

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

-Amended Agenda

WEDNESDAY, June 20, 2018

4:00 p.m.

-Consider approval of the minutes for August 9, September 20, September 27, October 4, October 11, October 18, and November 1, 2017; and January 10 and January 17, 2018.

CONSENT AGENDA

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

REGULAR AGENDA

- (2) [Consider request from Baldwin City to fund a portion of proposed trail between Ottawa and Baldwin City. \(Glenn Rodden, City Administrator of Baldwin City\)](#)
- (3) (a) Consider approval of Accounts Payable (if necessary)
(b) Appointments
(c) Board of Zoning Appeals (1) positions 10/17
(d) Building Code of Appeals Board (2) positions 12/16
(e) Community Corrections Advisory Board (1) position
(f) JAAA Advisory Council (2) position
(g) JAAA Board of Directors (1) position
(c) Public Comment
(d) Miscellaneous

RECESS

RECONVENE

6:00 p.m.

- (4) [CUP-18-00127](#): Consider a Conditional Use Permit for Marion Springs Event Center, located on approximately 9.58 acres at 316 E 900 Rd, Baldwin City. Submitted by Jay I and Mary D Bessey, property owners of record. Mary Miller is the Planner.
- (5) [TA-18-00155](#): Consider a Text Amendment to the Douglas County Zoning Regulation Article 13-319-5.01, to include and define *Data Collection Devices*, such as SODAR and metrological equipment and similar equipment as a Temporary Business Use. *Initiated by County Commission on 3/28/18.* (Sean Reid, Director of Zoning & Codes).
- (6) Adjourn

8 a.m. – Noon - MONDAY, JUNE 25 (tentative) BUDGET HEARINGS

8 a.m. – Noon TUESDAY, JUNE 26 (tentative) BUDGET HEARINGS

8 a.m. – Noon WEDNESDAY, JUNE 27 (tentative) BUDGET HEARINGS

8 a.m. – Noon THURSDAY, JUNE 28 (tentative) BUDGET HEARINGS

WEDNESDAY, June 27, 2018 – 4 p.m. only

4:00 a.m.

-Douglas County CRS Award Presentation (Andy Megrail with FEMA)

WEDNESDAY, JULY 4, 2018 - cancelled

WEDNESDAY, JULY 11, 2018
WEDNESDAY, JULY 18, 2018
WEDNESDAY, JULY 25, 2018
WEDNESDAY, AUGUST 1, 2018
WEDNESDAY, AUGUST 8, 2018
WEDNESDAY, AUGUST 15, 2018
WEDNESDAY, AUGUST 22, 2018
WEDNESDAY, AUGUST 29, 2018 - cancelled

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

From: [AD - Weinaug, Craig](#)
To: [AD - Crabtree, Robin](#)
Subject: FW: Trail Funding Request
Date: Friday, June 15, 2018 4:04:51 PM
Attachments: [BALDWIN TO OTTAWA TRAIL REVENUE 2018.xlsx](#)

From: Glenn Rodden <grodden@baldwincity.org>
Sent: Thursday, June 14, 2018 6:53 PM
To: AD - Weinaug, Craig <weinaug@douglascountyks.org>
Subject: Trail Funding Request

Craig,

Attached is a break down of the trail funding that you requested. You will notice that we are asking Douglas County for approximately \$94,000 total over a five year period. Contact me with any questions. Thanks.

Glenn Rodden
City Administrator
City of Baldwin City
Ph: 785.594.6427
Fax: 785.594.6586

TOTAL COST FOR BALDWIN CITY TO OTTAWA TRAIL PROJECT

EASEMENT COSTS	\$	345,000
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REVENUE COMMITTED

MID AMERICAN BANK	\$	25,000
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BALDWIN CITY ED	\$	25,000	\$	5,000	5 YR
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DOUGLAS COUNTY ED	\$	12,500	\$	2,500	5 YR
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TOTAL REVENUE COMMITTED	\$	62,500
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TOTAL UNFUNDED	\$	282,500
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PROPOSED FUNDING

DOUGLAS COUNTY	\$	94,167	\$	18,833.33	5 YR
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FRANKLIN COUNTY	\$	94,167	\$	18,833.33	5 YR
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BALDWIN CITY	\$	94,167	\$	18,833.33	5 YR
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PLANNING COMMISSION REPORT
Regular Agenda –Public Hearing Item

PC Staff Report
5/23/18

**ITEM NO. 4 CONDITIONAL USE PERMIT FOR MARION SPRINGS EVENT CENTER;
316 E 900 RD (MKM)**

CUP-18-00127: Consider a Conditional Use Permit for Marion Springs Event Center, located on approximately 9.58 acres at 316 E 900 Rd, Baldwin City. Submitted by Jay I. and Mary D. Bessey, property owners of record.

STAFF RECOMMENDATION: Staff recommends approval of the Conditional Use Permit for a *Recreation Facility* use, subject to the following conditions:

1. The applicant shall provide a revised CUP plan with the following change:
 - a. Provide one additional ADA accessible parking space and update the parking summary.
 - b. List the conditions which have been applied to the Event Center use.
2. The following conditions apply to the Conditional Use:
 - a. The CUP shall be administratively reviewed every 5 years by the Douglas County Zoning and Codes Office to ensure compliance with the CUP conditions.
 - b. Event occupancy is limited to no more than 200 patrons.
 - c. Event center may operate from 8:00 AM to 10:00 PM Sunday through Thursday, and 8:00 AM to 12:00 PM, Friday and Saturday.
 - d. Outdoor night-time events with amplified music are limited to no more than two per month. All other night events with amplified music shall be held indoors or shall be approved as Special Events.
 - e. All parking for the events shall occur on-site. Road-side parking is not permitted.

Reason for Request:

Applicant's Response:

"We are requesting this permit in order to establish a business as an event center. The building has a 4,500 sq ft gymnasium suitable for events. Asphalt parking areas are currently in place with overflow grass parking available. We reside in a portion of the building. (noted on aerial) The facilities are ADA compliant."

Project Summary

The Conditional Use Permit application was submitted to accommodate the conversion of the former Marion School at 316 E 900 Road/County Route 1039 to an event center while maintaining the current residential use. The event center use would be classified as a *Recreation Facility*, which is permitted in the A District with approval of a Conditional Use Permit.



Figure 1. Former Marion Springs School building

The applicant plans on converting the 4,300 sq ft gymnasium to an event center. Classrooms A-E, shown on the floorplan in Figure 2, will be used for classes and small event spaces, and an office will be converted to a conference/meeting room. (Figure 2)

Hand-drawn floorplan of the 1st floor of the National Center for Women's Justice. The plan shows a central corridor (F) connecting various rooms. On the left side, from top to bottom, are rooms B, storage, A, Residence, Girls/Women, Utilities, Boys/Men, Kitchen, and a Shop/Storage area. On the right side, from top to bottom, are rooms C, D, E, Residence, Conference/Meeting, Office, and a Lobby. At the bottom of the plan is a large Gym area with a stage and alcove. A compass rose indicates North (N) is at the bottom, South (S) is at the top, East (E) is to the left, and West (W) is to the right. Dimensions are provided for many rooms and corridors.

The property contains approximately 10 acres and is located on E 900 Road/County Route 1039, which is classified as a minor arterial in the Douglas County Access Management Map.

- An event center is classified in Section 12-319-4.11 of the Zoning Regulations as the Conditional Use, *Recreation Facility*, which is permitted in the A (Agricultural) Zoning District, and any other district in which it is not listed as a permitted use, with the approval of a Conditional Use Permit.

