

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

WEDNESDAY, FEBRUARY 12, 2003

6:35 P.M.

- Convene
- Pledge of Allegiance
- Consider approval of minutes of November 4, November 11, November 20, December 4, December 9 and December 18, 2002

CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders
- (b) Authorize Notice to Clinton Township for Clinton Store (Patty Jaimes)

REGULAR AGENDA

- (2) Planning Items:
 - (a) CUP-08-09-02: Conditional Use Permit for storage of excavation, trucking, and farm equipment. The property is generally located at 1768 E 1100 Road. Submitted by Paul Werner Architects for North 40 LC, property owners of record. (Sandra Day)
 - (b) CUP-12-17-02: Creekwood Lawn Company Storage Shed: 1753 N 700 Road (Sandra Day)
 - (c) CUP-12-18-02: Conditional Use Permit request for a Christmas Tree Farm. The property is generally described as being located at 794 Highway 40. Requested by Lynn Walther for Ethelyn F. Walther, trustee, property owner of record. (Sandra Day)
- (3) Other Business
 - (a) Consider approval of Accounts Payable (if necessary)
 - (b) Appointments
 - (c) Miscellaneous
 - (d) Public Comment
- (4) Adjourn

MONDAY, FEBRUARY 17, 2003

-No Commission Meeting

WEDNESDAY, FEBRUARY 19, 2003

-No Commission Meeting

MONDAY, FEBRUARY 24, 2003

-Consider approval of Resolution approving cereal malt beverage licenses for Clinton Marina and Clinton Store (Patty Jaimes)

WEDNESDAY, FEBRUARY 26, 2003 (possible cancellation)

FRIDAY, FEBRUARY 28, 2003

9:00 A.M.

-Canvass city & school primary elections

MONDAY, MARCH 3, 2003

-Annual Appraisal Report (Marion Johnson)

WEDNESDAY, MARCH 5, 2003 (Baldwin City High School)

-Joint meeting with Baldwin School Board and City Council

MONDAY, MARCH 10, 2003

-Economic Development Update (Lynn Parman)

WEDNESDAY, MARCH 12, 2003: 9 am (tentative)

-Joint meeting with Lawrence City Commission to discuss 31st Street feasibility study, possible projects extending Kasold over the Trafficway and the Wakarusa River, and possible short term improvements to Kasold.

MONDAY, MARCH 17, 2003

-No Commission Meeting (Spring Break)

WEDNESDAY, MARCH 19, 2003

-No Commission Meeting (Spring Break)

MONDAY, MARCH 24, 2003

-Planning Items

FRIDAY, APRIL 4, 2003

9:00 A.M.

-Canvass city & school general elections

WEDNESDAY, MAY 7, 2003

-No Commission Meeting

NOVEMBER 4, 2002

Chairman McElhaney called the meeting to order at 9:03 A.M. on Monday, November 4, 2002. All members were present. The Pledge of Allegiance was recited.

Jones moved approval of the minutes of April 17, April 29, May 6, May 8, May 15, and May 29, 2002. Motion was seconded by McElhaney and carried unanimously.

CONSENT AGENDA 11-04-02

Jones moved approval of the following Consent Agenda:

- ▶ Approve Commissioners Order Nos. 5057 and 5060. Orders are on file in the office of the County Clerk;
- ▶ Approve the Annual Review of the Douglas/Jefferson Counties Regional Solid Waste Management plan; and
- ▶ Approve grant offer from COPS MORE for a Mobile Data System in the amount of \$318,409 with a required match of \$106,153.

McElhaney seconded and the motion carried unanimously.

PLANNING 11-04-02

The Board considered approval of CUP-08-06-02, a Conditional Use Permit for placement of a voltage regulator. The property is generally located at the southwest quadrant of E 1800 Road and N 200 Road. Submitted by Kansas Power and Light Company for Robert L. Madl, property owner of record. Brian Pedrotti, staff member of the Lawrence-Douglas County Metropolitan Planning Department, presented the item. This item comes to the Board with a unanimous recommendation for approval based upon the following Findings of Fact:

Zoning and uses of property nearby. The subject property is located generally at the southwest corner of E 1800 Road and N 200 Road. The site is agriculturally zoned and undeveloped. Surrounding property is agriculturally zoned and is undeveloped, agricultural property with scattered residences.

Character of the area. The site is approximately 1 acre in size and is located on a portion of approximately 67 acres owned by Mr. Robert Madl. The area is largely agricultural and undeveloped in nature. It contains scattered residences.

Suitability of subject property for the uses to which it has been restricted. The subject site is suited for the uses to which it has been restricted.

Length of time subject property has remained vacant as zoned. The subject area has been zoned "A" (Agricultural) District since the adoption of the zoning regulations in the unincorporated portions of Douglas County in 1966.

Extent to which removal of restrictions will detrimentally affect nearby property. The restrictions on this site are not being removed. A conditional use is being permitted through this request. The addition of this use to this site is not anticipated to detrimentally affect nearby property.

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. Denial of the request is not expected to provide any gain to the public health, safety and welfare.

Conformance with *The Comprehensive Plan*. The Conditional Use Permit for the proposed facility is not in conflict with *Horizon 2020*.

AND subject to the following conditions:

1. Issues or concerns raised or identified by the Baldwin City Planning Commission in their public hearing process that were not part of the public hearing process held by the Lawrence-Douglas County Metropolitan Planning Commission be forwarded to the County Commission along with the individual recommendations of both Planning Commissions; and
2. Approval of the proposed driveway by the Palmyra Township Board prior to construction.

Pedrotti noted that the Baldwin City Planning Commission has also approved the CUP. Jones made a motion to approve CUP-08-06-02 subject to the above conditions. McElhaney seconded and the motion carried unanimously.

PURCHASING & PUBLIC WORKS 11-04-02

The Board discussed bids received for the purchase of two (2) heavy duty tandem dump trucks, two (2) snow plows, and two (2) spreaders for the Public Works Operation Division. McElhaney made a motion to accept the low bid received from KCR International Trucks in the amount of \$201,808; authorize the rejection of the trade-in offers of two (2) dump trucks both with a snow plow and spreader; and authorize staff to send the trucks to Nationwide Auction for auction. Motion was seconded by Jones and carried unanimously.

ACCOUNTS PAYABLE 11-04-02

Jones moved approval of accounts payable in the amount of \$419,983.92; accounts payable manual checks in the amount of \$1235.16; payroll in the amount of \$552,817.33; and electronic funds transfers in the amounts of \$40,765.69 for FICA and \$31,869.67 for KPERS to be paid 11/1/02. Motion was seconded by McElhaney and carried unanimously.

McElhaney made a motion to adjourn; seconded by Jones and carried unanimously.

Jere McElhaney, Chairman

Bob Johnson, Member

ATTEST:

Patty Jaimes, County Clerk

Charles Jones, Member

NOVEMBER 11, 2002

Chairman McElhaney called the meeting to order at 9:02 A.M. on Monday, November 11, 2002. All members were present. The Pledge of Allegiance was recited.

CONSENT AGENDA 11-11-02

Johnson moved approval of the following Consent Agenda:

- ▶ Approve Commissioners Order Nos. 5061 and 5062. Orders are on file in the office of the County Clerk;
- ▶ Approve the fifteen (15) Out-District College Tuition Statements in the amount of \$116,016;
- ▶ Approve Resolution No. 02-23 establishing a 30 miles per hour speed limit for a road construction zone located on County Route No. 1061; and
- ▶ Note receipt of fee reports for the month of October, 2002.

Motion was seconded by Jones and carried unanimously.

MISCELLANEOUS 11-11-02

Jane Bateman, representative of the Floodplain Regulation Subcommittee of the Planning Commission, appeared before the Board to discuss possible floodplain regulations in the unincorporated area of the county. John Haase, Roger Schenewerk, and Bryan Dyer were also present for the discussion. Bateman explained that the subcommittee recently completed this process for the city. Jones questioned the advantages and disadvantages of doing more than FEMA requires. Bateman responded that the FEMA map started 5 or 6 years ago and has already been altered. Some areas will flood more, some won't flood at all. Jones stated that he would like to see the FEMA floodplain maps showing where growth is expected. McElhaney noted he would like to think about it for a week or two before giving direction. Johnson suggested that an invitation be extended to Eudora, Baldwin and Lecompton to join the County Commission in discussion in a few weeks.

PLANNING 11-11-02

The Board considered Item No. 15 of the minutes of the Lawrence-Douglas County Metropolitan Planning Commission dated September 25, 2002. This item is TA-05-03-02: Text Amendment to Section 21-901.6 of the Joint City/County Subdivision Regulations to include a definition of the term "Undue Hardship." Mark Wilson, staff member of the Lawrence-Douglas County Metropolitan Planning Department, presented this item. This item comes to the Board with a recommendation for approval of the following text amendment:

21-802. VARIANCES.

In cases where there is hardship in carrying out the literal provisions of these regulations (such as design criteria pertaining to lot width, lot depth, block depth, etc.), the planning commission may grant a variance from such provisions, except that in cases where there is hardship in carrying out the literal provisions found in section 21-706 (sanitary sewers) the appropriate governing body may grant a variance from such provisions.

(a) An application for a variance shall be made to the planning department. The planning commission shall give the applicant and any other interested persons an opportunity to be heard with respect to the proposed application for a variance from the provisions of the regulations, except that the governing body shall give the applicant and any other interested persons an opportunity to be heard with respect to the proposed application for a variance from the provisions of section 21-705.

(b) A variance shall not be granted unless all of the following apply:

- (1) Strict application of these regulations will create an unnecessary hardship upon the subdivider;
- (2) The proposed variance is in harmony with the intended purpose of these regulations; and
- (3) The public health, safety and welfare will be protected. (Ord. 5500)

21-901.7 (47) Unnecessary Hardship. The condition resulting from application of these regulations when viewing the property in its environment that is so unreasonable as to become an arbitrary and capricious interference with the basic right of private property ownership, or convincing proof exists that it is impossible to use the property for a conforming use, or *sufficient* factors exist to constitute a hardship that would in effect deprive the owner of their property without compensation. Mere financial loss or the loss of a potential financial advantage does not constitute unnecessary hardship.

Jones made a motion to approve Resolution No. 02-37 approving the above text amendment, seconded by Johnson and carried unanimously.

AGREEMENTS & TREASURER 11-11-02

The Board considered approval of a lease agreement with Baldwin Properties, L.L.C. for the Baldwin Satellite Office. Johnson asked that there be an "out" clause added to the agreement in case future budgetary problems necessitate the need to close that office. It was the consensus of the Board to table this item, directing the County Treasurer to meet with the County Counselor to amend the agreement to include an "out" clause.

AGREEMENTS, PURCHASING, SHERIFF, & PUBLIC WORKS 11-11-02

The Board discussed bids received for the County fuel contract. Jackie Waggoner, Buyer, presented this item. Three bids were received with the low bid being submitted by Zaroco. However, Zaroco carries only clear diesel fuel which would require the County to apply for a refund from the state for off road diesel fuel tax. This could involve a considerable amount of staff's time to monitor and apply for these refunds. The Public Works Department has expressed concern since Zaroco's two locations which provide diesel are located in areas that would be difficult and unsafe for large equipment (1500 E. 23rd Street and 647 E 1250 Road). Capital City Oil's location provides a more accessible and safer location and a more reliable accounting approach. Jones made a motion to accept the low bid received from Zaroco. Johnson seconded the motion which carried unanimously.

PURCHASING & INFORMATION TECHNOLOGY 11-11-02

The Board discussed proposals received for a Storage Area Network (SAN). Six (6) proposals were received and three (3) suppliers were interviewed. Jim Lawson, Director of Information Technology, and Jackie Waggoner, Buyer, were present for the discussion. Staff requested authorization to negotiate a final contract with Tallgrass Technologies. In the event negotiations are not successful, staff requested authorization to negotiate with Hitachi Data Systems. Johnson made a motion to authorize staff to negotiate with Tallgrass Technologies and possibly Hitachi Data Systems for a Storage Area Network. Motion was seconded by Jones and carried unanimously.

PUBLIC WORKS 11-11-02

The Board then discussed the Capital Improvement Program. Keith Browning, Director of Public Works/County Engineer, presented additional projects for the program. It was the consensus of the Board to table further discussion until a later date.

