

Memorandum

City of Lawrence and Douglas County Planning and Development Services

TO: Planning Commission

FROM: Mary Miller

Date: For February 26, 2014 meeting

RE: TA-13-00451 Revised Agritourism Regulations

Attachments:

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

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

PROCESS:

October 16, 2013 Board of County Commissioners Meeting

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

November 6, 2013 Board of County Commissioners Study Session

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

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

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

January 27, 2014 Planning Commission

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

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

IMPORTANT POINTS ABOUT AGRITOURISM REGULATIONS

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

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

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

DISCUSSION OF COMMENTS RECEIVED AND REVISIONS MADE

(with staff discussion following in *italics*)

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

4. **12-319-7.03(b)(iii) and 12-319-7.07(b)(i)** Limiting the size of an activity by its parking area.

It is difficult to know how many people will come to your Agritourism operation. Perhaps your use is an orchard and you have very limited traffic year round, but on good days in the harvest season you have very large crowds. Don't think you should be required to install a 50 car parking lot for those good days.

No change. The parking limit is seen as a better tool for limiting the size of an Agritourism use rather than restricting the number of attendees that can be on site at a time as it is more enforceable. If an Agritourism use expects to have occasionally larger crowds, they could show an overflow parking area so they aren't creating a gravel parking lot for that infrequent parking and (if more than 25 spaces are planned—both regular and overflow) the use would be considered a Tier 2 and would require County Commission approval. (If they have very infrequent larger events, they could obtain Special Event Permits for those events, as an alternative.)

5. **12-319-7.03(b)(iv) and 7.07(b)(ii)** Restriction on motors or motorized vehicles.

What is the purpose of the restriction of motorized vehicles? Would golf carts that are used to access an apple orchard be included? Or a lawn mower that has been designed to look like a train engine?

The intent is to limit the nuisance factor of an Agritourism activity. A lawn mower that runs 8 hours a day could be a nuisance to a nearby property owner. Allowing electric motors may be an option as they are typically quieter. Revised to note that electric motors are excluded from this requirement.

6. **12-319-7.03(b)(vi)** Why would activities that occur outside of daylight hours require County Commission approval?

Activities that occur outside of daylight hours could have more of an impact on nearby properties than activities in the daylight hours. In order to keep the regulations as simple as possible, all activities that occur outside of daylight hours require County Commission approval. This would add a week or two to the registration timeline but would allow conditions to be placed on the activities, if necessary. Per the Planning Commission's discussion at the January meeting, this was revised to exclude the 'Farm Stays' and 'Bed and Breakfast' uses.

7. **12-319-7.04(a) and 7.08(a)** The term 'immediate family' is confusing.

This was revised to 'family members'. There are definitions of family in state regulations, but these are very complicated. The intent is to create a link between the operator and the property. Also revised to note that employees would include both paid and unpaid employees.

8. **12-319-7.04(a)(i) and 7.08(a)(i)** Definitions should be more clear.

'Agritourism Operator' definition: 'individual(s) with financial and legal responsibility for the Agritourism activity' has been added. Other proposed definitions are not needed, in staff's opinion (Agritourism site, Agritourism hours).

9. **12-319-7.04(b) and 7.08(b)** People should be allowed to park on adjacent roads.

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

ADA parking may not always be required for outdoor activities.

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

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

Language regarding fencing in the setback has been removed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Revised to clarify that.

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

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

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

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

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

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

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

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

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

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

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

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

20. Clarify that agricultural Agritourism uses are not required to register.

Supplemental brochure clarifies this.

21. Confused that some uses are permitted in various ways. For instance a commercial riding stable is a permitted use in the A District but could also be permitted as an Agritourism use. *"If regulated as Agritourism, the use would be subject to privacy fences, limit on parking spaces, the operator must be the resident etc."*

No change. Permitted uses in the A District, such as a Commercial Riding Stable, require approval through the site planning process. (Exceptions to site planning are agricultural and residential uses.) Screening, parking, etc. would be considered with the site plan review; however, the site plan review would not require the operator to reside on site.

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

No change. Tier 2 uses are required to occur on agricultural land. The Zoning and Codes Department has criteria they use to determine if a land use is considered 'Agricultural'.

23. Tier 1 users must show proof that the use will be accessory to the agricultural uses.

No change. It is possible that the Agritourism use will grow to be the primary use on the property if accessory and principal uses are measured by income. Being 'accessory' is not a requirement.

24. Agritourism or Special Event Permits should be required for some private events.

No change. This is beyond the scope of this amendment.