- County Commission approval of Conditional Use Permit application.
- Issuance of permit for the conditional use by the Douglas County Zoning and Codes Office.
- Issuance of building permits prior to development activity or the change of use.

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

Current Zoning and Land Use:

Surrounding Zoning and Land Use:

To the north, east, and west: A (Agricultural) District, with F-F (Floodway Fringe) Overlay District to the northeast; *Agriculture*

To the south: B-2 (General Business) District; *Seed Warehouse, Single Family Residences, and Agriculture, a Church* is located south of N 300 Road/Highway 56 (Figure 3)

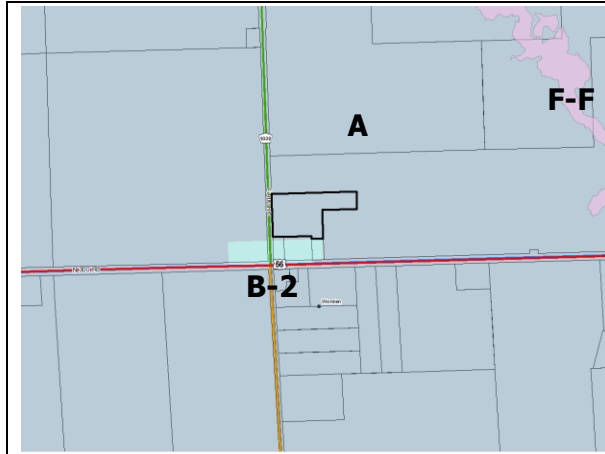


Figure 3a. Zoning in the area. Subject property outlined.



Figure 3b. Land use/development pattern in the area. The seed warehouse was built in the location marked with a star after these aerials were taken.

I. ZONING AND USES OF PROPERTY NEARBY

The subject property is zoned A (Agricultural) and is located adjacent to a B-2 (General Business) District to the south, which has been developed with a seed warehouse and two single family residences. The seed warehouse was constructed after these aerial photos were taken and is located in the northeast corner of the intersection of E 900 Road/County Route 1039 and N 300 Road/Highway 56. A church is located on the south side of the N 300 Road/Highway 56. The remainder of the surrounding properties are in agricultural use.

Staff Finding – The subject property is surrounded by A (Agricultural) zoning and land uses, with the exception of the south property line which is adjacent to B-2 (General Business) zoning. The B-2 zoned properties have been developed with a seed warehouse and two residences. The proposed use should be compatible with the zoning and uses on nearby property; however, conditions may need to be applied to minimize any negative impacts on the adjacent residences, such as parking and amplified music.

II. CHARACTER OF THE AREA

The area is well served by the major transportation network. E 900 Road/County Route 1039, a Minor Arterial, crosses the area north to south and connects with N 300 Road/Highway 56, a Principal Arterial, to the south. This is an agricultural area, with development located at the intersection of E 900 Road/County Route 1039 and N 300 Road/Highway 56. In addition to the former Marion Springs School, the subject of this application, the intersection contains a seed warehouse (developed too recently to be shown on the aerial), a church, and two residences. Scattered rural residences are located throughout the area. (Figure 3)

Staff Finding – The area is rural in nature with agriculture being the predominate land use. Scattered rural residences are located throughout the area. The intersection of E 900 Road/County Route 1039 and N 300 Road/Highway 56 has been developed with a seed warehouse, two residences, a church, and the former Marion Springs School. The proposed use should be

compatible with the existing land uses in the area; however, conditions may be necessary to minimize negative impacts on the nearby residences.

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

Applicant's Response:

"Building was built as a school."

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

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

The subject 10 acre property, shown in Figure 4, contains a former elementary school that is currently being used as the applicant's residence. The property is well suited for uses which are permitted in the A District.

The property is also well suited for the proposed use in that it has an existing structure with space for events, has open space for outdoor activities and adequate space for parking.



Figure 4. Aerial of subject property

Staff Finding – The property is suitable for uses permitted within the A (Agricultural) District and for the proposed *Recreation Facility* conditional use.

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

Staff Finding –The property is not vacant but was developed with a school in 1963. The structure is currently used as a residence.

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

Applicant's Response:

"None."

Section 12-319-1.01 of the County Zoning Regulations recognize that, *"certain uses may be desirable when located in the community, but that these uses may be incompatible with other uses permitted in a district...when found to be in the interest of the public health, safety, morals and*

general welfare of the community may be permitted, except as otherwise specified in any district from which they are prohibited.” The proposed use is included in the Conditional Uses enumerated in Section 12-319-4 of the Zoning Regulations for the Unincorporated Territory of Douglas County as a *Recreation Facility* use.

Detrimental effects typically associated with event centers include light trespass or glare onto adjacent properties, noise or activity associated with late night events, dust from traffic on gravel roads, and noise from outdoor music or activities. The subject property is located on E 900 Road/County Route 1039, which is classified in the DG County Access Management Standards map as a minor arterial and is approximately 330 ft north of the intersection with N 300 Road/Highway 56, which is classified as a principal arterial. Given its location on a paved, higher classification road and proximity to other paved, higher classification roads in the area, dust and traffic are not expected to be an issue with this event center.

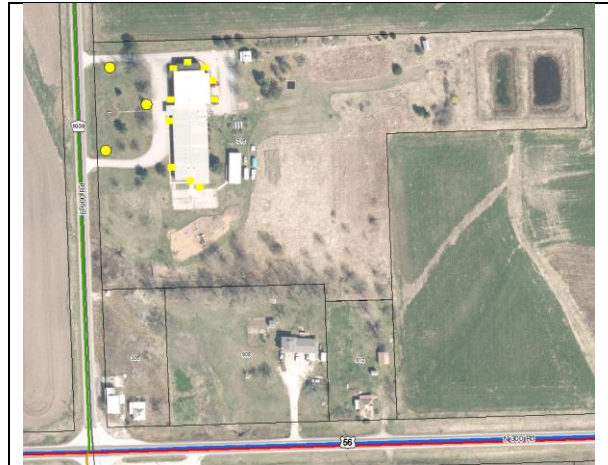


Figure 5. Exterior lighting marked in yellow. Pole lighting shown with circles; building mounted lighting with squares.

The applicant indicated that the existing lighting will continue to be used and additional low scale building mounted lighting will be installed as needed providing lighting for the building and a safe parking area. A plan showing the location of the lighting was provided and is illustrated in Figure 5. The building mounted lighting is LED lighting, dusk to dawn 2000 lumen security lights. The light level of a 2000 lumen light is less than that of a 150 watt incandescent light and is not typically required to be shielded to prevent glare. The three light fixtures along the driveway are full cut-off fixtures.



Figure 6. Exterior lighting; wall mounted security lighting on the left, driveway lighting on the right.

The applicant noted that they plan on having evening events only, (5:00 PM to 10:00 PM weeknights, 5:00 PM to 12:00 PM weekends), from March through May and August through October, and host limited functions from November through February. June and July would have extended hours (8:00 AM to 10:00 PM through the week, and 9:00 AM to 12:00 PM on weekends). To ensure compatibility with the nearby residences while maintaining flexibility for the event center, operating hours should be limited to 8:00 AM to 10:00 PM Sunday through Thursday and 8:00 AM to 12:00 PM Friday and Saturday. The applicant suggested that late night (after dark) activities with amplified music could be limited to no more than 4 per month. Given the proximity of the nearby residences, a limit of 2 night events with amplified music per month may be more appropriate with additional events being possible with approval of a Special Event Permit. The overall operating hours and restriction on late night outdoor amplified music should be conditions of the conditional use.

The amount of parking required depends on the maximum occupancy for the use. The maximum occupancy can be set with a review of the floorplans, or can be voluntarily set by the applicant.

