence, Kansas

PETEFISH

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Attorneys at Law
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Olin K. Petefish (1912-2001)
Jeffrey O. Heeb (retired)

September 22, 2014

Via Hand Delivery

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

Re: September 22, 2014 Commission Meeting

Ladies and Gentlemen:

I am writing on behalf of Willis and Linda Long in opposition to the application for a Conditional Use Permit for Central Soyfoods LLC, at 1168 E. 1500 Road, which is Item No. 3 on the agenda for the September 22, 2014 Planning Commission Meeting.

Mr. and Mrs. Long's home is on the property located at 1164 E. 1500 Road, which is the property that is immediately adjacent to and south of the subject property. They also own a parcel that borders the subject property on the north and east. Mr. and Mrs. Long bought their property to make their home and they enjoy living in the County away from the businesses located in the City. Now they are faced with an industrial use being brought to their doorstep, and they oppose the County's allowing an industrial use being brought so close to residential properties and on such a small lot.

Mr. and Mrs. Long have several reasons for their opposition to the application for the conditional use permit, which will be addressed below, but their primary objection is that the application of Central Soyfoods does not comply with the County's Code, and cannot legally be approved.

1. **The application does not satisfy the requirements of the County's Code.**

Section 12-319-4.35 of the County's Code allows conditional use permits for Value-added Agricultural Businesses so long as the business meets certain location and development standards. Although Planning Staff has addressed some of these requirements, Planning Staff did not adequately address all of them. In particular, the Code requires that Value-Added Agricultural Businesses meet the following requirements:

- "Structures are required to be upgraded to meet commercial building code requirements if used for more than storage of raw agricultural materials." (12-319-4.35.b.)
- "Minimum Site Area: A minimum site area is consistent with the County adopted policy for agricultural uses." (12-319-4.35.g.)
- "Road Access and Frontage: The site must have direct access to a full maintenance public road and the site shall meet the minimum frontage requirements in accordance with the Access Management Regulations." (12-319-4.35.h.)

The problem with Central Soyfoods' application is that it seeks to convert a residential dwelling that is non-conforming and expand the building by over 60% and convert it to an industrial use without having to comply with the County's current zoning regulations. The law is clear that an owner cannot expand or change the use of a non-conforming property without complying with the current zoning regulations, and the Planning Commission should not set bad precedent by ignoring the change in the non-conforming use simply because the Staff likes the idea of a Value-added Agricultural business.

Commercial Building Codes. Because the application for the CUP proposes to manufacture tofu and tempeh at the location and not just to store raw materials, the County's Code requires that the structure be upgraded to meet commercial building codes. Although this is a requirement for approval of the CUP, the Planning Staff failed to address this requirement in its report and does not propose that this requirement be added to the conditions for approval. There is no indication anywhere in the Staff's report that the upgrade to the building must meet all the commercial building code requirements. Without this upgrade, then the CUP cannot be legally approved.

Minimum Site Area. In its report, Planning Staff acknowledges that the *Value Added Agriculture* section requires "a minimum site area consistent with the County adopted policy for agricultural uses." Instead of addressing the minimum site area for agricultural uses, the Planning Staff merely concludes that the Home Occupation standard of five acres should apply. The Staff does this even though Staff states that the Home Occupation standards should only apply if those standards are stricter. That is not the case here.

The County's adopted policy for minimum site areas is provided in the Height, Area and Bulk Requirements of the County's Code (Section 12-318). Under these Requirements, the minimum site area for agricultural uses is ten acres for property that takes access from a Principal Arterial Road. Because the property that is the subject of the CUP application takes access to a Principal Arterial Road and only has a site area of five acres, the property does not meet the minimum site area required by the *Value Added Agriculture* section. The Planning Staff states that the property is a vested parcel since it was created before 2006. Although this is correct, this does not allow the property owner to change the use of the property without complying with the current Height, Area and Bulk Requirements.

Because the property was created before 2006, the property is a non-conforming use of the property (See Section 12-320-2.01.b.—made non-conforming through the adoption of the Height, Area and Bulk requirements under section 12-318). Under Section 12-320-1, the non-conforming use “may be continued,” but “[n]o non-conforming building, structure, or use shall be changed, extended, enlarged or structurally altered” subject to four exceptions that do not apply to this case. Furthermore, under state law, if there is “any alteration” to a building or use in the building, then the zoning regulations currently in effect shall apply. K.S.A. 12-758(a).

In this case, Central Soyfoods proposes two major alterations that if allowed to be done would require the property to comply with the current zoning restrictions, including lot area restrictions. First, Central Soyfoods proposes to increase the size of the building from 1,756 square feet to 2,812 square feet—an increase of over 60%. Second, Central Soyfoods proposes to change the use of the property from residential to industrial. Because of these changes, the property loses its right to continue the non-conforming use and must fully comply with the Height, Area and Bulk requirements under section 12-318.

And as mentioned above, because the property takes its access to a Principal Arterial road, the Height, Area and Bulk requirements under section 12-318 requires the property to have a minimum area of ten acres. Because it does not, the CUP cannot be approved.

Road Access and Frontage.

Likewise, Central Soyfoods' application for the CUP must be denied because the property does not have sufficient road frontage.

Under the *Value Added Agriculture* section, the property “shall meet the minimum frontage requirements in accordance with the Access Management Regulations.” (12-319-4.35.h.) The Access Management Regulations requires a minimum of 1,320 feet of road frontage for properties that obtain their access to a Principal Arterial road. (Section 9-501.) The Access Management Regulations provide exceptions for residential properties (see Section 9-502 and 9-512) or in the situation in which the minimum frontage impairs the owner's access to public roads (see Section 9-507), but none of the exceptions applies to this case. The alteration of the building to allow for an industrial use is obviously not a residential use and the owner's access to the road is not impaired. Thus, the minimum road frontage of 1,320 feet is required. But Central

Soyfoods' parcel only has roughly 400 feet of road frontage, and therefore, the application does not comply with the Access Management Regulations or the *Value Added Agriculture* section.

Again, because Central Soyfoods is attempting to substantially change the use and size of the building, it must comply with the current zoning restrictions, including, the Height, Area and Bulk requirements under section 12-318. And for parcels that take their access to a Principal Arterial road, Section 12-318 requires a minimum of 1,320 feet of road frontage.

For these three reasons, the approval of Central Soyfoods' application for a CUP would be contrary to the *Value Added Agriculture* section and therefore, it should be denied.

2. **The presence of the industrial use raises security issues.**

Mr. and Mrs. Long also believe that approval of the CUP raises security issues that should be addressed. Currently, Mr. and Mrs. Long live next to a residential dwelling that currently can only have a single family occupying that home. If the CUP is approved there will be no one residing in the property, and the people who will have access to the property will be the 5+ employees of Central Soyfoods, delivery drivers, and others who need to access the property for purposes of operating an industrial site. Because Central Soyfoods states that these employees are all part-time, the likely turnover of those employees are higher than they would be if they were full-time employees. And this turnover prevents the neighbors from getting to know any of them so that they know who should be lurking around the property. The employees will be unknown to the neighbors, but those employees and drivers will all now have the opportunity to scope out neighboring residences. This is a great concern for Mr. and Mrs. Long who now have to be diligent in ensuring their safety from the employees of the Central Soyfoods' industrial site.

3. **There is no adequate protection for drainage of the gray water.**

I understand that Central Soyfoods' industrial process uses a significant amount of water. The Staff report does not make it clear whether Rural Water District No. 4 will allow a residential water meter to be used for industrial purposes. And because of the amount of water used in the industrial process, Central Soyfoods produces a significant amount of "gray water." Although I understand that Central Soyfoods' application did not include any method for the proper discharge of this waste water, the Planning Staff noted that a lagoon will have to be "located" as shown on the plan. Mr. and Mrs. Long believe that not only should a lagoon be "located" it must be constructed in a manner which prevents discharge of the gray water from the property. Mr. and Mrs. Long's property also borders the subject property on the North and east and the natural flow of water from the subject property flows toward the northeast corner of the subject property and onto Mr. and Mrs. Long's property. The Planning Commission cannot approve the CUP without adequate assurance that the discharge of the "gray water" will not be allowed to flow off of the subject property onto Mr. and Mrs. Long's property.

4. **The proposed industrial use is not compatible with the area.**

Planning Staff has determined that the industrial use proposed by Central Soyfoods is compatible with the residential and agricultural nature of the neighboring properties. Mr. and Mrs. Long are not opposed to Value-added Agricultural businesses being located in the County, but they are opposed to industrial business being located on tracts of only five acres right in the midst of residential properties. Industrial businesses ought to be located on tracts larger than five acres as required by current code. Because the tract owned by Central Soyfoods is only five acres, the industrial manufacture of soybean products should not be located there, and the CUP should be denied.

Mr. and Mrs. Long bought their property so that they could live in the County away from industrial uses. Yet, they are now faced with a proposed industrial use at their doorstep.

The Longs' property is significant for historical reasons. The Hoover Barn is located near the subject property. The Hoover Barn was part of the Douglas County farm home, which was also known as the Douglas County Poor Farm. Enclosed with this letter is a description of the history of the Poor Farm.

An industrial use is not compatible with the adjacent historical Hoover Barn and the location of the Douglas County Poor Farm. By allowing an industrial use at this location, the Planning Commission would set precedent for the location of other industrial uses in this area, and the risk of losing the use of the area as residential and agricultural is high, and the historical uniqueness of the property would be swallowed by the industrial use.

Furthermore, if the CUP were approved, because the subject property is non-conforming, it would likely never be allowed to be used for residential again, and the property would either remain industrial or vacant.

And Central Soyfoods, like so many other owners of industrial land, is not a good steward of the land it owns. During the time that Central Soyfoods owned the subject property, it did nothing to keep up the appearance of the property. Enclosed are photographs of the subject property compared to the Longs' property. The fact that Central Soyfoods has failed to adequately maintain the property is a bad sign of how it plans to maintain the property once the industrial use is placed in the property. Furthermore, Central Soyfoods failed to maintain its current property in Lawrence in a manner that complied with the FDA's regulations. On July 2, 2014, the FDA sent a warning letter to Central Soyfoods that noted "serious violations" of the FDA's regulations. A copy of the FDA's letter is enclosed with this letter.

The failure of Central Soyfoods to adequately maintain its current facility in compliance with law and its failure to maintain the subject property while it owned the property does not give Mr. and Mrs. Long any confidence that once a CUP was approved that Central Soyfoods would be a good neighbor. As everyone knows, actions speak louder than words, and Central Soyfoods' promises to comply with the CUP conditions should hold little weight when its

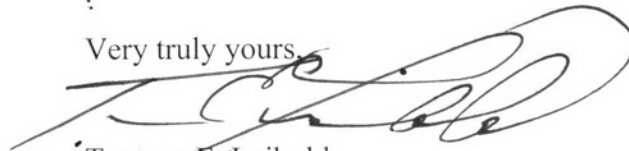
actions reveal an industrial company that is not concerned with complying with the law or ensuring its property is properly maintained. Because of these failures, the Longs are reasonably concerned by the presence of the industrial use so close to their home.

Finally on this issue, the presence of the industrial use will have a negative impact on the value of the residential properties near the industrial site: “[A]ccording to the Appraisal Institute[, a]n unkempt yard, . . . or having certain commercial facilities nearby, such as a power plant or funeral home, can reduce the value of surrounding homes by as much as 15%.” Brian O’Connell, 7 Neighborhood Threats to Your Home’s Value, found at <http://realestate.msn.com/7-neighborhood-threats-to-your-homes-value>. The subject property is located closed to the Longs’ property. I enclose photographs of the property from the Longs’ home. The close proximity of an industrial use may significantly reduce the value of the Longs’ property.

Again, while the Longs do not oppose a Value-added Agricultural business in the County, the business should not be located near to residences and on such a small tract of land.

For all these reasons, Mr. and Mrs. Long oppose the Planning Commission’s approval of the CUP of Central Soyfoods LLC, and they request that the Planning Commission deny the CUP.

Very truly yours,



Terence E. Leibold
Petefish, Immel, Heeb & Hird, L.L.P.

Enclosures

cc: Mr. and Mrs. Long

DOUGLAS COUNTY POOR FARM

I AM GOING TO TALK TO YOU TODAY ABOUT THE Douglas County Poor Farm. The English definition of the Poor Farm is the Almshouse, where the paupers are supported. There was even a Poor Commissioner.

SHOW MAP OF DOUGLAS COUNTY

Douglas County Commission minutes of January 30, 1866 show the purchase of the 110 acre farm from George Stern for \$2,200. Four days later plans for a "Farmhouse, two stories high and 24 feet wide by 36 feet long to be built on the county farm and used for a County Asylum for the poor" were noted. The building cost 3,760. A Superintendent was employed in March 1866 for the sum of \$1,200 a year for himself and his family.

It was suggested the Poor Farm be located two to four miles of the County seat because the Poor Commissioner made visits to the Poor Farm about once a week, but not regularly enough so that he could show up unexpectedly so he had an opportunity to see the real condition of the institution and the kind of care the inmates were receiving.

In 1877 according to a newspaper article in an account written by George Hollingbery who was unhappy with the obvious neglect and mistreatment of the inmates of this county home he stated "an aged Irishman died at the county farm and was buried unceremoniously in the county farm burying place which was situated on the bank of the Wakarusa River, in a narrow strip of land between the river and the road, and used as a cow pasture, said burying has long been without any protection from the desecrating root of pigs, or tramped of horses and cattle. This is another instance of the notorious want of decency that has long characterized the management of the asylum for the aged, sick and

friendless poor of the county. Because of this article a special meeting of the county commissioners was held in January 1888 to investigate the poor farm situation. They wanted all who had complaints against the present superintendent Mr. Dodge or against his management of the poor farm to come before him. Some felt that Mr. Dodge was a common drunkard, and a profane and brutel man, and such facts were well known. The pauper sick were fed on cornbread and fat meat. Others who were called upon to testify were Mr. Wheadon, Col. Sam Walker, Mr. Doolittle, ex-sheriff Carnen, William Marshall, Charles Gomer, Swan Johnson (a Swede), J. B. Walton, George Nell, H. D. Whitman and Dr. Morris. Several of those who testified thought Mr. Dodge was a good farmer but drank too much and they all felt he should be removed as superintendent of the home.

That's all we know about the Poor Farm from 1866 - 1911.

The "new" building, known as the Poor Farm, was accepted by the Board of County Commissioners from the builder on March 13, 1911. "Bids for the building were let on July 23, 1910." John H Petty was low bidder at \$22,944.00. The building contained 35 rooms.

In a 1918 Thesis written by Frances Maude Ellis it stated "That Douglas County provided everything and paid the superintendent and his wife \$50. a month, the cook \$20. the hired man \$25. a month making a total of \$95 a month for help in farming the 200 acres and for caring for the 20 inmates. But Douglas County had a new modern instillation in which it is easier to do the work for the inmates than in some of the other institutions.

The cost per year for caring for each inmate was \$206.89 which seems very low in comparison to other almshouses. A great deal of the food was produced on the farm and with the present system of management the inmates seem to receive good care with not a great deal of expense to the county.

Frances also researched 17 other poor farms in Kansas

On March 15, 1927, the main barn was destroyed by fire. A former resident names W. J. Welshimer had been dismissed earlier from the home and was convicted by a jury in the District Court on May 7, 1927 of arson in the fourth degree for the burning of the barn. When he appeared for sentence to the penitentiary, Welshimer made the following statement, 'you wouldn't keep me at the County Home, so I had to fix it so you would keep me some place.'

On April 13, 1944 the home was destroyed by fire. Eight of the 34 elderly residents of the County Home were burned to death- three of the dead were women. The 34-year old brick and frame structure was a total loss.

George Hoskinson, superintendent, and the six employees of thee home rescued the other 26 residents. Two elderly men sleeping in the basement, awakened Hoskinson and his wife about 1:30 a.m.- they found flames and smoke in the basement laundry room. Efforts with a fire extinguisher failed and the employees aided the aged residents in exiting the burning building.

Mrs. Hoskinson drove the truck to a nearby farm to call the fire department, when they arrived the roof was already on fire and it was too late.

Mr. Hoskinson stated that he helped one inmate out twice and she returned to to burning building and died in the flames.

I remember two of the people very well ~~who died in the fire~~. John Chance and Lizzie Raandolph – I remember well. Aunt Cora and Uncle Charlie Wheadon help one man after he was brought from the burning house. He broke loose and went back in to get a pair a rubber knee boots and he never returned.

County Welfare Director, Mrs. Mildred Watson and two members of the staff, Miss Cecelia Robinson and Mrs. Margaret Pierce, arranged temporary quarters in the community building for the displaced residents.

The county quickly bought a home at 1003 W 4th to be used as a "convalescent hospital." It was three stories tall and had a red tile roof.

After the fire county commissioners announced that a small farmhouse would be build 300 feet southwest of the burned home. The livestock and equipment was sold in a sale.

In 1953 Mr. and Mrs. Gerald Hoover purchased the farm.

The county had problems with the old house (that had been purchased on West 4th street) and on November 4, 1958 voters approved construction of a new County Nursing home. The old home was sold and purchased in 1982 by Medical Arts Center.

Funds from the sale of the old county farm house and the house on West 4th and a two year 1&1/2 mill levee financed a new \$280,000 Douglas County Home, which then became Valleyview Care Home at 2528 Ridge Court. It opened in April 1961.

I have pictures of the remaining buildings that were on the Poor Farm and still remaining today.

SHOW SLIDES

Hoovers House	Chicken house	Distance from barn
County Well	Garage	Dynamite bldg.
2 pictures of cave	Barn	

Articles on table; Journal World 1946 along with other paper work.

*Anschutz library at KU. and the State of Kansas Historical
library in Topeka*

Home Inspections, Compliance, Enforcement, and Criminal Investigations Compliance Actions and
Activities Warning Letters 2014
Inspections, Compliance, Enforcement, and Criminal Investigations

Central Soyfoods 7/2/14

Department of Health and Human Services

Public Health Service
Food and Drug Administration
Kansas City District
Southwest Region
8050 Marshall Drive, Suite 205
Lenexa, Kansas 66214-1524

Telephone:(913) 495-5100

July 2, 2014**WARNING LETTER****UNITED PARCEL SERVICE
SIGNATURE REQUIRED**

CMS#433431

Mr. David T. Millstein
Central Soyfoods LLC
710 E.22nd Street, Ste C
Lawrence, Kansas 66046-3118

Dear Mr. Millstein:

The Food and Drug Administration (FDA) conducted an inspection of your food processing facility, located 710 E. 22nd Street, Ste C, Lawrence, Kansas, from May 20 through May 21, and July 1, 2014. The inspection revealed serious violations of FDA's Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food (CGMP) regulation, Title 21, Code of Federal Regulations, Part 110 (21 CFR Part 110). These conditions cause the food products produced and stored at your facility, including Hickory Smoked, Firm (type), and Garlic Herb Tofu to be adulterated within the meaning of section 402(a)(4) [21 U.S.C. 342(a)(4)] of the Federal Food, Drug and Cosmetic Act (the Act) in that they have also been prepared, packed or held under insanitary conditions whereby they may have become contaminated with filth or may have been rendered injurious to health. You can find the Act and its implementing regulations at www.fda.gov¹.

CGMP violations:

1. You failed to take effective measures to exclude pests from the processing areas and protect against the contamination of food on the premises by pests, as required by 21 CFR 110.35(c) and evidenced by the following:

- a. What appeared to be a live roach was found on the leg of a food processing table inside the finished product packaging area.
- b. What appeared to be a live roach was found under a pallet of dried soybeans in the warehouse area of the plant.
- c. An apparent gnaw hole was found on a bag of Nigari (lot# 110415), an ingredient used in the production of your tofu.
- d. Apparent rodent droppings were found around bags of dried soybeans in the warehouse area. The warehouse is directly adjacent to the production area.

2) The facility and procedure used for cleaning and sanitizing of equipment has not been shown to provide adequate cleaning and sanitizing treatment as required by 21 CFR 110.35(d) (5). Specifically, on May 20, 2014, after producing tofu your procedure for cleaning and sanitizing food contact equipment by using hot water only does not provide adequate cleaning and sanitizing. The inside of the smoker used to smoke tofu contained accumulated debris. The corners of a metal food cart found in the packaging area contained debris.

3) Failure to take apart equipment as necessary to ensure thorough cleaning as required by 21 CFR 110.80(b)(1), Specifically, You do not fully disassemble all food contact equipment after processing and before the start of manufacture. The barrels with the screens used to extract the soy milk from the soy pulp had accumulated food debris inside parts of the screen.

4) Failure to have smoothly bonded or well-maintained seams on food contact surfaces, to minimize accumulation of food particles and the opportunity for growth of microorganisms as required by 21 CFR 110.40(b). Specifically, on May 20, 2014, during the manufacture of hickory smoked, firm (type), and garlic herb tofu several food contact tables and a food cart were found to have unsanitary welds. Also in the production area inside the hopper and the holding vats for the soybeans prior to the cooking kettle had rough welds.

5) Failure to properly store equipment, remove litter and waste, and cut weeds or grass that may constitute an attractant, breeding place, or harborage area for pests, within the immediate vicinity of the plant buildings or structures as required by 21 CFR 110.20(a)(1). Specifically, during the inspection conducted on May 20, 2014, the following harborage areas were found inside and outside your facility:

- a. Several bags of soybean meal were stored outside on the loading dock area. One bag was split open and apparent rodent droppings were found in and around the spilled food product.
- b. The area around the loading/receiving dock and door is overgrown and weeds are not trimmed around the front and side of the facility. Unused equipment is also stored outside on the loading/receiving dock

6) Instruments used for measuring conditions that control or prevent the growth of undesirable microorganisms are not accurate as required by 21 CFR 110.40(f). Specifically, on May 20, 2014, during the inspection of your facility, the temperature of cooling tofu was taken and the thermometer used by your employee read **(b)(4)** degrees F. The temperature of the Tofu was also taken with an FDA calibrated thermometer and the temperature recorded was 135 degrees F.

The above items are not intended to be an all-inclusive list of the violations at your facility. It is your responsibility to ensure compliance with the applicable laws and regulations administered by FDA. You should take prompt action to correct these violations. Failure to do so may result in regulatory action being initiated by the FDA without further notice. These actions include, but are not limited to, seizure and/or injunction.