ACCOUNTS PAYABLE 11-11-02

Johnson moved approval of accounts payable in the amount of \$198,600.54 to be paid 11/11/02; DA longevity payroll in the amount of \$8,250; and electronic funds transfers in the amounts of \$632.70 for FICA and \$219.00 for KPERS to be paid 11/8/02. Motion was seconded by McElhaney and carried.

McElhaney moved for adjournment. Johnson seconded and the motion carried.

Jere McElhaney, Chairman

Bob Johnson, Member

ATTEST:

Patty Jaimes, County Clerk

Charles Jones, Member

NOVEMBER 20, 2002

The Board of County Commissioners of Douglas County, Kansas, conducted a joint meeting with the Eudora City Council and Eudora School Board at Eudora City Hall on Wednesday, November 20, 2002. Chairman McElhaney called the meeting to order at 6:35 P.M. with all members present. The Pledge of Allegiance was recited.

The Boards discussed the following items:

- ▶ Fireworks regulations;
- ▶ 14th and Church intersection;
- ▶ Church Street bridge across K-10
- ▶ County Route 1061/28th Street to K-10
- ▶ K-10 Ramp/Winchester Road;
- ▶ Main Street/10th to the railroad tracks; and
- ▶ South Lawrence Trafficway.

No action was taken.

McElhaney made a motion to adjourn; seconded by Jones and carried unanimously.

Jere McElhaney, Chairman

Bob Johnson, Member

ATTEST:

Patty Jaimes, County Clerk

Charles Jones, Member

DECEMBER 4, 2002

The Board of County Commissioners of Douglas County, Kansas, conducted a joint meeting with the Lawrence-Douglas County Metropolitan Planning Commission, Lawrence City Commission and the Lawrence School Board on Wednesday, December 4, 2002. Chairman McElhaney called the meeting to order at 7:30 A.M. with all members present. The Pledge of Allegiance was recited.

PLANNING 12-04-02

Linda Finger, Director of the Lawrence-Douglas County Metropolitan Planning Department, conducted a presentation of maps showing the size of parcels in the unincorporated area. No action was taken.

CONSENT AGENDA 12-04-02

Johnson made a motion to approve the following Consent Agenda:

- ▶ Approve Commissioners Order Nos. 5076 and 5077. Orders are on file in the office of the County Clerk.

Motion was seconded by Jones and carried unanimously.

McElhaney made a motion for adjournment. Jones seconded and the motion carried unanimously.

Jere McElhaney, Chairman

Bob Johnson, Member

ATTEST:

Patty Jaimes, County Clerk

Charles Jones, Member

DECEMBER 9, 2002

Chairman McElhaney called the meeting to order at 9:05 A.M. on Monday, December 9, 2002. All members were present. The Pledge of Allegiance was recited.

CONSENT AGENDA 12-09-02

Jones moved approval of the following Consent Agenda:

- ▶ Approve Commissioners Order Nos. 5078 and 5079. Orders are on file in the office of the County Clerk; and
- ▶ Authorize the Chair to affix his signature to Department of the Army Easement for Pipeline Right-of-Way Located on Clinton Lake, Douglas County, Kansas.

Johnson seconded and the motion carried unanimously.

RESOLUTIONS & BUDGET 12-09-02

The Board discussed the possibility of adopting a resolution authorizing Douglas County to be listed as a named party in legal action by the Kansas Association of Counties with respect to demand transfer payment reductions recently made by Governor Graves. Craig Weinaug, County Administrator, recommended that Douglas County not participate in this law suit. Johnson made a motion that Douglas County not participate in the legal action by the Kansas Association of Counties. Motion was seconded by Jones and carried unanimously.

MISCELLANEOUS 12-09-02

The Board conducted a work session with the Douglas County legislative delegation to discuss the upcoming legislative session. No action was taken.

PARKING 12-09-02

The Board discussed a proposal received from Walker Parking Consultants to conduct a parking study. It was the consensus of the Board that this is the wrong time for this expenditure. However, the parking in the lot directly east of the Judicial & Law Enforcement Center needs to be addressed. Jones will appoint a committee to make recommendations.

ACCOUNTS PAYABLE 12-09-02

Jones moved approval of accounts payable in the amount of \$102,371.70 to be paid 12/9/02 and accounts payable manual checks in the amounts of \$3,044.16 and \$500.00. Johnson seconded and the motion carried unanimously.

McElhaney moved for adjournment. Jones seconded and the motion carried unanimously.

Jere McElhaney, Chairman

Bob Johnson, Member

ATTEST:

Patty Jaimes, County Clerk

Charles Jones, Member

DECEMBER 18, 2002

Chairman McElhaney called the meeting to order at 6:35 P.M. on Wednesday, December 18, 2002. All members were present. Commissioner-elect Jones was also present. The Pledge of Allegiance was recited.

Johnson moved approval of the minutes of July 9, August 9, August 19, August 21, August 26, September 9, September 18, September 23, October 2, October 7, and October 16, 2002. Motion was seconded by McElhaney and carried.

CONSENT AGENDA 12-18-02

Johnson moved approval of the following Consent Agenda:

- ▶ Approve Commissioners Order Nos. 5084, 5085 and 5086. Orders are on file in the office of the County Clerk;
- ▶ Authorize notice to Grant Township for Midland Farm Store;
- ▶ Note receipt of fee reports for the month of November, 2002;
- ▶ Approve Resolution No. 02-27 granting a beer license to Baldwin Junction Enterprises;
- ▶ Approve Resolution No. 02-28 granting a beer license to Clinton Cove Mini Mart;
- ▶ Approve Resolution No. 02-29 granting a beer license to ZARCO, Inc.;
- ▶ Approve Resolution No. 02-30 granting a beer license to Gilded Cage;
- ▶ Approve Resolution No. 02-31 granting a beer license to Eudora Riverview Golf;
- ▶ Approve Resolution No. 02-32 granting a beer license to The Bird of Lawrence;
- ▶ Approve Resolution No. 02-33 granting a beer license to Flamingo Catering; and
- ▶ Approve Resolution No. 02-34 reappointing the Special Deputy Coroner for the Seventh Judicial District for a one-year term.

McElhaney seconded and the motion carried.

PUBLIC WORKS & CONTRACTS 12-18-02

Keith Browning, Director of Public Works/County Engineer, requested authorization to renew the contracts for chip sealing and pavement marking for 2003. Browning explained that in order to renew the contracts for the next season, the contracts stipulate the County must notify the contractors of our intention to renew by December 31. Both contracts allow for a 25% reduction in contract quantities. For chip sealing we typically plan on 50 miles of sealing, so a 25% reduction would result in sealing 37.5 miles. It is currently estimated that we can reduce the Road & Bridge budget by \$100,000 for chip sealing and \$30,000 for striping and still meet the terms of each contract. Johnson made a motion to approve the renewal of the contracts for chip sealing with Hi-Plains Sand Co.,

Kanopolis, KS, and pavement marking with Midwest Striping, Grand Island, NE for 2003. McElhaney seconded and the motion carried.

PERSONNEL 12-18-02

The Board discussed the 2003 holidays. Johnson made a motion to approve the following holidays for 2003:

New Year's Day	Wednesday, January 1
Martin Luther King Day	Monday, January 20
Memorial Day	Monday, May 26
Fourth of July	Friday, July 4
Labor Day	Monday, September 1
Thanksgiving	Thursday/Friday, November 27-28
Christmas	Wednesday/Thursday, December 24-25

One (1) Personal Discretionary Day:

Eligibility: Employee's status must be permanent full time, permanent part time, or special project, with an employment date on or before October 1, 2003.

Definition: One (1) normal work day.

Scheduling: Must be taken all at one time (may not be split into hours). Must be scheduled in advance through the employee's supervisor and according to departmental procedures. Must be utilized during the calendar year 2003 and PRIOR to December 6, 2003.

McElhaney seconded and the motion carried.

ACCOUNTS PAYABLE 12-18-02

Johnson moved approval of accounts payable in the amount of \$104,742.91 to be paid 12/23/02; \$185,565.47 to be paid 12/16/02; accounts payable manual checks in the amounts of \$1,827.96 and \$475.50; payroll in the amount of \$578,705.77; and electronic funds transfers in the amounts of \$42,316.31 for FICA and \$34,632.86 for KPERS to be paid 12/13/02. McElhaney seconded and the motion carried.

McElhaney moved for adjournment. Johnson seconded and the motion carried.

Jere McElhaney, Chairman

Bob Johnson, Member

ATTEST:

Patty Jaimes, County Clerk

The board of county commissioners in any county shall not issue a license without giving the clerk of the township board in the township where the applicant desires to locate, written notice by registered mail, of the filing of the application.

NOTICE TO TOWNSHIP BOARD

State of Kansas, Douglas County, ss

To the Township Clerk of Clinton Township

This is to notify the members of your Township Board that application has been filed with the County Commissioners by Clinton Store to sell cereal malt beverages at retail in said Township at 598 North 1190 Rd.. Such sales are not to be in broken case lots and not for consumption on said premises.

The Township Board may within ten (10) days file advisory recommendations as to the granting of such a license and such advisory recommendations shall be considered by said Board of County Commissioners before such license is issued.
K.S.A. 41-2702

Done by the Board of County Commissioners this 12th day of February 2003

Chairman

County Clerk

(Seal)

Surrounding Zoning and Land Use:

A (Agricultural District) to the north and west; agricultural property.

R-1 (Single-Family Residential District) to the east and south; agricultural and single-family home uses.

I. ZONING AND USES OF PROPERTY NEARBY

Staff Finding – Subject property is located in an existing residential zoning district (east of E 1100 Road) and borders agricultural uses to the north and west. Several existing homes are located south of the subject property along E. 1100 Road. A residential subdivision [Stonegate] is developing to the far east of the subject property. The Lawrence City Limits are within one mile of the subject property to the south.

II. CHARACTER OF THE AREA

Staff Finding - The immediately surrounding area to the east and west is undeveloped and is used for agricultural purposes. The area to the south and far east are developed with single-family residential homes. A narrow parcel of land approximately 100' wide separates the subject property from the Kansas Turnpike on the north side of the property. The general area is heavily wooded and hilly, it includes meadow/pasture area throughout the area. The current character is rural. This property is within the urban growth area and the future land use will alter this character to a more suburban residential type neighborhood.

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

Staff Finding – The subject property is a portion of a larger 32-acre tract under the same ownership. The property has not been platted or subdivided. The structure was built in 1999 per the County Appraiser Office's records and is classified as a commercial building. Traditional commercial uses are not acceptable in this location as the access is limited and requires neighborhood pass-through to reach the property.

The revised application addresses the intensity of use, which would be acceptable within this area. However, the underlying question of warehouse storage facility, which is not a permitted conditional use, versus a truck storage facility must still be resolved. If approved for truck storage, the proposed Conditional Use Permit will not change the underlying base county residential zoning nor will it permit warehousing of apartment furniture and cabinetry for a rental business.

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

Staff Finding – The subject property is part of a larger 32.34-acre tract and has been zoned R-1 since the original adoption of county zoning in 1966. The property was vacant until 1999 when the structure was erected. It is classified as a commercial building according to the County Appraiser's Office though it was built as an agricultural building. Agricultural buildings do not require building permits. This structure was noted by the

County Zoning Office as violating the County zoning and building codes. The applicant is seeking to resolve the noted violations and retain the use of the building for storage purposes.

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

Approval of a Conditional Use Permit request does not alter the base-zoning district. Section 19-01 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 not expressly included in Section 19-4 Conditional Uses Enumerated, of the County Zoning Regulations. The applicant identified this application as a "*truck storage facility*" use. The County Zoning Regulations describe a truck storage facility as follows:

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

The existing building will be used for warehouse storage of the applicant's property maintenance business. A truck storage facility would generate little traffic typically access would be limited to the employees that operate equipment and the equipment maintenance and service. Additionally, a designated parking area is required for employees.

The County Zoning Office has notified the property owner of several violations including zoning, building and environmental codes. Environmental violations included dumping in the creek bed [unconfirmed] and improper disposal of construction/demolition waste, which are both state violations. The applicant has resolved many of these violations and has indicated in a letter dated November 22, 2002 that exterior storage and burning are not intended for this site.