The applicant indicated that they intended to host events with up to, but not exceeding, 200 people. Parking for assembly type uses, such as an event center, is required at a ratio of 1 space per 5 attendees. Required parking is based on the voluntary attendance limit set by the applicant.

Parking Summary

Use	Parking Requirement	Parking Required	Parking Provided
<i>Recreation Facility</i>	1 per 5 occupants	200 attendees=40 parking spaces	40 spaces
<i>Residence</i>	1 per dwelling	1 space	1 space
ADA Parking	2 spaces for parking areas with 26 to 50 spaces. None required for residence.	2 ADA spaces	1 ADA space*

*The plan needs revision to include one additional ADA space. This parking space can be added to the site, or a standard space can be converted. The parking table should be updated to reflect the change.

While the parking provided on the site will be code compliant, and a large overflow parking area will be provided, the following standard condition should be applied to the conditional use: All parking associated with this conditional use must occur on site. No roadway parking is permitted.

Staff Finding – With the proposed conditions, the project should not negatively impact nearby properties. Lighting will be managed to insure there is no trespass on to adjacent properties and to reduce glare to nearby properties; operating hours are established; the applicant has voluntarily limited occupancy to no more than 200 people, and all parking will occur on the subject property.

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

Applicant's Response:

"None."

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

Approval of this request would allow the landowner to add an event center to the former Marion Springs School, a portion of which is currently their residence. Approval would accommodate the reuse of the remainder of the school building, which is being considered for listing on the state historic register, for a public use.

Denial of the request would prevent the reuse of the school house as a recreational facility. As the recommended conditions should minimize negative impacts associated with the proposed uses, the denial would provide no benefit to the public health, safety, and welfare.

Staff Finding – In staff's opinion, the approval of the conditional use will accommodate the adaptive reuse of a historic building. The recommended conditions will result in a compatible project that would not harm the public health, safety or welfare while; therefore, denial of the request would provide no benefit to the public health, safety or welfare.

VII. CONFORMANCE WITH THE COMPREHENSIVE PLAN

An evaluation of the conformance of a Conditional Use Permit request with the comprehensive plan is based on the strategies, goals, policies and recommendations contained within *Horizon 2020*. A Conditional Use Permit provides additional review for uses that may be desirable in an area, but could have negative impacts. This tool allows development to occur in harmony with the surrounding area and address specific land use concerns.

The comprehensive plan recommends the conservation of Douglas County's rural character through the use of a clustered land use pattern and limited commercial development.

"The development of school sites and other public facility sites which provide recreation opportunities would maximize the public's investment in those facilities and be most consistent with the rural character intended for unincorporated Douglas County." (Page 9-6, Horizon 2020)

"There are a few locations, however, in the Rural Area which may be expected to receive some significant level of urban development consistent with the Plan, these include commercial areas to serve county residents and, potentially, to provide (i) conference and recreation facilities at Clinton Lake, and (ii) conference, recreation, or tourism facilities that benefit from or integrate with the rural setting at such other locations that substantially satisfy the following criteria; (a) direct access to an improved arterial roadway; (b) public water supply available; (c) separated from existing conference, recreation, or tourism facilities by at least 3 miles or other appropriate distance as determined by the board of county commissioners; and (d) designed to preserve and/or integrate natural resources and the rural environment through appropriate land use, site design, buffering, or other methods. (Page 4-4, Horizon 2020)

This recreation facility would not serve Clinton Lake, but benefits from and integrates with the rural setting at a location meeting the following criteria: Direct access to an improved arterial roadway; public water supply; separated from existing similar facility by an appropriate distance, and would preserve the rural environment through the preservation and reuse of a historic school.

Staff Finding –The proposed CUP is compliant with the recommendations in the comprehensive plan.

CUP PLAN REVIEW

Principal factors associated with the proposed use include adequate buffering from the nearby residential uses, and the appearance of the facility from the nearby residential areas and the adjacent roadway.

The facility has been in place since 1963 and no exterior physical changes are being proposed with the change of use. Existing vegetation and landscaping on the site provides a suitable buffer to the adjacent properties, with scattered trees on the perimeter of the property and denser growth along the southern property line, adjacent to the residential uses. (Figure 7)



Figure y. Tree canopy shown on Environmental Baseline Map (using NAIP imagery).

Utilities

On-Site Sewage Management System: Marion School utilized a lagoon for their sewage management. The Lawrence-Douglas County Health department indicated that this would be acceptable for the CUP use, as it was designed for large groups of people.

Water: The subject property is served by Rural Water District No. 5. The water district representative noted that the one meter could serve both uses as long as they were in the same building.

Parking and Access:

Parking will be located on existing asphalt parking areas on the east and west sides of the building. A grass overflow parking area is proposed southwest of the building. All parking associated with this conditional use must occur on site; no roadway parking is permitted. The required number of parking spaces will be provided on the site, with a grassed overflow parking area.

The property has two access points on E 900 Road/County Route 1039 and a circular driveway. This was historically a one-way driveway and will continue to be used as such. The plan should be revised to show the location of the required one-way signage.



Figure 8. Site with parking areas identified, including parking diagrams for each parking area.

Conclusion

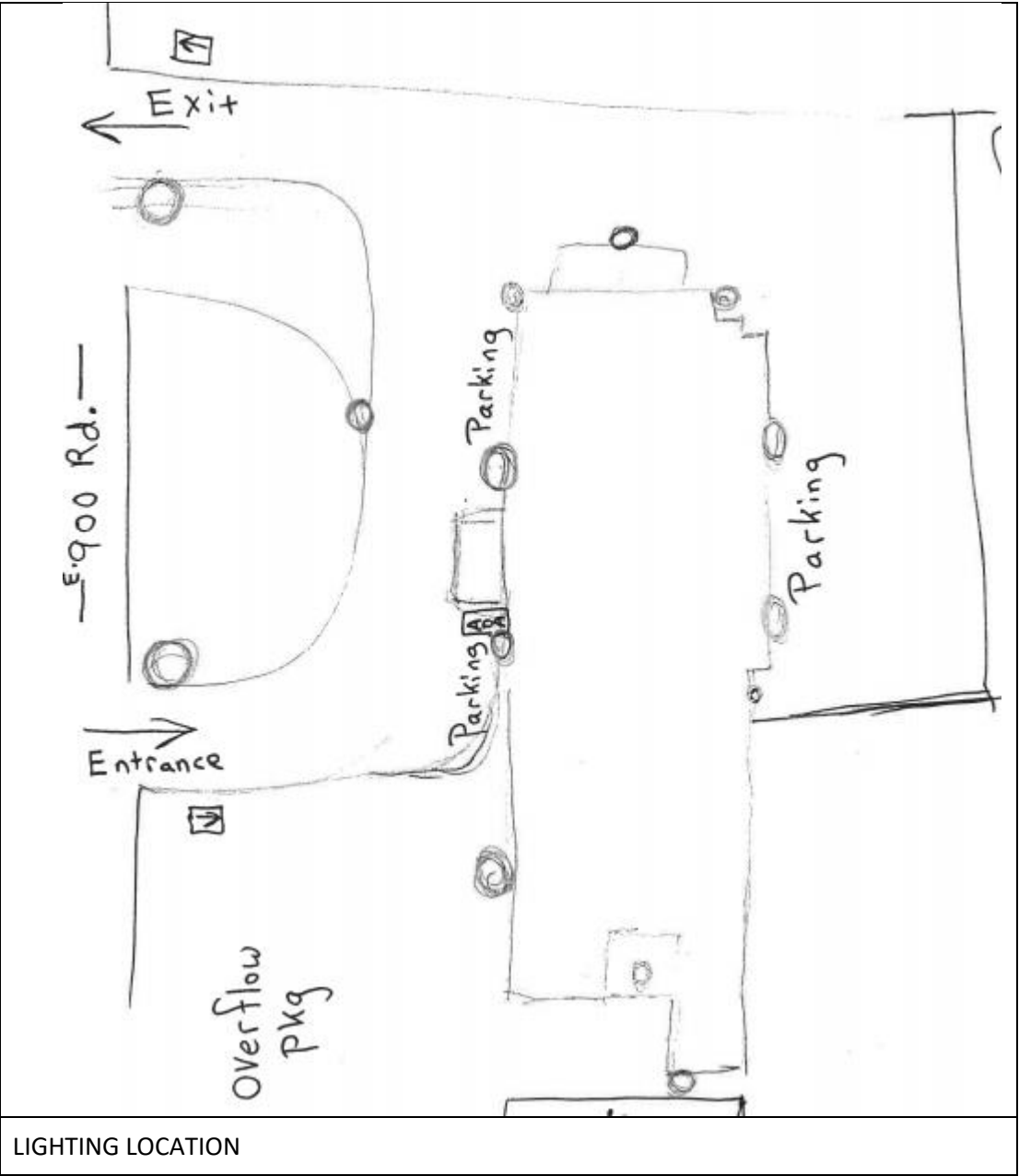
As noted in the report, this proposal will allow for the reuse of the former Marion School as an event center, in addition to its current use as a residence. With the recommended conditions, the proposed use should have minimal negative impacts on nearby properties.