25. Proposed parameter of number of hours per day and number of days per week the activity may occur for the different levels of Agritourism.

No change. This may be an effective parameter but would be very difficult to enforce.

26. Recommended enforcement provisions for Agritourism.

No change. This is beyond the scope of this amendment.

27. Specify in the regulations that infrequent Agritourism activities could also be approved with a Special Event Permit.

Noted in brochure.

28. Create a flow chart or decision tree to simplify these regulations.

Supplemental brochure created which includes a form of decision tree to clarify when Agritourism uses require registration, and what process is required for each.

STAFF REVISIONS

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

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

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

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

Is your use a Tier 2 use?

Yes---

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

No---

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

This brochure contains introductory information on Agritourism.

For more information on the registration process and requirements, please contact:

Zoning and Codes Office

785-331-1343

2108 W 27th Street, Lawrence.

AGRITOURISM IN DOUGLAS COUNTY

"Agritourism is recognized as a vital tool for sustaining the family farm and represents significant economic potential for the community in general.

These Regulations are intended to foster and promote Agritourism in Douglas County in keeping with the State of Kansas policy of encouraging agritourism, while ensuring the public health, safety and welfare is protected."

(Section 12-319-7 Zoning Regulations)



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

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

Now:

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

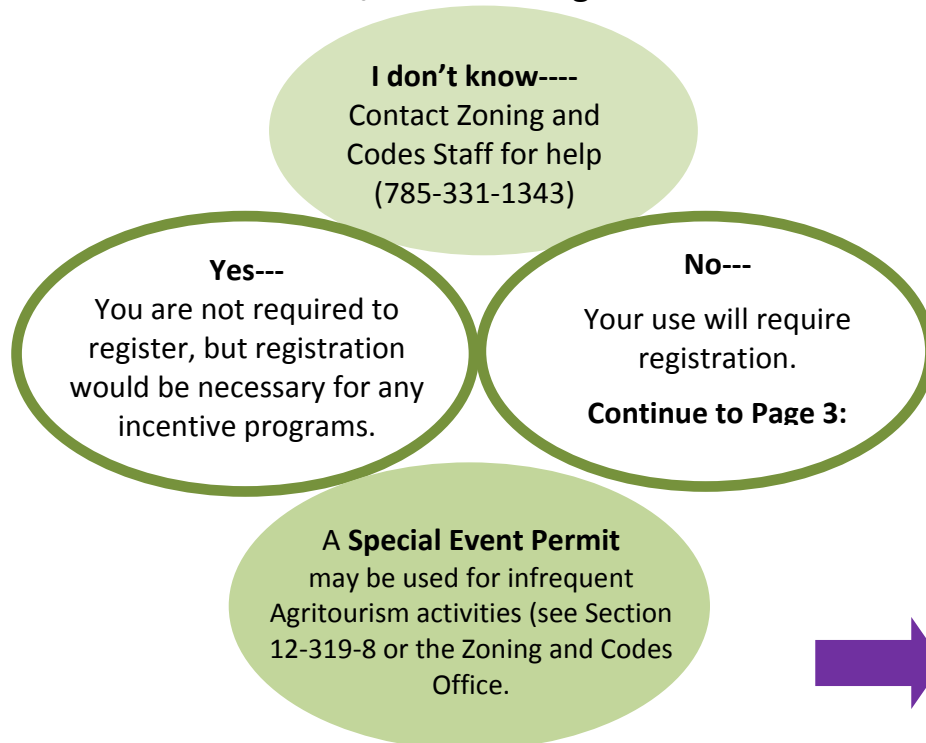
FAQ # 1:

Do the regulations apply to my Agricultural use?

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

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

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



FAQ # 2:

How do I register?

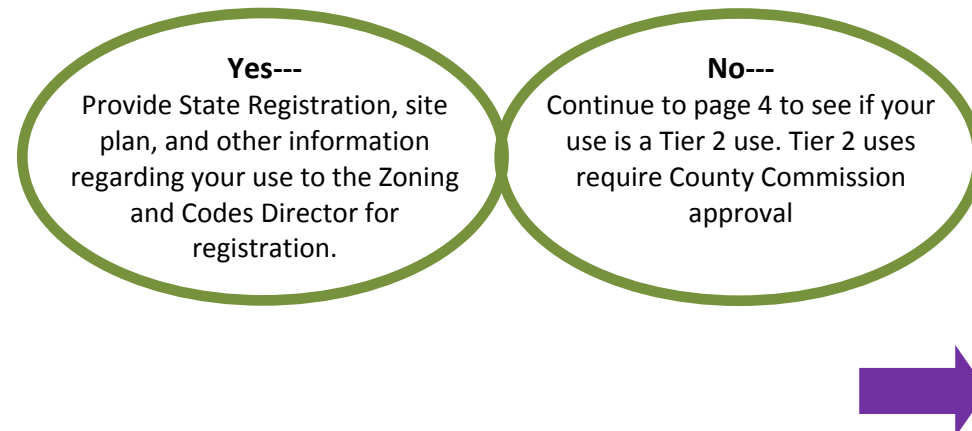
Step 1: Where does your use fit?