Staff Finding – The subject property is located within the Urban Growth Area and is anticipated to develop residentially over time. E 1100 Road is a local road that provides access to the adjacent residential homes in the area and also provides access to the subject property. Approval of the CUP will not alter the base zoning. The applicant has proposed self-limiting conditions that minimize the impact that had originally been a concern for Staff and the Township. This modification in use and access for truck storage would not detrimentally impact adjacent properties.

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

The site is clearly used for storage of both equipment and construction materials. Use of the site included two box trailers at the rear of the property and additional equipment near the building.

Staff concurs that there is a need for storage facilities located within the unincorporated portion of Douglas County. These uses should ideally be located along major county thoroughfares and highways to accommodate the frequent access associated with such uses. The County Zoning Regulations make a distinction between a CUP for truck storage and a warehouse facility that requires B-2 commercial zoning.

The immediately adjacent homes are located on larger parcels and appear to be setback from the right-of-way that provides some buffering.

The proposed facility will accommodate only the applicant's warehouse storage needs and activities but must be limited to storage of equipment such as trucks, machinery and/or lawn maintenance equipment. The proposed use is not associated with an ability to provide services to other similar operations. The applicant has stated that denial of the use would render the structure useless. The limited nature of access and the prohibition of dumping of construction debris should minimize any impact on adjacent properties.

Staff Finding – No significant gain to the public is provided by approval of this use. A marginal hardship to the existing adjacent landowners and township road maintenance is recognized. The area is isolated and is not directly accessible. As the area develops, this use will become obsolete and incompatible.

VII. CONFORMANCE WITH THE COMPREHENSIVE PLAN

The subject property is located approximately one mile northwest of the City of Lawrence and within the Urban Growth Area shown in Figure 9 of **Horizon 2020**. The Plan does not address Conditional Use Permits as a tool to achieve specific policies. The Plan does encourage the support of local businesses to *"ensure their retention and to facilitate expansion plans for the future."* Industrial uses are directed to urban areas where services such as sewer, water and transportation options are available. The difficult in this application centers on the specific use as an accessory activity for the property management business.

It is anticipated this area will ultimately develop with low and moderate density residential uses; that over time, will make this proposed use inconsistent. The proposed use includes more than truck storage, however the other intended uses are beyond the scope of a Conditional Use Permit to address. The use is accessory to a primary property management business located else ware.

Staff Finding – The Comprehensive Plan supports the retention of industrial uses and limited expansion of existing industrial districts outside of an urban area. A Conditional

Use Permit can be used to allow limited commercial and industrial usage such as truck storage.

STAFF REVIEW

Site Summary:

Parent Parcel:	32.34 acres [Per County Appraiser's Office records]
Subject Parcel:	6 acres
Existing Building:	5,000 SF
Off Street Parking Required:	1 space per two employees [No employees are located on site]
Off Street Parking Provided:	Not identified on site plan.

** Review Comments from Other Departments/Agencies are provided at the end of this report.*

This application has been submitted in response to a notice of violation issued by the County Zoning Codes Office. The property and surrounding area to the east and south is zoned for residential development. The subject property is comprised of the west 6 acres of a larger 32.34-acre tract. The building was constructed in 1999 without a building permit [as an agricultural building]. The County Appraiser's Office classifies the structure as a commercial building. The proposed CUP is for a "storage facility". There are no employees associated with the storage building therefore no parking is required on site by the Zoning Regulations.

Site Plan Review:

The site plan notes: *"The exterior storage area is primarily for the storage of equipment for the excavation and farming business. Some exterior storage of building materials is allowed. This material shall use less area than the storage of equipment."* This statement is both very general and open-ended. Without clarification, it could be interpreted allow all 6 acres to be used for the storage of equipment and other building materials. The site plan shows a gravel area around the building and a rear "pad site" intended to be used for storage. It is this portion of the application that was clarified by the applicant (Refer to letter dated November 22, 2002). Because of the described reduced intensity of the use of the property, the Township has indicated that they are no longer opposed to the use based on a concern for the road condition and maintenance. Similarly, staff has reconsidered the application and revised the recommendation to recommend approval of the proposed activity. Staff recommends that the site plan be revised to include the limitations on the face of the site plan as suggested by the applicant's representative and to more clearly indicate the use of the building.

A site visit in October noted that there is exterior storage. Only two pieces of equipment were found on site on the date of the site visit, however, several pallets of landscape rock were observed, as well as large semi-trailer box-trailers and a large pile of concrete debris. However, the location and orientation of the site do provide reasonable screening.

Approval of the request would allow an accessory commercial type business on a restricted basis. Immediate residential development is limited by the lack of available water and sewer infrastructure. The property is served with neither electric nor gas services.

Setback Requirements - Building setback requirements for the "R-1" District is as follows: Front Yard -25'; Side Yard- 10'; Rear Yard – 30'. Setback requirements are typically measured from the property lines. The existing structure complies with the minimum setback requirements.

Access to the site - Specific access to the site is provided via a driveway located at the north end of E. 1100 Road (Folks Road extended). It is the only access to the property and is a local township road. The applicant has proposed a self-limiting access program and included a limitation on the types of vehicles used to address Township concerns regarding road maintenance. If approved, these conditions should be stated on the face of the site plan.

Screening - Natural screening is provided on all sides of the activity area. Exterior storage areas are specifically required to be screened with a "*view reducing wall, fence, or landscaping material*" (per Section 19-4). The existing vegetation along the south boundary line of the described CUP provides the required screening. Any removal or loss of trees as a result of disease must be replaced to comply with the screening requirements.

Outdoor Storage and Parking - The site plan only generally indicates areas proposed for outdoor storage. Storage should be limited to only that "equipment" directly associated with the specific business operation. The site plan should also note that dumping of materials is prohibited. While the Zoning Regulations require parking related to on-site employees, as a practical matter some vehicle parking space should be provided. It is conceivable that employees will arrive at the site and leave vehicles at the site while they are loading/unloading materials stored at the site.

CONCLUSION

Although Conditional Use Permits can be customized tailored to address specific issues of a request, such as size, time limitations, restriction on the number of vehicles, and screening requirements, the basic test is if the special use is both desirable and appropriate for a particular location.

As discussed in this report the proposed usage is less intensive than originally described but exceeds the truck storage listed use in Section 19 of the County Zoning Regulations. The action on this application can address only the truck storage portion of the uses requested. Rezoning to a commercial district is needed to permit the warehouse use.

The Township has noted that the road is not structurally appropriate for a high intensive activity. The applicant has been able to provide additional information to indicate that the proposed use is more moderate in nature, which has addressed the outstanding concerns of the Township. It is anticipated that the surrounding area will continue to develop residentially.

PROFESSIONAL STAFF RECOMMENDATION

The staff recommendation is based on a narrow view, that being the truck storage portion of the proposed use. Planning Staff recommends approval of the Conditional Use Permit for a storage facility and forwarding of it to the County Commission with a recommendation for approval, based upon the findings of fact presented in the body of the staff report subject to the following conditions:

1. Approval of the CUP shall be limited to 5 years at such time the applicant must reapply prior to continuation of the use;
2. Provision of a revised site plan to show the following:
 - a. Show existing E1100 Rd. right-of-way.
 - b. Show front building setback along west property line and side building setback along south property line.
 - c. Provide reference for drainage easement including Book & Page number.
 - d. Show that portion of the subject property that is located within the special hazard district flood zone including the map and date references from FEMA.
 - e. Provision of a revised legal description that cites the full parent parcel that matches the County records and the sub-parcel proposed.
3. Provision of a revised site plan to include the following notes:
 - a. "No restroom facilities are provided. If a restroom is provided the structure shall be required to meet ADAAG requirements on the site plan as well as actual building construction."
 - b. Provision of a note that clarifies the proposed use of the building as truck storage only.
 - c. "All access will be limited to automobiles, pickup trucks or other light-duty trucks not to exceed five-ton load limit, and the Applicant shall, at its sole expense, repair all damage to East 1100 Road caused by the applicant's use of such road."
 - d. "No outside storage of equipment."
 - e. "No burning."
 - f. "No night uses."
 - g. "No exterior outside lighting is proposed."
 - h. "No excessive noise."
 - i. "No construction debris shall be dumped or disposed of on site."

Review Comments from Other Departments/Agencies

County Public Works/Engineering:

1. Show existing E1100 Rd. right-of-way
2. It seems front yard setback should be along road R/W (west side of property).
3. Provide more info on Drainage Easement. If existing, state Book & Page number.

County Zoning & Codes:

1. Prior to the adoption of the Home Occupation Regulations, North Stephens L.C. was one of the several 100 that were in violation of the Douglas County Zoning Regulations. Although it was previously discussed with Mr. Jim Teague of Gene Fritzel Construction Company, only after the issuance of a stop work order, were the applicants willing to follow appropriate steps to resolve the dilemma.
2. The building was constructed without obtaining a building permit, so therefore no permit was ever issued. Much like many that have been constructed as an agriculturally exempt structure. Pursuant to Uniform Building Code Section 3405 states, "No change shall be made in the **character of occupancies or use of any building** that would place the building in a different division of the same group of occupancy or in a different group of occupancies, **unless such building is made to comply with the requirements of the code for such division or group of occupancy.**"
3. A portion of the property is in the special hazard district flood zone, which is not shown on the site plan.
4. Under the allowable uses as specified under the General Notes 1.14 on the Site Plan, Excavation, Trucking, and Farm Equipment are listed. During the investigation of the violation of this site, it was noted that trucks, which exceeded the allowable load limit, were being used.
5. The building code will require outside lighting on the building, and therefore its location and means to prevent glare shall also be shown. (Dg. Co. Zoning Reg. 19A-4.12)
6. A note shall appear on the building that specifically states that no restroom facilities are provided. If a restroom is provided the structure shall be required to meet ADAAG requirements on the site plan as well as actual building construction. (Dg. Co. Zoning Reg. 19A-4.14 & Uniform Building Code Section 1105)
7. Applicant has also been cited by the State for the illegal disposal of construction/demolition waste on March 21, 2002.

County Health Department:

If any restrooms will be provided, health department must approve sanitary system first.

Natural Resources

Conservation District:

No comments

Wakarusa Township:

- ~~1. Several times debris must be picked up from public road left by applicant.~~
- ~~2. Not used for farm equipment, storage of landscape rock, bobcat, trenchers etc [commercial use] box trailers appear to be used for storage.~~
- ~~3. Several past fires requiring township fire service. Area is densely wooded.~~
- ~~4. Dust from traffic loading and unloading.~~

5. ~~Wakarusa Township does not approve of this CUP due to increased heavy truck traffic on E 1130 Road, which will destroy the road. This road has a 5-ton weight limit on E 1130 and N 1750 Roads. Also a culvert was installed for this CUP without township approval.~~
6. ~~The property owners have been hauling brush, construction debris, dirt, rock, etc back on this property for some time. This property has almost no farm ground on it, just some hay ground. This property will be used for business purposes not farm purposes as proposed. This CUP should be denied for all adjacent property owners' best interests.~~