Section 743 of the Act (21 U.S.C. 379j-31) authorizes FDA to assess and collect fees to cover FDA's costs for certain activities, including re-inspection-related costs. A re-inspection is one or more inspections conducted subsequent to an inspection that identified noncompliance materially related to a food safety requirement of the Act, specifically to determine whether compliance has been achieved. Re-inspection-related costs means all expenses, including administrative expenses, incurred in connection with FDA's arranging, conducting, and evaluating the results of the re-inspection and assessing and collecting the re-inspection fees (21 U.S.C. 379j-31(a)(2)(B)). For a domestic facility, FDA will assess and collect fees for re-inspection-related costs from the responsible party for the domestic facility. The inspection noted in this letter identified noncompliance materially related to a food safety requirement of the Act. Accordingly, FDA may assess fees to cover any re-inspection-related costs.

Please respond in writing within fifteen (15) working days from your receipt of this letter. Your response should outline the specific actions you are taking to correct these violations and prevent their recurrence. If you cannot complete all corrections before you respond, please explain the reason for your delay and state when you will correct any remaining violations.

Your written response should be sent to the Food and Drug Administration, Attention: Danial S Hutchison. If you have questions regarding any issues in this letter, please contact Mr. Hutchison at (913) 495-5154 or Danial.Hutchison@fda.hhs.gov.

Sincerely,
/S/
Cheryl A. Bigham
District Director

Page Last Updated: 07/14/2014

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CENTRAL SOYFOOD PROPERTY -NOT MAINTAINED FOR 4 YEARS





CENTRAL SOYFOOD PROPERTY -NOT MAINTAINED FOR 4 YEARS
Photo taken Sept.15, 2014 3 days after trying to shame owners
into mowing yard before meeting

Long Residence 9/12/2014



CENTRAL SOYFOOD 9/12/2014



Long Residence next door



1160 E 1500 Rd
1160 E 1500 Rd
Lawrence, Kansas
Street View - May 2011

CENTRAL SOYFOOD Property 2011











THE FOLLOWING IS FROM MIKE MANLEY, 1548 NORTH 1175 ROAD, LAWRENCE KANSAS 66046,

REGARDING CENTRAL SOYFOODS LLC CONDITIONAL USE PERMIT APPLICATION, SUBJECT TO PUBLIC HEARING 9/22/14 AS CUP-14-00304:

FACTS WE KNOW ABOUT DAVID T. MILLSTEIN (President of Central Soyfoods) obtained using GOOGLE:

ISSUE # 1: FDA Warning Letter to Central Soyfoods, citing Serious Violations, July 2014.

A warning letter from the Kansas City District FDA office, dated July 2, 2014, was sent to Central Soyfoods LLC and is an item of public record. The letter cites numerous "serious violations" of FDA Good Manufacturing Processes for manufacturing of food for human consumption. Full text can be found at the following website.

<http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2014/ucm404543.htm>

I am concerned, regardless of whether all violations cited below have been/will be found by the FDA to be corrected, that these types of inherent issues will follow the Central Soyfoods facility from their current location within the city limits, out to the proposed relocation site at 1168 E. 1500 Road. The rodent and health issues cited by the FDA are of concern to myself and others I have spoken with in our rural residential neighborhood.

Below are excerpts of the exact text of the FDA letter (font sizes modified for emphasis).



Department of Health and Human Services

Public Health Service
Food and Drug Administration
Kansas City District
Southwest Region
8050 Marshall Drive, Suite 205
Lenexa, Kansas 66214-1524

Telephone:(913) 495-5100

July 2, 2014

WARNING LETTER

**UNITED PARCEL SERVICE
SIGNATURE REQUIRED**

CMS#433431

Mr. David T. Millstein
Central Soyfoods LLC
710 E.22nd Street, Ste C
Lawrence, Kansas 66046-3118

Dear Mr. Millstein:

The inspection revealed serious violations of FDA's Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food (CGMP) regulation

in that they have also been **prepared, packed or held under insanitary conditions whereby they may have become contaminated with filth or may have been rendered injurious to health.**

- 1. You failed to take effective measures to exclude pests from the processing areas and protect against the**

contamination of food on the premises by pests,

as required by 21 CFR 110.35(c) and evidenced by the following:

a. What appeared to be a **live roach** was found on the leg of a **food processing table** inside the finished product packaging area.

b. What appeared to be a **live roach** was found under a **pallet of dried soybeans** in the warehouse area of the plant.

c. An **apparent gnaw hole** was found on a **bag of Nigari** (lot# 110415), an ingredient used in the production of your tofu.

d. **Apparent rodent droppings** were found **around bags of dried soybeans** in the warehouse area. The warehouse is directly adjacent to the production area.

2) The facility and procedure used for cleaning and sanitizing of equipment has not been shown to provide adequate cleaning and sanitizing treatment as required by 21 CFR 110.35(d)(5). Specifically, on May 20, 2014, after producing tofu your procedure for cleaning and sanitizing food contact equipment by using hot water only does not provide adequate cleaning and sanitizing. The **inside of the smoker used to smoke tofu contained accumulated debris**. The corners of a metal food cart found in the packaging area contained debris.

3) **Failure to take apart equipment as necessary to ensure thorough cleaning** as required by 21 CFR 110.80(b)(1), Specifically, You do not fully disassemble all food contact equipment after processing and before the start of manufacture. **The barrels with the screens used to extract the soy milk from**

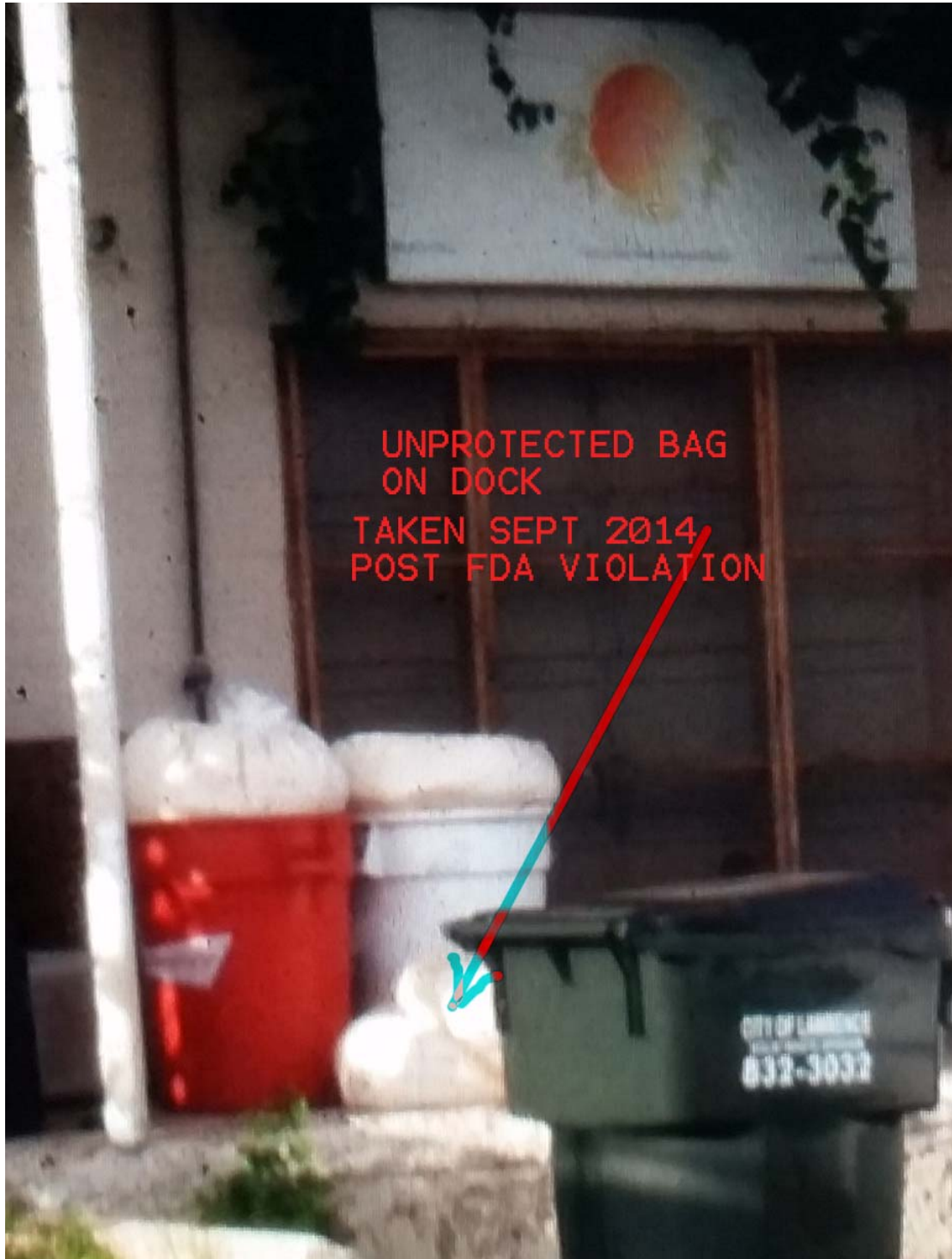
the soy pulp had accumulated food debris inside parts of the screen.

4) Failure to have smoothly bonded or well-maintained seams on food contact surfaces, to minimize accumulation of food particles and the opportunity for growth of microorganisms as required by 21 CFR 110.40(b). Specifically, on May 20, 2014, during the manufacture of hickory smoked, firm (type), and garlic herb tofu several food contact tables and a food cart were found to have unsanitary welds. Also in the production area inside the hopper and the holding vats for the soybeans prior to the cooking kettle had rough welds.

5) **Failure to properly store equipment, remove litter and waste, and cut weeds or grass that may constitute an attractant, breeding place, or harborage area for pests,** within the immediate vicinity of the plant buildings or structures as **required** by 21 CFR 110.20(a)(1). Specifically, during the inspection conducted on May 20, 2014, the following harborage areas were found inside and outside your facility:

a. Several bags of soybean meal were **stored outside on the loading dock area. One bag was split open and apparent rodent droppings** were found in and around the spilled food product.

(NOTE: PHOTO BELOW WAS TAKEN AT CENTRAL SOYFOODS FACILITY IN SEPTEMBER 2014, AFTER THE FDA WARNING LETTER. ARE THESE BAGS OF SOYBEAN MEAL STILL BEING STORED OUTSIDE ON THE LOADING DOCK AREA?)



b. The area around the loading/receiving dock and door is overgrown and weeds are not trimmed around the front and side of the facility. Unused equipment is also stored outside on the loading/receiving dock

6) Instruments used for measuring conditions that control or prevent **the growth of undesirable microorganisms** are not accurate as required by 21 CFR 110.40(f). Specifically, on May 20, 2014, during the inspection of your facility, the temperature of cooling tofu was taken and the thermometer used by your employee read **(b)(4)** degrees F. The temperature of the Tofu was also taken with an FDA calibrated thermometer and the temperature recorded was 135 degrees F.

The above items are not intended to be an all-inclusive list of the violations at your facility.

Sincerely,
/S/
Cheryl A. Bigham
District Director

ISSUE # 2: Long-term Neglect of property at 1168 E 1500 Road

Central Soyfoods acquired the property at 1168 E 1500 Road in 2010. The first set of photos, below, were obtained using GOOGLE STREET VIEW and were dated September 2011. The previous owner of the property was an elderly lady who mowed the property weekly and had pride in her property and consideration for the overall upkeep of our neighborhood (THE ADVANTAGE OF HAVING A HOMEOWNER PRESENT ON THE PROPERTY).

After acquisition by Central Soyfoods/Millsteins, it can already be seen that mowing became infrequent and the property began to be overrun by weeds and brush. Because tall weeds provide a breeding ground for rodents -- plus the snakes that feed on them -- these creatures have increased dramatically causing a health and safety hazard for their neighbors.



THE SECOND SET OF PHOTOS, BELOW, WERE TAKEN SEPTEMBER 12, 2014, BY MIKE MANLEY. THE CENTRAL SOYFOODS PROPERTY IS SHOWING THE LONG-TERM EFFECTS OF SEVERAL YEARS OF NEGLECT AND ABSENTEE OWNERSHIP. THE LONG'S HAVE MOWED THE CENTRAL SOYFOODS PROPERTY (FOR FREE -- MULTIPLE TIMES) IN AN ATTEMPT TO KEEP IT FROM APPEARING ABANDONED AND REFLECTING BADLY ON THEIR ADJACENT RESIDENCE AND ACREAGE.



THE LONGS HAVE BEEN APPROACHED ABOUT 50 TIMES OVER THE PAST 4 YEARS BY STRANGERS, LOOKING FOR CHEAP REAL ESTATE, ASKING WHO OWNS THE APPARENTLY ABANDONED PROPERTY NEXT DOOR.

THE 3-4 YEAR DURATION OF THESE DETERIORATING CONDITIONS IS THE UNFORTUNATE OUTCOME OF ABSENTEE OWNERSHIP AND NEGLECT OF PROPERTY. AS THE MILLSTEINS ARE ATTEMPTING TO REQUEST AN EXCEPTION TO GOOD PLANNING PROCEDURES -- THEY SHOULD HAVE AT LEAST TRIED TO BE GOOD NEIGHBORS BY KEEPING THE PROPERTY MOWED AND MAINTAINED,

RATHER THAN ALLOWING IT TO DETERIORATE TO THE POINT THAT IT'S OBVIOUS NO ONE LIVES THERE. THEIR PROPERTY HAS BECOME AN EYESORE IN OUR OTHERWISE PLEASANT RURAL RESIDENTIAL AREA.

I find it curious that the above letter from the FDA dated July 2 , 2014 stated the following as a violation at Central Soyfoods current location at 710 E. 22nd Street:

The area around the loading/receiving dock and door is overgrown and weeds are not trimmed around the front and side of the facility.

To Summarize: THE Central Soyfoods/MILLSTEIN PROPERTY HAS HAD LITTLE OR NO MAINTENANCE FOR 3 YEARS. I REALIZE YOU MAY NOT HAVE SEEN THIS COMPELLING EVIDENCE OF NEGLIGENCE AND DERELICTION WHEN YOU INITIALLY LOOKED AT THE SOYFOODS PROPOSAL. IT SPEAKS VOLUMES ABOUT THE IMPORTANCE OF BEING A HOMEOWNER AND RESIDENT. I HAVE A LOT OF PRIDE IN OUR NEIGHBORHOOD AND I HOPE YOU WILL CONSIDER THE LASTING IMPACT YOUR DECISION WILL HAVE ON OUR NEIGHBORHOOD-- GIVEN THE HISTORY OF THIS INDIVIDUAL'S NEGLIGENCE OF THE PROPERTY AND DISREGARD FOR THE RESULTING IMPACT ON ADJACENT RESIDENTS AND THE GENERAL NEIGHBORHOOD. WHEN I HEAR CHILDREN GIVE EXCUSES FOR THEIR BAD BEHAVIOR -- ALL I HEAR IS " BLAH BLAH BLAH BLAH BLAH -- DOG ATE MY LAWNMOWER -- BLAH BLAH BLAH " . PICTURES ARE WORTH A THOUSAND BLAH BLAH BLAHS. -- ACTIONS HAVE CONSEQUENCES and I BELIEVE THEY HAVE MADE THEIR BED AND NOW THEY HAVE TO SLEEP IN IT. - SORRY ABOUT THE SPEECH - THERE'S MORE.

I Attempted to shame Susan Millstein into mowing her yard and gave her 4 days (I would have been over there in 30 minutes with a push mower). Anyway below is just another picture taken Sept 15, 2014. -- AS OF THIS WRITING I AM NOT SURE IF THEY HAVE HAD A DEATH BED CONVERSION AND HAVE MOWED THEIR PROPERTY THE DAY BEFORE THEIR MEETING --FIGURING YOU HAVE NOT HAD TIME TO INSPECT THEIR PROPERTY.



CENTRAL SOYFOOD PROPERTY -NOT MAINTAINED FOR 4 YEARS
Photo taken Sept.15, 2014 3 days after trying to shame owners
into mowing yard before meeting

THIS PHOTO IS WHAT THE LONGS HAVE HAD TO LOOK AT FOR 4 YEARS. GREAT BREEDING GROUNDS FOR RODENTS/SNAKES (who eat the rodents). Unfortunately GREEN IS NOT CLEAN (in this case).



One more quote from the FDA

**Failure to properly store
equipment, remove litter and
waste, and cut weeds or grass
that may constitute an**

**attractant, breeding place, or
harborage area for pests, within the
immediate vicinity of the plant buildings or structures as
required** by 21 CFR 110.20(a)(1).

THE PREVIOUS FACTS ARE ALL PUBLIC KNOWLEDGE AND I BELIEVE SHOULD BE CONSIDERED WHEN MAKING AN IRREVOCABLE DECISION ABOUT THE FUTURE OF OUR NEIGHBORHOOD -- WHICH WE ARE ALL PROUD OF. MOST OF THE RESIDENTS OF THE IMMEDIATE NEIGHBORHOOD HAVE LIVED HERE ON AVERAGE 25-35 YEARS AND HAVE NEVER SEEN THIS LEVEL OF NEGLECT.

**HAVE PRIDE IN
LAWRENCE-- PLEASE --
VOTE NO!**

PART 2 --(COMMON SENSE)

THE PSYCHOLOGICAL WAR ON THE WOMEN OF OUR COMMUNITY.

To understand our the mindset of the rural homeowner please read Truman Capote's book "IN COLD BLOOD". Strange people creep the Bejesus out of some of our residents. -- We want neighbors we can trust, not transient/unknown workers who rotate in and out. Having a resident neighbor is an infinitely better situation -- as they are close by and have concern about your well being and are there at night if you have an emergency -- having a non-resident based business will prevent this sense of security -- which can only be accomplished by have a long term resident -- who genuinely cares about you.

QUESTIONS:

1. Will the employees be Drug Tested Frequently and have a Criminal background check. -- Our lives and sense of security depend upon this. -- PLEASE PUT YOUR SELF IN OUR POSITION AND HAVE SOME CONSIDERATION ABOUT HOW YOU WILL BE DESTROYING OUR NEIGHBORHOOD.

2. When Central Soyfoods first bought the residence they had some of their employees living in the house. One night Willis Long was walking on his property only to discover -- strange people trespassing on his property by his barn. -- AGAIN if this was his wife -- the phrase "CREEPS THE BEJESUS OUT OF ME" would apply.

3. If the Central Soyfood Property is zoned for a business -- can it ever be a residence again-- Please be positive about this. Otherwise you will PERMANENTLY RUIN OUR NEIGHBORHOOD.

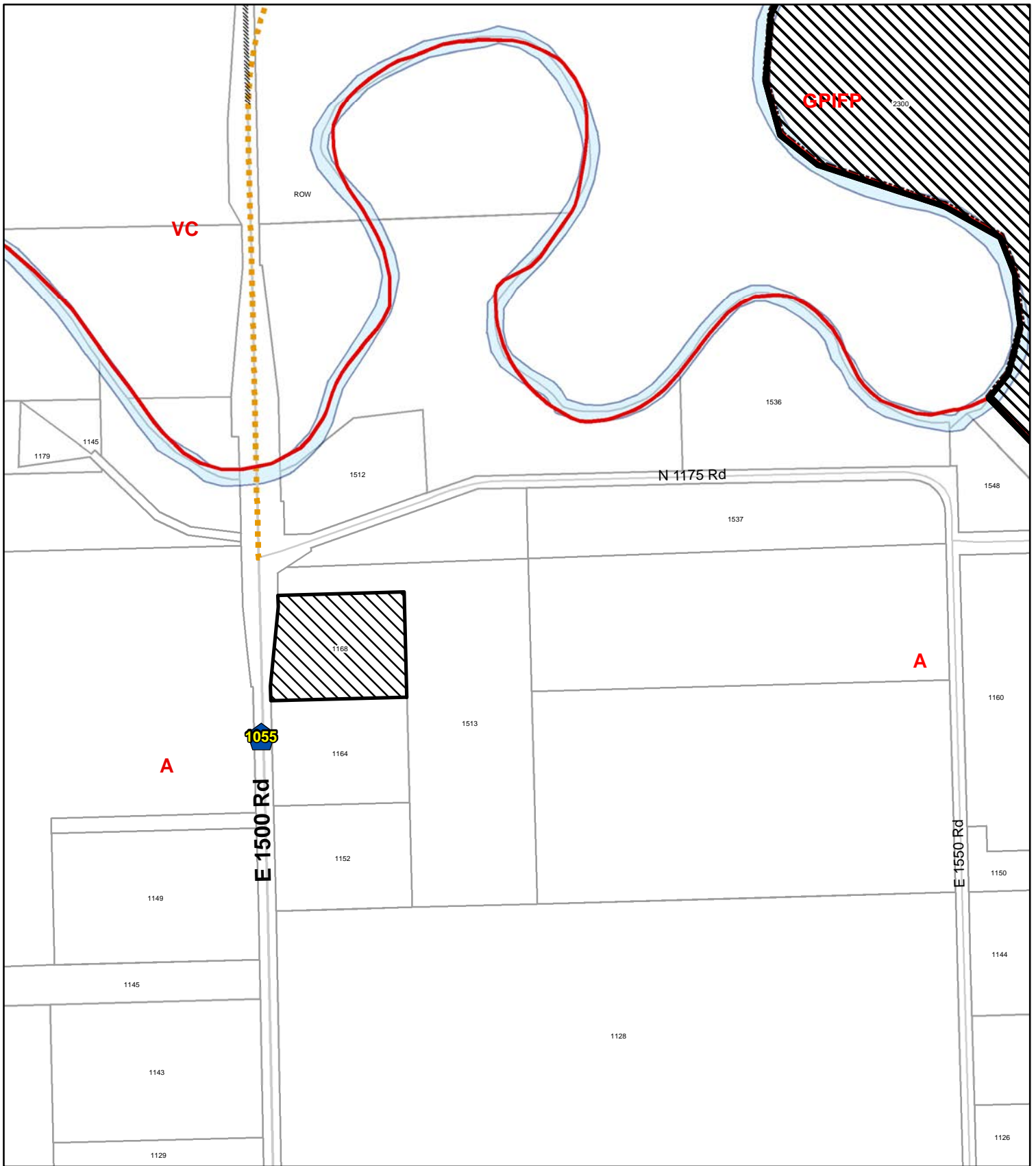
Mary Miller

From: Richard Heckler [rheckler2002@yahoo.com]
Sent: Monday, September 22, 2014 2:30 PM
To: Mary Miller
Subject: Central SoyFoods Construction Project

After reviewing the material I have this to offer:

1. Landscape Maintenance at the current location is the responsibility of the property owner.
2. As a landscape management person for a few decades I will be assisting in the maintenance of the new location.
3. This new project upgrades the property a great deal. Thus upgrades the property value.
4. All food service operations are routinely inspected and most likely receive advice as to what should be done in preparation for a follow up inspection.
5. In the twelve years as an employee I have not seen any major traffic regarding large trucks with the exception of soybean deliveries as David Milstein has noted. BTW I am not a transient employee.
6. In the 12 years as an employee I have not witnessed a large number of employee vehicles thus minimal employee traffic. I will be seen most frequently as I perform my duties in the area of sales and distribution. Customer service is of the utmost importance and key to the success of Central Soyfoods.
7. The Milstein family are among the best small business management group I have ever had the pleasure of interacting with.