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

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

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

Is your use a Tier 1 use?



12-319-7 AGRITOURISM SUPPLEMENTAL USE REGULATIONS

Agritourism is recognized as a vital tool for sustaining the family farm and represents significant economic potential for the community in general. These regulations are intended to foster and promote agritourism in keeping with the State of Kansas policy of encouraging agritourism, while ensuring that the public health, safety, and welfare are protected.

12-319-7.01 AGRITOURISM

- a. Agritourism is the intersection of agriculture and tourism, when the public visits rural areas for recreation, education, enjoyment, entertainment, adventure or relaxation. Agritourism uses the rural experience as a tool for economic development.
- b. Typical agritourism uses include, but are not limited to, the following:
 - i. Farm markets/roadside stands,
 - ii. U-pick operations,
 - iii. Farm winery tours and tastings,
 - iv. Corn mazes,
 - v. Farm-related interpretive facilities, exhibits, and tours,
 - vi. Historical, cultural, or agriculturally related educational and learning experiences, including volunteer workers,
 - vii. Farm stays,
 - viii. Bed and Breakfast establishments,
 - ix. Recreation related operations (fishing, hunting, bird watching, hiking, etc),
 - x. Horseback riding,
 - xi. Garden, nursery tours and exhibits,
 - xii. Pumpkin patch visits and activities,
 - xiii. Assembly type uses such as fairs or festivals which are historical, cultural, or agriculturally related; weddings, receptions; etc,
 - xiv. Ancillary retail sales,
 - xv. Other uses that may be determined on a case by case basis if it meets the purpose and intent of the regulations.
- c. These Agritourism provisions do not apply to camping.

12-319-7.02 REGISTRATION AND APPROVAL PROCESS OF AGRITOURISM USES

- a. After the use has been registered with the State, a copy of the Agritourism Promotion Act Registration Form shall be provided to the Douglas County Zoning and Codes Office to register the Agritourism use with the County. Agritourism uses which meet the definition set forth in these Regulations and are registered with the State and with the County may occur as permitted in Section 12-319-7 without any additional review under Section 12-319, Conditional Use Permits; Section 12-319A, Site Plan Regulations; or Section 319.8 , Special Event Permits, although other State and local regulations shall apply.
- b. Sections 12-319-7.03 and 12-319-7.06 establish the parameters for Tier 1 (low intensity), and Tier 2 (medium intensity) Agritourism uses.

- i. Tier 1 (low intensity) Agritourism uses may be registered administratively by the Zoning and Codes Director.
 - ii. Registration of Tier 2 (medium intensity) Agritourism uses requires approval by the Board of County Commissioners.
 - iii. Agritourism uses which do not meet the definition or parameters of a Tier 1 or Tier 2 use require approval through a Conditional Use Permit, Special Event permit, or rezoning.
- c. Registration forms shall be jointly reviewed by the Director of Zoning and Codes Office and the Planning Director to determine if the proposed use(s) meet the definition of Agritourism set forth in these Regulations within 7 working days of submittal.
 - i. Additional descriptive information may be necessary for the determination. This information will be provided by the Agritourism operator and kept as a part of the registration.
 - ii. If the Directors are unable to make a determination, the registration will be referred to the Board of County Commissioners.
 - iii. The applicant for the Agritourism registration may file an appeal from the Director's determination. Appeals from the determination shall be made to the Board of County Commissioners. An appeal must be filed within 30 days of notification of the determination to the applicant. The appeal will be considered at the next available Commission meeting.