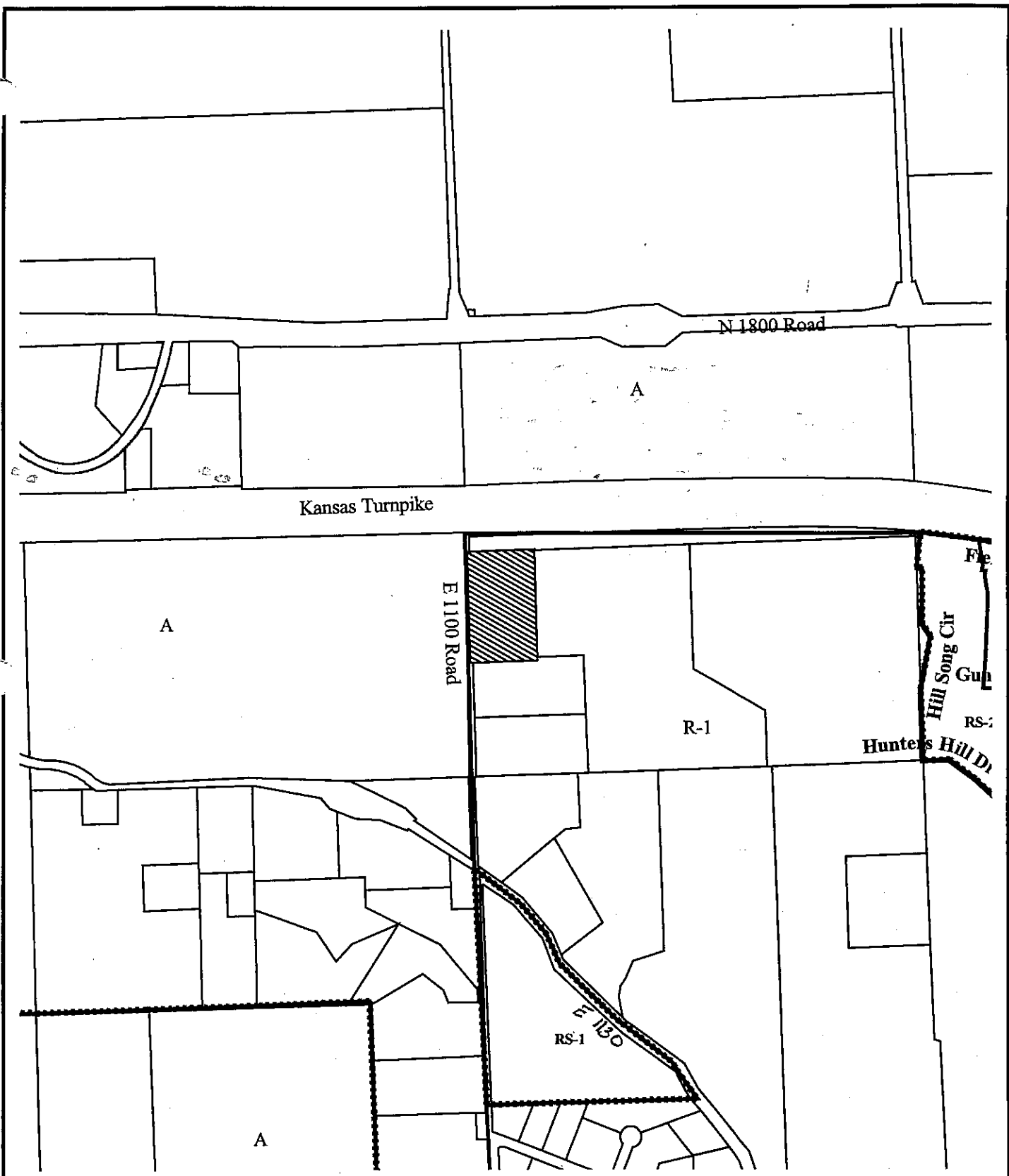
Revised Comments 12/27/02:

1. Refer to Letter from Mark Andersen dated November 22, 2002 for resolution of concerns with applicant's representative.
2. Additional concern is that no modifications to the driveway entrance that include concrete abutments, monuments or improvements shall be made unless otherwise first approved by the Township Board.

Wakarusa Township Fire Dept: Recommend that applicant contact the Township fire department prior to any on-site burning.

Planning Department:

1. Legal description does not match County records that describe 32-acre parcel.
2. Please provide detailed list of uses, staff has received conflicting reports regarding equipment, storage, dumping, etc on the property.
3. Provide estimated time frame for use, area to the south and east is developing with residential uses; subject property is located in urban growth area. Long term planning anticipates further residential development in this area.



CUP-08-09-02: Conditional Use Permit for Storage of Excavation,
Trucking & Farm Equipment at 1768 E 1100 Road

Lawrence-Douglas County Planning Office
September 30th, 2002



Area Requested

Scale: 1 Inch = 800 Feet

LAW OFFICES
BARBER, EMERSON, SPRINGER, ZINN & MURRAY, L.C.

1211 MASSACHUSETTS STREET
POST OFFICE BOX 667
LAWRENCE, KANSAS 66044
(785) 843-6600

FACSIMILE (785) 843-8405

JOHN A. EMERSON
BYRON E. SPRINGER
RICHARD L. ZINN
THOMAS V. MURRAY
CALVIN J. KARLIN
JANE M. ELDREDGE
MARK A. ANDERSEN*
WILLIAM N. FLEMING*
TERENCE E. LEIBOLD*
TERRENCE J. CAMPBELL*
JULIE A. BORCHARDT
CLAYTON C. SKAGGS

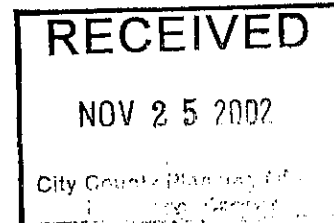
*ADMITTED IN KANSAS AND MISSOURI

RICHARD A. BARBER
(1911-1998)

MARTIN B. DICKINSON, JR.
GLEE S. SMITH, JR.

OF COUNSEL

November 22, 2002



Via Hand-Delivery

Ms. Sandra L. Day, AICP
City/County Planner
Lawrence/Douglas County Metropolitan
Planning Office
6th and Massachusetts
P.O. Box 708
Lawrence, Kansas 66044-0708

Re: *Conditional Use permit for Storage at 1768 E. 1100 Road
North Forty, L.C. (the "Applicant")*

Dear Sandra:

I am writing to follow up our telephone conversation in connection with a request for a conditional use permit for storage at 1768 E. 1100 Road. Your staff report makes reference to the proposed use being "an intensive operation", makes another reference to "the intensity of the intensive traffic in the area resulting from the storage operation", and then again to "the proposed use is an intensive operation". Comments from Wakarusa Township includes a statement to the effect that the Township "does not approve of this CUP due to increased heavy truck traffic on E 1130 Road, which will destroy the road."

I disagree with your description of the proposed use being "intensive" in any way. Furthermore, I disagree with the statement that the proposed use will "destroy the road". The truth is that the Applicant is willing to define and restrict the proposed use in a number of ways that will, in fact, render the Applicant's proposed use less intensive than that of most of the residential uses in the area. In order to accommodate the concerns of the Wakarusa Township and the adjoining residential landowners, the Applicant will agree to limit the proposed use, as follows:

1. Nonmowing season, October 15-April 15, access will be limited to twice per week.

Ms. Sandra L. Day, AICP
November 22, 2002
Page 2

2. Mowing Season, April 15-October 15, access will be limited to two trips per day.
3. Access during July 25-August 10 not to exceed four trips per day, to haul apartment carpet and appliances.
4. All access will be limited to automobiles, pickup trucks or other light-duty trucks not to exceed five-ton load limit, and the Applicant shall, at its sole expense, repair all damage to East 1100 road caused by the Applicant's use of such road.
5. No outside storage of equipment.
6. No burning.
7. No night uses.
8. No outside lighting.
9. No excessive noise.
10. CUP expires in 5 years.

It is my sincere hope that these restrictions will be acceptable to you and to the Wakarusa Township board of trustees. I will look forward to discussing these matters with you. If you have any questions, or if I may be of any further assistance, please call me.

Very truly yours,

BARBER, EMERSON, SPRINGER,
ZINN & MURRAY, L.C.

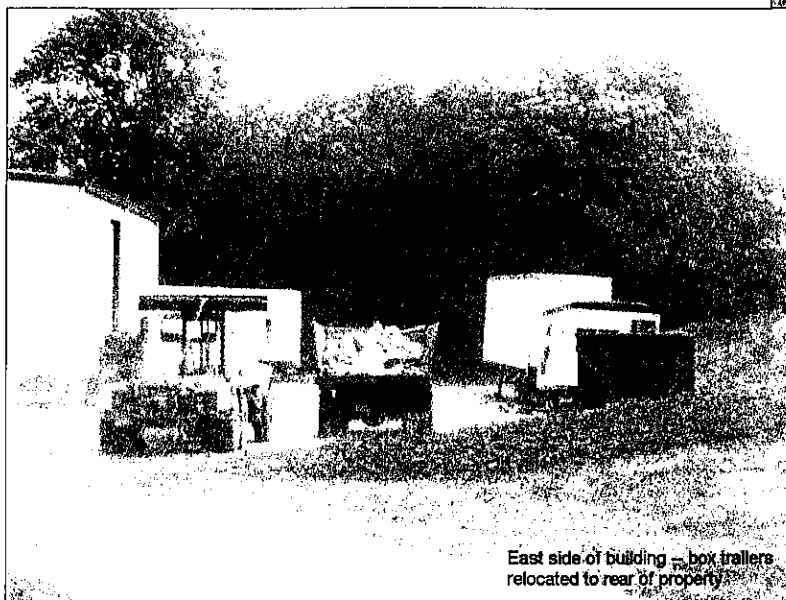
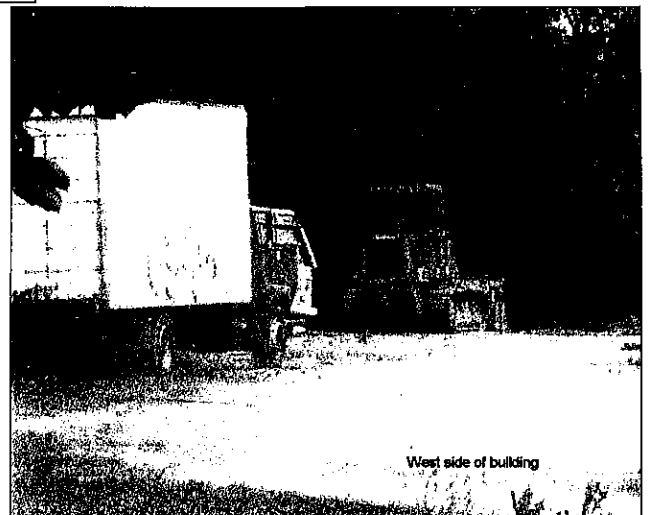
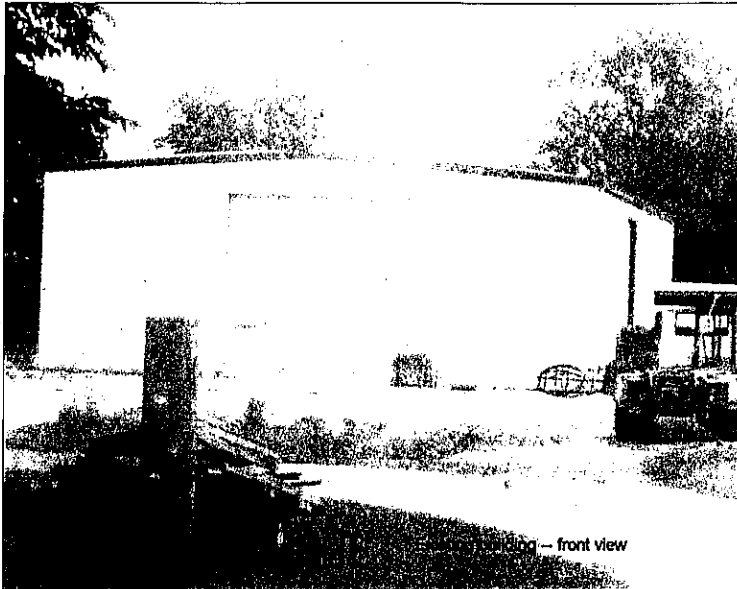


Mark A. Andersen

MAA:smb

cc: Thomas S. Fritzell
Paul Werner
Ernest Butell

Attachments



ITEM NO. 11: **CONDITIONAL USE PERMIT FOR TRUCK STORAGE AT 1768 E 1100 ROAD (SLD)**

CUP-08-09-02: Conditional Use Permit for storage of excavation, trucking, and farm equipment. The property is generally located at 1768 E 1100 Road. Submitted by Paul Werner Architects for North 40 LC, property owners of record. *This item was deferred from the November Planning Commission meeting.*

Chairman Jennings abstained from the Item and Vice-Chair Pine acted as Chair.

STAFF PRESENTATION

Ms. Day introduced the Item, stating the subject property was zoned R-1, which was a county single-family residential zoning district. There was an existing structure on the property, the primary surrounding use was agricultural, with several rural residential structures along the County roads.

There was some confusion initially over what use the applicant proposed and what affect this use would have on the maintenance of the Township roads. The applicant met with Staff and the Township to clarify his intentions and offered self-imposed conditions to address the concerns of the Township regarding trip generation, outdoor storage and other previous problems.

Ms. Day clarified the intended use had been stated as the storage of trucks and equipment associated with the applicant's property maintenance business.

The County Zoning Code permitted screened outdoor storage, but Staff recommended against this without having further details. An outdoor storage area was shown on the plan to the east of the building property and Staff indicated the property was well-screened by existing vegetation and the topography of the area.