Thank You,
Richard Heckler



CUP-14-00304: Conditional Use Permit for the Relocation and Expansion of Central Soyfoods, LLC Located at 1168 E 1500 Road

**ITEM NO. 3 CONDITIONAL USE PERMIT FOR CENTRAL SOYFOODS LLC; 1168 E 1500 RD
(MKM)**

CUP-14-00304: Consider a Conditional Use Permit for Central Soyfoods LLC, a Value Added Agriculture use, at 1168 E 1500 Rd. Submitted by David Millstein, property owner of record.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

APPLICANT PRESENTATION

Mr. David Millstein said Central Soyfoods had been around since 1978 producing tofu for the Lawrence and Kansas City area and had never had any complaints from the neighbors or employees regarding the operation. He said the operation had very little waste. He said there would be no odor since it was essentially tap water that would go into the lagoon. He said the neighbor's concern about employees being transient was not based on fact. He said the FDA inspection letter was a warning and that the business complied with the problems.

PUBLIC HEARING

Mr. Terry Liebold, attorney representing Willis and Linda Long, showed where the Long's property was in proximity to the site. He said the primary reason for their opposition was included in the letter that he sent, which included the location. He said the site was only being a 5 acre lot and surrounded by a lot of residences. He did not feel the application complied with the requirements of a value added business. He expressed concern about the commercial building codes being met.

Mr. Mike Manley expressed concern about the property not being maintained.

Mr. Quinn Miller expressed concern about the size of business being on less than 5 acres. He felt there were other sites that would be more suitable. He also expressed concern about water runoff.

Ms. Rebecca Manley wondered why the applicant chose this particular location and felt there were other sites better suited.

Mr. Roy Chaney said he could not see how this was an agricultural use since nothing was grown on site. He felt it was food manufacturing. He expressed concern about potential odor from the business. He said the area was more like a subdivision with other houses.

Mr. Manley asked Ms. Violet Walker about her opinion on the condition of the property.

Ms. Violet Walker said the property was not well taken care of.

APPLICANT CLOSING COMMENTS

Mr. Millstein said the property had been mowed numerous times but that they chose to mow a yard size area around the house. He said the property had been hayed on a yearly basis. He said he moved to this location because it was reasonably priced. He said his current location was between two other businesses and he could not control pests. He said the scale of the business was a micro business. He stated the house would be completely rehabbed and that he would probably only use the basement of the house. He said he had looked in Lawrence for over a year for a suitable location that was affordable. He said it was an agriculturally based business. He said they use local beans grown on his farm and other Douglas County farms. He said they use 700 bushes a year, which was hardly two grain trucks a year. He said it was a micro business with no odor. He said he had never had any problems with neighbors. He said the lagoon would be designed by an engineer and would follow Kansas health guidelines. He said the greywater lagoon would only contain tap water and a little bit of dishwashing detergent. He said the blackwater would be separated from the greywater so there would be no possibility of contamination.

COMMISSION DISCUSSION

Commissioner Liese asked staff to remind Planning Commissioners what they should focus on.

Mr. McCullough said staff had not received any complaints and that there was no record or history of compliance issues. He said Planning Commission should look at land use elements, traffic, business operations and Code compliance. He said they could also discuss the typical impacts, such as lights, noise, traffic, and odors.

Commissioner Liese asked staff if they felt like they had adequate time to review the letter from Mr. Liebold.

Mr. McCullough said staff reviewed it and responded appropriately.

Commissioner Josserand said he was still struggling with questions that Mr. Liebold brought up in his letter. He asked staff to discuss altering the use of a building and why the objection made by Mr. Liebold was not legitimate with this application.

Mr. McCullough said staff had not consulted County council on the issues. He said it was staff's perspective on how they understood the Code to be interpreted. He said the lot was non-conforming but was not a use issue.

Commissioner Josserand asked if it would be a change of use for the building.

Mr. McCullough said yes.

Commissioner Josserand asked if staff's interpretation was that there was no need to make the building, as a new use, comply with commercial County Codes.

Ms. Miller said it was required to comply with County Codes. She said it was listed as an additional step in the staff report. She said when the applicant goes to Zoning & Codes for the Conditional Use Permit they would also have to get building permits.

Mr. Jim Sherman, Director of County Zoning & Codes, said the structure would be designed and reviewed under the 2012 International Commercial Building Code.

Commissioner Denney asked if the owner of the business was also the property owner.

Ms. Miller said yes.

Mr. Millstein said the company was an LLC and he was the managing partner. He said the property was owned by himself and his wife.

Commissioner Rasmussen said he would vote in favor of the Conditional Use Permit. He said the community, City, and County have indicated they want to support value added agricultural activities. He said they want to maintain the rural and agricultural character surrounding Lawrence with these types of uses. He did not feel this was any different than the example used in the County Code; making strawberries into jam. He said he could not see a reason for not approving it.

ACTION TAKEN

Motioned by Commissioner Rasmussen, seconded by Commissioner Culver, to approve Conditional Use Permit, CUP-14-00304, for *Value Added Agriculture* subject to the following conditions:

1. The following standards shall apply to the use:
 - a. A maximum of 4 full-time equivalent employees are permitted.
 - b. The structure in which the use is conducted may be up to 3,600 sq ft.

- c. No equipment that creates noise, vibration, electrical interference, smoke or particulate matter emission perceptible beyond the property lines or in excess of EPA standards is allowed.
 - d. All equipment and materials used in the business must be stored indoors.
 - e. No retail sales of products shall occur on the site.
 - f. Deliveries from trucks with a GVWR (Gross Vehicle Weight Rating) of more than 5 tons are limited to no more than 2 per week. This does not apply to incidental deliveries such as Fed Ex and UPS.
2. Provision of a revised CUP plan with the following changes:
- a. General CUP notes added per Planning approval.
 - b. Parking area expanded to 5 parking spaces, with one being ADA accessible, and dimensions of the parking area noted on the plan.
 - c. Evergreen trees added to screen the south side of the parking area.
 - d. Location of holding pond/lagoon shown on the plan.
 - e. Standards listed in Condition No. 1 noted on the plan.
 - f. Addition of the following note: *"The Conditional Use Permit will be administratively reviewed by the Zoning and Codes Office in 5 years and will expire in 10 years from the approval date noted on the plan unless an extension is approved by the County Commission prior to that date."*

Commissioner Culver said he agreed with Commissioner Rasmussen about value added agricultural business. He felt it fit the description and criteria set forth in the standards. He said it also had regulations and conditions in which the applicant must comply, which was part of the structure in which it could proceed. He said it was a micro-business and an acceptable use under the Conditional Use Permit.

Commissioner Kelly said he appreciated the concern shared by the neighbors about it becoming a factory. He said when he read the Code regarding value added agricultural businesses it specifically said a commodity not grown onsite. He said he looked for other food processing in Douglas County and the County Food Policy Council had a list that they created a few years ago. He said it included quite a few businesses that were rural and small in nature that bring in products from elsewhere. He felt it did seem to be an appropriate land use.

Commissioner Jossierand said this kind use was exactly what was anticipated by the value added agricultural section of the Code. He did not feel it would be a noxious industrial use. He said his principal issue was the nature of the structure but that Mr. Jim Sherman had made that issue disappear from his mind with his earlier response. He said he would support the request.

Commissioner Britton said he initially had concerns about legal requirements for a change in use being met but that it sounded like it would meet the Commercial Building Code. He stated that any time a neighborhood came out to weigh in on something like this he put a lot of stock in that. He did not feel the concerns rose to the level of overriding the staff report. He said he would support the motion.

Commissioner Struckhoff said he would support the motion. He said his concern was the scale and scope of the operation, the stewardship of the waste product, and traffic generate. He felt that most of those have or would be mitigated and that the Code requirements would be complied with. He believed this value added agricultural use was exactly what was envisioned.

Commissioner von Achen said she was sensitive to the concerns of county residents but that she would hate to deny the use based on fears that she did not think would materialize. She said she would support the motion.

Commissioner Denney said the concerns raised by the neighbors should be dealt with through the Code and building permit process.

Commissioner Graham echoed the comments from other Planning Commission members.

Ms. Manley spoke from the audience about the FDA violations.

Commissioner Liese said that Planning Commission was a land use committee and that the County Commission could listen to their additional concerns.

Unanimously approved 10-0.

PETEFISH
PETEFISH, IMMEL, HEEB & HIRD, LLP
Attorneys at Law
— Est. 1915 —

John J. Immel*
Richard W. Hird**
Thomas H. Johnson**
Cheryl L. Denton**
Terence E. Leibold**
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Olin K. Petefish (1912-2001)
Jeffrey O. Heeb (retired)

September 22, 2014

Via Hand Delivery

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

Re: September 22, 2014 Commission Meeting

Ladies and Gentlemen:

I am writing on behalf of Willis and Linda Long in opposition to the application for a Conditional Use Permit for Central Soyfoods LLC, at 1168 E. 1500 Road, which is Item No. 3 on the agenda for the September 22, 2014 Planning Commission Meeting.

Mr. and Mrs. Long's home is on the property located at 1164 E. 1500 Road, which is the property that is immediately adjacent to and south of the subject property. They also own a parcel that borders the subject property on the north and east. Mr. and Mrs. Long bought their property to make their home and they enjoy living in the County away from the businesses located in the City. Now they are faced with an industrial use being brought to their doorstep, and they oppose the County's allowing an industrial use being brought so close to residential properties and on such a small lot.

Mr. and Mrs. Long have several reasons for their opposition to the application for the conditional use permit, which will be addressed below, but their primary objection is that the application of Central Soyfoods does not comply with the County's Code, and cannot legally be approved.

1. The application does not satisfy the requirements of the County's Code.

Section 12-319-4.35 of the County's Code allows conditional use permits for Value-added Agricultural Businesses so long as the business meets certain location and development standards. Although Planning Staff has addressed some of these requirements, Planning Staff did not adequately address all of them. In particular, the Code requires that Value-Added Agricultural Businesses meet the following requirements:

- "Structures are required to be upgraded to meet commercial building code requirements if used for more than storage of raw agricultural materials." (12-319-4.35.b.)
- "Minimum Site Area: A minimum site area is consistent with the County adopted policy for agricultural uses." (12-319-4.35.g.)
- "Road Access and Frontage: The site must have direct access to a full maintenance public road and the site shall meet the minimum frontage requirements in accordance with the Access Management Regulations." (12-319-4.35.h.)

The problem with Central Soyfoods' application is that it seeks to convert a residential dwelling that is non-conforming and expand the building by over 60% and convert it to an industrial use without having to comply with the County's current zoning regulations. The law is clear that an owner cannot expand or change the use of a non-conforming property without complying with the current zoning regulations, and the Planning Commission should not set bad precedent by ignoring the change in the non-conforming use simply because the Staff likes the idea of a Value-added Agricultural business.

Commercial Building Codes. Because the application for the CUP proposes to manufacture tofu and tempeh at the location and not just to store raw materials, the County's Code requires that the structure be upgraded to meet commercial building codes. Although this is a requirement for approval of the CUP, the Planning Staff failed to address this requirement in its report and does not propose that this requirement be added to the conditions for approval. There is no indication anywhere in the Staff's report that the upgrade to the building must meet all the commercial building code requirements. Without this upgrade, then the CUP cannot be legally approved.

Minimum Site Area. In its report, Planning Staff acknowledges that the *Value Added Agriculture* section requires "a minimum site area consistent with the County adopted policy for agricultural uses." Instead of addressing the minimum site area for agricultural uses, the Planning Staff merely concludes that the Home Occupation standard of five acres should apply. The Staff does this even though Staff states that the Home Occupation standards should only apply if those standards are stricter. That is not the case here.

The County's adopted policy for minimum site areas is provided in the Height, Area and Bulk Requirements of the County's Code (Section 12-318). Under these Requirements, the minimum site area for agricultural uses is ten acres for property that takes access from a Principal Arterial Road. Because the property that is the subject of the CUP application takes access to a Principal Arterial Road and only has a site area of five acres, the property does not meet the minimum site area required by the *Value Added Agriculture* section. The Planning Staff states that the property is a vested parcel since it was created before 2006. Although this is correct, this does not allow the property owner to change the use of the property without complying with the current Height, Area and Bulk Requirements.

Because the property was created before 2006, the property is a non-conforming use of the property (See Section 12-320-2.01.b.—made non-conforming through the adoption of the Height, Area and Bulk requirements under section 12-318). Under Section 12-320-1, the non-conforming use "may be continued," but "[n]o non-conforming building, structure, or use shall be changed, extended, enlarged or structurally altered" subject to four exceptions that do not apply to this case. Furthermore, under state law, if there is "any alteration" to a building or use in the building, then the zoning regulations currently in effect shall apply. K.S.A. 12-758(a).

In this case, Central Soyfoods proposes two major alterations that if allowed to be done would require the property to comply with the current zoning restrictions, including lot area restrictions. First, Central Soyfoods proposes to increase the size of the building from 1,756 square feet to 2,812 square feet—an increase of over 60%. Second, Central Soyfoods proposes to change the use of the property from residential to industrial. Because of these changes, the property loses its right to continue the non-conforming use and must fully comply with the Height, Area and Bulk requirements under section 12-318.

And as mentioned above, because the property takes its access to a Principal Arterial road, the Height, Area and Bulk requirements under section 12-318 requires the property to have a minimum area of ten acres. Because it does not, the CUP cannot be approved.

Road Access and Frontage.

Likewise, Central Soyfoods' application for the CUP must be denied because the property does not have sufficient road frontage.

Under the *Value Added Agriculture* section, the property "shall meet the minimum frontage requirements in accordance with the Access Management Regulations." (12-319-4.35.h.) The Access Management Regulations requires a minimum of 1,320 feet of road frontage for properties that obtain their access to a Principal Arterial road. (Section 9-501.) The Access Management Regulations provide exceptions for residential properties (see Section 9-502 and 9-512) or in the situation in which the minimum frontage impairs the owner's access to public roads (see Section 9-507), but none of the exceptions applies to this case. The alteration of the building to allow for an industrial use is obviously not a residential use and the owner's access to the road is not impaired. Thus, the minimum road frontage of 1,320 feet is required. But Central

Soyfoods' parcel only has roughly 400 feet of road frontage, and therefore, the application does not comply with the Access Management Regulations or the *Value Added Agriculture* section.

Again, because Central Soyfoods is attempting to substantially change the use and size of the building, it must comply with the current zoning restrictions, including, the Height, Area and Bulk requirements under section 12-318. And for parcels that take their access to a Principal Arterial road, Section 12-318 requires a minimum of 1,320 feet of road frontage.

For these three reasons, the approval of Central Soyfoods' application for a CUP would be contrary to the *Value Added Agriculture* section and therefore, it should be denied.

2. The presence of the industrial use raises security issues.

Mr. and Mrs. Long also believe that approval of the CUP raises security issues that should be addressed. Currently, Mr. and Mrs. Long live next to a residential dwelling that currently can only have a single family occupying that home. If the CUP is approved there will be no one residing in the property, and the people who will have access to the property will be the 5+ employees of Central Soyfoods, delivery drivers, and others who need to access the property for purposes of operating an industrial site. Because Central Soyfoods states that these employees are all part-time, the likely turnover of those employees are higher than they would be if they were full-time employees. And this turnover prevents the neighbors from getting to know any of them so that they know who should be lurking around the property. The employees will be unknown to the neighbors, but those employees and drivers will all now have the opportunity to scope out neighboring residences. This is a great concern for Mr. and Mrs. Long who now have to be diligent in ensuring their safety from the employees of the Central Soyfoods' industrial site.

3. There is no adequate protection for drainage of the gray water.

I understand that Central Soyfoods' industrial process uses a significant amount of water. The Staff report does not make it clear whether Rural Water District No. 4 will allow a residential water meter to be used for industrial purposes. And because of the amount of water used in the industrial process, Central Soyfoods produces a significant amount of "gray water." Although I understand that Central Soyfoods' application did not include any method for the proper discharge of this waste water, the Planning Staff noted that a lagoon will have to be "located" as shown on the plan. Mr. and Mrs. Long believe that not only should a lagoon be "located" it must be constructed in a manner which prevents discharge of the gray water from the property. Mr. and Mrs. Long's property also borders the subject property on the North and east and the natural flow of water from the subject property flows toward the northeast corner of the subject property and onto Mr. and Mrs. Long's property. The Planning Commission cannot approve the CUP without adequate assurance that the discharge of the "gray water" will not be allowed to flow off of the subject property onto Mr. and Mrs. Long's property.

4. The proposed industrial use is not compatible with the area.

Planning Staff has determined that the industrial use proposed by Central Soyfoods is compatible with the residential and agricultural nature of the neighboring properties. Mr. and Mrs. Long are not opposed to Value-added Agricultural businesses being located in the County, but they are opposed to industrial business being located on tracts of only five acres right in the midst of residential properties. Industrial businesses ought to be located on tracts larger than five acres as required by current code. Because the tract owned by Central Soyfoods is only five acres, the industrial manufacture of soybean products should not be located there, and the CUP should be denied.

Mr. and Mrs. Long bought their property so that they could live in the County away from industrial uses. Yet, they are now faced with a proposed industrial use at their doorstep.

The Longs' property is significant for historical reasons. The Hoover Barn is located near the subject property. The Hoover Barn was part of the Douglas County farm home, which was also known as the Douglas County Poor Farm. Enclosed with this letter is a description of the history of the Poor Farm.

An industrial use is not compatible with the adjacent historical Hoover Barn and the location of the Douglas County Poor Farm. By allowing an industrial use at this location, the Planning Commission would set precedent for the location of other industrial uses in this area, and the risk of losing the use of the area as residential and agricultural is high, and the historical uniqueness of the property would be swallowed by the industrial use.

Furthermore, if the CUP were approved, because the subject property is non-conforming, it would likely never be allowed to be used for residential again, and the property would either remain industrial or vacant.

And Central Soyfoods, like so many other owners of industrial land, is not a good steward of the land it owns. During the time that Central Soyfoods owned the subject property, it did nothing to keep up the appearance of the property. Enclosed are photographs of the subject property compared to the Longs' property. The fact that Central Soyfoods has failed to adequately maintain the property is a bad sign of how it plans to maintain the property once the industrial use is placed in the property. Furthermore, Central Soyfoods failed to maintain its current property in Lawrence in a manner that complied with the FDA's regulations. On July 2, 2014, the FDA sent a warning letter to Central Soyfoods that noted "serious violations" of the FDA's regulations. A copy of the FDA's letter is enclosed with this letter.

The failure of Central Soyfoods to adequately maintain its current facility in compliance with law and its failure to maintain the subject property while it owned the property does not give Mr. and Mrs. Long any confidence that once a CUP was approved that Central Soyfoods would be a good neighbor. As everyone knows, actions speak louder than words, and Central Soyfoods' promises to comply with the CUP conditions should hold little weight when its

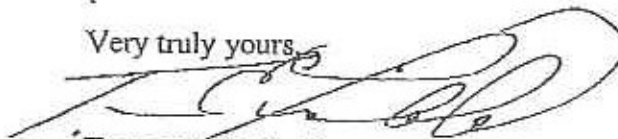
actions reveal an industrial company that is not concerned with complying with the law or ensuring its property is properly maintained. Because of these failures, the Longs are reasonably concerned by the presence of the industrial use so close to their home.

Finally on this issue, the presence of the industrial use will have a negative impact on the value of the residential properties near the industrial site: "[A]ccording to the Appraisal Institute, a]n unkempt yard, . . . or having certain commercial facilities nearby, such as a power plant or funeral home, can reduce the value of surrounding homes by as much as 15%." Brian O'Connell, 7 Neighborhood Threats to Your Home's Value, found at <http://realestate.msn.com/7-neighborhood-threats-to-your-homes-value>. The subject property is located closed to the Longs' property. I enclose photographs of the property from the Longs' home. The close proximity of an industrial use may significantly reduce the value of the Longs' property.

Again, while the Longs do not oppose a Value-added Agricultural business in the County, the business should not be located near to residences and on such a small tract of land.

For all these reasons, Mr. and Mrs. Long oppose the Planning Commission's approval of the CUP of Central Soyfoods LLC, and they request that the Planning Commission deny the CUP.

Very truly yours,



Terence E. Leibold
Petefish, Immel, Heeb & Hird, L.L.P.

Enclosures

cc: Mr. and Mrs. Long

Home Inspections, Compliance, Enforcement, and Criminal Investigations Compliance Actions and Activities Warning Letters 2014
Inspections, Compliance, Enforcement, and Criminal Investigations

Central Soyfoods 7/2/14



Department of Health and Human Services

Public Health Service
Food and Drug Administration
Kansas City District
Southwest Region
8050 Marshall Drive, Suite 205
Lenexa, Kansas 66214-1524

Telephone:(913) 495-5100

July 2, 2014

WARNING LETTER

UNITED PARCEL SERVICE SIGNATURE REQUIRED

CMS#433431

Mr. David T. Millstein
Central Soyfoods LLC
710 E.22nd Street, Ste C
Lawrence, Kansas 66046-3118

Dear Mr. Millstein:

The Food and Drug Administration (FDA) conducted an inspection of your food processing facility, located 710 E. 22nd Street, Ste C, Lawrence, Kansas, from May 20 through May 21, and July 1, 2014. The inspection revealed serious violations of FDA's Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food (CGMP) regulation, Title 21, Code of Federal Regulations, Part 110 (21 CFR Part 110). These conditions cause the food products produced and stored at your facility, including Hickory Smoked, Firm (type), and Garlic Herb Tofu to be adulterated within the meaning of section 402(a)(4) [21 U.S.C. 342(a)(4)] of the Federal Food, Drug and Cosmetic Act (the Act) in that they have also been prepared, packed or held under insanitary conditions whereby they may have become contaminated with filth or may have been rendered injurious to health. You can find the Act and its implementing regulations at www.fda.gov¹.