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

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

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

12-319-7.04 TIER 1 AGRITOURISM USES STANDARDS:

The following standards apply to all Tier 1 Agritourism uses:

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

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

12-319-7.05 TIER 1 AGRITOURISM REGISTRATION PROCESS

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

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

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

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

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

12-319-7.06 DURATION/RE-REGISTRATION

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

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

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

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

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

12-319-7.08 TIER 2 AGRITOURISM USE STANDARDS

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

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

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

12-309-7.09 TIER 2 AGRITOURISM USES REGISTRATION PROCESS

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

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

12-309-7.10 Duration/Review

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

- a. The Agritourism Use may continue as long as the use complies with the conditions and standards that were applied with the registration.
- b. **A Tier 2 use that received County Commission approval may be re-registered administratively by the Zoning and Codes Director if the use remains the same as on the original registration and no unresolved complaints are on file.**

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

12-319-7.11 STRUCTURES AND CONSTRUCTION CODES

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

Mary Miller

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

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

Re: your message about Agritourism Regulations

Dear Ms. Miller:

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

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

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

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

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

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

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

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

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

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

Charles NovoGradac

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

Charles,

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

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

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

Thank you very much for your input!

Mary

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

Planning Division | www.lawrenceks.org/pds

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From: Nuts2sell@aol.com [mailto:Nuts2sell@aol.com]
Sent: Wednesday, January 29, 2014 10:27 PM

To: Mary Miller

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

Ms. Mary Miller, AICP

City/County Planner

Douglas County, KS

Re: your message about Agritourism Regulations

Dear Ms. Miller:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Charles NovoGradac

Chestnut Charlie's Organic Tree Crops

by email: nuts2sell@aol.com

by mail: P.O. Box 1166, Lawrence, KS 66044

Mary Miller

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

Mary,

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

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

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

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

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

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

Linda M. Finger, AICP, CFM, RLA

Interim Director, Douglas County Zoning & Codes Department

Planning Resource Coordinator

lfinger@douglas-county.com

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DRAFT

COMPREHENSIVE REVIEW OF PROPOSED REVISED AGRITOURISM REGULATIONS

OUTLINE

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

SUMMARY AND DISCLAIMER

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

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

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

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

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

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

COMPLICATIONS TO THE REVIEW PROCESS

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

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

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

ADVERSE EFFECT OF REGULATORY REVISION PROCESS

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

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

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

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

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

OVERALL CONTEXT OF PROPOSED REGULATIONS

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

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

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

POINT-BY-POINT ANALYSIS OF PROPOSED CHANGES

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

TYPOGRAPHICAL ERRORS AFFECTING REVIEW PROCESS

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

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

REQUIRED CONDITIONAL USE PERMIT

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

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

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

LIST OF TIER 1 USES

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

(5) Corn mazes and Pumpkin Patches visits and activities

...

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

...

(14) Farm tours and demonstrations.

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

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

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

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

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

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

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

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

“ACCESSORY TO ...A PARCEL”

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

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

“CONTIGUOUS PARCELS”

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

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

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

“UNDER THE SAME OWNERSHIP”

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

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

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

“AGRICULTURAL LAND USES”

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

“AGRITOURISM OPERATOR”

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

“MOTORS OR MOTORIZED VEHICLES”

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

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

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

“DAYLIGHT HOURS”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"LANDSCAPING SHALL CONSIST..."

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

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

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

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

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

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

12-319-7.04(d) “NO EXTERIOR LIGHTING”

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

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

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

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

“200 FOOT SETBACK”

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

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

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

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

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

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

12-319-7.04(e) SANITARY FACILITIES

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

"AGRITOURISM REGISTRATION PROCESS"

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

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

“1000 FOOT NOTICE RADIUS”

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

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

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

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

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

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

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

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

PROPOSED ALTERNATIVE REGULATORY SCENARIO

Agritourism regulations should provide a framework that:

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

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

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

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

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

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

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

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

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

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

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

--Volunteers—

PRIVATE ACTIVITIES PERMITTED BY RIGHT

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

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

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

Landowners/tenants must ensure that:

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

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

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

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

AGRICULTURAL EVENTS

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

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

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

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

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

AND with parking provided for 25 or fewer vehicles,

AND no overnight guests,

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

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

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

--TIER 2 AGRITOURISM

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

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

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

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

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

--AGRITOURISM REQUIRING CONDITIONAL USE PERMIT

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

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

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

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

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

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

12.319.7.02 REGISTRATION AND APPROVAL PROCESS

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

12-319-7.0_ STANDARDS

All agritourism activities must meet the following standards:

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

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

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

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

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

ENFORCEMENT

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

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

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

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

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

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

PUBLIC COMMENTS

REVISED AGRITOURISM TEXT AMENDMENT

Submitted by:
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I want to commend staff for the improvements that have been made to the first version of the proposed revised regulations. The point-by-point document addressing the various public comments and the changes that were or were not made was especially helpful in reviewing the changes...a great step towards transparency in the process.