MARION SPRINGS EVENT CENTER

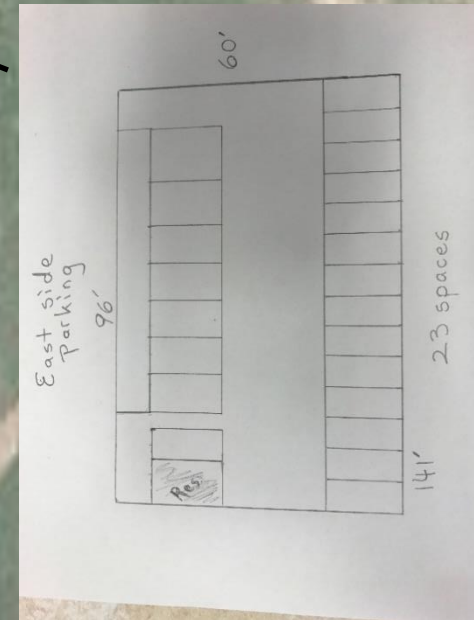
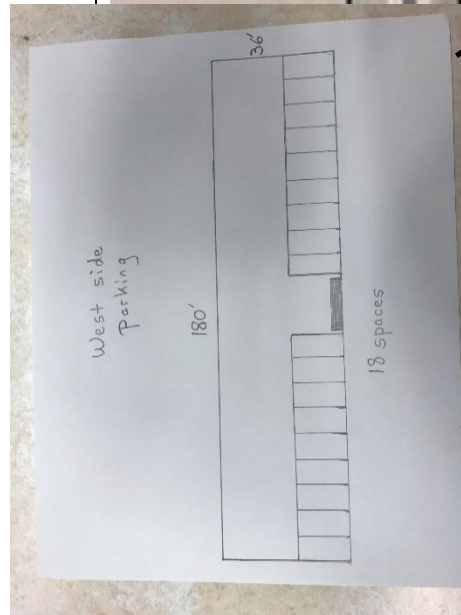
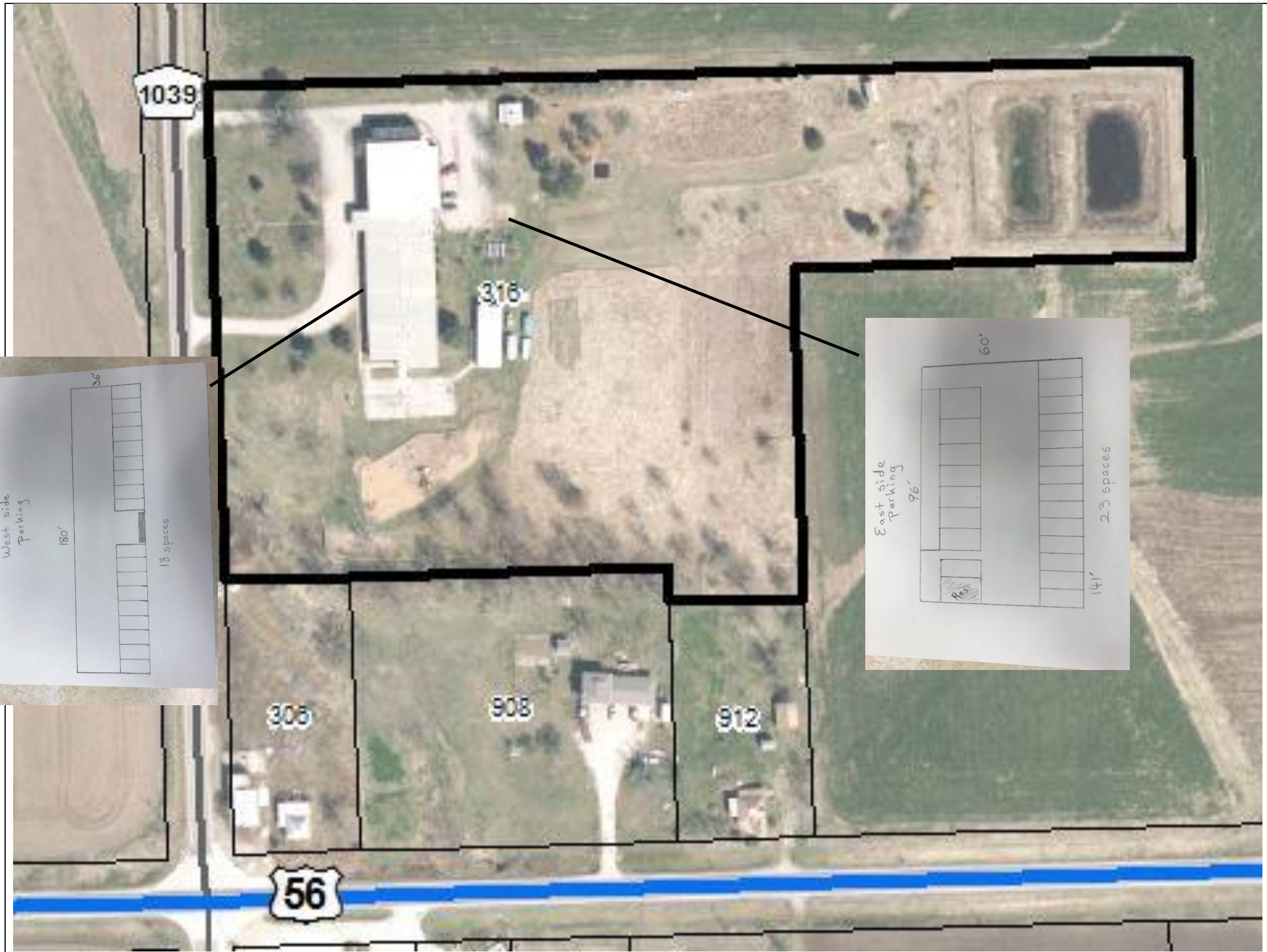
Address: 316 E 900 RD., BALDWIN CITY, KS 66006
Acreage: 10 ACRES
Legal Description: SW 1/4 OF SECTION 24 TOWNSHIP 14S RANGE 19E
Zoning: A (Agriculture)
Property Owner: JAY I. & MARY D. BESSEY
Existing use: Residence
Proposed use: Residence, Event Center/Recreation