It was noted that the Staff Report included a condition for "no outdoor storage of equipment". Staff explained that this condition was one of several suggested by the applicant in response to Township concerns regarding previous complaints. Other conditions included a load maximum of 5 tons and four round trips per day.

Comm. Schachter suggested the word "proposed" be replaced with "permitted" in the condition regarding exterior lighting.

Staff recommended approval of the Conditional Use Permit for a storage facility, based on a narrow view of the truck storage portion of the proposed use.

APPLICANT PRESENTATION

Mark Andersen spoke on behalf of the applicant, stating the pictures presented in the Staff Report had been taken long ago and represented the kind of problems the applicant attempted to address with the self-imposed conditions.

Mr. Andersen said the intended use was to store hay and to park overnight a single 1-ton truck that would be loaded with mowing equipment. He requested the conditions be modified to allow the equipment to remain on the truck overnight.

Mr. Andersen said the Township had set the 5-ton limit. The applicant did not think the limit needed to be so high.

Regarding the trip generation condition, Mr. Andersen said the applicant believed the following restrictions would be adequate:

- Two trips per week during the non-mowing season, October 15 – April 15
- Two trips per day during the mowing season, April 15 – October 15

The applicant was also requesting permission to use the interior concrete floor between July 25 – August 10 to cut carpet and unpack small appliances. It was established that the carpet and/or appliances would not be stored overnight, but would be cut/unpacked and delivered each day. This would result in a trip generation of approximately 4 trips per day. It was pointed out that this alternate use was not permitted by the County Zoning Code.

PUBLIC HEARING

Rick Whitson, adjacent property owner, said he was relieved to hear the intended use was for mower storage, but the subject property was not adequately screened. The area was highly visible, even in the summer.

Mr. Whitson said he had been concerned with the possibility of large trucks making numerous trips in his semi-residential neighborhood, noting the number of children (including those with special needs) that lived along the narrow road.

Mr. Whitson said he was comfortable with the proposed mower storage use and the suggested short-term carpet/appliance area, but he was opposed to industrial uses in the area. In response to questioning, he said he was comfortable with the conditions as presented.

CLOSING COMMENTS

There were no closing comments from the applicant or Staff.

COMMISSION DISCUSSION

Comm. Burress asked Staff to comment on the applicant's request to be allowed to use the property for cutting carpet and unpacking appliances. Ms. Day said these uses are outside the clearly stated allowable uses of a CUP. Commercial zoning should be sought to allow for these uses.

ACTION TAKEN

Motioned by Comm. Schachter and seconded to approve the Conditional Use Permit and forward it to the County Commission with a recommendation for approval, based on the findings of fact presented in the body of the Staff Report and subject to the following revised conditions:

1. Approval of the CUP shall be limited to 5 years at such time the applicant must reapply prior to continuation of the use;
2. Provision of a revised site plan to show the following:
 - a. Show existing E1100 Rd. right-of-way;
 - b. Show front building setback along west property line and side building setback along south property line;
 - c. Provide reference for drainage easement including Book & Page number;
 - d. Show that portion of the subject property that is located within the special hazard district flood zone including the map and date references from FEMA; and

- e. Provision of a revised legal description that cites the full parent parcel that matches the County records and the sub-parcel proposed.
3. Provision of a revised site plan to include the following notes:
 - a. "No restroom facilities are provided. If a restroom is provided the structure shall be required to meet ADAAG requirements on the site plan as well as actual building construction.
 - b. Provision of a note that clarifies the proposed use of the building as truck **and mower** storage only."
 - c. "All access will be limited to automobiles, pickup trucks or other light-duty trucks not to exceed five-ton load limit, and the Applicant shall, at its sole expense, repair all damage to East 1100 Road caused by the applicant's use of such road."
 - d. "No outside storage of equipment **or materials**."
 - e. "No burning."
 - f. "No night uses."
 - g. "No exterior lighting is permitted."**
 - h. "No excessive noise."
 - i. "No construction debris shall be dumped or disposed of on site."
4. Revise site plan to remove notes related to exterior storage.

DISCUSSION ON THE MOTION

Comm. Schachter believed the proposed wording negated the need to directly address the alternative use (carpet and appliances) question, making it clear that another Site Plan would be needed to add this use.

The Commission discussed exterior lighting with Mr. Whitson and gave unanimous consent to revise the condition regarding lighting to permit basic safety lighting within County Regulations.

ACTION TAKEN

Motion on the floor was to approve the Conditional Use Permit for a truck storage facility and forwarding it to the County Commission with a recommendation for approval, based upon the findings of fact presented in the body of the staff report subject to the following conditions:

1. Approval of the CUP shall be limited to 5 years at such time the applicant must reapply prior to continuation of the use;
2. Provision of a revised site plan to show the following:
 - a. Show existing E1100 Rd. right-of-way;
 - b. Show front building setback along west property line and side building setback along south property line;
 - c. Provide reference for drainage easement including Book & Page number;
 - d. Show that portion of the subject property that is located within the special hazard district flood zone including the map and date references from FEMA; and
 - e. Provision of a revised legal description that cites the full parent parcel that matches the County records and the sub-parcel proposed.
3. Provision of a revised site plan to include the following notes:
 - a. "No restroom facilities are provided. If a restroom is provided the structure shall be required to meet ADAAG requirements on the site plan as well as actual building construction.
 - b. Provision of a note that clarifies the proposed use of the building as truck and mower storage only."

- c. "All access will be limited to automobiles, pickup trucks or other light-duty trucks not to exceed five-ton load limit, and the Applicant shall, at its sole expense, repair all damage to East 1100 Road caused by the applicant's use of such road."
 - d. "No outside storage of equipment or materials."
 - e. "No burning."
 - f. "No night uses."
 - g. "Exterior safety lighting is permitted."
 - h. "No excessive noise."
 - i. "No construction debris shall be dumped or disposed of on site."
4. Revise site plan to remove notes related to exterior storage.

Motion carried 8-0-1, with Chairman Jennings abstaining and Student Comm. Morrell voting in favor of the motion.

Chairman Jennings reassumed his position as Chair.

Draft

PUBLIC HEARING ITEM:

ITEM NO. 12: CONDITIONAL USE PERMIT FOR STORAGE SHED AT CREEKWOOD LAWN COMPANY; 1753 N 700 ROAD (SLD)

SUMMARY

CUP-12-17-02: Conditional Use Permit request for a storage shed at Creekwood Lawn Company. The property is generally described as being located at 1753 N 700 Road. Requested by Shelby Franklin, property owner of record.

GENERAL INFORMATION

Current Zoning and Land Use:	A (Agricultural District); existing rural residential parcel includes only barn structure at this time.
Surrounding Zoning and Land Use:	A (Agricultural District) in all directions; rural agricultural and residential uses.
Reason for Request:	Compliance with minimum requirements for storage facility. Intent of applicant is to construct a single family home and base location as home occupation for lawn service business.

I. ZONING AND USES OF PROPERTY NEARBY

Staff Finding - The subject property and surrounding area is zoned for agricultural uses.

II. CHARACTER OF THE AREA

Staff Finding – The subject property is located two and a half miles north of Baldwin within the Vinland community. This area is characterized as a rural residential area and includes both agricultural and residential uses as well as a small airfield facility. The subject property is outside of any incorporated city's growth area and is predominantly an agricultural neighborhood including rural residential homes. The subject property is adjacent to county roads on two sides and has direct access to a paved county maintained road.

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

Staff Finding – A Conditional Use Permit (CUP) does not change the base, underlying zoning. The suitability of the property for agricultural or rural residential use will not be altered. The subject property is not located within an Urban Growth Area. The subject property area is zoned for agricultural uses. The subject property is a five-acre tract suitable for future rural residential development.

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

Staff Finding – The subject property is developed with an existing storage building for machinery equipment. The structure was constructed as an agricultural building; therefore no building permit was issued. The County Zoning Regulations were adopted in 1966, this property has been zoned "A (Agricultural)" since that time.

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

Approval of a Conditional Use Permit request does not alter the base-zoning district. Section 19-01 of the County Zoning Regulations recognize that "*certain uses may be desirable when located in the community, but that these uses may be incompatible with other uses permitted in a district...when found to be in the interest of the public health, safety, morals and general welfare of the community may be permitted, except as otherwise specified in any district from which they are prohibited.*" The proposed use is included in Section 19-4 Conditional Uses Enumerated, of the County Zoning Regulations listed as a "*truck storage facility*" use. The Regulations describe a truck storage facility as follows:

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

The existing building will be used for equipment storage of the applicant's lawn service business. No external storage is proposed. Based on this use description, it is recommended that restrictions be placed on this CUP to: limit the area dedicated to the truck storage activity; to require screening to minimize the impacts on adjacent properties; and to provide a note on the plan that this facility is not approved for the purpose of repair or servicing of equipment. It is also recommended that approval of the CUP request be tied to this specific use and to this applicant. This would mean the approval of the CUP is non-transferable and is granted solely for the proposed use and to the specific individual on the application.

The recent approval of similar uses included a limitation on the number of employees to retain the small nature of the business and to limit the transformation of the activity to a more commercial/repair operation. Staff recommends that the number of employees (on site) be limited to address the nature and character of the proposed use. A truck storage facility would not typically require employees other than those who bring equipment to the site and conduct minor maintenance of the equipment. Additionally, a designated parking area is required for employees.

Staff Finding – Approval of the CUP will provide an opportunity for the applicant to be compliant with the minimum zoning regulations and standards until such time as a single-family house is constructed. As a Conditional Use Permit, the issues of screening and buffering to reduce undesirable impacts such as noise and view on residential properties to the west can and should be provided.

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

Evaluation of this criterion weighs the benefits to the community-at-large versus the benefit of the owners of the subject property. Benefits are measured based on anticipated impacts of the conditional use request on the public's health, safety and welfare.

Approval of the subject property neither directly benefits the community nor harms the public health, safety and welfare, as the underlying A (Agricultural) zoning district is unchanged. The subject property is adjacent to a paved road along the north side and has direct access to this road. The impact of the use for storage of lawn equipment is relatively low compared to other similar requests for truck storage facilities.

Staff recommends the approval period be for 5 years. CUP's are subject to reconsideration if 20% of the neighbors find the use objectionable or the surrounding neighborhood changes substantially in use. To request review of an existing CUP, a petition can be made to the County Commission for early review and reconsideration of the use and operation.

Staff Finding – There is no identified relative gain or detriment to the public's health, safety and welfare by permitting development of this use as a Conditional Use Permit. The underlying A (Agricultural) zoning remains unchanged.

VII. CONFORMANCE WITH THE COMPREHENSIVE PLAN

The subject property is not located immediately adjacent to any city's growth boundary. **Horizon 2020** encourages the support of local businesses to *"ensure their retention and to facilitate expansion plans for the future."* Industrial uses are directed to urban areas where services such as sewer, water and transportation options are available. **Horizon 2020** does not address conditional use permits as a tool to achieve specific policies.

Staff Finding – A Conditional Use Permit can be used to allow limited commercial and industrial expansion or establish new or temporary areas for certain non-residential uses. This tool allows proportional development in harmony with the surrounding area. As recommended by **Horizon 2020**, the proposed request is, in the short term, consistent with the Comprehensive Plan. As a more detailed study of industrial locations is completed for the unincorporated area, the longevity of the appropriateness may be affected.