CGMP violations:

1. You failed to take effective measures to exclude pests from the processing areas and protect against the contamination of food on the premises by pests, as required by 21 CFR 110.35(c) and evidenced by the following:

- a. What appeared to be a live roach was found on the leg of a food processing table inside the finished product packaging area.
- b. What appeared to be a live roach was found under a pallet of dried soybeans in the warehouse area of the plant.
- c. An apparent gnaw hole was found on a bag of Nigari (lot# 110415), an ingredient used in the production of your tofu.
- d. Apparent rodent droppings were found around bags of dried soybeans in the warehouse area. The warehouse is directly adjacent to the production area.

2) The facility and procedure used for cleaning and sanitizing of equipment has not been shown to provide adequate cleaning and sanitizing treatment as required by 21 CFR 110.35(d) (5). Specifically, on May 20, 2014, after producing tofu your procedure for cleaning and sanitizing food contact equipment by using hot water only does not provide adequate cleaning and sanitizing. The inside of the smoker used to smoke tofu contained accumulated debris. The corners of a metal food cart found in the packaging area contained debris.

3) Failure to take apart equipment as necessary to ensure thorough cleaning as required by 21 CFR 110.80(b)(1). Specifically, You do not fully disassemble all food contact equipment after processing and before the start of manufacture. The barrels with the screens used to extract the soy milk from the soy pulp had accumulated food debris inside parts of the screen.

4) Failure to have smoothly bonded or well-maintained seams on food contact surfaces, to minimize accumulation of food particles and the opportunity for growth of microorganisms as required by 21 CFR 110.40(b). Specifically, on May 20, 2014, during the manufacture of hickory smoked, firm (type), and garlic herb tofu several food contact tables and a food cart were found to have unsanitary welds. Also in the production area inside the hopper and the holding vats for the soybeans prior to the cooking kettle had rough welds.

5) Failure to properly store equipment, remove litter and waste, and cut weeds or grass that may constitute an attractant, breeding place, or harborage area for pests, within the immediate vicinity of the plant buildings or structures as required by 21 CFR 110.20(a)(1). Specifically, during the inspection conducted on May 20, 2014, the following harborage areas were found inside and outside your facility:

- a. Several bags of soybean meal were stored outside on the loading dock area. One bag was split open and apparent rodent droppings were found in and around the spilled food product.
- b. The area around the loading/receiving dock and door is overgrown and weeds are not trimmed around the front and side of the facility. Unused equipment is also stored outside on the loading/receiving dock

6) Instruments used for measuring conditions that control or prevent the growth of undesirable microorganisms are not accurate as required by 21 CFR 110.40(f). Specifically, on May 20, 2014, during the inspection of your facility, the temperature of cooling tofu was taken and the thermometer used by your employee read **(b)(4)** degrees F. The temperature of the Tofu was also taken with an FDA calibrated thermometer and the temperature recorded was 135 degrees F.

The above items are not intended to be an all-inclusive list of the violations at your facility. It is your responsibility to ensure compliance with the applicable laws and regulations administered by FDA. You should take prompt action to correct these violations. Failure to do so may result in regulatory action being initiated by the FDA without further notice. These actions include, but are not limited to, seizure and/or injunction.

Section 743 of the Act (21 U.S.C. 379j-31) authorizes FDA to assess and collect fees to cover FDA's costs for certain activities, including re-inspection-related costs. A re-inspection is one or more inspections conducted subsequent to an inspection that identified noncompliance materially related to a food safety requirement of the Act, specifically to determine whether compliance has been achieved. Re-inspection-related costs means all expenses, including administrative expenses, incurred in connection with FDA's arranging, conducting, and evaluating the results of the re-inspection and assessing and collecting the re-inspection fees (21 U.S.C. 379j-31(a)(2)(B)). For a domestic facility, FDA will assess and collect fees for re-inspection-related costs from the responsible party for the domestic facility. The inspection noted in this letter identified noncompliance materially related to a food safety requirement of the Act. Accordingly, FDA may assess fees to cover any re-inspection-related costs.

Please respond in writing within fifteen (15) working days from your receipt of this letter. Your response should outline the specific actions you are taking to correct these violations and prevent their recurrence. If you cannot complete all corrections before you respond, please explain the reason for your delay and state when you will correct any remaining violations.

Your written response should be sent to the Food and Drug Administration, Attention: Danial S. Hutchison. If you have questions regarding any issues in this letter, please contact Mr. Hutchison at (913) 495-5154 or Danial.Hutchison@fda.hhs.gov.

Sincerely,
/S/
Cheryl A. Bigham
District Director

Page Last Updated: 07/14/2014

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U.S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993
Ph. 1-888-INFO-FDA (1-888-463-6332)
Email FDA



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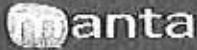
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Central Soyfoods LLC

Central Soyfoods

710 E 22nd Street

Lawrence, KS 66046 - [View Map](#)

Phone: (785) 312-0638



[Ads](#)

Company Information The most comprehensive company info available. Get your free trial.

www.hoovers.com/

Central Soyfoods LLC

A privately held company in Lawrence, KS. *Is this your business? Claim This Profile*

More Details for Central Soyfoods LLC

Categorized under Tofu, Except Frozen Desserts. Our records show it was established in 1978 and incorporated in Kansas. Current estimates show this company has an annual revenue of \$2.5 to 5 million and employs a staff of approximately 10 to 19.

Products or Services

Companies like Central Soyfoods LLC usually offer: Best Tofu, Spinach Tofu, Easy Tofu, Chinese Tofu, Tofu.

9-4-14

Dear Mr. and Mrs. Long,

I am the bookkeeper at and a shareholder in Central Soyfoods. The planning commissioner forwarded us an email from Mr. and Mrs. Othick expressing concerns about our hopes of moving our kitchen out of the industrial area where we are now into the building at 1168 E 1500 Road, a far more pleasant location.

Having lived in rural Douglas County since 1972, by our personal preference, I know how we all feel about changes in our areas. We live in the country to be away from industry and commercialism. So I understand your concerns.

I would very much like to sit down with any of the neighbors who have questions or concerns about our operation and how it may impact the neighborhood. I feel I can allay your fears when you see what we do and how small we are. We would only want to be good neighbors. I can meet you together, or individually, wherever you prefer, at any time convenient for anyone. If you prefer, you may feel free to email me at symillstein@gmail.com or write me at 464 E 1750 Rd., Baldwin City, KS 66006.

Thank you and I look forward to meeting you.

Sincerely,

Susan Millstein

CERTIFICATE OF ACCEPTANCE

Presented to

John E. Stewart Property

The National Park Service has evaluated this SITE as making a significant contribution to the understanding of the Underground Railroad in American history and it meets the requirements for inclusion in the National Underground Railroad Network to Freedom




Ernest Quintana, Regional Director
Midwest Region, National Park Service

July 23, 2010

NATIONAL
UNDERGROUND RAILROAD
NETWORK TO FREEDOM



NATIONAL PARK SERVICE
NATIONAL UNDERGROUND RAILROAD NETWORK TO FREEDOM

GENERAL INFORMATION

Type (pick one): Site ___ Facility ___ Program

Name: John E. Stewart property

Address: Harmary Acres, 1152 E. 1500 Road (NW 1/4 Section 20, Township 13, Range 20)

City, State, Zip: Lawrence, Kansas 66046

County: Douglas

Congressional District: Third

Physical Location of Site/facility (if different):

___ Address not for publication?

Date Submitted: January 15, 2010

Summary: Describe in 200 words or less, the significance to the Underground Railroad, of the site, program, or facility nominated for inclusion in the Network.

The south bank of the Wakarusa was the home of a well-known abolitionist, Captain John E. Stewart, who preempted the northwest quarter of Section 20. The quarter-section north of Stewart belonged to John Pieratt from Kentucky, who (although a Southerner) did not believe in slavery. This area became a mini-settlement of free-state sympathizers. Stewart was a Methodist preacher, an Englishman by birth, and at one time lived in Salem, New Hampshire; he became known as "the fighting preacher". The claim became a well-known rendezvous for fugitive slaves. From Judge L. D. Bailey's account of Quantrill's raid, John had been a close friend and confidant of Quantrill, alias Charley Hart, during his early days in Kansas and in his company had succeeded in effecting the escape of slaves from Missouri into Kansas. As it was only forty miles to the line which divided the slave state of Missouri from the free territory of Kansas it was easy for these young men, most of whom were bold riders and experts in the use of arms, to pass over the line, meet with slaves, then explain to them how short a run they had to make to gain their freedom, and give them full directions how to reach a safe hiding place at the Stewart farm. In the heavy timber that lined the banks of the Wakarusa near the farm there was a snug little cabin provided, and friends were always ready to guide the way and furnish provisions to the freedom seekers, who were told that they would be kept there in safety until they could be sent on through Nebraska and Iowa to Chicago and thence to Canada. Stewart's farm was known as important "stockade" and depot for the Kansas branch of the Underground Railroad.

FOR NATIONAL PARK SERVICE USE ONLY

I hereby certify that this ___ site ___ facility ___ program is included in the Network to Freedom.

Signature of certifying official/Title

Date





Midwest Region
601 Riverfront Drive
Omaha, Nebraska 68102-4226



July 23, 2010

H22(MWR-CR/UR)

Ms. Catherine Hess
Harmar LLC
1201 Wakarusa Drive
Lawrence, Kansas 66049

Dear Ms. Hess:

Congratulations! The National Park Service (NPS) evaluated your application for the John E. Stewart Property to be included in the National Underground Railroad Network to Freedom (Network to Freedom). We found that it makes a significant contribution to the understanding of the Underground Railroad in American history and that it meets the requirements for inclusion as a site. We commend you on your dedication to this important aspect of our history and expect that you will join with us in continuing to exemplify the values expressed in the National Underground Railroad Network to Freedom Act.

We are enclosing a Certificate of Acceptance, which you may display at your site. As a site included in the Network to Freedom, you may use the Network to Freedom logo under certain conditions, such as in plaques or publications. We will send a separate mailing with the Network to Freedom graphics standards manual. Use of the logo in specific projects requires prior approval by your NPS Regional Program Manager. Please consult with your NPS Regional Program Manager for further information and guidelines on the use of the logo. We will also include your site on the NPS Network to Freedom Web site at www.nps.gov/ugrr.

Please know that we are aware of your commitment to be stewards of all that the National Underground Railroad Network to Freedom Act embraces and encourage you to stay firm to that commitment by continuing to manage your site as described in your application. To ensure accurate interpretation of the Underground Railroad to the public, we wish to emphasize that you may only represent your association with the Network to Freedom as it has been approved in your application.

We know that you are as committed to quality and high standards as we are and will realize the need for periodic review. Any site in the Network to Freedom is subject to periodic review and may be removed from the Network to Freedom if there is evidence that it no longer meets the criteria for inclusion or if the steward's activities are inconsistent with the goals of the National Underground Railroad Network to Freedom Act. In order to help us stay up-to-date on your programs and activities, we rely on you to send us news and examples of flyers, newsletters, programs, brochures, etc. Additionally, you may post news of your upcoming events on the NPS Network to Freedom Web site.

Congratulations again on your extraordinary site, which we welcome into the Network to Freedom. We wish you continued success. Please do not hesitate to contact your Regional Program Manager at any time to seek assistance, advice, information, or to let them know about your current activities.

Sincerely,

Ernest Quintana
Regional Director

Enclosure

**TAKE PRIDE
IN AMERICA** 

Owner/Manager (Share contact information X Y N)
Name: Catherine Hess, Harmary LLC

Address: 1201 Wakarusa Drive
E-2
City, State, Zip: Lawrence, Kansas 66049

Phone: 785 856-3881 Fax: E-mail:

Owner/Manager (Share contact information Y N)
Name:

Address:

City, State, Zip:

Phone: Fax: E-mail:

Application Preparer (Enter only if different from contact above.) (Share contact information Y N)
Name: Clinton Lake Historical Society

Address: 1047 E 251 Diagonal Rd

City, State, Zip: Lawrence, KS 66047

Phone: Fax: E-mail:

Privacy Information: The Network to Freedom was established, in part, to facilitate sharing of information among those interested in the Underground Railroad. Putting people in contact with others who are researching related topics, historic events, or individuals or who may have technical expertise or resources to assist with projects is one of the most effective means of advancing Underground Railroad commemoration and preservation. Privacy laws designed to protect individual contact information (i.e., home or personal addresses, telephone numbers, fax numbers, or e-mail addresses), may prevent NPS from making these connections. If you are willing to be contacted by others working on Underground Railroad activities and to receive mailings about Underground Railroad-related events, please add a statement to your letter of consent indicating what information you are willing to share.

Paperwork Reduction Act Statement: This information is being collected for applications to the National Park Service's National Underground Railroad Network to Freedom to nominate properties, facilities, and programs to the Network to Freedom. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Response to this request is required for inclusion in the Network to Freedom in accordance with the National Underground Railroad Network to Freedom Act (P.L. 105-203).

Estimated Burden Statement: Public reporting burden for this form is estimated to average 15 hours per response including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding this burden estimate or any aspect of this form to the National Coordinator, National Underground Railroad Network to Freedom, NPS, 601 Riverfront Drive, Omaha, Nebraska 68102.



In addition to the responses to each question, applications must also include the following attachments:

- 1) Letters of consent from all property owners for inclusion in the Network to Freedom (see sample)
- 2) Text and photographs of all site markers
- 3) Photographs illustrating the current appearance and condition of the site being nominated
- 4) Maps showing the location of the site

S1. Site type:

Building Object District (neighborhood)

Structure Landscape/natural feature Archeological site

Other (describe):

S2. Is the site listed in the National Register of Historic Places? Y N

What is the listing name:

S3. Ownership of site:

Private Private, non-profit (501c3) Multiple ownership

Public, local government Public, state government Public, federal government

S4. Describe the site's association and significance to the Underground Railroad. Provide citations. Supplemental chronologies are encouraged.

One of the most active Underground Railroad conductors in Kansas was the "fighting preacher" Captain John E. Stewart. Stewart was part of the "Immortal Ten" who bluffed their way into the jail at St. Joseph to liberate John Doy, a conductor who had been caught escorting a party of freedom seekers on the Lane Trail. The group walked out with Doy, making their escape across the Missouri River in boats they had hidden on the banks for that purpose.¹

A former Methodist minister, Stewart lived on the Wakarusa River, south of Lawrence on a stockaded farm that was noted as a leading station on the Underground Railroad. Rather than wait for fugitives to make their way to his farm, Stewart raided plantations in Missouri. In December 1859, he wrote to New York merchant and abolitionist Thaddeus Hyatt that since the Doy rescue, he had liberated fourteen slaves from Missouri, including "one unbroken family, of which I feel rather proud." Stewart described his method of going into Missouri on the pretense of buying livestock or produce. Conversing with enslaved laborers, he showed them the hidden wagon bottom and armed them for self-defense. Sometimes successful escape depended on the fleetness of his horse, sometimes on a steady hand. Since his only capable horse had given out, he requested money from Hyatt to obtain another. Further, Stewart and his allies in Kansas did not have the resources necessary to help the fugitives who were destitute of any material goods. Once he liberated the slaves from Missouri, Stewart asked for assistance in finding a safe place. He speculated that "something is wrong in Nebraska & Iowa. I

¹ The "Immortal Ten" included Silas S. Soule, J.A. Pike, S.H. Willes, Joseph Gardner, Thomas Simmons, Charles Doy, Jacob Sinex, John E. Stewart, George Hay, and James B. Abbott. They were careful not to carry Sharps rifles, a well known badge of Kansas abolitionists. Sheridan, p. 27-34.



all realize that some have been captured here & sent back. ... sentiment from his wife who lamented that slavery made everyone wicked because she wanted to "burn every slaveholder up. I believe, husband, it would be right for you to shoot them."²



John Stewart
Photo: Kansas State
Historical Society

Stewart continued his work in spite of these challenges. Close friend Silas Soule, another of the Doy rescuers, wrote from Coal Creek on May 9, 1860 that Stewart had just brought up another three slaves, making 68 since he started. While Soule and Stewart were in Lawrence the previous day, a runner came with word that kidnappers had attacked Stewart's place. By the time Stewart and Soule could get back to the stockade, the kidnappers had taken one man and wounded another. The blacks had revolvers while out plowing the field, but Soule reported the five kidnappers had fired fifteen or twenty shots. The abolitionists gave chase for six miles but could not overtake them. Soule speculated that William C. Quantrill was among the kidnappers.³

S4a. Type(s) of Underground Railroad Association (select all that apply)

- Station Assoc. w/ prominent person Rebellion site Legal challenge
 Escape Rescue Kidnapping Maroon community
 Destination Church w/active congregation Cemetery Transportation route
 Military site Commemorative site/monument
 Other (describe):

S5. Provide a history of the site since its time of significance to the Underground Railroad, including physical changes, changes in ownership or use of the building(s) and site.

See summary

² John E. Stewart to Thaddeus Hyatt, December 20, 1859, Kansas State Historical Society

³ Sheridan, p. 131-132.



S6. Describe current educational programs, tours, markers, signs, brochures, site bulletins, or plaques at the site. Include text and photographs of markers.

None

S7. Identify historical sources of information. Include a bibliography.

Parker, Martha. *Angels of Freedom*.

Sheridan, Richard B. ed., *Freedom's Crucible: The Underground Railroad in Lawrence and Douglas County, Kansas, 1854-1865: A Reader*, Lawrence: University of Kansas, 1998

Stewart, John E. to Thaddeus Hyatt, December 20, 1859, Kansas State Historical Society.

S8. Describe any other local, state, or federal historic designation, records, signage, or plaques the site has.

None

S9. Is the site open to the public, and under what conditions?

No

S10. Describe the nature and objectives of any partnerships that have contributed to the documentation, preservation, commemoration, or interpretation of the site.

Clinton Lake Historical Society, Incorporated

S11. Additional data or comments. (Optional)



1855 United States Land Grant issued to John E. Stewart

1947 Louis A. Hayes purchased from Lawrence City Commissioners

1947 Albert F. McCue purchased from Louis A. Hayes

1951 Leslie L. McCue purchased from Hattie McCue (survivor of Albert F. McCue trustee Deed)

1953 Gerald I. Hoover purchased from Leslie L. McCue

1987 David Allen Switsher purchased from Gerald I. Hoover

1990 Lawrence Evilsizor purchased from David Allen Switsher

1994 Harry Winters purchased from Lawrence Evilsizor

**2008 estate willed to family Jennifer⁴ Stewart and Catherine³ Hess/
Harmay Acres LLC Robert S. Winters, Linda A. Miner,**
who deeded the property to their partnership
Harmay Acres, LLC.

2014 - Walter T. Deborah S. James
purchased from Harmay Acres, LLC.

Historic Function

The John E. Stewart property at the NW 1/4 of Section 21 Township 13, Range 20, was the homeplace, and farm of the John E. Stewart family. Mention is also made that Stewart had built a "strong fort" (see Connelley, p. 117) on this claim. In the 1860 Kansas census, Stewart, his wife four children, four white men (possibly farm hands) and four black men were listed in the household.

The site also functioned as a very active Underground Railroad Station Here from time to time came a number of runaway slaves that Stewart had brought from Missouri on the Underground Railroad.

Stewart also had a large number of cattle on his property from time to time. Connelley quotes a letters from Samuel Walker to W.W. Scott dated in the 1880s in which he relates that Quantrill reportedly drove cattle he had stolen from pro-slavery men in Missouri to Stewart's fort,

*The section number is given as 21 on 1857 J.Cooper Stuck map and in the Douglas County Pre-emptions, however, ^{20 correct} William E. Connelley states that Stewart's property was on land that was later (1909) the Douglas County Poor Farm. This would have been Section 20.

Current Function

Today the John E. Stewart property (if Sec 21) is on private property.

Narrative of Historical Significance of the Nominated Station

1) John E. Stewart, born ca. 1820, in England ca., and more recently a Methodist Minister from Salem, New Hampshire, was called the "General Traffic Manager" of the Lawrence Underground Railroad Station. (See Kansas City Star, July 21, 1905. This article refers to a letter dated 9 May 1860 from Coal Creek, Douglas County, KT from Silas Soule (KSHS) in which Soule states that Stewart "brought up three head the other night making sixty-eight since he commenced. ... he is going to make a haul of about fifteen next week.."

2) In an undated clipping from the *Lawrence Tribune*, (in possession of William E. Connelley ca. 1909) reference is made to John E. Stewart's house being "a common rendezvous of a certain class of extreme 'Free State' men and of slaves escaping from Missouri." Some of the men who visited Stewart's home were William Clarke Quantrill, John H. Kagi and "young Copple." He had also been "actively engaged" with old John Brown and Col James Montgomery in Linn and Bourbon Counties.

3) A letter from A.L. Reed to J.E. Stewart, 27 January 1861 (KSHS) seems to refer to John E. Stewart's taking in runaway slaves. "...Your expenses here are by no means small, a large Family help Full together with the endless number of those unfortunate creatures who know of no other asyllum in Kansas—but Capt. Stewart you may look at these things very lightly—but my dear SIR—it takes money..."

New County Convalescent Hospital Was Opened for Use October 1, 1944

Two years ago this month, early on the morning of April 13, 1944, the Douglas county farm home, near the Wakarusa river, burned to the ground. Nine of the 35 old persons living there were killed. The others, their possessions destroyed, were homeless, and were sent temporarily to hospitals or private homes.

Within a week, the county welfare board purchased a building at 1004 West Fourth street, for \$3,500. The \$24,300 remaining of the \$27,800 insurance was available for remodeling, refurnishing, and reconditioning the building, which had formerly been used as a fraternity house, then an N.Y.A. center, and later as apartments for Sunflower Ordnance workers. Public-spirited individuals and organizations helped with labor, furnishings, and supplies. On October 1, 1944, the new County Convalescent hospital was opened.

Remodeling and equipping of the building were slowed by war shortages of help and materials. Today, however, the transformation is almost complete. From basement to sunlit third floor, the walls are tinted in cheerful pastels. New laundry equipment has been installed in the basement. The windows have flower-appliqued curtains, made by farm bureau units. Painters are giving the outside wood trim of the brick building a freshening coat of white paint. The yard soon will be landscaped.

Miss Gertrude Hunt, director and dietician, has guided the process of decorating and equipping the hospital, assembled a staff, and turned the institution into a real "home for the 33 old persons now living there.

The average age of the 15 women and 18 men is 85. The oldest is 92, and the youngest is 68. Most of the men live in the large third floor dormitory. They sit under the skylight reading or playing cards, go downstairs to the dining room for their meals, and

often sit outdoors in the sun. Several of the men, who are paralyzed, have a large room on the second floor. From their windows, they can look out in three directions over green lawns, and watch squirrels playing in the nearby trees.