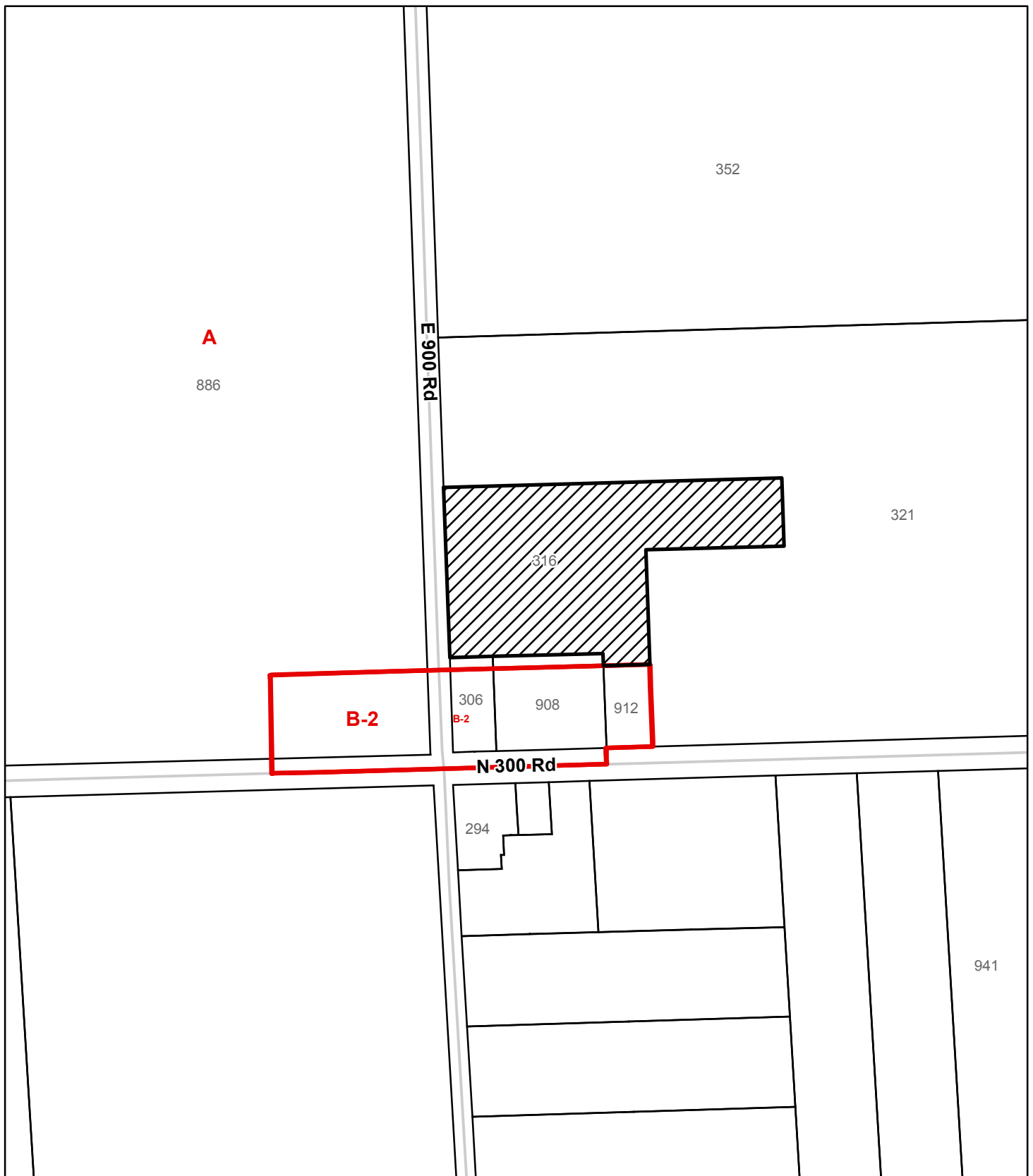
Parking Summary

Residence: Required-- 1 space
No. of spaces provided 1
Event Center: Required 1 per 5 occupants based on maximum occupancy.
Maximum occupancy 200, 40 spaces required
No of spaces provided 40
27,000 sq ft grass overflow parking area also provided.
An on-site lagoon will be used for sewage management.
Public water is provided by Rural Water District No. 5



LIGHTING LOCATION





CUP-18-00127: Consider a Conditional Use Permit for Marion Springs Event Center, located on approximately 9.58 acres at 316 E 900 Rd, Baldwin City.



ITEM NO. 4 CONDITIONAL USE PERMIT FOR MARION SPRINGS EVENT CENTER; 316 E 900 RD (MKM)

CUP-18-00127: Consider a Conditional Use Permit for Marion Springs Event Center, located on approximately 9.58 acres at 316 E 900 Rd, Baldwin City. Submitted by Jay I and Mary D Bessey, property owners of record.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

APPLICANT PRESENTATION

Mr. Jay Bessey said he applied for the building to be on the National Historic Register. He said he was looking forward to preserving the building and maintaining the property.

Ms. Mary Beesey said the building provided value to the community. Said there was interest from the public in renting the space.

PUBLIC COMMENT

Mr. Jay Coffman expressed concern about security, increased lighting and traffic.

Mr. Ryan Niehoff spoke in favor of the event center.

APPLICANT CLOSING COMMENT

Mr. Bessey said there was current lighting on the property and he wasn't aware of any issues. He said the lights were on a timer and could be adjusted. He said he was not requesting a liquor license although patrons could have liquor on-site but would have to abide by the rental rules and conditions.

COMMISSION DISCUSSION

Commissioner Struckhoff asked staff to respond to the comments made about lighting.

Ms. Miller said the applicant could add additional lighting by revising the site plan and having staff review it.

Commissioner Willey felt having a public space in a rural neighborhood was valuable. She said she was excited to see it move forward.

Commissioner Weaver thanked the applicant for trying to preserve the structure.

Commissioner Sinclair said condition 2(c) listed the ending hour of 12:00pm when it should be 12:00am.

ACTION TAKEN

Motioned by Commissioner Weaver, seconded by Commissioner Willey, to approve the Conditional Use Permit, CUP-18-00127, for a *Recreation Facility* use at 316 E 900 Rd, subject to the following conditions:

1. The applicant shall provide a revised CUP plan with the following change:
 - a. Provide one additional ADA accessible parking space and update the parking summary.
 - b. List the conditions which have been applied to the Event Center use.
2. The following conditions apply to the Conditional Use:
 - a. The CUP shall be administratively reviewed every 5 years by the Douglas County Zoning and Codes Office to ensure compliance with the CUP conditions.
 - b. Event occupancy is limited to no more than 200 patrons.

- c. Event center may operate from 8:00 AM to 10:00 PM Sunday through Thursday, and 8:00 AM to 12:00 PM AM, Friday and Saturday.
- d. Outdoor night-time events with amplified music are limited to no more than two per month. All other night events with amplified music shall be held indoors or shall be approved as Special Events.
- e. All parking for the events shall occur on-site. Road-side parking is not permitted.

Unanimously approved 9-0. Commissioners Butler, Carpenter, Culver, Paden, Sands, Sinclair, Struckhoff, Weaver, and Willey voted in favor.