STAFF REVIEW

Site Summary:

Subject Property: 5.009 acres
Existing Building: 2,400 SF (40'x 60')
Off Street Parking Required: 1 space per two employees—[No on-site employees]

Review Comments from Other Departments/Agencies

County Public Works/Engineering: No comments

County Zoning & Codes:

1. The building was constructed without obtaining a building permit prior to commencing construction; at this point it is unknown whether the structure will meet commercial building code requirements. (Douglas County Zoning Reg's. Section 29-2, 26-1, 26-1.03, and 26-2.)
2. Site Plan doesn't contain a written legal description. (Dg. Co. Zoning reg's 19A-4.3) (*Plan revised*)
3. Site Plan doesn't show present and proposed topography at 5'-0" intervals. (19A-4.4)
4. The direction, amount of illumination, and information to prevent glare isn't contained on Site Plan. (Dg. Co. Zoning Reg's 19A-4.12) (*Plan revised*)
5. The location and dimensions of existing entrance not shown. (19A4.7) (*Plan revised*)
6. The entrances, gross floor area, and number of stories of the building are not shown as required. (19A4.6) (*Plan revised*)
7. Plan shows outdoor compost pile without any screening. (19A.4.13. & 19A.4.8) (*Plan revised*)
8. No area is designated for off street parking. (19A.4.11.) (*Plan revised*)
9. The applicant also does landscaping which isn't listed or specified on the site plan. Does he only intend to store lawn mowers and equipment and not other nursery material for resale and installation? Section 19A4.24 is the closest seemingly similar use to this application. (Truck Storage Facility) (*Plan revised*)

County Health Department: None received

Natural Resources

Conservation District: None received

Westar (KPL): None received

United Cities Gas Co.: None received

Palmyra Township: None received

Palmyra Township Fire Dept: None received

Rural Water District #4: None received

Southwestern Bell: None received

Planning:

1. Provide note that there will not be any employees on-site during work hours. (*No employees are proposed*)
2. State on the plan if there are restroom facilities on this property. (*There is no restroom facility*)
3. Show any utilities to this building.
4. Show on-site parking. (*Plan revised*)
5. Show dimension of adjacent roadways.
6. Legal description should be shown on face of site plan. (*Plan revised*)

STAFF REVIEW

The subject property is located in the southeast portion of Douglas County within the Vinland area. This application is the result of a change relating to Home Occupations and that the presence of an accessory building cannot exist unless there is a primary structure. The site plan shows the location of a future single-family residence. Approval of this request would allow a "commercial type business" within an agricultural/residential area. The subject property is not located within any urban growth area. It should be noted that if the applicant resided on this property, this use would qualify as a home occupation and a CUP would not be required.

Setback Requirements - Building setback requirements for the "A" District are as follows:

- Front Yard - 50'
- Side Yard - 15'
- Rear Yard - 50'

Setback requirements are measured from the property lines. The setback requirements for county development are established from a base line that accounts for legal descriptions that often include the public roadway easement. The site plan has been drawn to show both the roadway easement and the minimum building setback requirements. The building is accessed from N. 700 Road. The existing structure complies with the minimum yard requirements. The subject property is described by metes and bounds; it is not a platted property.

Access to the site - Specific access to the site is provided via a driveway from N. 700 Road (County maintained road). There is a letter attached to the application from the County Engineer's Office indicating that the recently constructed entrance is acceptable. The site plan shows that this entrance would also serve the future residence to the east (applicant's intended home site).

Screening and Outdoor Storage- The site plan drawing shows that the area is substantially screened by dense vegetation along the county roadways. There is no "open storage" use proposed as part of this site plan. Any addition of open storage would require a revision to the site plan portion of the Conditional Use Permit and would require additional screening.

Conclusion – A Conditional Use Permit does not allow the range of uses found in commercial or industrial districts. Approval of a CUP can be tailored to address specific issues such as size, time limitations, restriction on the number of vehicles, and screening requirements.

This use could have existed as an extension of a home occupation if the single-family residence were all ready constructed. There is no benefit to denial of the request for the application. This would result in the relocation of the business to another commercially zoned location. The benefit results in the continued operation of a local business that has recently had to "downsize" and has required a new location of equipment storage. The access to the property is immediately adjacent to a paved road and county highway network. The access driveway has recently been constructed and approved by the County Engineer. There is no public harm in approval of the request.

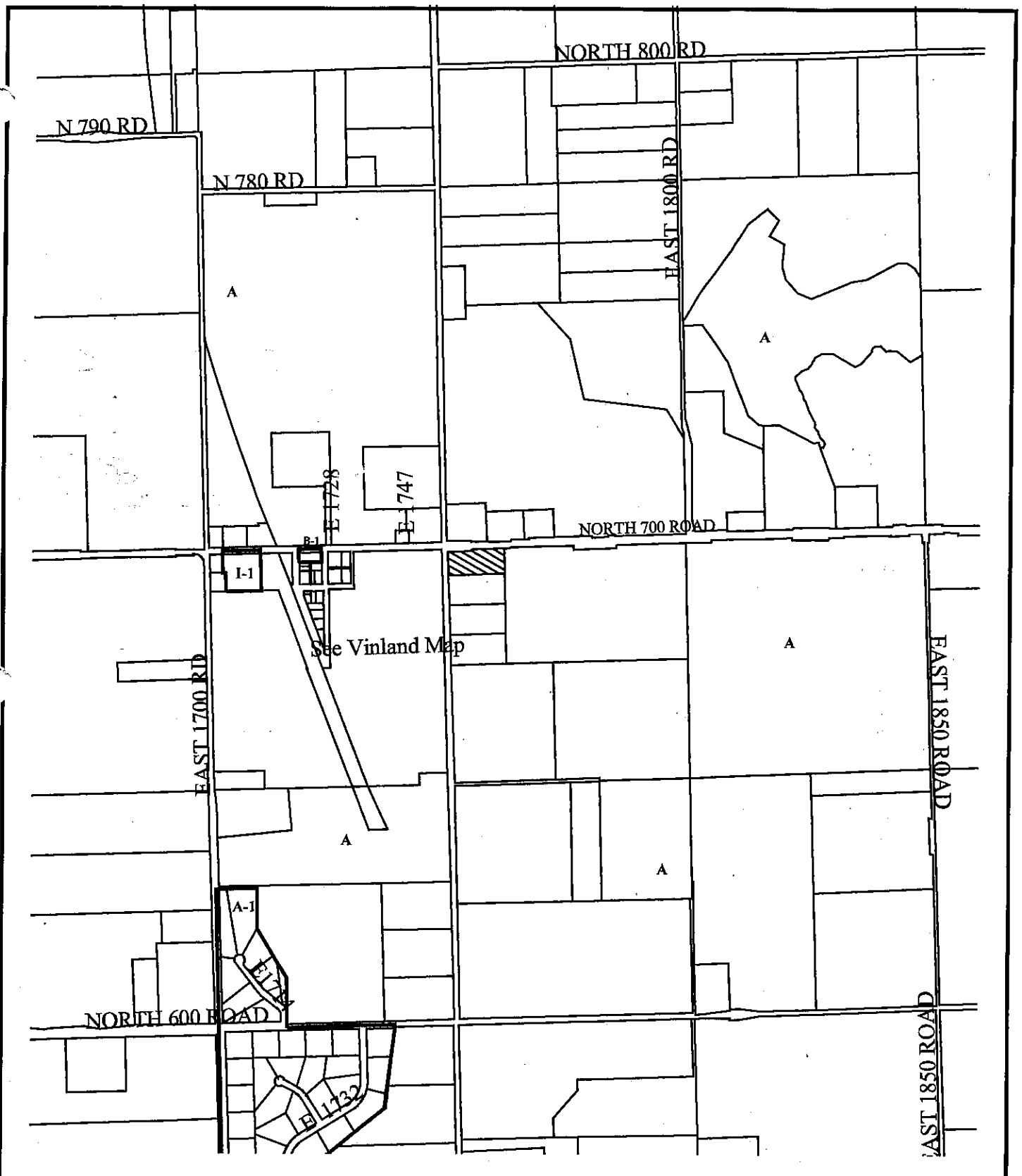
Staff recommends that the site plan be revised to indicate that there will be no on-site employees during the hours of operation and that parking spaces be provided to accommodate access and pick-up of equipment as necessary. As vehicles are intended to be stored within this building it is assumed that only minor maintenance of these vehicles will also be provided within this building.

Staff recommends that the approval of the CUP be limited to not more than five (5) years with the ability to be re-approved for an additional 5 years as discussed above. The property owner would then be required to re-apply. This will allow assessment of the use during that time.

PROFESSIONAL STAFF RECOMMENDATION

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

1. Provision of a note on the face of the site plan stating, "The Conditional Use Permit will be re-evaluated by the County Commission in February, 2008. The CUP will expire on February 28 2013. Continuation of the use **covered by this CUP** beyond February 28, 2013 the applicant will need rezoning or approval of a new CUP."
2. Provision of a revised site plan to include the following changes:
 - a. Show present and proposed topography at 5'-0" intervals. (19A-4.4)
 - b. Provide a note stating there will not be any employees on-site during work hours.
 - c. State on the plan if there are restroom facilities on this property.
 - d. Show any utilities to this building.
 - e. Show dimension of adjacent roadways.
 - f. Provision of a note on the face of the site plan that states; "The approved use for this site is an interior equipment storage facility for vehicles and equipment for the applicant. Repair, and/or servicing stored vehicles and equipment, other than those necessary for standard maintenance and upkeep, is expressly prohibited".
 - g. Provision of a note on the face of the site plan that states; "Any exterior storage of material shall be located completely screen per Section 19-4(24) of the County Zoning Regulations."
 - h. Provision of a note on the face of the site plan that states: "The addition of exterior storage of materials shall first require a revision to the site plan portion of the CUP."
 - i. Provision of a note regarding existing landscape per Dg. Co. Zoning Reg. 19A-4.10.



CUP-12-17-02: Conditional Use Permit for Creekwood Lawn Company
Storage Shed at 1753 North 700 Rd.

Lawrence-Douglas County Planning Office

December 20, 2002



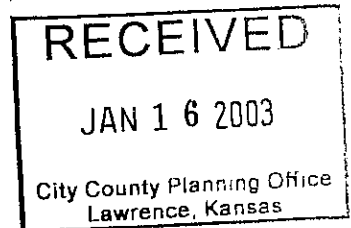
Area Requested

Scale: 1 Inch = 1500 Feet

Item 12

1764 N. 700 Rd.
Baldwin, KS 66006

Sandra L. Day
Lawrence-Douglas County Planning Department
6th & Massachusetts
Lawrence, KS 66044



Dear Ms. Day:

Thank you for notifying me of the pending request for a Conditional Use Permit for proposed activities at 1753 N. 700 Road. I am grateful for the opportunity to make my concerns known to the County.

For the record, I support the granting of this permit, though not without reservations.

Members of the County Commission and Planning Commission may remember my struggle to persuade the County to impose some substantial level of control over the intrusion of industrial types of businesses, including home businesses, in areas of the county zoned Agricultural or Residential. The basis of my concern has been the preservation of land values for small lots in residential use, such as my own, and the mitigation of nuisances affecting quality of life. The response of County staff has been professional and supportive. County officials, however, chose to legalize the many industrial home businesses that had operated in the county for years, and any new ones that might come along. The result is that my rural home, an old farmhouse on 3½ acres just east of Vinland, is now bracketed by new industrial uses – a water-district warehouse and a home-business welding shop.

When I moved in, about ten years ago, these sites were cropland and such industrial uses were illegal. On the strength of the prevailing uses and the protection of the zoning law at the time, I undertook the renovation of this old fixer-upper of a house, in the reasonable expectation that this would remain a desirable area for a residence. You can imagine my disappointment at subsequent events at the County. My investment in renovation here has consequently been drastically cut back, and my wife and I find ourselves living in a divided neighborhood – part cropland, part forklifts and dumpsters and truck traffic and outdoor storage yards that somehow never get screened from view as the law requires. You can picture which component is shrinking and which is spreading.

Now a new proposal arrives for yet another industrial use, a lawn-service operation, to be conducted not as a home business but as an independent business operating outside any kind of business zone.

In view of the history of our corner of Vinland, what kind of response do the Commissioners expect from me? Does this look like an appropriate land use here? Wouldn't such businesses be more suitably placed on the west side of Vinland, near the

airport, the aircraft-components factory, the Vinland Enterprises building and the road-maintenance materials yard, and adjacent to County Route 1055? Is it wise to add more truck movement and noise to the road intersection this corner site shares with Vinland Elementary School? Is this a good place – across from a schoolyard – to stockpile herbicides, pesticides, fertilizer, fuel and other hazardous chemicals that lawn services use?

Now, I have vented my feelings about this proposal as part of a trend affecting the whole Vinland School area. But I figure that battle has been pretty much lost. Given that situation, and as for my feeling about how this proposal affects me personally, let me surprise you.

I am not going to oppose this permit outright. My support, though, will have to be conditional. The commissioners may recognize that my concerns are pretty reasonable.