I want to say that I share the concerns detailed in Mr. NovoGradac's two letters...to the extent that I can even understand the legal ramifications that he references. I hope that the regulatory bodies involved will take his comments very seriously. His understanding of law is much more nuanced than mine; my comments are based on a strictly literal reading of the regulations without the deep knowledge of legal practice and precedent that Mr. NovoGradac has.

Most especially, I am concerned, as is Mr. NovoGradac, with the very fuzzy distinction between "activities permitted by right" (residential, agricultural, or other) and activities permitted only as "agritourism". Over the past 15 years I have been told (at various times) by Zoning and Codes that allowing others to walk on my agricultural land is illegal; that I can't camp on it even for agricultural necessity; that I can't establish a temporary farm office in a parked vehicle. In the past, I've been threatened with \$500/day fines for essential farming activities. Now, some of those activities seem to be allowed by right...at least to some extent...for some people...without significant intervening changes to the regulations. But really, our permitted rights are not at all well defined and established, and are subject to changing interpretation. As has sadly been demonstrated in the past 8 years, the interpretation of the regulations has sometimes been on political or personal basis, rather than legal authority.

On the other hand, there continue to be egregious failures of the regulations to protect agricultural land from "from the depreciating effect of objectionable, hazardous and unsightly uses" (12-306-1), and at times an ongoing failure of enforcement efforts to rectify these situations. My neighbors, who reside on unincorporated Douglas County land zoned, but not used, as Agricultural, can have very large "private" parties (with extensive on-street parking and inadequate sanitary facilities, and without any regulatory oversight); extensive fire works displays for well over a hundred guests; glaring outdoor lights all night year around that significantly disturb my night-time farm work. They operate a significant industrial/commercial business on their "agricultural" land without

the benefit of a site plan and with no screening and inadequate paving; enter and leave the roadway with large trucks and other vehicles at points other than their designated “curb cut”; invite groups of friends and relatives to play with ATVs and “off-road” type recreational driving of pickup trucks; and all manner of other disruptive activities. The County is apparently powerless to enforce against these disturbances, nuisances, and code violations.

If I tried to do the same or far lesser activities as Agritourism, I would have to get a CUP—yet either a CUP or Agritourism registration could be denied in the first place based on exaggerated, unfounded neighbor complaints in advance of any actual activities (as has occurred in the not-so-distant past) and I would be subject to immediate enforcement and withdrawal of my permit simply based on hearsay from anonymous complainants, making up stories about my operation.

State law protects hunting as an agricultural activity. So do we need to carry guns and hunting licenses everywhere we go in order to be allowed to walk in the woods? Yet if people—even strangers not known to the landowner—can hunt on agricultural land, why can’t they take photos of birds, or fish, or ice skate, or view the stars at night—without the landowner going through the rigamarole of Agritourism registration? ANY night-time nature activities such as star-gazing or owl calling...or even a farmer, his friends, and his harvest crew celebrating “harvest home” with a potluck and bonfire at the end of the season--would require onerous Tier 2 registration—yet these are normal, natural aspects of rural life and traditional farming community.

Somehow we as a culture and as a community have lost our way rather badly. We can’t see the “forest”—enjoyment of outdoor rural life with friends—because we’ve planted a privacy screen of regulations around activities that once were, and should still be, considered part and parcel of rural life.

So many valuable agritourism activities are informal, and are a blend of “permitted” and “not permitted” activities. It isn’t clear at all what ratio of “agriculture” to “tourism” is permitted by right...and if an agritourism registration is cancelled, how much of the “agriculture” will be allowed to continue? A group of Girl Scouts gather eggs...that’s agriculture. If they eat a snack at the farm, that’s agritourism. If they pick an apple, wash it, and eat it on the farm...is that agriculture or agritourism? How fine are we going to split the hairs?

This is an important concern because the finer the hairs are split, the more likely that disgruntled neighbors (perhaps upset with something entirely unrelated to agricultural or agritourism activities) will attempt to use poorly conceived regulations as a means of harassing or even shutting down a farm.

Does this type of harassment happen? A few weeks ago my farm was subject to a complaint-based investigation by the Kansas Dept. of Agriculture. The complaint was obviously declared “not valid” from the first moment the inspector stepped onto the farm, before we even spoke. Nevertheless the full investigation process had to be followed. The

overall situation took many hours of my time (unpaid and unproductive) and the State Inspector's time (tax dollars at work).