DRAFT

PLANNING COMMISSION REPORT
Regular Agenda -- Public Hearing Item

PC Staff Report
05/23/2018

**ITEM NO. 9 TEXT AMENDMENT TO COUNTY ZONING REGULATIONS FOR DATA
COLLECTION DEVICES; (SLD)**

TA-18-00155: Consider a Text Amendment to the Douglas County Zoning Regulation Article 12-319-5.01, to include and define *Data Collection Devices*, such as SoDAR and meteorologic equipment, and similar equipment, as a Temporary Business Use. *Initiated by County Commission on 3/28/18.*

RECOMMENDATION: Staff recommends the Planning Commission forward the proposed amendment, TA-18-00155, amending Chapter 12-319-5 of the Douglas County Zoning Regulations to include *Data Collection Devices* as a temporary business use to the Board of County Commissioners with a recommendation for approval.

Reason for Request: The Douglas County Board of County Commission initiated a text amendment to the Zoning Regulations at their March 28, 2018 meeting to permit and define *Data collection Devices* and to clarify the process for permitting such devices as a Temporary Business Use.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- None received

ATTACHMENTS

- A. Draft Language
- B. ZTBU-2018-0001 application and staff report.

BACKGROUND

The Douglas County Board of County Commissioners adopted changes to the Zoning Regulations related to *Wind Energy Conservation Systems* (Resolution 17-12) and *Wireless Communication Equipment* (Resolution 17-19) in response to a recent land use request and changes to Federal Regulations. These changes did not address equipment used in preliminary data collection such as meteorologic instruments (MET), SoDAR units, temporary antenna mounted on a truck or trailer (COW, COLT), and similar devices.

Generally, these devices are used for a temporary amount of time for collect scientific data for applicants to determine the feasibility of making a formal application for a *Wind Energy Conversion System*, *Wireless Communication Equipment (tower)*, or other similar type of permanent land use. At the beginning of 2018, Tower Associates LLC contacted County staff regarding the process to install a SoDAR unit on a property in the County for up to 12 months to collect wind data. After reviewing the County Zoning Regulations it was determined that the most similar use was a Temporary Business Use per Section 12-319-5.01.

Staff conferred with County legal counsel and confirmed with the County Commission that the appropriate process for approval was through the Temporary Business Use permit process. This process requires notice of a hearing and the County Commission's approval. The related Temporary Business Use was approved and the County Commission directed staff to prepare a text amendment to the County zoning regulations establishing a clear process for approving future *Data Collection Devices*.

OVERVIEW OF PROPOSED AMENDMENT

The following is a summary listing of the proposed changes:

1. Douglas County Zoning Regulation Article 13-319-5.01

The portion of the Zoning Regulations being revised is attached to this staff report (Attachment B).

CRITERIA FOR REVIEW AND DECISION-MAKING

Section 12-324 Changes and Amendments, of the Zoning Regulations provides the process for proposed text amendments, but does not include criteria for review and decision-making. The text amendment was reviewed with the following criteria that are similar to those in the City of Lawrence Land Development Code:

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

The regulations do not currently include data collection devices or a process for considering their placement or approval. These devices were not contemplated when the Zoning Code was originally adopted in 1966. Updates to the code have not include them as temporary uses.

They are a land use that can help forecast a future more intensive land use such as a *Wind Energy Conversion System*. By amending the Zoning Regulations, as recommended with this amendment, proper and reasonable notice and review process can be implemented.

2) Whether the proposed text amendment is consistent with the Comprehensive Plan and the stated purpose of the Douglas County Zoning Regulations

The general goal of the Comprehensive Plan is to provide “...for the optimum in public health, safety, convenience, general social and physical environment and individual opportunities for all the residents of the community, regardless of racial, ethnic, social, or economic origin. It is the goal of the planning process to achieve a maximum of individual freedom, but public welfare must prevail.” (Introduction, page 3, *Horizon 2020*)

The proposed amendment establishes regulations that would provide notice and process for a land use that is generally of interest to the public to ensure the public, health, safety, convenience, and general welfare.

Conclusion

The proposed change accommodates a new process for review, notice, and approval of a type of land use that may have external affects surrounding property owners for a short duration of time.

General Location:

Parent parcel is located on the northeast corner of E 1100 Road and N 200 Road.

Parcel Number: 212-03-0-00-00-004.01-0

911 Address: 1132 N 200 Road

Land Use

Existing Use: Agricultural

Proposed Use: SODAR – Meteorological data collection equipment

Surrounding Uses:

Rural residential and agricultural. Private landing strip and existing communication tower located to the east. **Will proposed equipment affect either use/operation?**

Zoning

Existing Zoning: A (Agricultural) District.

Proposed Zoning: No proposed change to existing district

Urban Growth Boundary:

Property is not located in any designated urban growth boundary and is not located within 3 miles of another incorporated City in Douglas County.

Plans

Area, Sector, or Neighborhood Plans:

This property is not located within a designated planned area.

Site Characteristics**Environmental Factors:**

Southwest portion of property includes Class 2 soils. Majority of property is sloped less than 3%.

Floodplain:

Southwest corner of property is encumbered by regulatory floodplain. Proposed equipment will not be located in floodplain.

Adverse Impacts on Natural Environment

None identified

Length Vacant as Zoned

Zoning was established in 1966. Property is used for agricultural purposes.

Detrimental Affect on Nearby Properties

None identified

Public Gain

None identified

Public Services Availability

No services are required for use. **Power provided by ????????**

Access from existing public roads

Compatibility with Surrounding Uses

Unit is small and portable. No impact on surrounding uses.

Confirm that equipment will not impact tower or private landing strip nearby to the east.

Adequacy of Continued Maintenance

Equipment is temporary for data collection purposes. Maintenance is generally not anticipated other than to collect data and to remove equipment at end of collection period.

Recommended Time Limit

???????????????

12-319-5. TEMPORARY BUSINESS USES AND TEMPORARY BUSINESS USE PERMITS

Temporary business uses may be permitted in any district upon the review and finding of the Board of County Commissioners that the proposed use is in the public interest. In making such determination, the Board shall consider the intensity and duration of the use, the traffic that can be expected to be generated by the use, the applicant's plans for dealing with sanitation and other public health and safety issues, and other factors which the Board in its discretion determines will affect the public health, safety and welfare. [Res.13-03]

12-319-5.01. Definitions.

- a. "Temporary business use" shall mean the carrying on of any of the activities enumerated in subparagraph (2) of this Section 12-319-5.01 on real property located in the unincorporated area of Douglas County, Kansas, which is not owned and regularly used by the applicant/sponsor of such activity for such purpose; provided that, "temporary business use" shall not include the activities of persons, families, groups or social or religious organizations that conduct fund raising, social or religious activities on real groups for such activity. An activity enumerated in subparagraph (b), below, held on property which is leased or borrowed for the purpose of conducting the activity shall be presumed to be a "temporary business use" which is subject to the requirements of this Section 12-319-5.
- b. Temporary business uses shall include the following activities conducted only for a temporary and specified duration:
 - 1) Batching or rock-crushing plant, including concrete or asphalt.
 - 2) Construction building or construction materials yard.
 - 3) Real estate tract sales office.
 - 4) Flea market or swap meet.
 - 5) Movie or video filming operations involving a combined crew, cast and extras of greater than ten (10) persons, except that one permit may be acquired for a single movie or video filming operation at different locations over a six (6) month period provided the applicant therefore informs the Douglas County Sheriff of each filming location twenty-four (24) hours prior to commencing filming operations.
 - 6) **Data Collection Devices**
 - 1. **Equipment that is mounted on the ground, vehicle, trailer, elevated platform or similar structure that can be removed such as SoDar, metrologic equipment, stream gages and similar equipment for environmental data collection.**
 - 7) Any other similar business use of a temporary and specified duration generating no more traffic or other effects on neighboring property than the foregoing.
- c. **Application Procedure.** An applicant for a temporary business use permit shall make application to the office of the Director of Zoning and Codes Department no less than twenty-eight days before the date of commencement of the proposed temporary business use. For good cause shown, the Board of County Commissioners may allow an application to be filed on shorter notice. All applications shall be accompanied by a non-refundable application fee in an amount set by resolution of the Board of County Commissioners but not less than one hundred dollars. In the application the applicant shall identify each sponsor of or other persons with a financial interest in the proposed activity
- d. **Temporary Business Use Plan.** Each temporary business use application shall be accompanied by ten copies of a plan in which the applicant explains the activity, the number of persons anticipated to attend, the location of the temporary business use, and detailed information concerning the applicant's plans and procedures for the following:
 - 1) Controlling traffic, parking and road conditions during the temporary business use, including provisions for off-road parking;