The women's rooms are on the second floor, with two, three or four in a room. They usually prefer to have their meals served on trays in their rooms, instead of eating downstairs. Their life is not exciting, but most of them keep busy knitting, mending, or making hooked rugs. One of them does mending for the whole group, while two others cut out and make their own clothes, entirely by hand. They all enjoy talking to friends and relatives during visiting hours from 2 to 4 in the afternoons, and 7 to 8:30 at night.

Most of the patients are invalid or semi-invalid, and all are under doctors' constant supervision. Each chooses his own doctor.

Mrs. Susan Miller and Mrs. Helen Talley are day nurses, while Mrs. Elsie May Baker is on duty at night. Mrs. Della Van Buren, the cook, has been at the hospital for more than a year. Mrs. Elizabeth Harkey helps prepare dinner, while Miss Ruby Kizer and Miss Ruby Stout help with cleaning and mending.

"We are fortunate," Miss Hunt says, "in that, during a time when most employers had a hard time getting and keeping help, four of our staff have been with us for a year or more."

The cost of maintenance and board averages about \$60 a patient. Some of the patients pay more, according to the nursing care they need, the place in the home available to them, and the financial status of their families, so that the cost to the county, for the others, averages about \$30.

"People are always ready to help us," Miss Hunt says. "We have only to ask. Last summer, for instance, someone gave us 20 bushels



Financial News Jan. 30 1866
10 o'clock A.M.

The Board of Commissioners met pursuant to adjournment.

Present: Messrs. Meason, Wason, Campbell and Paul R. Brooks County Clerk.

Genl. Seaman having offered to sell the County the North West quarter of Section County on Township Charter, Co. Range Towny Co. for the sum of Twenty-two Hundred Dollars, five hundred dollars to be paid down and seventeen hundred dollars in one year with interest at the rate of seven per cent. It was voted to accept the offer.

The Shannon & Ogden of Mr. Seaman presented a deed for said land which was examined and accepted and on motion ordered that a warrant be drawn on the Treasurer in favor of said Genl. Seaman for \$5000. Also a warrant for \$5,819.00 payable on the first day of February 1867 being the amount of the fund to grant on said land with interest as decided.

adjourned until one o'clock P.M.

One O'clock P.M.

The Board met pursuant to adjournment. Hall, Board and Clerk present.

John Parath County Assessor notified the Board that he had appointed James Stark and Gayden Graham Deputy Assessors and called them before the Board. On motion the appointments were approved.

J. D. Harrington presented evidence to the Board that he had paid illegal school tax to the amount of \$9.06 and asked that it be refunded. On motion ordered that said amount be refunded and charged to School District No. 11.

The Board of J. C. Stark Deputy County Assessor was founded and adjourned.

The following bills were audited and allowed as full pay:
H. Storm etc. \$428.40
S. J. ...

Business of Board. June 30 1866.
10 O'clock P.M.

The Board of Commissioners met pursuant to adjournment.

Present Messrs. Mason, Isaac Campbell and Paul W. Brooks County Clerk.

Geo. S. Stearns having offered to sell the lands the North West quarter of Section twenty (20) Township Thirtieth 45 Range twenty (20) for the sum of Twenty two hundred Dollars, five hundred dollars to be paid down and seven hundred Dollars in one year with interest at the rate of seven per cent. It was voted to accept the offer. The Chequon for Agent of Mr. Stearns presented a deed for said land which was examined and accepted and no objection or demand that a covenant be drawn with Chequon as in and to the Geo. S. Stearns Record also a Chequon of \$89.81 per payable on the first day of February 1867 being the amount of the first payment on said land with interest included.

adjourned until one o'clock P.M.

One O'clock P.M.

The Board met pursuant to adjournment. Fall Board and Clerk present.

John Smith County Assessor notified the Board that he had a printed annual State and Township Manual July 1866 and would the approval of the Board. On motion the appointments were approved.

J. G. Harrington presented evidence to the Board that he had paid the legal school tax on the amount of \$5.00 and asked that it be refunded to him. It was ordered that said amount be refunded and charged to School District No. 11.

The report of J. G. Steele Deputy County Assessor was presented and approved.

The following bills were audited.

and all over expenses.		
J. G. Steele	Exp. done &c.	\$428.45
J. G. Steele	Wood furnished	15.00
	over Sept.	150.00

COUNTY POOR FARM (LOST) CEMETERY
WAKARUSA TOWNSHIP

Owner: At the time it existed - Douglas County, Kansas.

Location: Two miles south of Highway #10 on Haskell Avenue. Turn left first road south end of bridge. Remains of Poor Farm about .3 miles on left (north) side of road. Cemetery was behind the building along the bank of the Wakarusa River.

We have no records as to when the "Poor Farm" or cemetery were first established, we do know, from newspaper accounts, that it existed as early as 1887. In one account written by George Hollingbery, who was unhappy with the obvious neglect and mistreatment of the inmates of this county home, he stated: "An aged Irishman died at the county farm, and was buried unceremoniously in the county farm burying place which was situated on the bank of the Wakarusa River in a narrow strip of land between the river and the road, and used as a cow pasture, said burying has long been without any protection from the desecrating root of pigs, or tramp of horses and cattle. This is another instance of the notorious want of decency that has long characterized the management of the asylum for the aged, sick and friendless poor of this county..." (1)

Because of this article a special meeting of the county commissioners was held in January, 1888 to investigate the Poor Farm situation. They wanted all who had complaints against the present superintendent, Mr. Dodge, or against his management of the Poor Farm to come before them. Some felt that Mr. Dodge was "a common drunkard, a profane and brutal man, and such facts were well known. The pauper sick were fed on corn bread and fat meat." Others who were called upon to testify were: Mr. Wheedon, Col. Sam Walker, Mr. Doolittle, Ex-Sheriff Carmean, William Marshall, Charles Gomer, Swan Johnson (a Swede), J.B. Walton, George Nell, H.D. Whitman, and Dr. Morris.

Several of those who testified thought Mr. Dodge was a good farmer, but drank too much, and they all felt he should be removed as superintendent of "The Home." (2)

The "new" building, known as the Poor Farm, was accepted by the Board of County Commissioners from the builder on March 13, 1911. "Bids for the building were let on July 23, 1910." John H. Petty was low bidder at \$22,944.00. The Board of County Commissioners consisted of A.C. Walter, T.L. McClelland, and J.C. Walton.

On March 15, 1927, the main barn was destroyed by fire. A former resident named W.J. Welshimer had been dismissed earlier from the home and was convicted by a jury in the District Court on May 7, 1927 of arson in the fourth degree for the burning of the barn. When he appeared for sentence to the penitentiary, Welshimer made the following statement, "you wouldn't keep me at the County Home, so I had to fix it so you would keep me some place." (3)

On April 13, 1944 this building was destroyed by fire. Eight of the 34 elderly residents of the County Home were burned to death-three of the dead were women. The 34-year-old brick and frame structure was a total loss. The building was insured for \$24,800 and the contents for \$3,000.

George Hoskinson, superintendent, and the six employees of the home rescued the other 26 residents. Screams of Charles Barton and John Baker, two elderly men sleeping in the basement, awakened Hoskinson and his wife about 1:30 A.M. - they found flames and smoke in the basement laundry room. Efforts with a fire extinguisher failed and employees took the aged residents from the burning building. Telephone lines to the home were cut off by the fire so Mrs. Hoskinson drove the truck to a nearby farm to call the fire department, when they arrived flames were already licking the slate roof of the two-story, 35 room building. Fire Chief Paul Ingels expressed belief that the fire started in a fusebox. Quick work by the firemen prevented damage to other buildings.

Three of the persons burned to death were in the north end of the structure. Mr. Hoskinson stated that he helped one inmate out twice and she returned to the burning building and died in the flames.

County Welfare Director, Mrs. Mildred Watson, and two members of her staff, Miss Cecelia Robinson and Mrs. Margaret Pierce, arranged temporary quarters in the community building for the displaced residents who had escaped from the burning building. County Commissioner M.N. Penny, and Councilman R.O. Burgert were also involved in making the arrangements.

With the help of the Red Cross the inmates were cared for until arrangements could be made for the care of those who were now homeless. One 69-year-old inmate was taken to Lawrence Memorial Hospital with both legs fractured - he either fell or jumped from a second story window during the fire.

The fire at its height was clearly visible from Lawrence. Coroner C.B. Runsey assembled a jury to visit the ruins of the home to gather evidence, and to remove the remains of the eight inmates who were burned to death. Those serving on the jury were: William Underwood, Ed Arnold, Al Bromelsick, Ed Fritz, Harold Fisher and Homer Allison. (3)

The county home was never built back.

Those who escaped the flames were:

Joseph ADAIR	75	Elva CHRISTY	65	John MEINKE	71
Mack ANDERSON	78	Albert DUNN	63	William MILLER	75
John BAKER	75	Margaret ERWIN	81	Robert PAGE	68
Charles BARTON	66	Charles GEELAN	80	Alvin PUCKETT	85
Emma BRENDER	74	Beulah GOFF	33	Lizzie RANDOLPH	51
Jasper BYFORD	86	George JOHNSON	81	Frank ROCKEFELLER	72
Thomas CAMPBELL	75	Andrew LEE	48	Mattie WARREN	73
John CHANCE	65	Mrs. Jacobena LUZIUS	84	Leo WILLIAMS	68
				Martin WHITE	75

Those who died:

Mrs. Alice EBBOU	86 - Lawrence	Fred W. PLATEMAN	88 - Big Springs
Mrs. Ida CLARK	80 - Leecompton	William St. CLAIR	88 - Big Springs
Miss. Elizabeth WHITELAW	76 - Topeka	Isaac TABOR	71 - Lawrence
Peter LUZIUS	83 - Lawrence	Lafayette TABOR	82 - Lawrence (3)

2

COUNTY POOR FARM (LOST) CEMETERY
WAKARUSA TOWNSHIP

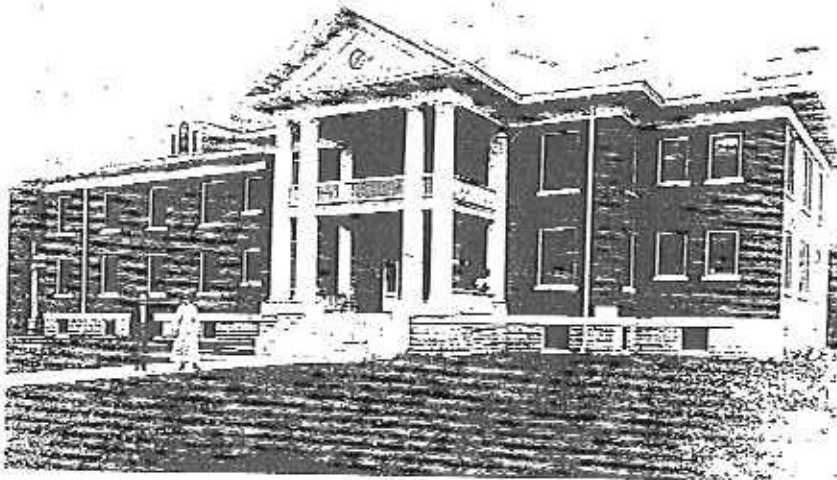
We were unable to locate any records or record book for the County Poor Farm. Records of burials on the "farm" listed below have been taken from other records.

C.W. Smith Mortuary Records:

- | | | | |
|----------------------|---------------------|----------------|-----|
| 1 - FRANKLIN, Joseph | - Bd: Dec. 16, 1893 | - age 64 | |
| 2 - FURGASON, infant | - Bd: Jan. 4, 1891 | - No age given | |
| 3 - HATTAN, child | - Bd: Apr. 28, 1893 | - No age given | |
| 4 - EDWARDS, infant | - Bd: Nov. 25, 1901 | - Stillborn | |
| 5 - ANDERSON, Minnie | - Bd: Jan. 19, 1894 | - No age given | |
| 6 - BARKLEY, Dan'l | - Bd: Jan. 23, 1895 | - No age given | |
| 7 - LOWE, Mrs. | - Bd: Oct. 21, 1891 | - No age given | |
| 8 - LOW(S)?, Carrie | - Bd: Jan. 1893 | - No age given | |
| 9 - SUKEY, _____ | - Bd: Feb. 11, 1891 | - No age given | |
| 10- JACKSON, _____ | - Bd: July 3, 1892 | - No age given | |
| 11- CORDER, child of | - Bd: Apr. 22, 1893 | - No age given | |
| 12- WRIGHT, Ora | - Bd: May 10, 1892 | - No age given | (4) |

Western Home Journal, Feb. 23, 1883

"Died - at the poor farm, on Tuesday evening, February 14, 1882, of paralysis, Caroline Holmes, colored, aged sixty-five. She was born in Missouri, and was sent from Lawrence there, September 1, 1881..." (5)



"New"
County Poor Farm
Built in 1911

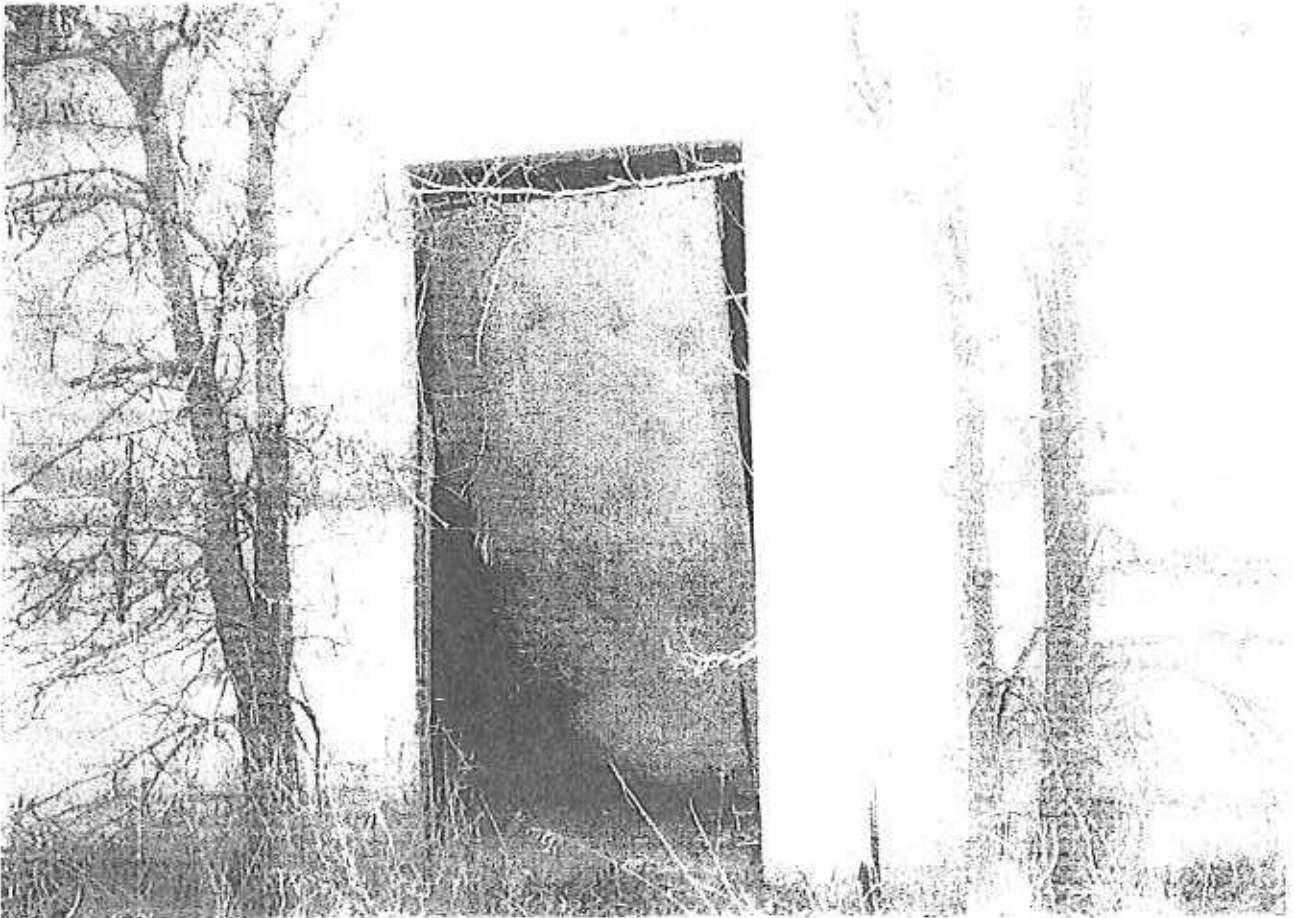
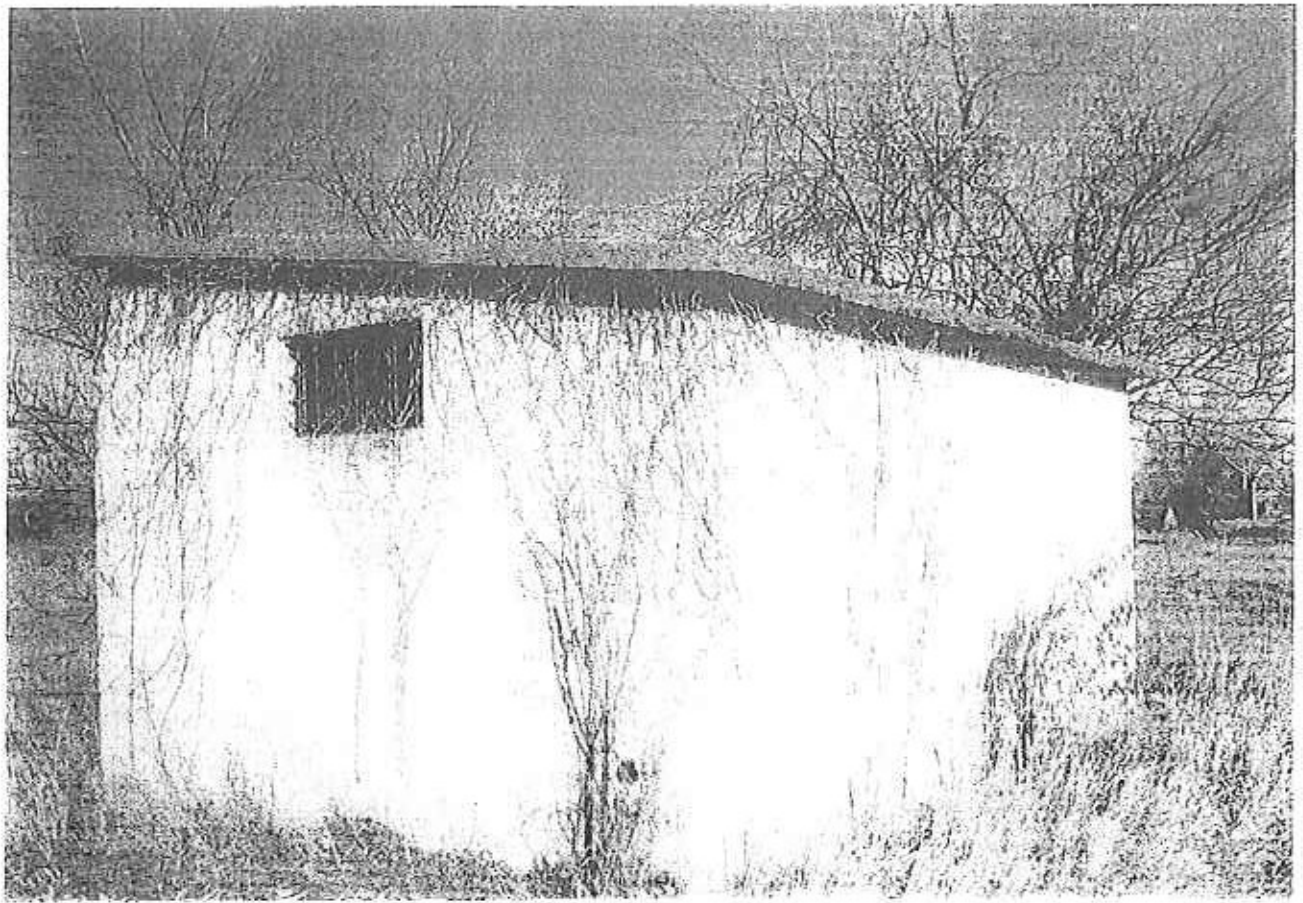
After Fire
April 13, 1944



Photos

Courtesy Watkins Community Museum







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5 Mistakes Real Estate Investors Should Avoid

By Glenn Curtis

AA |

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REAL ESTATE: FROM CRASH TO CASH
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Real estate investors and first-time home buyers face an uphill battle in a slow real estate market. When it comes to buying and selling properties, it is still possible to make money, but it won't be easy. However, avoiding some classic mistakes will help put you on the right track. (Considering jumping into the real estate market? Read *Five Things Every Real Estate Investor Should Know* first!)



Tutorial: Exploring Real Estate Investments

Mistake 1. Lack Of Research

Before most individuals buy a car or a television set they compare different models, ask a lot of questions and try to determine whether what they are about to purchase is indeed worth the money. The due diligence that goes into purchasing a home should be even more rigorous.

There are also research considerations for each type of real estate investor - whether a personal homeowner, a future landlord, a flipper or a land developer. (If you're flipping houses, check out *Fix It And Flip It: The Value of Remodeling*, *Five Mistakes That Make House Flipping A Flop* and *Top 5 Must-Haves For Flipping Houses*.)

Not only must the prospective buyer ask a lot of questions about the home, but he or she should also inquire about the area (neighborhood) in which it is located. (After all, what good is a nice home if just around the corner is a college frat house known for its all-night keg parties? Unless of course, you're attracting a student renter.)

The following is a list of questions that would-be investors should ask regarding the home in question:

- Is the property built in the vicinity of a commercial site, or will long-term construction be occurring in the near future?
- Does the property reside in a flood zone or in a problematic area, such as ones known for radon or termite problems?

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- Does the house have foundation or permit "issues" that will need to be addressed?
- What is new in the house and what must be replaced?
- Why is the homeowner selling?
- What did he or she pay for the home and when?
- If you are moving into a new town, are there any problem areas in town?