Was this harassment? The investigation was triggered by an anonymous complaint filed with a Douglas County regulatory agency, which forwarded the complaint to the state. The complaint had absolutely no basis in current reality (the scenario described, even when stripped of hyperbole, had not occurred for many years). It was regarding an activity that is a normal, traditional farm life activity not prohibited by any law.

Fictitious complaints aren't accidentally filed, and they aren't filed to "protect" the subject of the complaint. A situation like this exhibits deliberate malicious intent. Our current enforcement procedures make this kind of harassment easy. Given the prevalence of extremely strong feelings about neighbors who undertake activities that other neighbors don't like, it's not hard to imagine regulations (such as the type of detailed agritourism regulations that is being proposed) being used as tools to clobber legitimate, code-compliant farming/agritourism operations.

The economic cost of investigating insignificant complaints such as this can be staggering. Douglas County Zoning and Codes already has difficulty enforcing real, significant, obvious, on-going violations, such as previously mentioned. Writing regulations that are overly restrictive or detailed may make it more, rather than less, likely that complaints may be used as a tool for harassing legitimate agricultural operations.

12-319-7.03 (b) (iii) Limit on Parking Spaces

Does the 25 parking space limit mean that no more than 25 vehicles may ever be parked on the farm, or does this mean a combination of permanent and overflow parking spaces totalling less than 25 at all times, or is it 25 permanent parking spaces plus occasional on-site overflow parking? A bus might take up three or more passenger car parking spaces; large vans might take two spaces. Would fewer than 25 vehicles be allowed if one or more is a bus or oversize van?

Do motorcycles, scooters and bicycles each count as a separate vehicle, even though more than one can fit in a standard parking spot?

I am really not convinced that parking spaces will be any easier to enforce than attendance by number of people.

If legal on-street parking is available, why can't it legitimately be used by participants for an agritourism use, especially in semi-urban areas? Other neighbors use street parking at or near my farm. How could enforcement prove that vehicles legally parked on the street near my farm are attending an agritourism event, and not neighbor vehicles parked there to trigger enforcement action?

The only way I can legally control parking on the streets around my farm is to obtain “No Parking by Order of Chief of Police” signs from the city (which takes considerable effort and a large deposit)—which I can do because I am on a City Limit street. Do folks in the county have a similar mechanism for posting “No Parking” on roads that are otherwise not posted and thereby legal for parking? If a car is legally parked, I can’t have it ticketed or towed...but a guest’s preference for parking on the road might cause my agritourism registration to be revoked.

12-319-7.03 (b) (v) **Amplified Noise**

Please specify “*Electronically amplified*”; even acoustical musical instruments have some form of natural amplification (i.e. the body of an acoustic guitar or sound board of a piano), and a building or natural environment may serve to amplify sounds. Excluding ALL amplification from Tier 1 makes 12-319-7.03 (a) (xv) necessarily a Tier 2 activity.

12-319-7.04 (a) and 7.08 (a) **Operator/land ownership relationship**

“...employees (*paid or unpaid*)” is problematic. Please specify “*employees or volunteers*” to reflect the common usage and distinctions made by those who will be subject to these regulations. Volunteers have a distinctly different relationship with their hosts than employees have with their employers, above and beyond compensation and liability issues. Not paying “employees” would be a violation of Dept. of Labor regulations except perhaps in the case of family members, who are already mentioned. Also, non-profit agencies engaged in agritourism operations could encounter difficulties with their volunteers being construed as “unpaid employees.”

12-319-7.04 (c) and 7.08 (c) **Landscaping/fencing/screening**

The reduction in excess detail is helpful, as is giving the Zoning and Codes Director some leeway to exercise professional judgment in this matter. However, this requirement is still problematic for several reasons.

One example is a friend’s farm in south Douglas County. Her farm parking area is more visible from residences 2 miles away, viewed cross-country through a valley, than it is from the road or close neighboring residences, from where it is naturally screened. Yet no amount of screening would hide it from those distant houses unless installed near the residences 2 miles away, on others’ land.

Another example is my own farm, located on a small cluster of parcels which each have their own driveways. There is also a permanent right-of-way that cannot be obstructed (other sites may have issues with utility easements that don’t allow structures or plantings). This particular site makes it nearly impossible to screen parking areas from street view. However, it is located on an urban street, so there are many cars and business vehicles parked in view of the street on neighboring properties, most of them much closer to the street than the farm parking. In this case, screening of parking areas from the street is not a reasonable requirement.

On the side of my property with a residence not owned by me, a commercial business involving as many as 6 large tow trucks and 10 or more passenger cars, present 24-7, is operated right up to our mutual property line, yet is not required to have screening to reduce the impact of their operation on my rental residence. Yet I would have to invest in permanent screening to hide occasional agritourism guest vehicles from their tow trucks?