- 2) Addressing health and sanitation concerns at the site, including toilet and drinking water facilities and supplies adequate to meet the anticipated crowd plus a reasonable allowance for additional persons, including certification by Lawrence-Douglas County Health Department that all sanitation and health concerns have been adequately addressed in the applicant's plans;
 - 3) Providing adequate illumination at the site if the temporary business use is to be held at night;
 - 4) Providing security at the site, including the hiring of private security guards;
 - 5) Providing adequate fire safety precautions at the site, including consultation with the township fire department and approval prior to the activity;
 - 6) Evidence that the applicant has secured or can secure adequate general liability and property insurance coverage for the temporary business use; and,
 - 7) If applicable, the serving of alcoholic beverages, including cereal malt beverage.
 - 8) **Other documentation identified by staff such as but not limited to equipment specifications, noise, parking, health and sanitation, lighting, signage, site changes, floodplain or sensitive lands, access plan, maintenance and servicing plan, removal plan.**
- e. **Public Notice Requirements.** Upon receipt of the application for a temporary business use permit, the Director of Zoning and Codes Department shall notify the applicant of the date scheduled for a public hearing on such application before the Board of County Commissioners. No less than ten days prior to the public hearing the Director of Zoning and Codes Department shall cause notice to be sent of the date, time and place of the hearing by first class mail to the following persons:
- 1) The owners and occupants of properties within 1,000 feet of the boundaries of the site at which the proposed use will occur; and,
 - 2) The owners and occupants of residential structures served by driveways which take access from the public road which shall serve as the primary access to the proposed site and that are within one mile of the main entrance to such site. The public notice provided for herein also shall contain a copy of the temporary business use plan required in paragraph (d) or a summary thereof. The failure of any of the above described persons to receive the notice provided for herein shall not invalidate any proceedings held concerning a temporary business use permit application. The notice required by this subsection shall only be required to be sent to the non-owner occupants of properties described herein if the names and addresses of such persons can be ascertained from records of the County that are available to the Director of Zoning and Codes Department.
- f. **Public Hearing and Decision by Board.** Each application for a temporary business use permit shall be exempt from the requirements of Section 12-319-1, but the application shall be the subject of a public hearing before the Board of County Commissioners on the date and at the time and place set out in the notice required to be given under paragraph (e) of this section. After the public hearing held thereon, the Board may approve or deny the permit, or the Board may continue the hearing or a decision on the permit application until a subsequent meeting. If the permit is approved, the Board shall establish the effective time period for the permit and all conditions under which the permit is granted. Such conditions may include, but shall not be limited to, a requirement that a cash bond be posted by the applicant to reimburse Douglas County for the cost of any overtime incurred by County staff in responding to calls by law enforcement personnel and the provision of other services in connection with the permitted activity. Within 14 days after the conclusion of the use the County Administrator shall review all costs incurred by the County, shall deduct the amount of the costs from the bond, and shall refund the balance of the cash bond to the applicant.
- g. **Permit Not Assignable.** Any permit issued under this section may not be assigned by the applicant to any other person without the consent of the Board of County Commissioners.



DOUGLAS COUNTY ZONING & CODES DEPARTMENT

2108 W 27th Street, Suite I

Lawrence, Ks 66047

Phone: 785.331.1343 Fax: 785.331.1347

TEMPORARY BUSINESS USE PERMIT REQUEST NOTICE OF PUBLIC HEARING

TO WHOM IT MAY CONCERN: Owners of property within 1000' of MNL Farms, generally located 220 E 1100 Rd.

SUBJECT: **ZTBU 2018-0001:** Temporary Business Permit for installment of a SoDAR Unit to be located generally at 220 E 1100 Rd, Baldwin City, KS

DATE: March 28, 2018

Tower Associates, LLC has submitted an application for temporary installation of a meteorological device on MNL Farms property at approximately 220 E 1100 Rd for a period 12 months. The purpose of the temporary business permit is to measure the scattering of sound waves created by atmospheric turbulence. It will be used to measure wind speed at various heights above the ground.

A Temporary Business Use Permit (TBU) requires a public hearing before the Board of County Commissioners, after which the County Commission can approve, approve with conditions, or deny the TBU permit.

The public hearing for this Temporary Business Use Permit will be on Wednesday, **March 28, 2018, at 6:00 pm.** The Douglas County Commission holds their meetings in the County Courthouse at 1100 Massachusetts Street, Lawrence, Ks, in the Commission Room on the second floor of the Courthouse.

You are welcome to attend this meeting and share your comments or questions with the Commission regarding the location of a Temporary "SoDAR Unit" for temporary data collection at 220 E 1100 Rd. If you would rather ask questions before the meeting or submit comments in writing, you may contact the Zoning & Codes office at 785.331.1343 or by email at Judy Stone (jstone@douglascountyks.org), Tonya Voigt (tvoigt@douglascountyks.org), or Sean Reid (sreid@douglascountyks.org).



bcc. Jeffrey Bryce, Project Manager, Nextera Energy Resources
Ken McGovern, Douglas County Sheriff
Mike Wintermantel, Willow Springs Township Trustee
Keith Browning, Douglas County Public Works Director

RESOLUTION NO. 18-_____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS ADOPTING TEXT AMENDMENTS TO THE ZONING REGULATIONS FOR THE UNINCORPORATED TERRITORY OF DOUGLAS COUNTY, KANSAS.

WHEREAS, the Lawrence-Douglas County Planning Commission, after holding a public hearing on May 23, 2018, following due and lawful notice pursuant to K.S.A. 12-757 and the *Zoning Regulations for the Unincorporated Territory of Douglas County, Kansas*, as codified in Chapter 12, Article 3 of the Douglas County Code and as amended (the "Zoning Regulations"), has recommended that the Board of County Commissioners of Douglas County, Kansas (the "Board") make text amendments to the Zoning Regulations, the nature and description of such change being fully set forth below; and

WHEREAS, on _____, 2018 the Board found that the Zoning Regulations regarding Conditional Use and Conditional Use Permits should be amended by adopting the text amendments set forth below.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS AS FOLLOWS:

I. Adoption of Text Amendments. The Board hereby finds that the statutory provisions for the amendment of the Zoning Regulations has been fully complied with and hereby adopts the following text amendments (the "Text Amendments") amending the Zoning Regulations as follows:

A. Revising subsection 12-319-5 **TEMPORARY BUSINESS USES AND TEMPORARY BUSINESS USE PERMITS** as follows:

12-319-5. TEMPORARY BUSINESS USES AND TEMPORARY BUSINESS USE PERMITS

Temporary business use permits may be used for the review of equipment used in preliminary data collection such as metrologic instruments (MET), SoDAR units, temporary antenna mounted on a truck or trailer (COW, COLT), and similar devices that the proposed use is in the public interest with proper notice upon the review and finding of the Board of County Commissioners. In making such determination, the Board shall consider the intensity and duration of the use, the traffic that can be expected to be generated by the use, and other factors which the Board in its discretion determines will affect the public health, safety and welfare. [Res.13-03]