1. If the proposed storage shed is strictly for dead storage, without daily vehicle traffic or outdoor storage, I have no problem with it. However, if it will be used as a base of operations for the maintenance and movement of equipment, trucks, trailers and machinery on a daily basis, I will expect the Commission to recognize the potentially intrusive nature of this business upon the school and upon residences on small lots nearby, and impose reasonable regulations to minimize nuisances and conflicts, especially noise.
2. Under the current home-business law, this operation would be entirely legal as a home business. Though I find the current home-business law counterproductive and peculiar, it is nevertheless the law. I would not object to this business if the owner pledges in good faith to build his own home on the site within a reasonable time – say, five years. Then he and his family would be present on site to monitor any nuisances his business might generate, and would be a part of the affected community. I would still expect the County to act to minimize hazards and nuisances.
3. If the Conditional Use Permit has a limited term, is reviewed frequently for renewal – say, every year or two at first – and if neighboring landowners have substantial input into that review, I would support approval of the C.U.P., at least for the first term. If this is not how a C.U.P. works, perhaps a Use Permitted Upon Review might be suitable, provided such review occurs periodically. It seems to me that a C.U.P. without a time limit constitutes a de facto spot rezoning.

Therefore, I support approval of the C.U.P. for this business only under one or more of these conditions:

1. The property is to be used only for dead storage, indoors.
2. The County imposes reasonable conditions on any more active use, to protect nearby property from excessive noise, dust, fumes, toxins, traffic, blight, excessive night lighting, and any other nuisance arising from the business.

3. The business owner builds a residence for himself on site within a reasonable time.
4. The C.U.P. contains a time limit and can be reviewed for renewal frequently, and renewal denied if the operation has repeatedly imposed undue nuisances upon nearby property.

Given the precedent this C.U.P. may establish, I urge the County to proceed with reasonable care on requests such as this. At the same time, I believe that the applicant, Mr. Franklin, having already built his building, deserves a chance to prove himself a considerate neighbor. Mr. Franklin, in fact, has been known to my family for years, and we have confidence in his good intentions. Nevertheless, the County has an obligation to assure area residents that this permit, and those that will follow, will be so constructed that those intentions shall be carried out. Therefore, as long as the County, in imposing conditions, can assure that this operation will not be unduly noisy or intrusive or dangerous or destructive of property values, I support the County's granting him his Conditional Use Permit.

Sincerely,



Paul O. Caviness

ITEM NO. 12: CONDITIONAL USE PERMIT FOR TRUCK STORAGE AT CREEKWOOD LAWN COMPANY; 1753 N 700 ROAD (SLD)

CUP-12-17-02: Conditional Use Permit request for a storage shed at Creekwood Lawn Company. The property is generally described as being located at 1753 N 700 Road. Requested by Shelby Franklin, property owner of record.

Vice-Chair Pine abstained from the Item

STAFF PRESENTATION

Ms. Day introduced the Item, explaining the proposed use would be an allowable Home Occupation if a residential structure were built on the property. The applicant was requesting the CUP until this was financially feasible.

Comm. Schachter suggested specifying the types of equipment permitted in condition 2f.

Staff explained condition 2a was a basic Site Plan requirement intended to avoid unintentional stormwater runoff. The condition was unessential in this case because the structure was already in place.

Comm. Lawson requested clarification on the condition prohibiting employees during work hours. Staff explained this was to avoid on-site workers, which fell under commercial use.

The exterior storage area was discussed, establishing that the area must be screened and was intended for compost. Appropriate screening materials were suggested as evergreen trees or solid fencing to define the area and reduce visual impact.

Staff said condition 2g provides for future expansion of the project and would affect the Site Plan, not the CUP.

Other conditions such as exterior lighting, trip generation, time limits and review dates were also discussed.

Staff recommended approval of the Conditional Use Permit for a Truck/Equipment Storage Facility, subject to the conditions listed.

APPLICANT PRESENTATION

Shelby Franklin, property owner and applicant, clarified the requested use would require 2 round trips per day, Monday – Saturday. He was the only full-time employee and would have at most a single part-timer. Mulch was not frequently stored on the premises and no inventory was carried. Equipment requested for storage included mowers, tillers, and spreaders.

Mr. Franklin suggested wording to include storage of “vehicles and lawn care machinery.” He said 4 trips per day would be ample, but asked if he would be permitted to work on-site to service the machinery.

The applicant intended to build a residence on the subject property before the CUP expired in five years.

PUBLIC COMMENT

No member of the public spoke on this Item

CLOSING COMMENTS

There were no closing comments from the applicant or Staff.

COMMISSION DISCUSSION

Comm. Lawson felt this Item was significantly different from the previous agenda Item (CUP-08-09-02), even though they were ostensibly for the same use. He noted the difference in zoning between the two Items and commented on the Commission's tendency to highly restrict uses in the County. He asked how making it difficult to run an independent business would benefit the community.

Comm. Schachter responded that he thought the conditions proposed were reasonable and in accordance with Code regulations.

ACTION TAKEN

Motioned by Comm. Schachter and seconded to approve the Conditional Use Permit for a Truck/Equipment Storage Facility and forward it to the County Commission with a recommendation for approval, based upon the findings of fact presented in the body of the Staff Report, and subject to the following revised conditions:

- a. The CUP will expire on February 28, 2008. For continuation of the use covered by this CUP beyond February 28, 2008 the applicant will need rezoning or approval of a new CUP.
- b. Provision of a revised site plan to include the following changes:
 - a. Show present and proposed topography at 5'-0" intervals. (19A-4.4)
 - b. Provide a note stating: "Employees shall not work on the premises ***except for the pick up/drop off of equipment and vehicles or servicing of machinery.***"
 - c. State on the plan if there are restroom facilities on this property.
 - d. Show any utilities to this building.
 - e. Show dimension of adjacent roadways.
 - f. Provision of a note on the face of the site plan that states; "The approved use for this site is an interior equipment storage facility for vehicles, ***mowers and related lawn care machinery*** for the applicant. Repair, and/or servicing stored vehicles and equipment, other than those necessary for standard maintenance and upkeep, is expressly prohibited".
 - g. Provision of a note on the face of the site plan that states; "Any exterior storage of material shall be completely screened per Section 19-4(24) of the County Zoning Regulations."
 - h. Provision of a note on the face of the site plan that states: "The addition of exterior storage of materials shall first require a revision to the site plan portion of the CUP."
 - i. Provision of a note regarding existing landscape per Dg. Co. Zoning Reg. 19A-4.10.

DISCUSSION ON THE MOTION

Comm. Lawson asked why it was important to limit access to the applicant's own property when others were allowed to access their own land at any time. Comm. Schachter indicated this was

intended to preclude the running of a business on the property, which would violate the County Zoning Code.

Comm. Durflinger suggested condition 1 be returned to the wording presented by Staff to allow for the use to continue if the applicant's plans to construct a residence did not come to fruition within five years. The Commission concurred unanimously following discussion.

Comm. Angino stated he did not see the point of "re-writing" conditions and reports that were created by professional Staff. He felt this took up valuable time and unnecessarily prolonged the meetings. Comm. Schachter replied this was his method of working towards a better final end-product, which was the Commission's basic intent.

Comm. Lawson considered requesting an amendment to the motion that would remove some of the restrictions. Some Commissioners felt the conditions, as stated in the motion, provided a broader range for the applicant to work within than that provided by strict application of the Code.

The Commission discussed the issue of rewording and refining conditions. Some felt this typified the micromanagement style of the Commission, while others felt it was the responsibility of this body to consider each case closely. It was noted that Staff was required to consider each case administratively. The Commission could go beyond those limitations to consider public comments and apply what Comm. Burress termed a "political judgment".

ACTION TAKEN

Motion on the floor, as amended, was to approve the Conditional Use Permit for a Truck/Equipment Storage Facility and forward it to the County Commission with a recommendation for approval, based upon the findings of fact presented in the body of the Staff Report, and subject to the following conditions:

1. Provision of a note on the face of the site plan stating, "The Conditional Use Permit will be re-evaluated by the County Commission in February, 2008. The CUP will expire on February 28, 2013. Continuation of the use covered by this CUP beyond February 28, 2013 the applicant will need rezoning or approval of a new CUP."
2. Provision of a revised site plan to include the following changes:
 - a. Show present and proposed topography at 5'-0" intervals. (19A-4.4)
 - b. Provide a note stating: "Work activity on the site shall be limited to the servicing of equipment and/or work vehicles and the pick up or delivery of such equipment/vehicles."
 - c. State on the plan if there are restroom facilities on this property.
 - d. Show any utilities to this building.
 - e. Show dimension of adjacent roadways.
 - f. Provision of a note on the face of the site plan that states; "The approved use for this site is an interior equipment storage facility for vehicles, mowers and related lawn care machinery for the applicant. Repair, and/or servicing stored vehicles and equipment, other than those necessary for standard maintenance and upkeep, is expressly prohibited".
 - g. Provision of a note on the face of the site plan that states; "Any exterior storage of material shall be completely screened per Section 19-4(24) of the County Zoning Regulations."

- h. Provision of a note on the face of the site plan that states: "The addition of exterior storage of materials shall first require a revision to the site plan portion of the CUP."
- i. Provision of a note regarding existing landscape per Dg. Co. Zoning Reg. 19A-4.10.

Motion carried 8-0-1, with Vice-Chair Pine abstaining and Student Comm. Morrell voting in favor of the motion.

Draft

PUBLIC HEARING ITEM:

**ITEM NO. 13: CONDITIONAL USE PERMIT FOR STRAWBERRY HILL
CHRISTMAS TREE FARM; 794 HIGHWAY 40 (SLD)**

SUMMARY

CUP-12-18-02: Conditional Use Permit request for a Christmas Tree Farm. The property is generally described as being located at 794 US Highway 40. Requested by Lynn Walther for Ethelyn F. Walther, trustee, property owner of record.

GENERAL INFORMATION

Current Zoning and Land Use:	A (Agricultural District); existing Christmas tree farm.
Surrounding Zoning and Land Use:	A (Agricultural District) in all directions; existing rural residential and agricultural uses.
Reason for Request:	Compliance with minimum requirements for County Zoning.

I. ZONING AND USES OF PROPERTY NEARBY

The property is located on the north side of Highway 40 (W. 6th Street extended). The subject property and surrounding area is zoned for agricultural uses.

Staff Finding - Surrounding zoning includes A (Agricultural) on all sides. Surrounding land uses are primarily agricultural with farm residences.

II. CHARACTER OF THE AREA

Staff Finding – The subject property is located just west of the current city limits and is developed with multiple accessory buildings associated with the property. This property is characterized as a rural residential area along a major county thoroughfare. The surrounding area includes agricultural and residential uses. The subject property is outside of the city's growth area and is predominantly an agricultural neighborhood including rural residential homes. The subject property is adjacent to country roads on two sides and has direct access to paved roads.

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

The current zoning designation for the property is A (Agricultural) District, a district in which agriculture-related uses are allowed. The agricultural products sales portion of the use is allowed by right in the A District. The proposed sale of products not produced on the property is allowed in the A District with approval of a Conditional Use Permit.

The proposed uses are compatible with the property's current zoning of A (Agricultural) District with approval of a Conditional Use Permit.

Staff Finding - A Conditional Use Permit (CUP) does not change the base, underlying zoning. The suitability of the property for agricultural or rural residential use will not be altered. The subject property is not located within an Urban Growth Area. The subject property area is zoned for agricultural uses. The subject site is suitable for the proposed uses of agricultural and other products sales.

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

Staff Finding – The subject property is developed with the Strawberry Hill Christmas Tree Farm business. Agricultural sales operation has existed for over 18 years on the property. The property has been zoned A (Agricultural) District since 1966.

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

Staff Finding – Approval of a Conditional Use Permit request does not alter the base-zoning district. The current request is for a Conditional Use Permit to allow the continued operation of the retail agricultural sales along with the sale of ancillary products. Traffic and noise impacts associated with the use have existed in the area for over 18 years. Traffic intensity will not be altered with the approval of the Conditional Use Permit.

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

Evaluation of the relative gain weighs the benefits to the community-at-large vs. the benefit of the owners of the subject property. Benefits are measured based on anticipated impacts of the request on the public's health, safety and welfare.