Many agritourism locations may only be active for a short time each year. It isn't appropriate to require screening year around for an area that is only used a short time. Also, it isn't clear whether all parking requires screening, or whether overflow parking is exempt from screening.

I suggest that the landscaping/fencing/screening requirement merely be stated as "*Site plan shall show landscaping, fencing, etc. as appropriate to provide reasonable screening from nearby roads and residences of permanent parking areas used for agritourism, subject to the approval of Director of Zoning and Codes [or County Commission, for Tier 2].*" This will alert the potential agritourism operator that screening is needed, while allow the applicant and the approving body to decide what is appropriate and reasonable for the individual site and agritourism use.

12-319-7.05 (a) (iii) (f) (i) and 7.08 (b) (i) **Parking Estimation**

The changed wording is very awkward.

The stated ratio of 2 attendees/vehicle is problematic. At the Jan. 27, 2014 Planning Commission meeting, another agenda item was a CUP for an assembly hall. There was discussion about the parking spaces allocated, relative to the capacity of the building. City staff stated that the code requirement for an assembly hall was based on 5 people per car. If 1 parking space per 5 guests is sufficient to comply with code requirements for an assembly hall, it would make sense to use the same standard as a guideline for estimating the attendance/vehicle ratio for agritourism activities, rather than a much more restrictive one.

Looking at this from a broader perspective, the attendance/vehicle ratio might reasonably be estimated much differently for different types of agritourism activities. Family-focused activities (such as a children's birthday party or church-related program) might have a much higher ratio (3-7 attendees/vehicle) than adult education activities (such as a writing workshop; 1 attendee/vehicle) or a couples activity (formal farm-to-table event; 2 attendees/vehicle). An agritourism program that caters primarily to school tours may only need 2 bus parking spaces, yet serve 60 participants at a time. Quick drop-in agritourism activities (such as a small Farmer's Market or festival) might serve hundreds of people throughout a day, yet only have a dozen cars on site at any one time.

This section might best be replaced by a requirement that the applicant show expected attendance and how this attendance will be served by the allocated parking spaces.

12-319-7.05 (b) **Public Notice Recipients**

The requirement to send notices to landowners in other counties should be limited to “*owners of land in another county that is within 1000 ft of the subject property*” rather than the entire county.

12-319-7.05 (b) **Public Notice Mailing**

The requirement for the applicant, instead of the County, to mail notice letters to nearby property owners for Tier 1 activities places an additional time and cost burden on the applicant. The County has a system for converting the file from the County Clerk to print addressed envelopes; many applicants would likely hand-copy or retype the addresses. Not only would this be a time-consuming effort, but also errors might be made in transcribing the addresses, so that they wouldn’t reach the intended recipient. For my property, cost of photocopies, envelopes and standard first class postage (\$.49) would total approx. \$15.00 plus a significant amount of time to address more than 25 envelopes by hand.

Furthermore, there is no accountability if the landowner sends out the letters, unless a much more expensive postal service is used. I do not know of any way that the USPS certifies that a list of addresses has been sent copies of a letter. Even if the landowner sends out letters to each party on the list, someone might accuse the landowner of failing to do so, and the landowner would have no proof. Conversely, the landowner might not send them out, but claim to have done so. If the county automatically generates the letters and mails them from the electronic file of addresses obtained by the county, there is much less room for error.

12-319-7.10 (c) (ii) (a) **Notification for Minor Changes**

Since these are approved administratively similar to a Tier 1 registration, it isn’t clear whether the Tier 1 procedure for the applicant mailing out the notices applies, or the Tier 2 procedure for the County to mail them out. Please specify. Specification is not needed if the County is to send out Tier 1 as well as Tier 2 notices.

12-319-7.10 (d) **Non-Compliance**

This should specify “Engaging in any agritourism activity not listed on the registration.” Otherwise, legitimate agricultural, residential or other code-compliant, permitted-by-right activities might be construed to be violations of the agritourism registration.

Also, it should specify “operating out of substantial compliance with the plans and conditions approved with the registration” to reduce complaints based on inconsequential variances or differences of interpretation. It is simply impossible to control every detail of an agritourism operation or foresee all possible opportunities. If a registration lists “birthday parties” and someone wants to have an “adoption day party”, this should not be a violation.

My broader concern here is that the revised regulations seem much more restrictive than the original (2012/2013) regulations in terms of allowing an operator the flexibility to change how the land is used for various agritourism activities through the farming season or through the course of the 5-year registration.