Mistake 2. Getting Lousy Financing

Though the real estate bubble in North America ostensibly popped in 2007, there are still a large number of exotic mortgage options. The purpose of these mortgages is to allow buyers to get into certain homes that they might not otherwise have been able to afford using a more conventional, 25-year mortgage agreement. (Learn more about exotic mortgages in *Choose Your Monthly Mortgage Payments.*)

Unfortunately, many buyers who secure adjustable/variable loans or interest-only loans eventually pay the price when interest rates rise. The point is that home buyers should make sure that they have the financial flexibility to make the payments (if rates go up). Or they should have a back-up plan to convert to a more conventional fixed-rate mortgage down the line. (Find out more in *Mortgages: How Much Can You Afford?*)

Mistake 3: Doing Everything on Your Own

Many buyers think that they know it all, or that they can close a real estate transaction on their own. While they might have completed a number of deals in the past that went well, the process may not go as smoothly in a down market - and there is no one you can turn to if you want to fix an unfavorable real estate

deal.

Real estate investors should tap every possible resource and befriend experts that can help them make the right purchase. A list of the potential experts should, at a minimum include a savvy real estate agent, a competent home inspector, a handyman, a good attorney and an insurance representative. These experts should be capable enough to alert the investor to any flaws in the home or neighborhood. Or, in the case of an attorney, he or she may be able to alert the home buyer to any defects in the title or easements that could come back to haunt them down the line. (For more, see *The Benefits Of Using A Real Estate Attorney.*)

Mistake 4: Overpaying

This issue is somewhat tied into the point about doing research. Searching for the right home can be a time-consuming and frustrating process. And when a prospective buyer finally finds a house that actually meets his or her needs/wants, the buyer is naturally anxious to have the seller accept the bid.

The problem with being anxious is that anxious buyers tend to overbid on properties. Overbidding on a house can have a waterfall effect of problems. Buyers may end up overextending themselves and taking on too much debt,



Why You Don't Need Mortgage Protection ...
By Amy Fontinelle

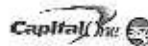


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Market insights

creating higher payments than they can afford.; as a result, it may take years for the home buyer to recoup this investment.

Are You Overpaying?

To find out whether your dream investment has a high price tag, start by searching what other similar homes in the area have sold for in recent months. Any real estate broker should be able to provide this information with relative ease (particularly with their access to a multiple listing real estate agent database). But as a fallback, or if you are not using a realtor's services, simply look at comparable homes in the local newspaper, and see what they are being offered for. Logic should dictate that unless the home has unique characteristics that are likely to enhance its value over time, the buyer should try to keep any bids consistent with other home sales in the neighborhood.

Buyers should realize that there are always other opportunities out there, and that even if the negotiation process becomes bogged down or fails, the odds are in their favor that there is another home out there that will meet their needs. It's just a matter of being patient in the searching process.

Mistake 5: Underestimating Expenses

Every homeowner can attest to the fact that there is way more to owning a house than just making the mortgage payment. Unlike renting, there are maintenance expenses that go along with mowing the lawn, painting the shed and tending the garden. Then there are the costs associated with furnishing the house and keeping all of the appliances (such as the oven, washer/dryer, refrigerator and the furnace) running, not to mention the cost of installing a new roof, making structural changes to the house, or other little things like insurance and property taxes.

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The point is that first-time investors tend to forget these costs when house hunting. Unfortunately, this is exactly why many new homeowners tend to be house poor and cash poor. (To learn more, see *Five Mistakes That Make House Flipping A Flop* and *McMansion: A Closer Look At The Big House Trend*.)

The best advice is to make a list of all of the monthly costs that are associated with running and maintaining a home (based upon estimates) before actually making a bid on one. Once those numbers are added up, you'll have a better idea of whether you can really afford a property.

Determining expenses prior to purchasing a property is even more important for house flippers and investors. That's because their profits are directly tied to the amount of time it takes them to purchase the home, improve it and resell it. In any case, investors should definitely form such a list. They should also pay particular attention to short-term financing costs, prepayment penalties and any cancellation fees (for insurance or utilities) that might be borne when the home is flipped in short order.

Bottom Line

The reality is that if investing in real estate were easy, everybody would be doing it. Fortunately, many of the struggles that investors endure can be avoided with due diligence and proper planning before the contract is signed.

(To learn about the perks of real estate investing, see our *Exploring Real Estate Investment Tutorial* and *Investing In Real Estate*.)



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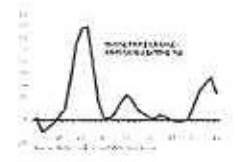


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7 neighborhood threats to your home's value



Who — or what — is next door can affect how much people will pay for your home.

By Brian O'Connell of MainStreet

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Bad neighbors can be a serious problem, according to the Appraisal Institute. An unkempt yard, proximity to a sex offender or having certain commercial facilities nearby, such as a power plant or funeral home, can reduce the value of surrounding homes by as much as 15%.

"The impact can vary tremendously, depending on a few factors: how 'bad' the bad neighbor is, the kind of neighborhood you're located in and the type of market that exists," says Carlos Gobel, director of residential services at Integra Realty Resources in Miami.

But what exactly is a "bad" neighbor? Definitions vary, but real-estate professionals say it boils down to any home or business that turns people off.

© Gail Mooney/Masforfile

"A bad neighbor is one that has no consideration for the rest of the community," says Mindy Pordes, co-founder of Pordes Residential Sales & Marketing in Aventura, Fla. "For example, someone who doesn't take care of the outside appearance of the home, such as the gardening, painting of the outside of the home, roof, garbage and general upkeep. In addition, a bad neighbor may have constant visitors taking up parking spaces, perhaps on the street, loud house parties, dogs that bark all night or stray cats lingering around."

more from MainStreet.com

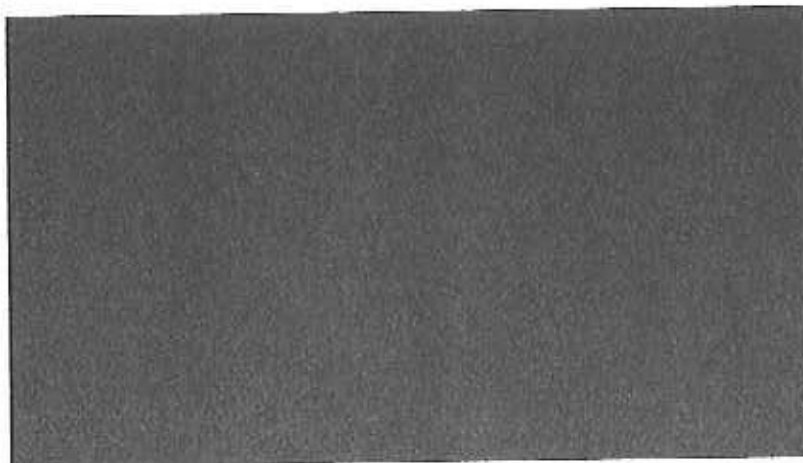
- 5 neighbors that can boost home prices
- 8 things your movers don't want you to know
- 8 signs you have a bad real estate agent

A "bad" neighbor can also be a business or government enterprise whose very existence drives down the value of your property. Here are seven surprising neighbors that can reduce your home's value:

What's your home worth?

Power plants. The data are fairly clear on the impact of a power plant on nearby home values — it usually hurts them. A study (PDF) from the University of California at Berkeley shows that home values within two miles of a power plant can be decreased between 4% and 7%.

Article continues below



City Hopes Ordinance Will Send Message To Sex Offenders
Date: 3/21/2011 Duration: 002:0033 Video By: [KETV Omaha](#)
State lawmakers have left it up to cities to decide where sex offenders should be allowed to live. Bellevue is one city creating a buffer zone around schools and day cares.

More Videos

Landfills. A study (PDF) from the Pima County, Ariz., assessor's office shows that a subdivision near a landfill loses 6% to 10% in value compared with a subdivision that isn't near a landfill — all other residential factors being equal, including house size, school quality and residential incomes.

Robert A. Simons, an urban planning professor at Cleveland State University, [says](#) that if you live within two miles of a Superfund site — a landfill that the government designates as a hazardous-waste site — your home's value could decline by up to 15%.

MSN Money: [Will these neighbors hurt your home value, too?](#)

Sex offenders. Living near a registered sex offender is one of the biggest downward drivers of home values. Researchers at Longwood University in Farmville, Va., [concluded](#) that the closer you live to a sex offender, the more your home will depreciate. In the paper, "Estimating the Effect of Crime Risk on Property Values and Time on Market: Evidence from Megan's Law in Virginia," Longwood researchers say, "The presence of a registered sex offender living within one-tenth of a mile reduces home values by about 9%, and these same homes take as much as 10% longer to sell than homes not located near registered sex offenders."

'Listed': [Bank works with cities to combat foreclosure blight](#)

Delinquent bill payers. One surprising way neighbors can bring down the value of surrounding homes, especially in town home or condo communities, is by not paying their maintenance fees or mortgages. "Bad neighbors bring values down by not paying their maintenance fees, in some cases their mortgage payments, and not maintaining the home's appearance," Pordes says. "These homeowners usually do not care about real-estate values."

Foreclosed homes. Perhaps the biggest single factor that drives nearby home values down is a foreclosure. A recent study by the Massachusetts Institute of Technology concludes that the value of homes within 250 feet of a foreclosed property will decrease by 1% per foreclosure, on average. Federal Reserve Governor Joseph Tracy said recently in his economic outlook for 2011: "The growing inventory of defaulted mortgages continues to weigh down any

recovery in the housing market ... Problems in housing markets can impact economic growth."

Lackluster landscaping. Studies show that lawn care has a big impact on surrounding home values. Virginia Tech University [released a report](#) stating that pristine landscaping can jack up the value of a home by 5% to 11%.

Closed schools. Sometimes, neighborhood problems can stem from local government action. For example, if a cash-strapped city or town closes a neighborhood school, that can easily steer home values south. The National Association of Realtors says 75% of home shoppers say the quality and availability of schools in the neighborhood is either "somewhat important" or "very important."

So can you fight back against problem neighbors? In the case of a landfill, power plant or sex offender, your options are severely limited. As long as your neighbors are following the letter of the law, you'll just have to grin and bear it — or move. If not, you have every right to petition your local government authorities for a grievance and at least get the matter reviewed.

If it's a residential property causing the problem, however, you might have better options.

For starters, you can leave a polite letter in the offending homeowner's mailbox to get his attention. In addition, Pordes says that if the home is within a homeowners association or condo association, the association can send letters to the homeowner and deny him community privileges to encourage him to comply with the community rules and maintain home values.

Most cities and towns have ordinances against messy yards and junk-laden driveways, so check your community's rules and regulations to see what applies.

Unfortunately, many cities and towns also have landfills, power plants and other less-than-desirable commercial-sized neighbors.

Most likely, you're just going to have to live with them.

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results by

nightmare neighbors



Chris Brown - Nightmare Neighbor



Nightmare Neighbors Anyone Would Dread



How To Deal With Nightmare Neighbors - GoogleBites

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Lawrence, Kansas

PRELIMINARY DRAFT
TOFU PRODUCTION



ADDITION

PRODUCTION
&
PACKAGING



WALK IN

TO
BASE
HEIGHT

BATH
ROOM

LABELS
&
LOCKERS

OFFICE

L ←

1/8" = 1'



SOY Central Soyfoods, LLC
43-1974482
FYE: 12/31/2005

Limited Liability Company Annual Report
Central Soyfoods, LLC

2/27/2006 11:27 AM

Partner Number	Members Who Own 5% or More of Capital	Percent of Ownership	Address
1	Ed Reznicek	13.8267000	Route 2, Box 23 Goff, KS 66428
2	David T. Millstein	12.579000	64 East 1750 Road Baldwin City, KS 66006
3	Susan Y. Millstein	18.867000	464 East 1750 Road Baldwin City, KS 66006
7	KS Organic Producers	12.578000	Route 2, Box 23 Goff, KS 66428
11	William J. Mackie	18.867000	3036 Woodson Road Baldwin City, KS 66006

KANSAS SECRETARY OF STATE
NON-CERTIFIED WEB COPY
10/12/2014 3:06:26 PM

Form LC		KS Limited Liability Company Annual Report - Member Listing		2013
Name		KS ID Number	Employer Identification Number	
For the taxable year beginning 01/01/13 ending 12/31/13			43-1974482	
Central Soyfoods, LLC				
Members who own 5% or more of capital	Address			Country
Ed Reznicek	1890 88th Road Goff	KS 66428		US
David T. Millstein	464 East 1750 Road Baldwin City	KS 66006		US
Susan Y. Millstein	464 East 1750 Road Baldwin City	KS 66006		US
KS Organic Producers	Route 2, Box 23 Goff	KS 66428		US
Bob Lominska	1954 Union Road Lawrence	KS 66044		US
Joy Lominska	1954 Union Road Lawrence	KS 66044		US
William R. Jr. Mackie, Jr.	3036 Woodson Road Baldwin City	KS 66006		US

KANSAS SECRETARY OF STATE
NON-CERTIFIED WEB COPY
9/29/2014 5:18:34 PM

9-4-14

Dear Mr. and Mrs. Long,

I am the bookkeeper at and a shareholder in Central Soyfoods. The planning commissioner forwarded us an email from Mr. and Mrs. Othick expressing concerns about our hopes of moving our kitchen out of the industrial area where we are now into the building at 1168 E 1500 Road, a far more pleasant location.

Having lived in rural Douglas County since 1972, by our personal preference, I know how we all feel about changes in our areas. We live in the country to be away from industry and commercialism. So I understand your concerns.

I would very much like to sit down with any of the neighbors who have questions or concerns about our operation and how it may impact the neighborhood. I feel I can allay your fears when you see what we do and how small we are. We would only want to be good neighbors. I can meet you together, or individually, wherever you prefer, at any time convenient for anyone. If you prefer, you may feel free to email me at symillstein@gmail.com or write me at 464 E 1750 Rd., Baldwin City, KS 66006.

Thank you and I look forward to meeting you.

Sincerely,

Susan Millstein

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5 Mistakes Real Estate Investors Should Avoid

By Glenn Curtis

AAA |

You may also like: [Five Chart Patterns you need to know...](#)



REAL ESTATE: FROM CRASH TO CASH
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Real estate investors and first-time home buyers face an uphill battle in a slow real estate market. When it comes to buying and selling properties, it is still possible to make money, but it won't be easy. However, avoiding some classic mistakes will help put you on the right track. (Considering jumping into the real estate market? Read *Five Things Every Real Estate Investor Should Know* first!)

Tutorial: Exploring Real Estate Investments

Mistake 1. Lack Of Research

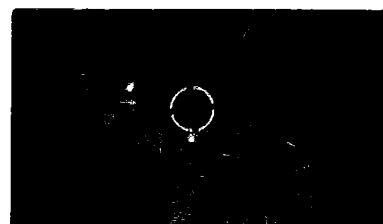
Before most individuals buy a car or a television set they compare different models, ask a lot of questions and try to determine whether what they are about to purchase is indeed worth the money. The due diligence that goes into purchasing a home should be even more rigorous.

There are also research considerations for each type of real estate investor - whether a personal homeowner, a future landlord, a flipper or a land developer. (If you're flipping houses, check out *Fix It And Flip It: The Value of Remodeling*, *Five Mistakes That Make House Flipping A Flop* and *Top 5 Must-Haves For Flipping Houses*.)

Not only must the prospective buyer ask a lot of questions about the home, but he or she should also inquire about the area (neighborhood) in which it is located. (After all, what good is a nice home if just around the corner is a college frat house known for its all-night keg parties? Unless of course, you're attracting a student renter.)

The following is a list of questions that would-be investors should ask regarding the home in question:

- Is the property built in the vicinity of a commercial site, or will long-term construction be occurring in the near future?
- Does the property reside in a flood zone or in a problematic area, such as ones known for radon or termite problems?



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Five Chart Patterns You Need To Know

General Design Considerations
Adopted 8-17-78

2. Proposed development may be served or unserved by the proposed collection and/or treatment system and may consist of new subdivisions, platted land, adjacent platted property, etc.
3. Separation distances may include roadway or railway right-of-ways as long as a minimum of 100 feet from property lines is observed.

Minimum Separation Distances

1. Minimum separation requirements for facilities of 10-99 P.E. are as listed (in feet) in the following table:

<u>Plant Type</u>	<u>Existing Habitations</u>	<u>Proposed Development</u>	<u>Property Lines</u>
Activated Sludge	500*	350	100
Trickling Filter	500*	350	100
Aerobic Lagoon	500*	350	100
Anaerobic Lagoon	1000	1000	100
All other facilities	500*	350	100

2. Minimum separation requirements for facilities of 100 P.E. and larger are as listed (in feet) in the following table:

<u>Plant Type</u>	<u>Existing Habitations</u>	<u>Proposed Development</u>	<u>Property Lines</u>
Activated Sludge	1000*	350	100
Trickling Filter	1000*	350	100
Aerobic Lagoon	500*	350	100
Anaerobic Lagoon	1000	1000	100
All other facilities	1000*	350	100

*This distance may be reduced to a minimum of 350 feet with the written permission of the affected property owner having a habitation less than 1000 feet from the proposed treatment works. The written permission must be a notarized statement from the affected property owner stating that there are no objections to the establishment and construction of the treatment facility. The statement shall not waive any future rights with respect to future action on lack of proper operation and maintenance. A copy of the notarized statement must be furnished to this office, the property owner, and the owner of the treatment plant.

3. The above distances are required minimums. Requests for further reductions or additions must be fully documented and will be reviewed by Water Pollution Control Section, Bureau of Water Quality staff. However, further reductions/additions will not be approved on a routine basis.
4. Where an existing treatment plant has been established on a site with fixed boundaries, modifications, and/or additions to the plant should only be concerned with the 100 foot separation from property lines.

KDSH

SECTION 12 LOCATION REQUIREMENTS

- 3-12.1 Unless otherwise approved by the Health Department, the single-family waste stabilization pond shall be located as set forth in Table 1. No single-family waste stabilization pond shall be installed within:
- a. Twenty-five (25) feet of any private water line or water meter (p. 4, KDHE Bulletin 4-2, or as amended).
 - b. Fifty (50) feet of any house or ther building.
 - c. Fifty (50) feet of any cistern, in-ground swimming pool, surface water course, creek bank, stream, river, pond, or lake (p. 4, KDHE Bulletin 4-2, or as amended).
 - d. One hundred (100) feet of any property line, including right-of-way.
 - e. One hundred (100) feet of any water well.
- 3-12.2 No single-family waste stabilization pond permitted after January 1, 2007, shall be installed within the floodplain nor where groundwater or adverse geological formations may result in the contamination of groundwater by sewage.
- 3-12.3 All distances shall be measured from inside top of the waste stabilization pond dike.

SECTION 13 MINIMUM DESIGN AND CONSTRUCTION

- 3-13.1 Sewage Conduits
- a. Size of sewage conduits – Sewage conduits connecting component parts of Single-family Waste Stabilization Pond systems shall be a minimum of four (4) inches in diameter.
 - b. Materials – All pipe and fittings used in sewage conduits shall be constructed of PVC and meet nationally-recognized standards for their designated use-such as Standards published by the American Society for Testing and Materials or the National Sanitation Foundation and shall have been approved by the Health Department for use in on-site management systems. Sewage conduits under driveways or similar areas of load or impact shall be of material capable of withstanding maximum anticipated loads. All sewage pipe shall be marked to indicate it meets or exceeds a Schedule 40 or heavier “crush test” rating.

TO: Douglas County Commission, 10/20/14

The property in question was put on the market in 2007. Susan and I use Haskell or 1055 as our route home and over the period the location was on the market we began to think about it as a good location for Central Soyfoods. We thought we did our due diligence concerning the legality of moving the plant, i.e. zoning, by telling the real estate agent our plans and asking him to check into the zoning. He confirmed that it would have to be rezoned but our use fell within the zoning guidelines in that it was possible to get a value added ag use for the location. I then confirmed this with planning. The die was cast and after the property was on the market for around 2 years; we made an offer and bought it in 2010.

We had little contact with the neighbors and they knew nothing about it's potential use until I rented the house on the property to our production manager who, during his stay in the house, made it clear to our neighbors on the south that it was ultimately going to be used as a soy/ tofu production facility; it was spring of 2010. My first contact with our neighbors was in the summer of 2012 while mowing the yard. Willis Long, our neighbor to the south, walked over and we had a neighborly talk in which one of the topics was the future use of the property. I only wish he would have expressed his concerns at that time, but all seemed to be copacetic.

I bring up the aforementioned for the following reasons; We bought the property solely to use it for the home of Central Soyfoods. We did due diligence before we acquired the location as to zoning. We were always upfront concerning our intended use of the property. There were no protests by the neighbors concerning our intentions until this summer, a full four years after they were informed of our future plans.

Central Soyfoods, a brief history:

Established in 1978 by Jim Cooley and located adjacent to the alley at 1403 Massachusetts, Central has been producing soy products, primarily tofu, for over 36 years. Over these decades Central has never been more than a micro business but has excelled at making high quality products that over these years has won the hearts and stomachs of consumers in the Lawrence and Kansas City region. In 2002, Central moved it's operation to 710 E. 22ND. St., Lawrence. When expectations for increased volume and distribution failed to materialize, the original business went into bankruptcy. In 2003 a group of interested parties bought the debt and assets of the company, re-organized the business structure into an LLC and went back into production.

Over the next decade Central has continued on it's slow upward trajectory, doubling it's revenue and increasing market penetration in the region while still retaining it's micro-business footprint.

Some Details:

Physical plant, 3300 square feet.

Employees, 5 part time, around 100 total work hours per week.

Production days; We currently produce 13 days per month, but would like to up that number to 16. Our working hours are around 6:00 am-1:30 pm for the cook and the former and 10:00am -3:30pm for the packagers.

Noise and air pollution; low to none.

Deliveries; using 1 small delivery van, we visit Lawrence customers twice per week and KC customers twice a week.

Receiving; Currently we receive 60 bushels of organic soybeans, mostly county grown, once per month. If our current request for re- location is approved, we will cut the bean deliveries down to 2 or 3 per year by the addition of a 500 bushel grain bin. Other UPS Fed/ Ex deliveries come on an irregular basis, but not more than 2 or 3 per week.

By-products are produced in the manufacture of tofu. Okara, or the fiber from the soybean mixed with the water soluble vitamins and some minerals, is a useful by product picked up on production days and used as fertilizer by a number of local organic farmers. We produce about 300 lbs. of okara per production day. Whey is the second by product produced in the process consisting mostly of water with water soluble vitamins and minerals. Both of the by-products are non-toxic and in fact are used in the manufacture of other food products.