The property could continue to be utilized as a residence and agricultural land with sales of agricultural products. The hardship imposed upon the landowner with denial of the Conditional Use Permit is that products not grown on-site would not be permitted to be sold. The relative gain to the public health, safety, and welfare is unchanged by permitting the existing use to continue, and by placing a time limit of 10 years on the present use. This is a condition for approval of the Conditional Use Permit. At the end of 10 years, the Conditional Use Permit approval will expire. Prior to that time, it would be appropriate to review the current use and its compatibility with adjacent uses, as well as the owner's needs and the zoning options available based upon surrounding land development and comprehensive plan recommendations.

The primary benefit resulting from this project would be that it provides residents and businesses in Douglas County with a continued option for farm-grown agricultural and ag-related seasonal products.

Staff Finding - The primary benefit and/or gain to the public health, safety, and welfare of the Conditional Use Permit for the market is that it would provide residents and businesses of Douglas County with farm-grown agricultural and ag-related products. Denial of the request would impose a hardship on the applicant by requiring them to cease any non-farm product sales.

VII. CONFORMANCE WITH THE COMPREHENSIVE PLAN

An evaluation of the conformance of this request with the County's comprehensive plan is based on the goals, policies and recommendations in **Horizon 2020**. As a planning document, **Horizon 2020** is a policy-oriented plan. Maps are intended to be used as general reference guides in the interpretation of these policies and recommendations.

In Chapter Six – Commercial Land Use, Horizon 2020 includes the following strategy:

"Establish and maintain a system of commercial development which provides for neighborhood, community and regional commercial and retail development anticipated to meet the community's needs through the planning period" and,

"In Douglas County, focus and build upon key existing commercial areas [identified in the Horizon 2020 Background Studies] to provide day-to-day goods and services to residents of unincorporated Douglas County." (pg. 85)

For existing commercial areas in Douglas County the plan states, *"Unincorporated Douglas County currently maintains a variety of commercial areas. Each of these areas provides neighborhood level retail goods and services to both farm and non-farm residents. The Plan recommends limited expansion of these areas in the future. As the rural areas of Douglas County continue to receive new non-farm residential development, demands will increase for retail goods and services."*(pg. 96)

This request is not an expansion of the existing use. The primary retail use has existed for over 18 years. The presence of an agricultural sales and seasonal farm in this location provides an additional resource for surrounding residents and farmers.

The subject property is not located immediately adjacent to any city's growth boundary. **Horizon 2020** encourages the support of local businesses to *"ensure their retention and to facilitate expansion plans for the future."* Industrial uses are directed to urban areas where services such as sewer, water and transportation options are available. **Horizon 2020** does not address conditional use permits as a tool to achieve specific policies.

Staff Finding - The Conditional Use Permit for the facility is consistent with the goals and policies in **Horizon 2020**. A Conditional Use Permit can be used to allow limited commercial and industrial expansion or establish new or temporary areas for certain non-residential uses. This tool allows proportional development in harmony with the surrounding area.

Site Summary:

Subject Property: 18.79 acres
Existing Building: 24' x24' sale barn

Off Street Parking Provided: 41 vehicles spaces

Review Comments from Other Departments/Agencies

County Public Works/Engineering: No comments

County Zoning & Codes:

1. The Site Plan doesn't show boundaries and dimensions graphically, and doesn't contain a legal description. (Dg. Co. Zoning Reg's 19-A.4.3)
2. Present and proposed contours are not shown at 5'-0" intervals. (19-A.4.4)
3. Direction arrows for proposed storm drainage are not shown. (19-A.4.5.)
4. North arrow and directional arrows are not shown. (19-A.4.2)
5. Any new proposed building will need to meet all adopted Douglas County Regulations for a Commercial Building, including engineering and all work to be performed by licensed electrician, plumber, and mechanical contractors. (KSA 12-1508, 12-1541, & 12-1525)
6. No note is provided that states the structure will be designed to meet the Americans with Disabilities Act Accessibility Guidelines. (19 A-4.14)
7. Gross floor area and entrances to building are not shown. (19 A-4.7)
8. Direction, location and means to prevent glare from illumination are not shown. (19 A-4.12)

KDOT: I don't believe that this proposal will result in new traffic impacts to the state highway.

County Health Department: None received

Natural Resources
Conservation District: None received

Kaw Valley Electric: None received

Kanwaka Township: None received

Kanwaka Township Fire Dept: None received

Rural Water District #4: None received

Southwestern Bell: No comment

Planning: Clarify if any new uses are proposed for this site. (*Applicant indicated that no new buildings or activity is proposed*)

STAFF REVIEW

The subject property is located approximately two miles west of the Lawrence City Limits on the Northwest corner of Highway 40 (W. 6th Street Extended) and E. 800 Road. The subject property is not located within the designated Urban Growth Area. The site plan provided is only intended to show the conceptual use of the property and does not detail the specific location of buildings. No changes or improvements are proposed to this current business operation.

The applicant has submitted a Conditional Use Permit request for the existing Strawberry Hill Tree Farm business. The site is proposed for the continued use of retail agricultural sales and related seasonal products. The property owner was informed by the Douglas County Zoning Administrator that a Conditional Use Permit would be required to continue operation of the facility as it exists with the sale of ancillary products not produced on site.

The site currently contains a residence and retail sales structure, as well as multiple farm-related outbuildings.

A Conditional Use Permit is required for this use in an A (Agricultural) District. The Zoning Regulations recognize certain conditional uses, although incompatible with other uses permitted in a district, may be permitted when *"found to be in the interest of the public health, safety, morals, and general welfare of the community"*.

Parking

The applicant has shown approximately 41 parking spaces within the gravel parking lot on the plan. The total retail floor area is 744 square feet that includes the "sale barn and the wreath shed", which accounts for only the interior retail space and does not include the outdoor tree farm portion of the property. With a parking requirement of 1 parking space per 200 square feet, the total required for the retail use is 4 spaces.

Setback Requirements - Building setback requirements for the "A" District are as follows:

- Front Yard - 50'
- Side Yard - 15'
- Rear Yard - 50'

Setback requirements are measured from the property lines. The setback requirements for county development are established from a base line that accounts for legal descriptions that often include the public roadway easement. The site plan has been drawn to show only the generalized location of the existing structures and does not provide graphic dimensions. There are no proposed improvements associated with this proposed development. Any future improvements to the site should include a formal site plan that shows the existing and proposed improvements including dimensions.

Access to the site - Specific access to the site is provided via a driveway from Highway 40 as well as a secondary access from E. 800 Road. There are no proposed changes to the access drive at this time. Any changes must be approved by KDOT.

Screening and Outdoor Storage- The site plan drawing shows that the area is substantially screened by dense vegetation along the west property line. The existing topography of the site

screens the activity from the adjacent roadways. There is no "open storage" use proposed as part of this site plan. Any addition of open storage would require a revision to the site plan portion of the Conditional Use Permit and would require additional screening.

Conclusion

A Conditional Use Permit does not allow the range of uses found in commercial or industrial districts. Approval of a CUP can be tailored to address specific issues such as size, time limitations, restriction on the number of vehicles, and screening requirements.

This use has existed for some time. As noted above, the sale of accessory products other than that produced immediately upon the property is the cause for the CUP application. Denial of the request will alter the current business. There is no public harm in approval of the request.

Staff recommends that the approval of the CUP be limited to not more than five (5) years with the ability to be re-approved for an additional 5 years as discussed above. The property owner would then be required to re-apply. This will allow assessment of the use during that time.

PROFESSIONAL STAFF RECOMMENDATION

Planning Staff supports the land use as an agricultural retail sales business with sales of ancillary seasonal products. Staff recommends approval of the Conditional Use Permit for the above stated use, based upon the findings of fact presented in the body of the Staff Report and forwarding of it to the County Commission with a recommendation for approval subject to the following conditions:

1. Provision of a note on the face of the site plan stating, "The Conditional Use Permit will be re-evaluated by the County Commission in February, 2008. The CUP will expire on February 28 2013. For continuation of the use ***covered by this CUP*** beyond February 28 2013 the applicant will need rezoning or approval of a new CUP."
2. Provision of a revised site plan to include the following items:
 - a. Legal description
 - b. North Arrow
 - c. Graphic dimensions of the property per Dg. Co. Zoning Reg's 19-A.4.3
 - d. Direction arrows of existing storm runoff per section 19-A.4.5.
 - e. Site summary of the existing floor area
 - f. Show the existing building entrances per section 19 A-4.7
 - g. Show location of all existing lighting including mounting height, light sources and light direction per section 19 A-4.12

ITEM NO. 13: **CONDITIONAL USE PERMIT FOR STRAWBERRY HILL CHRISTMAS TREE FARM; 794 HIGHWAY 40 (SLD)**

CUP-12-18-02: Conditional Use Permit request for a Christmas Tree Farm. The property is generally described as being located at 794 Highway 40. Requested by Lynn Walther for Ethelyn F. Walther trustee, property owner of record.

STAFF PRESENTATION

Ms. Day introduce the Item, explaining the application followed notification of a County Zoning Violation for selling items that were not produced on-site such as tree stands, plant life supplements, etc.

It was established that CUP regulations dictated only what square footage was used for sales and that all sales must occur within the structure. Product types were not regulated.

Staff recommended approval of the CUP for land use as an agricultural retail sales business with sales of ancillary seasonal products.

APPLICANT PRESENTATION

Lynn Walther, property owner, applicant and President of the Strawberry Hill Christmas Tree Farm, said her business had been in operation for 15 years and no drastic changes were intended. The business was typically open from early November to the week before Christmas and sold trees, tree stands, some gifts and related holiday products. She explained that, due to recent growing conditions, it was sometimes necessary to import trees for resale.

In response to questioning, Ms. Walther estimated traffic at 0-25 trips on weekdays and 25-75 trips on weekends.

PUBLIC COMMENT

No member of the public spoke on this Item.

CLOSING COMMENTS

There were no closing comments from the applicant or Staff.

COMMISSION DISCUSSION

Comm. Durflinger said the property was not suitable for other uses and he was therefore not concerned that the CUP should be strictly tied to the current owner. Staff's opinion in response to questioning was that the stated use "for the sale of other seasonable related items" was sufficiently restrictive.

ACTION TAKEN

Motioned by Comm. Durflinger and seconded to approve the Conditional Use Permit as presented by Staff.

Motioned by Comm. Schachter and seconded to amend the motion to add a note on the face of the CUP stating the sale of "Christmas tree or seasonal sales."

DISCUSSION ON THE MOTION

It was established that the proposed amended language would still permit the sale of trees out of season, as the CUP applied only to those products obtained from off-site.

Comm. Schachter pointed out that the language proposed was similar to that added to the CUP's for Shaake's Pumpkin Farm and Pendleton's Country Market. Comm. Durflinger said the addition of conditions did not automatically equate to better planning.

The Commission expressed no objection to Comm. Burress's request to call the question.

ACTION TAKEN

Motion on the floor was to amend the original motion to add a note to the face of the CUP stating the sale of "Christmas tree or seasonal sales."

Motion failed to carry, 3-6, with Comm.'s Angino, Bateman, Durflinger, Haase, Jennings and Pine voting in opposition to the motion. Student Comm. Morrell voted in favor of the motion.

Motion on the floor was to approve the CUP as presented and forward to the County Commission with a recommendation for approval, based upon the findings of fact presented in the body of the Staff Report and subject to the following conditions:

1. Provision of a note on the face of the site plan stating, "The Conditional Use Permit will be re-evaluated by the County Commission in February, 2008. The CUP will expire on February 28, 2013. For continuation of the use covered by this CUP beyond February 28, 2013 the applicant will need rezoning or approval of a new CUP."
2. Provision of a revised site plan to include the following items:
 - a. Legal description
 - b. North Arrow
 - c. Graphic dimensions of the property per Dg. Co. Zoning Reg's 19-A.4.3
 - d. Direction arrows of existing storm runoff per section 19-A.4.5.
 - e. Site summary of the existing floor area
 - f. Show the existing building entrances per section 19 A-4.7
 - g. Show location of all existing lighting including mounting height, light sources and light direction per section 19 A-4.12

Motion carried unanimously, 9-0, with Student Comm. Morrell also voting favor of the motion.

DISCUSSION ON THE ACTION

Comm. Haase noted his usual tendency to vote against nursery CUP's on principle. He felt they were a needless expense to the County and the applicant in light of evolving agricultural practices and asked the Commission to consider addressing this issue in the form of a Text Amendment to the Zoning Regulations.

Chairman Jennings called a 5-minute recess.