When I submitted my registration for events with less than 100 participants at a time, the site plan that I submitted was for our proposed weekly Farmer's Market. This activity was to be confined to the portion of the farm near the street, and a one-way traffic flow was envisioned to maximize parking and activity space. Sanitation facilities, if required, would be needed near the market area, within 200' of the street. ADA parking would be near the market area as well.

When I submitted my registration for events with more than 100 participants, the site plan that I submitted was for an assembly type event—our traditional annual Sheep Shearing Day. This twice-yearly event is held prior to the Farmer's Market season, and utilizes the farm's land and resources in an entirely different way from smaller events. The focus is out at the Green Barn, so the ADA spaces are located near that location. If required, that's where sanitary facilities are needed. Because we were not allowed to let guests drive through my city property, we had to temporarily convert some day-to-day parking spaces to two-way traffic lanes for those few hours in order to meet Zoning and Codes requirements. We planned our sanitary facilities and ADA parking signs to be portable so we could use them wherever they were needed, depending on the event.

My understanding was that the site plan for the >100 registration was to be for the "trial event", and if that event went well (which it did) then other events with >100 attendees could be held, regardless of their "shape", without submitting a new site plan or new registration as long as the general types of events were listed on my State registration.

However, when I came before the Planning Commission with my CUP for camping, one of the Commissioners complained that I was already out of compliance with my agritourism Sheep Shearing Day site plan—a site plan used for 2 days a year—and he visited the farm on a day that was not a Sheep Shearing Day or any other agritourism event. He presented this as "proof" that I could not be trusted to adhere to a CUP site plan. Yet I had been told by the County to make the Agritourism site plan for just that one-day event!

This current, highly structured set of regulations suggests that I either need to predict the best possible land use for every possible configuration of every possible event for the next 5 years, or I will need to revise my registration (including a new site plan) for every event that is even a little different than the previous one. For example, if one couple wants to hold their wedding under the Torii, and one wants to hold their wedding in the woods, and one wants to be out in the pasture, I have to submit a separate site plan for each of those uses or be in violation of my Agritourism regulation?

Do I also have to have site plans for every possible weather-related last minute change of plans? Do I have to tell a group of soccer-playing 7-year-old birthday party attendees that they can't kick the soccer ball down the main lane on their way to our impromptu soccer field on the pasture, just because it's not on the site plan? Are they even allowed to play soccer on the pasture as part of a birthday party if I somehow didn't foresee it? What about the 5-child Chinese dragon "puppet" that the birthday boy requested, that decided to go dancing on the pasture? How could I possibly predict every nuance of every scenario to prevent an enforceable accusation that I am out of compliance with my registration and site plan?

The combination of complaint-based enforcement, anonymous complaints, and detailed, restrictive site plan/activity registration requirements, combined with the propensity for neighbors in all parts of the county to have disagreements over how land that someone else owns should be used, virtually guarantees that agritourism operators around the county will likely be fighting an uphill battle. It is a statistical fact that we will not be able to please everyone all the time, and in the end we will please no one.

Agritourism may seem like a new "kid on the block" in Douglas County, and non-farming county residents may feel the "new kid" doesn't fit in with their established expectations of country life. However, I'm sure not all working farmers have been thrilled at seeing wide open pastures and fertile farm fields transformed into suburb-like 5 acre-lot housing developments. Many of those who complain about the potential of agritourism to "ruin their lives and property values" may have "ruined the lives" of the long-time farmers they moved next to. Those complaining about the "new kid" were likely once "new kids" themselves.

If Agritourism is to be a tool for economic development for Douglas County farmers, then the County's regulation of it must leave plenty room for flexibility, creativity, innovation, and rapid response to customer requests. This must be done without risking any restriction on conventional, traditional agricultural and farm living activities, broadly construed. It must also, *but to a lesser extent*, reasonably protect the peaceful enjoyment of non-farming rural residents. But this must NOT mean that non-farming rural residents can expect to never be irritated by a neighbor's land use. Economic development will probably not come without lights, traffic and a little noise.

In the end this boils down to property rights. When I buy a piece of land, do I or my neighbors have more say over what I should or shouldn't do? When that land is my livelihood, and my neighbor's land is a hobby, whose best interest should prevail? An economy based solely on real estate values is unsustainable. Making room for agricultural operations to expand in non-traditional directions, while allowing traditional agricultural and natural land uses, without undue restrictions makes sense to foster an overall vibrant, balanced rural economy, rather than just a bunch of residences for commuters that are often vacant for much of the day.