12-319-5.01. Definitions.

a. "Temporary business use" shall mean the carrying on of any of the activities enumerated in subparagraph (2) of this Section 12-319-5.01 on real property located in the unincorporated area of Douglas County, Kansas, which is not owned and regularly used by the applicant/sponsor of such activity for such purpose; provided that, "temporary business use" shall not include the activities of persons, families, groups or social or religious organizations that conduct fund raising, social or religious activities on real groups for such activity. An activity enumerated in subparagraph (b), below, held on property which is leased or borrowed for the purpose of conducting the activity shall be presumed to be a "temporary business use" which is subject to the requirements of this Section 12-319-5.

b. Temporary business uses shall include the following activities conducted only for a temporary and specified duration:

- 1) Batching or rock-crushing plant, including concrete or asphalt.
- 2) Construction building or construction materials yard.
- 3) Real estate tract sales office.
- 4) Flea market or swap meet.
- 5) Movie or video filming operations involving a combined crew, cast and extras of greater than ten (10) persons, except that one permit may be acquired for a single movie or video filming operation at different locations over a six (6) month period provided the applicant therefore informs the Douglas County Sheriff of each filming location twenty-four (24) hours prior to commencing filming operations.
- 6) Data Collection Devices
 - (a) Equipment that is mounted on the ground, vehicle, trailer, elevated platform or similar structure that can be removed such as SoDar, metrological equipment, stream gages and similar equipment for environmental data collection.
- 7) Any other similar business use of a temporary and specified duration generating no more traffic or other effects on neighboring property than the foregoing.

c. Application Procedure. An applicant for a temporary business use permit shall make application to the office of the Director of Zoning and Codes Department no less than twenty-eight days before the date of commencement of the proposed temporary business use. For good cause shown, the Board of County Commissioners may allow an application to be filed on shorter notice. All applications shall be accompanied by a non-refundable application fee in an amount set by resolution of the Board of County Commissioners but not less than one hundred dollars. In the application the applicant shall identify each sponsor of or other persons with a financial interest in the proposed activity.

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

- 1) Controlling traffic, parking and road conditions during the temporary business use, including provisions for off-road parking;
- 2) Addressing health and sanitation concerns at the site, including toilet and drinking water facilities and supplies adequate to meet the anticipated crowd plus a reasonable allowance for additional persons, including certification by Lawrence-Douglas County Health Department that all sanitation and health concerns have been adequately addressed in the applicant's plans;
- 3) Providing adequate illumination at the site if the temporary business use is to be held at night;
- 4) Providing security at the site, including the hiring of private security guards;
- 5) Providing adequate fire safety precautions at the site, including consultation with the township fire department and approval prior to the activity;
- 6) Evidence that the applicant has secured or can secure adequate general liability and property insurance coverage for the temporary business use; and,
- 7) If applicable, the serving of alcoholic beverages, including cereal malt beverage.
- 8) Other documentation identified by staff such as but not limited to equipment specifications, noise, parking, health and sanitation, lighting, signage, site changes, floodplain or sensitive lands, access plan, maintenance and servicing plan, removal plan.

- e. **Public Notice Requirements.** Upon receipt of the application for a temporary business use permit, the Director of Zoning and Codes Department shall notify the applicant of the date scheduled for a public hearing on such application before the Board of County Commissioners. No less than ten days prior to the public hearing the Director of Zoning and Codes Department shall cause notice to be sent of the date, time and place of the hearing by first class mail to the following persons:
- 1) The owners and occupants of properties within 1,000 feet of the boundaries of the site at which the proposed use will occur; and,
 - 2) The owners and occupants of residential structures served by driveways which take access from the public road which shall serve as the primary access to the proposed site and that are within one mile of the main entrance to such site. The public notice provided for herein also shall contain a copy of the temporary business use plan required in paragraph (d) or a summary thereof. The failure of any of the above described persons to receive the notice provided for herein shall not invalidate any proceedings held concerning a temporary business use permit application. The notice required by this subsection shall only be required to be sent to the non-owner occupants of properties described herein if the names and addresses of such persons can be ascertained from records of the County that are available to the Director of Zoning and Codes Department.
- f. **Public Hearing and Decision by Board.** Each application for a temporary business use permit shall be exempt from the requirements of Section 12-319-1, but the application shall be the subject of a public hearing before the Board of County Commissioners on the date and at the time and place set out in the notice required to be given under paragraph (e) of this section. After the public hearing held thereon, the Board may approve or deny the permit, or the Board may continue the hearing or a decision on the permit application until a subsequent meeting. If the permit is approved, the Board shall establish the effective time period for the permit and all conditions under which the permit is granted. Such conditions may include, but shall not be limited to, a requirement that a cash bond be posted by the applicant to reimburse Douglas County for the cost of any overtime incurred by County staff in responding to calls by law enforcement personnel and the provision of other services in connection with the permitted activity. Within 14 days after the conclusion of the use the County Administrator shall review all costs incurred by the County, shall deduct the amount of the costs from the bond, and shall refund the balance of the cash bond to the applicant.
- g. **Permit Not Assignable.** Any permit issued under this section may not be assigned by the applicant to any other person without the consent of the Board of County Commissioners.

II. Addition to the Zoning Regulations. The Text Amendments made by this Resolution shall be as a supplement to the Zoning Regulations, as codified in Chapter 12, Article 3 of the Douglas County Code.

III. Invalidity. If any section, clause, sentence or phrase of Resolution of the Text Amendments adopted hereby is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining parts of this Resolution or the Text Amendments adopted hereby, as the case may be.

IV. Repeal. The Zoning Regulations heretofore adopted that are in conflict with this Text Amendments are amended, repealed, or replaced, as the case may be, to be consistent with

the Text Amendments adopted hereby.

V. Effective Date. This Resolution shall be in full force and effect from and after its adoption by the Board and its publication once in the office County newspaper.

ADOPTED this ____ day of _____, 2018.

BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, KANSAS

Nancy Thellman, Chairman

ATTEST:

Mike Gaughan, Member

Jameson D. Shew, County Clerk

Michelle Derusseau, Member

ITEM NO. 9 TEXT AMENDMENT TO COUNTY ZONING REGULATIONS; DATA COLLECTION DEVICES (SLD)

TA-18-00155: Consider a Text Amendment to the Douglas County Zoning Regulation Article 13-319-5.01, to include and define *Data Collection Devices*, such as SODAR and meteorologic equipment and similar equipment as a Temporary Business Use. *Initiated by County Commission on 3/28/18.*

STAFF PRESENTATION

Ms. Sandra Day presented the item.

PUBLIC COMMENT

No public comment.

COMMISSION DISCUSSION

Commissioner Carpenter asked about the purpose of the measurements.

Ms. Day said SODAR was equipment to collect data for a potential wind farm application.

Commissioner Carpenter asked if it would be as loud as a motorcycle.

Ms. Day said it would be louder than the clicking of computer keyboard typing but quieter than a motorcycle.

Commissioner Willey asked if it bothered the birds.

Ms. Day said she wasn't sure she could answer that.

ACTION TAKEN

Motioned by Commissioner Culver, seconded by Commissioner Weaver, to approve Text Amendment, TA-18-00155, amending Chapter 12-319-5 of the Douglas County Zoning Regulations to include *Data Collection Devices* as a temporary business use and forwarding to the Board of County Commissioners with a recommendation for approval.

Unanimously approved 9-0. Commissioners Butler, Carpenter, Culver, Paden, Sands, Sinclair, Struckhoff, Weaver, and Willey voted in favor.