Water usage: Of the 1500 gallons per day used in production (water that would be directed to the grey water lagoon) the water content would be as follows: Dishwashing detergent .00133%, bleach .00033%, vinegar .00266%, soy milk clean-out and soy particulate clean-out .00037%, making the resultant grey water 99.99521 % tap water.

Raw materials: The soybeans used in our products are certified organic, 50% of which are grown in the county and the rest grown within 100 miles of Lawrence.

These are the facts regarding this request for a Conditional Use Permit. We hope you will approve our application.

Thanks, Central Soyfoods LLC Dave & Sue Mulstein



L to R
MARK
Robertson
EMILY
HAEFNER
AARON
KRAUS
ELLIE
CLARK
NP,
DICKIE
HECKLER

From: County Commissioner - Thellman, Nancy
Sent: Sunday, October 19, 2014 9:51 AM
To: AD - Crabtree, Robin
Subject: please add to packet

Robin,
Would you please add this to our packet for Wednesday's meeting? It was sent to all of us...so probably should be shared with general public.

Thanks!
Nancy

Sent from my iPad

Begin forwarded message:

From: Willis Long <longbell61@aim.com>
Date: October 17, 2014 at 7:30:51 PM CDT
To: <mgaughan@douglas-county.com>, <nthellman@douglas-county.com>, <jflory@douglas-county.com>

Dear Commissioners,

We would like to tell you our side on the factory that is trying to come in under the C U P -14-00304.

We own 25 acres that surrounds their 5 acres . We are on the north, east , and south sides of them. We have planed on selling our house and building on the North side when we retire, that won't happen if this passes . We will loose 12-15%of our property value(per 7 neighborhood threats to your home's value) not to mention how long it will take to get it sold. Also if there is a lagoon ,our land will be land locked do to the required set backs set by the state,(per Don Carlson KDHE) and why would we build a new house with a factory in the back yard.

We don't understand how a shareholder can apply for permits on behalf of a company, just so that they them selves can make a profit . If Central Soy doesn't follow through, or anytime this Stand Alone Spec. Rental Factory is empty the Millsteins can rent to anyone. This is only for their own good it will not benefit our neighbor hood at all.

There are several legal reason as to why this cannot pass , you will see those in the letter written by our attorney presented to the City / County Planning Committee. I am not sure but I don't think legal was never asked about the points that were made.

We have had several question that we can't get answers to, do to not having full discloser as to what is going on . Even to this day.

At the one and only meeting I had with Mary Miller I was told that,I need to have a sit down meeting with the Millsteins and do what ever to get this through.

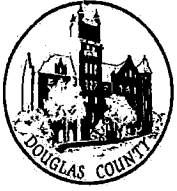
We would hate to see history get pushed out by way of industry, this area has the underground R.R. as well as the Douglas County Poor Farm with the original barn still standing on our property , and a dynamite shed . Also the Oregon Trail passed over this area.

Although this doesn't cover everything it is just a start, there are so many wrongs here. Please don't pass this till you have proof of all facts, and do all back ground checks

We are exhausted trying to figure out what is going on as things change every time we talk to some one at the City, County , or State level.

How can one fight for what they have worked their entire life for when you can't get full and complete discloser.

Thank You
Willis and Linda Long



JAMIE SHEW
DOUGLAS COUNTY CLERK
1100 Massachusetts
Lawrence, KS 66044

Marni Penrod-Chief Deputy Clerk
Benjamin Lampe-Deputy Clerk Elections

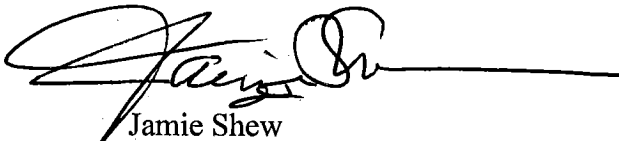
October 1, 2014

ATTN: DOUGLAS COUNTY COMMISSIONERS

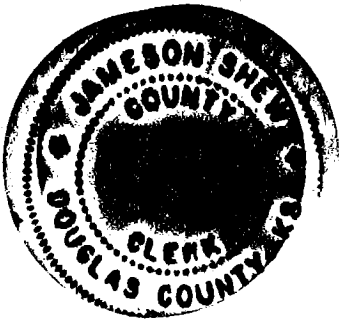
RE: Protest Petition against Conditional Use Permit 14-00304, Central Soyfoods LLC

CERTIFICATION

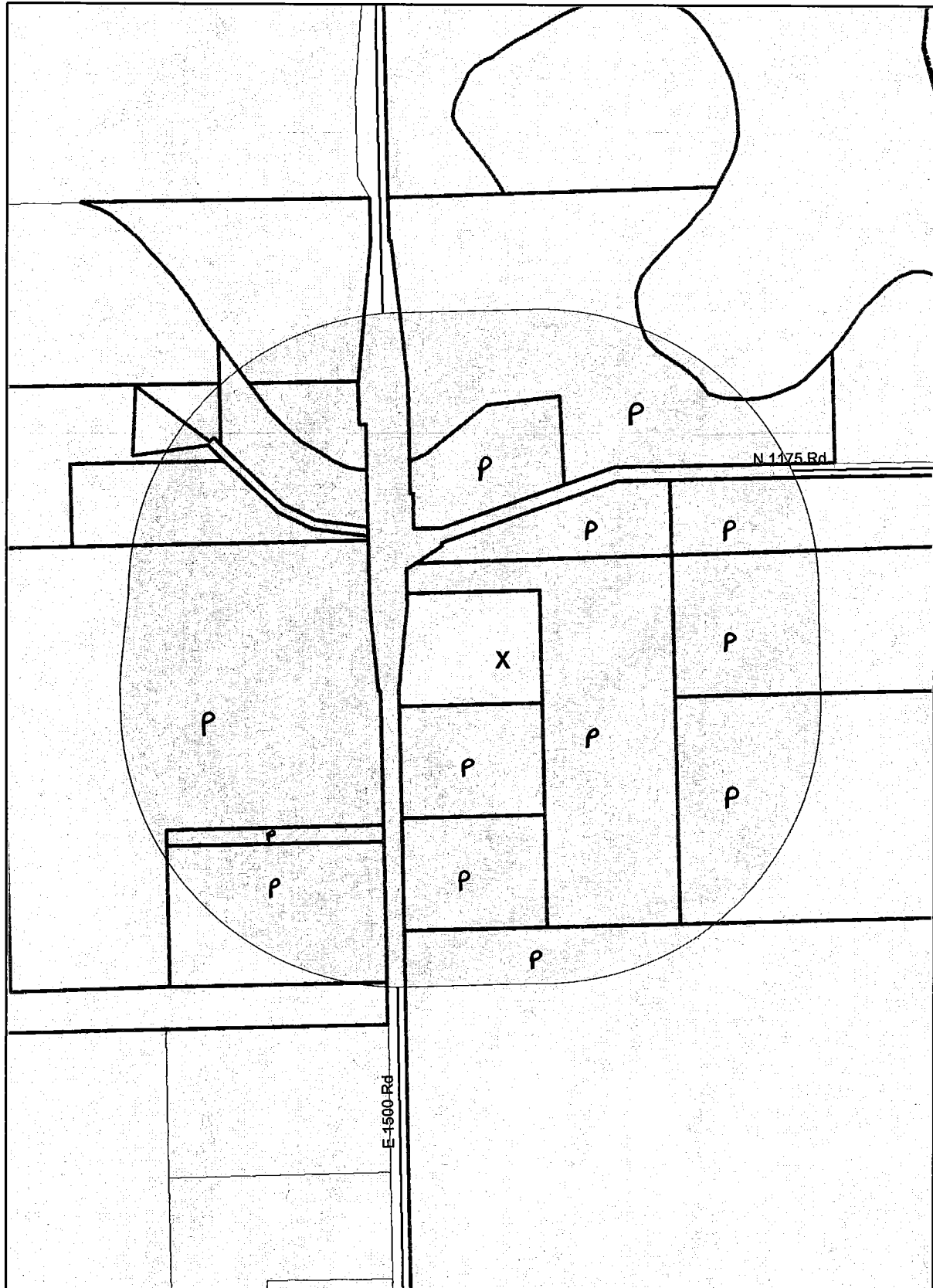
I, JAMIE SHEW, DOUGLAS COUNTY CLERK, DO HEREBY CERTIFY THAT THE ATTACHED PETITION, RECEIVED ON October 1, 2014 IS A VALID PETITION.



Jamie Shew
Douglas County Clerk



POL CUP 14-00304
(800899D)



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

Forest Tractor by ROBERT J. ... 1705 N 1389 LAWRENCE, KS
[Signature] 023-104-19-0-00-07-000-07-0 10/1-14

STATE OF KANSAS))
 COUNTY OF DOUGLAS)) ss:

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

[Signature] Linda Long
 Circulator Signature Printed Name

Circulator's Residence and Address 1164E. 1500 RD Date 10/1/14

Signed and sworn to (or affirmed) before me on this 1 day of October, 2014, by Linda Long, circulator of this Protest Petition.

Catherine Merritt
 Notary Public
 My appointment expires: 04/25/2015

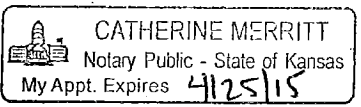


Exhibit A

A tract of land located in the Northwest Quarter of Section 20, Township 13 South, Range 20 East of the 6th P.M., Douglas County, Kansas, more particularly described as follows: Commencing at the Southwest corner of the Northwest Quarter; thence North 0°21'09" East a distance of 800.00 feet to the point of beginning, said point being on the West line of the Northwest Quarter; thence continuing along said West line North 0°21'09" East a distance of 400.00 feet; thence South 89°48'37" East a distance of 550.00 feet; thence South 0°21'09" West a distance of 400.00 feet; thence North 89°48'37" West a distance of 550.00 feet to the point of beginning, containing 5.05 acres more or less.

Subject to easements, reservations, and restrictions, if any of record.

REZONING (CONDITIONAL USE PERMIT) PROTEST PETITION

Protest Petition against Cwp 14-00304

We, the undersigned property owners, do hereby protest the granting by the Board of County Commissioners of Douglas County, Kansas of [proposed rezoning from _____ (existing zoning) to _____ (proposed zoning)] or [a CUP to permit Value Added Ag Use] on the following described property: 1168 E 1500 Rd - (800899D)

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

see Exhibit A

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

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

<u>PRINTED NAME AND SIGNATURE OF OWNER</u>	<u>DESCRIPTION OF PROPERTY WITHIN NOTIFICATION AREA</u>	<u>RESIDENCE ADDRESS (IF DIFFERENT)</u>	<u>DATE</u>
<i>Trace S. Miller</i> TRACE L. MILLER	023-104-20-0-00-00-004.00-0	1141 Sunset dr. 66044	9/29/14
<i>Quinn A. Miller</i> Quinn A. Miller	023-104-20-0-00-00-004.00-0	2040 W. 31st STE 62153	9/29/14
<i>Wen Ta Peng</i> WEN TA PENG	0231042000000010-000	2605 ATCHISON AVE Law KS 66047	9/30/14
<i>Judith A. Saathoff</i> Judith A Saathoff	0231642600000004-01-0	1925 Maple Ln Law, Ks 66046	9/30/14

Exhibit A

A tract of land located in the Northwest Quarter of Section 20, Township 13 South, Range 20 East of the 6th P.M., Douglas County, Kansas, more particularly described as follows: Commencing at the Southwest corner of the Northwest Quarter; thence North 0°21'09" East a distance of 800.00 feet to the point of beginning, said point being on the West line of the Northwest Quarter; thence continuing along said West line North 0°21'09" East a distance of 400.00 feet; thence South 89°48'37" East a distance of 550.00 feet; thence South 0°21'09" West a distance of 400.00 feet; thence North 89°48'37" West a distance of 550.00 feet to the point of beginning, containing 5.05 acres more or less.

Subject to easements, reservations, and restrictions, if any of record.

REZONING (CONDITIONAL USE PERMIT) PROTEST PETITION

Protest Petition against CUP-14-00304

We, the undersigned property owners, do hereby protest the granting by the Board of County Commissioners of Douglas County, Kansas of [proposed rezoning from _____ (existing zoning) to _____ (proposed zoning)] or [a CUP to permit Value Added Ag use] on the following described property: 1168 E. 1500 Rd. (8008990)

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

See Exhibit A.

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

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

<u>PRINTED NAME AND SIGNATURE OF OWNER</u>	<u>DESCRIPTION OF PROPERTY WITHIN NOTIFICATION AREA</u>	<u>RESIDENCE ADDRESS (IF DIFFERENT)</u>	<u>DATE</u>
<u>Willis Long</u>	<u>Willis Long 1164 E 1500 rd</u>		<u>9-24-14</u>
<u>lundak Long</u> <u>hindaklong</u>	<u>1164 E 1500 Rd</u>		<u>9-24-14</u>
Walter D James <u>Walter D James</u>	<u>1152 E 1500 Rd</u>		<u>9-24-14</u>
<u>Debrah S. James</u> <u>Deborah S. JAMES</u>	<u>1152 E 1500 Rd</u>		<u>9-24-14</u>
<u>Seth J. Griffin</u>	<u>1128 E 1500 Rd</u>	<u>1128 E 1500 Rd</u>	<u>9-25-14</u>
<u>Seth J. Griffin</u>	<u>1128 E 1500 Rd</u>	<u>1128 E 1500 Rd</u>	<u>9-25-14</u>
<u>Verma J Griffin</u>	<u>1716 Kent Ave</u>	<u>1716 Kent Ave</u>	<u>9-20-14</u>
<u>Joe W Peng</u>	<u>2605 Atchison</u>	<u>Lawrence KS 66047</u>	<u>10/23/14</u>
<u>Jennifer Peng</u>	<u>2605 Atchison</u>	<u>Lawrence KS 66047</u>	<u>10/23/14</u>
<u>Jennifer Peng</u>	<u>2605 Atchison</u>	<u>Lawrence KS 66047</u>	<u>10/23/14</u>

PRINTED NAME AND SIGNATURE OF OWNER	DESCRIPTION OF PROPERTY WITHIN NOTIFICATION AREA	RESIDENCE ADDRESS (IF DIFFERENT)	DATE
<i>[Signature]</i>		Lawrence, KS 66046 1149E 1500RD	9-28-14
<i>[Signature]</i>	023-104-19-0-00-00-002,08-0	1149E 1500RD Lawrence, KS	9-28-14
<i>[Signature]</i>		1149 E. 1500 RD	
<i>[Signature]</i>		Lawrence KS 66046	9/28/14
<i>[Signature]</i>	023-104-19-0-00-00-002,08-0	1149E 1500RD Lawrence, KS	9/28/14
<i>[Signature]</i>	Signing for Cheryl F. Smith Trustee		
CHERYL F. SMITH	1537 N 1175 ROAD LAWRENCE, KS 66046		9/28/14
<i>[Signature]</i>	Signing for Cheryl F. Smith Trustee		
CHERYL F. SMITH	023-104-20-0-00-00-009,00-0	1537 N 1175 ROAD Lawrence, KS 66046	9/28/14
<i>[Signature]</i>	Signing for Smithy B. Smith Trustee		
Smithy B. Smith	1537 N. 1175 Rd. Lawrence, KS. 66046		9/28/14
<i>[Signature]</i>	Signing for Smithy B. Smith Trustee		
Smithy B. Smith	023-104-20-0-00-00-009,00-0	1537 N 1175 Rd Lawrence, KS 66046	9/28/14
<i>[Signature]</i>		1164E 1500RD Lawrence, KS 66046	
Willis Long	023-104-20-0-00-00-011,00-0		9/28/14
<i>[Signature]</i>		1164E 1500RD Lawrence, KS 66046	
Linda Long	023-104-20-0-00-00-011,00-0		9/28/14
<i>[Signature]</i>		1164 E 1500RD Lawrence, KS 66046	
Willis Long	023-104-20-0-00-00-004,02-0		9/28-14
<i>[Signature]</i>		1164 E 1500RD Lawrence, KS 66046	
Linda Long	023-104-20-0-00-00-001,02-0		9/28/14

STATE OF KANSAS)
)
 COUNTY OF DOUGLAS) ss:

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

[Signature] Linda K Long
 Circulator Signature Printed Name

Circulator's Residence and Address 1164E 1500 RD Date 9/29/14

Signed and sworn to (or affirmed) before me on this 29th day of September, 2014, by Linda K. Long, circulator of this Protest Petition.

[Signature]
 Notary Public
 My appointment expires: 2/10/2017

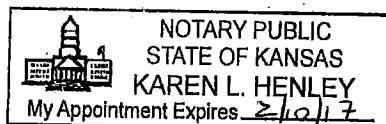


Exhibit A

A tract of land located in the Northwest Quarter of Section 20, Township 13 South, Range 20 East of the 6th P.M., Douglas County, Kansas, more particularly described as follows: Commencing at the Southwest corner of the Northwest Quarter; thence North 0°21'09" East a distance of 800.00 feet to the point of beginning, said point being on the West line of the Northwest Quarter; thence continuing along said West line North 0°21'09" East a distance of 400.00 feet; thence South 89°48'37" East a distance of 550.00 feet; thence South 0°21'09" West a distance of 400.00 feet; thence North 89°48'37" West a distance of 550.00 feet to the point of beginning, containing 5.05 acres more or less.

Subject to easements, reservations, and restrictions, if any of record.



Neighborhood Meeting discussing objections and how to stop CENTRAL SOYFOOD from location their business in our residential/rural neighborhood. 2 more showed up after I took this panorama (virtually entire neighborhood)



Notice the concern and worry on these fully informed people about the possibility of having our neighborhood degraded/ruined by allowing Central Soyfood to set up thier commercial business so close to all these people. I have details on an alternate country location for them. Vote No please



City of Lawrence
Douglas County
PLANNING & DEVELOPMENT SERVICES

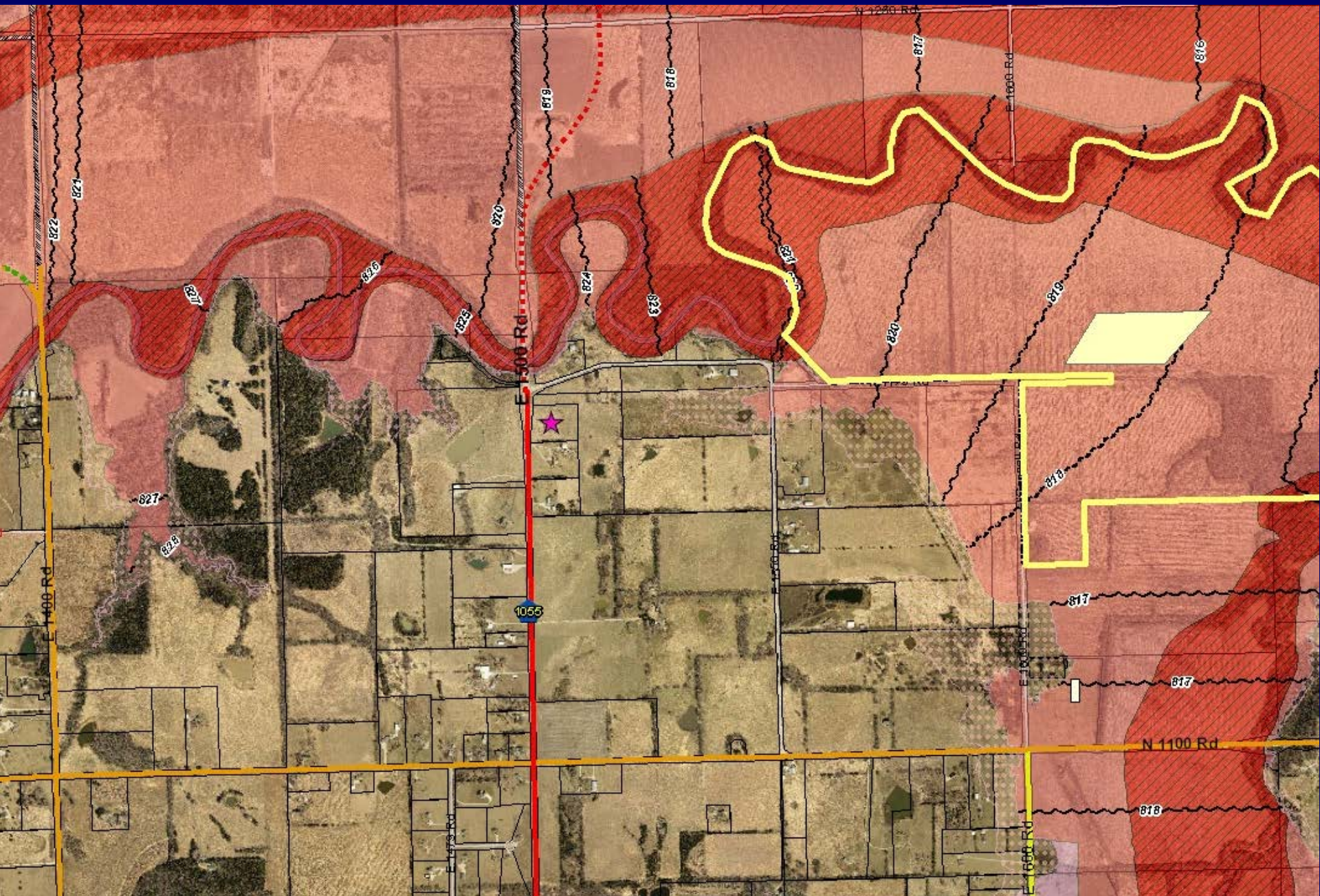
CUP-14-00304

Central Soyfood

Value Added Agriculture

1168 E 1500 Road

October 22, 2014





1179

1512

1536

E 1500 Rd

N 1175 Rd

1537

11168

1055

1513

1164

1149

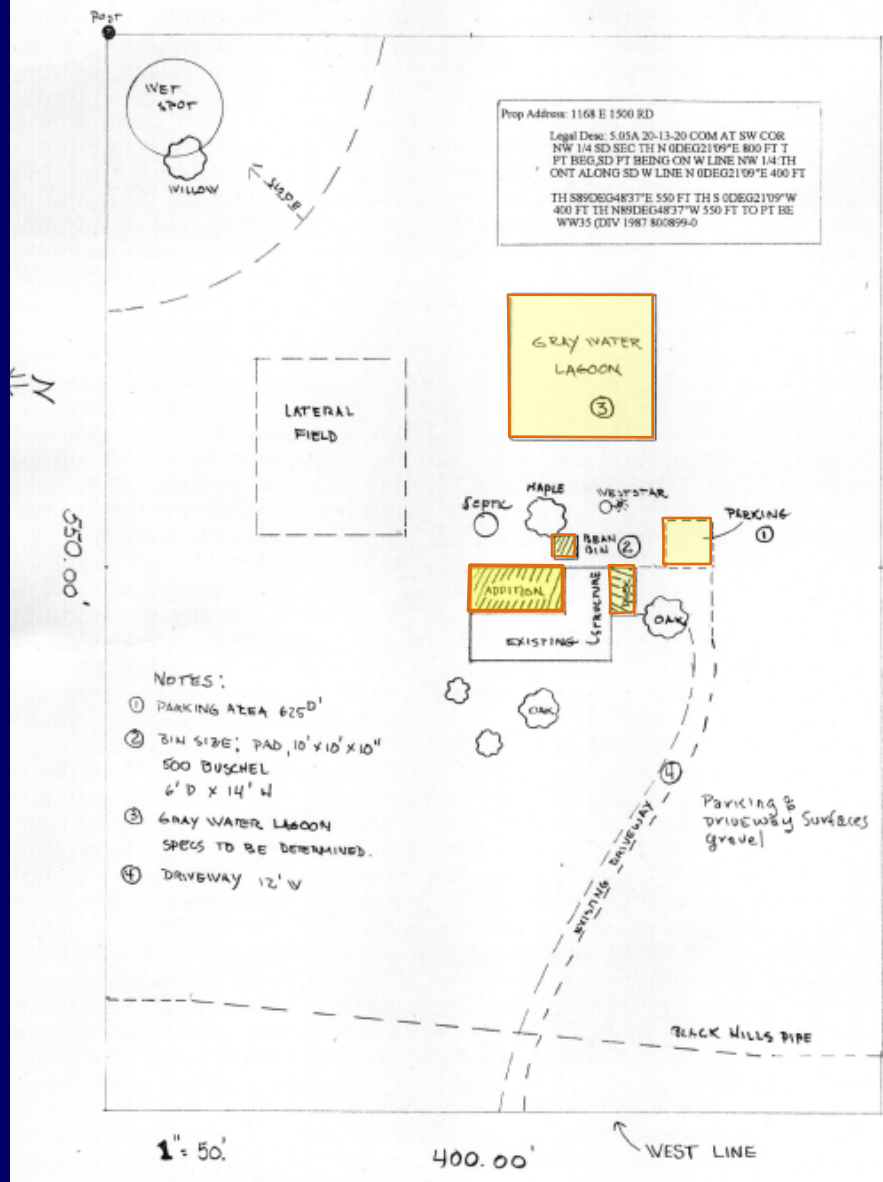
1152

1128

D



Site Plan Proposed tofu facility

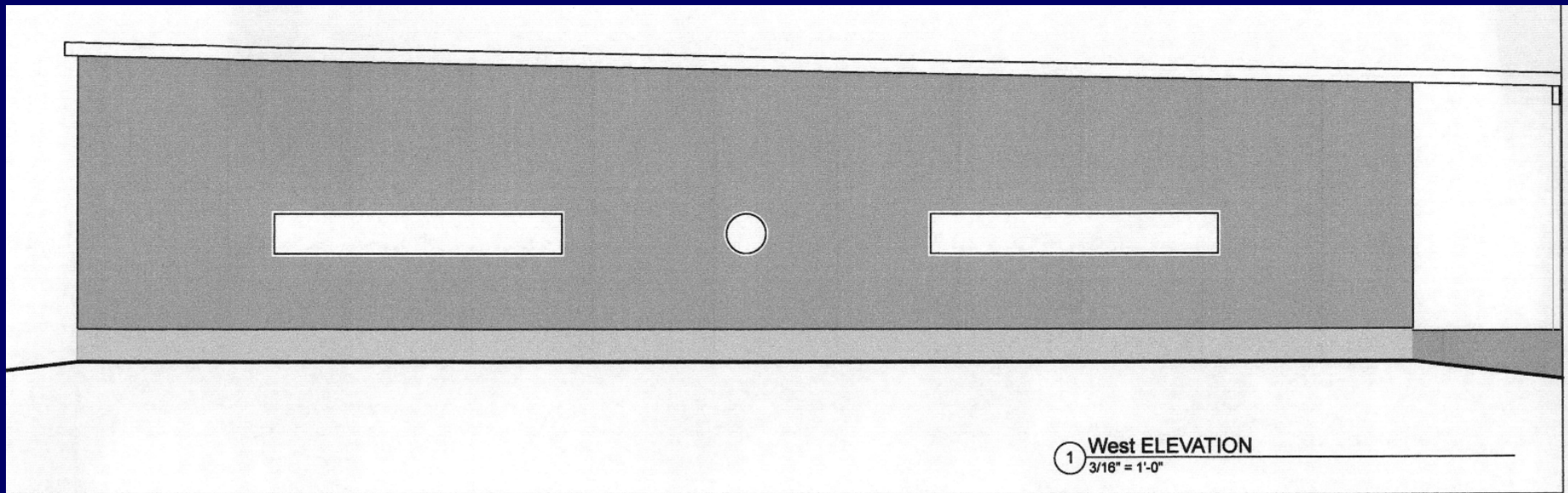
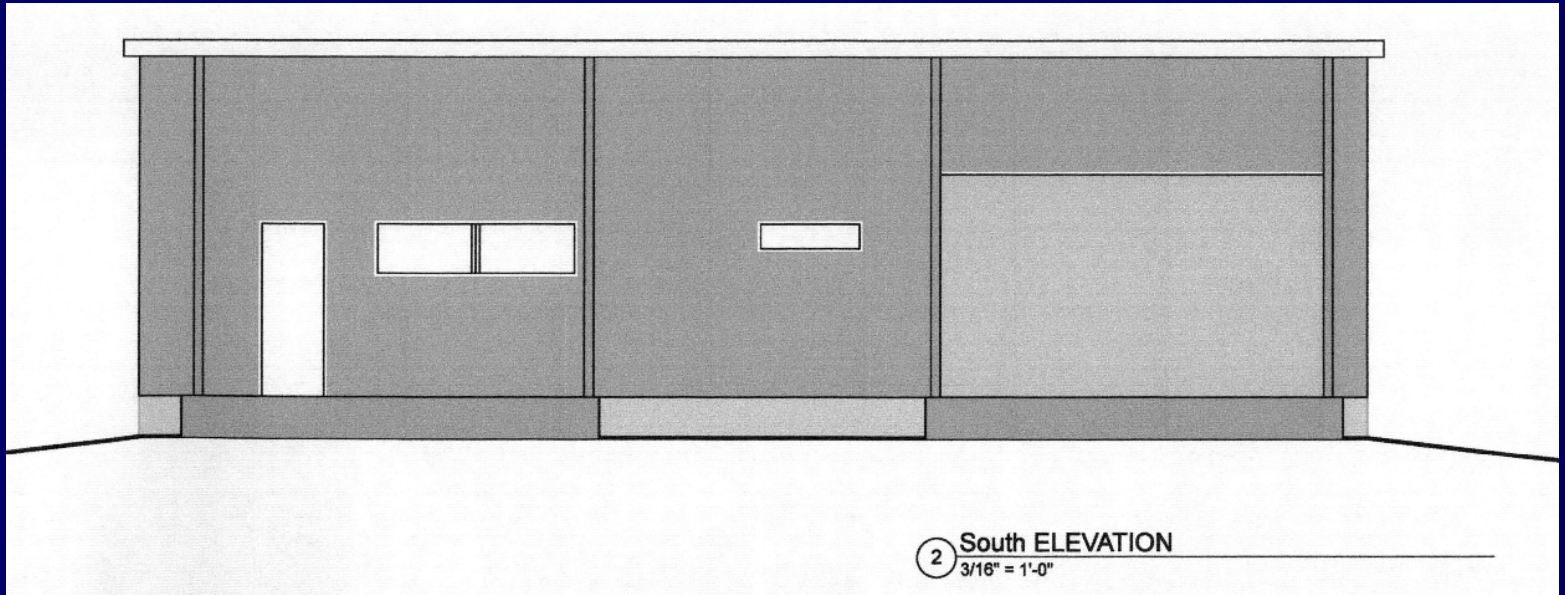


Prop Address: 1168 E 1500 RD
 Legal Desc: S 05A 20-13-20 COM AT SW COR
 NW 1/4 SD SEC TH N 0 DEG 21' 09" E 800 FT T
 PT BEG SD PT BEING ON W LINE NW 1/4 TH
 CONT ALONG SD W LINE N 0 DEG 21' 09" E 400 FT
 TH S 89 DEG 48' 37" E 550 FT TH S 0 DEG 21' 09" W
 400 FT TH N 89 DEG 48' 37" W 550 FT TO PT BE
 WW35 (DIV 1987 800899-0)

- NOTES:
- ① PARKING AREA 625'D'
 - ② BIN SIZE: PAD, 10' x 10' x 10"
500 BUSCHEL
6'D x 14' W
 - ③ GRAY WATER LAGOON
SPECS TO BE DETERMINED.
 - ④ DRIVEWAY 12' W

Parking & driveway surfaces gravel

1" = 50'
 400.00'
 WEST LINE





KAWANISHI CO. LTD.
川西工業株式会社





Value Added Agriculture (12-319-4.35)

- **Max of 4 full-time equivalent employees**
- **Structures: 10,000 sq ft / 3600 sq ft**
- **Comm. Vehicles > 5 tons: 2 trips/day / 2 /wk**
 - **Compliance with EPA standards + no emission, smell, noise at property lines.**
- **Equipment: indoors or screened.**
- **Product storage: enclosed**
- **A Min. Site Area is consistent with the County adopted policy for ag. uses**
- **Compliance with Access Management Stds.**
- **No on-site retail sales.**

Public Comments: Code Concerns

•Commercial Building Code

- Non conforming lot – **Vested Property**
Parcel in A, A-1, or R-1 created through previous Subdivision Regulations or as an exemption . May or may not comply with current regulations. A vested property may be used for Single family residence or any use permitted in the District.

Section 11-101(e)(2)(iv) – Subdivision Regulations

Public Comments: Minimum Site Area Standard: A minimum site area is consistent with the County adopted policy for agricultural uses.

- **Draft language to BoCC w/initiation: Minimum site area of 80 acres.**
- **Draft language to PC w amendment: Minimum site area of 40 acres.**
- **Current language noted in minutes of PC meeting.**

Public Comments:

Nonconforming structure

The structure does not exceed the height limitation, nor encroach into the setback. The structure is a conforming structure.

The use, both the residential and proposed Value Added Agriculture use are permitted in the A District. The use is a conforming use.

The parcel does not have the required area/frontage per Article 18...similar to many other parcels in the area. Vested property.

Public Comments: Frontage

“Browning stated the Access Management Regulations were not restricted to application of only residential properties and that he would apply the same process to any use on a ‘vested’ parcel of land. He asked if the Board would agree with this interpretation of the regulations. The board discussed whether the access, if determined safe, to a ‘value-added agriculture business’ property should have to meet the minimum frontage requirements

or be considered as having vested rights to a road cut with less than the minimum road frontage. The Board broadened the discussion to all conditional use requests, not just requests for value-added agricultural businesses. Johnson stated he felt Board created the access dilemma for existing parcels when the new regulations were adopted and that parcels with less than the required road frontage should be permitted access.” *(4/16/2008 BoCC meeting)*

Public Comments: Other

- FDA Warning Letter
- Property Maintenance
- Unfamiliar People
- Ability to Return to Residential Use



Planning Commission Recommendation:

**Planning Commission voted
unanimously to recommend approval
of the CUP application subject to the
conditions of approval.**



Possible Additional Conditions:

The lagoon must be permitted by the Lawrence Douglas-County Health Department or by Kansas Department Health and Environment, as appropriate, and constructed prior to the commencement of the use.

The soyfood facility must obtain a commercial building permit from the Zoning and Codes Department prior to the change of use.



Possible actions:

1. Approve the CUP request as recommended by the Planning Commission, with or without the additional conditions.
(unanimous vote required)
2. Deny the CUP request.
3. Return the CUP request to the Planning Commission with direction for additional consideration.

David and Susan Millstein/Central Soyfoods
464 E. 1750 Rd.
Baldwin, Kansas 66006

Douglas County Commissioners
Douglas County Courthouse
11th and Massachusetts
Lawrence, Kansas 66044

Dear Commissioners,

We have 2 comments that we think are relevant to the ongoing deliberation concerning the CUP application for 1168E. 1500 Rd.

1. Susan sent a letter to all of the neighbors within the 1000Ft. radius of the proposed facility, inviting them to inspect the operation and or express concerns to us prior to the planning commissions vote.

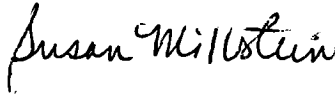
No one responded to the letter except an e-mail from the Chaney's. Copy of letter enclosed.

2. The neighbor directly to the south operates a lawn service, their frontage is the same as ours and it seems that all things being equal, if we can't operate why can they? I have enclosed an aerial view of their property showing multiple vehicles, out buildings and implements. I have also enclosed a cancelled check from Willis Long, the neighbor, charging us for mowing services rendered. Additionally, the Long's operate a fireworks concession that generates more traffic in a week than the Tofu facility generates in a much longer period.

Thank you for your consideration,



Dave and Sue Millstein
Central Soyfoods





Douglas County Bank

9th & Kentucky / P.O. BOX 429
 Lawrence, KS 66044
 (785) 865-1000

**MEMBER
 FDIC**

DAVID T. HILLSTEN 0143		3607
DBA LIBERTY HALL ASSOCIATES		
P.O. BOX 429		
444 E. 77th St.		
LAWRENCE, KS 66044		DATE 7/19/14
PAY TO THE ORDER OF Willis Long		\$ 225.00
Two Hundred Twenty Five		
Douglas County Bank		Shield
MEMO 1169		<i>David Hillsten</i>
⑆101114666⑆ 3607 78427 3⑆		

Ck#:3607, Amount:\$225.00, Date:7/22/2014

9-4-14

Dear *Ms. Sterrett,*

I am the bookkeeper at and a shareholder in Central Soyfoods. The planning commissioner forwarded us an email from Mr. and Mrs. Othick expressing concerns about our hopes of moving our kitchen out of the industrial area where we are now into the building at 1168 E 1500 Road, a far more pleasant location.

Having lived in rural Douglas County since 1972, by our personal preference, I know how we all feel about changes in our areas. We live in the country to be away from industry and commercialism. So I understand your concerns.

I would very much like to sit down with any of the neighbors who have questions or concerns about our operation and how it may impact the neighborhood. I feel I can allay your fears when you see what we do and how small we are. We would only want to be good neighbors. I can meet you together, or individually, wherever you prefer, at any time convenient for anyone. If you prefer, you may feel free to email me at symillstein@gmail.com or write me at 464 E 1750 Rd., Baldwin City, KS 66006.

Thank you and I look forward to meeting you.

Sincerely,

Susan Millstein

NEW
to the
Lawrence
Area!

Good Earth Gatherings is a
Learning Center & Retail Shop
Just a few miles south of Lawrence

858 E. 1500 Rd.
Baldwin City, Kansas
*In the country on pavement
between Lawrence & Baldwin*
785-691-5914



GOOD EARTH GATHERINGS

We offer unique goods, community groups and classes on herbs, healthy and sustainable living, arts/writing, home decorating, and other topics.

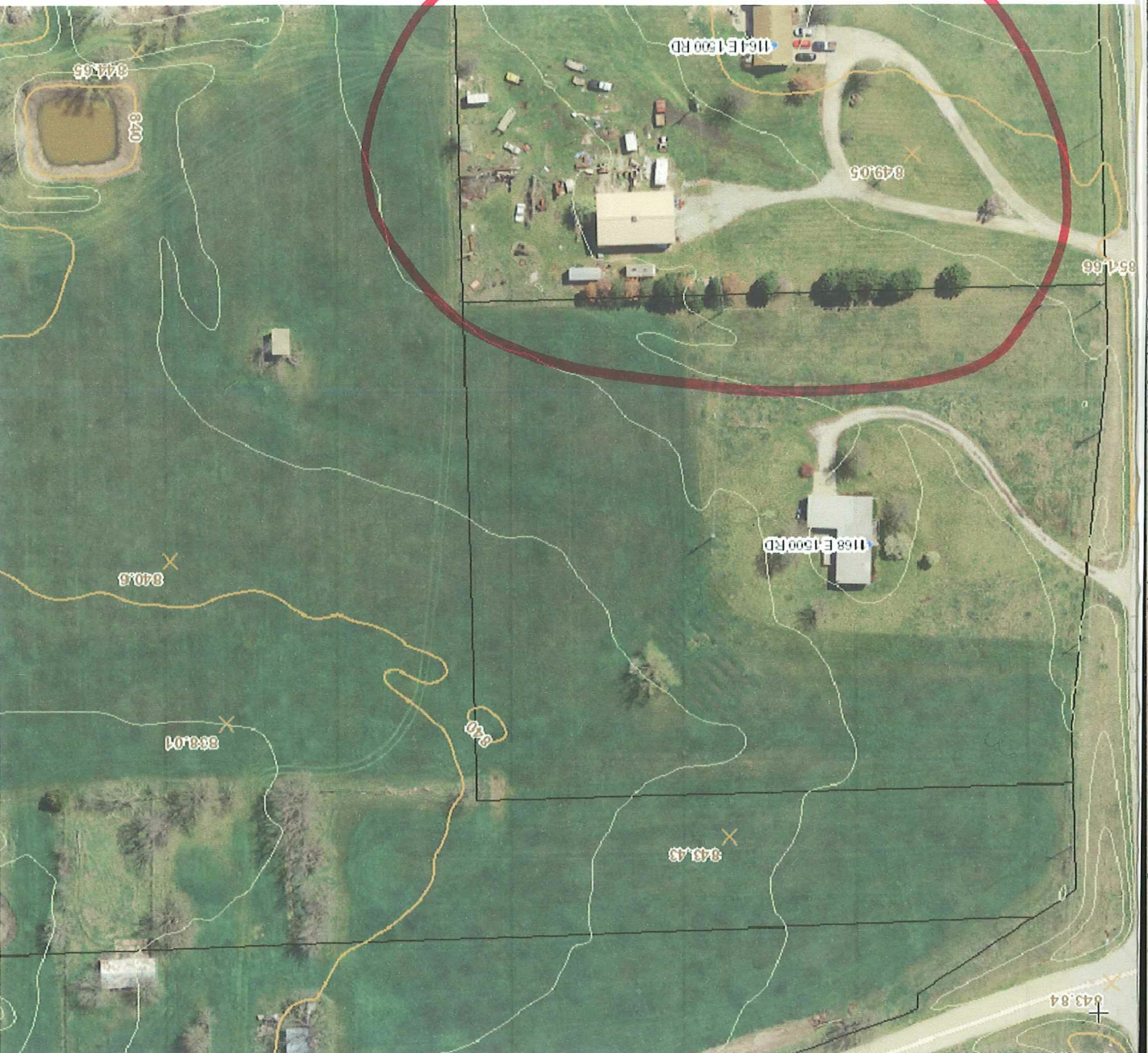
We partner with local businesses and instructors to create opportunities for learning and community building.

Learn all about our one-of-a-kind classes and other offerings on our website, and check our Facebook page for events and open days. *You'll love our Gatherings!*

GoodEarthGatherings.com

GoodEarthGatherings@gmail.com

facebook.com/GoodEarthGatherings



1168 EAST 1500

AD - Crabtree, Robin

From: mikegaughan@gmail.com on behalf of Mike Gaughan [mgaughan@douglas-county.com]
Sent: Monday, November 17, 2014 5:34 PM
To: AD - Crabtree, Robin; Evan Ice; AD - Weinaug, Craig
Subject: Fwd: Website Comment/Question

As we are not taking public comment at this time I think I should forward this to you in case the other commissioners need it before tomorrow. I have not responded and truth be told, I haven't read it. Along with so many other emails in my inbox right now.

Mike Gaughan
Douglas County Commissioner
[@mikegone](#)
[facebook.com/mikegone](#)

Douglas County cares about sustainability. Please think twice before printing this email.

----- Forwarded message -----

From: copl28 <copl28@att.net>
Date: Wed, Nov 5, 2014 at 5:50 PM
Subject: Website Comment/Question
To: [mgaughan@douglas-county.com](#)
Cc: [copl28@peoplepc.com](#)

Dear Commissioner Gaughan:

We are writing this email because of the concerns that we and our neighbors have with the up coming vote for The Tofo factory that the city-county planning commission has passed. We moved to the country to get away from the city and industry over 36 years ago-to raise our children away from the city, to raise a few head of Livestock for 4-h projects and just to live out our lives on this small acreage.

None of you, I am sure, would want a factory in your back yard; this is a residual neighborhood with people that we are proud of to call neighbors-we look out for each other! Why would a factory of any kind be allowed to be built in a residual area? The plans for building have been changed a number of times; even with the addition of a lagoon to this property by the owners of the property, Mr. and Mrs. Millstein. The trailer house has not been cared for over the past 4 years; so, how do they plan on making a commercial building that will be safe for the process of their product? If not kept clean there will be rats, and other animals eating their byproduct-we do not need this for our area. As pictures from the building in town show that this is what is happening at their factory.

When the city decided to build the waste management facility on our lower road (1175), we were told at that

Meeting that this area within a 4 mile radius of the Walkie river to 468 would be green space-what happened

To that plan? I do not think that a factory of any kind would be included in this green space plan.

We believe that this factory will only pave the way for any kind of industry or factory that the city-county planning

Commission will allow in our neighborhood. We have 58 acres that is for sale next to us; will someone be

Allowed to run a commercial chicken farm, free range hog lot or other type of "factory", if, the new owners

Would like? New neighbors and homeowners have said that they would not have bought if they knew this project

Might be allowed. I think that there will be more people who want to build, but, wont be cause of this factory.

We were "in-home" business owners in Douglas County for many years, but, we went by the rules that were

Set for our construction business of building ag buildings. We are not against anyone owning a business, but, There seems to be no rules for the Millsteins and this property. If, their share holders would decide to leave Central Soyfoods, would

The Millsteins sell this factory to someone else and would this property be able to go back to the residential

Property that it was before this issue;possibly not?

We thank you for reading this and looking at the concerns that this project has given all of us in this neighborhood.

Respectfully,

Wayne and Nancy Othick

1144 E 1550 Road Lawrence



This email is free from viruses and malware because avast! Antivirus protection is active.

This_email_has_been_scanned_by_the_MessageLabs_Email_Security_System.

This_email_has_been_scanned_by_the_MessageLabs_Email_Security_System.