

**PLANNING COMMISSION REPORT**  
**Regular Agenda –Public Hearing Item**

PC Staff Report  
1/27/14

**ITEM NO. 4      CONDITIONAL USE PERMIT; GOOD EARTH GATHERINGS; 858 E 1500 RD (MKM)**

**CUP-13-00482:** Consider a Conditional Use Permit for Good Earth Gatherings, a recreational facility including education, community outreach, and ancillary retail sales on approximately 10 acres located at 858 E 1500 Rd. Submitted by Tamara Fairbanks-Ishmael, property owner of record.

**STAFF RECOMMENDATION:** Staff recommends approval of a Conditional Use Permit for a recreation facility, to provide community outreach, education, and ancillary retail sales on approximately 10.5 acres, located at 858 E 1500 Rd subject to the following conditions:

1. A driveway shall be installed from the access point provided on the property prior to the commencement of the CUP use.
2. Provision of a revised site plan to include the following notes
  - a. Operating hours will conclude at 9 PM.
  - b. No more than one class shall be conducted/offered at a time.
  - c. Use of the lake for public, business, commercial, and recreation activities associated with the conditional use is prohibited.

**Reason for Request:** *"A home occupation requiring a Conditional Use Permit."*

**KEY POINTS**

- The subject property is located on and takes access from E 1500 Road which is classified as a Minor Collector in the Douglas County Access Management Standards.
- The property is not located within the Urban Growth Area of any city within Douglas County.

**ATTACHMENTS**

- Attachment A: Good Earth Gatherings Business Plan
- Attachment B: Public communications

**ASSOCIATED CASES/OTHER ACTION REQUIRED**

- Approval of CUP application by the Board of County Commissioners.
- Release of permit for the Conditional Use from the Zoning and Codes Office.
- Building permit from the Zoning and Codes Office may be required for the change of use in the accessory building.
- Construction of an onsite access drive to E 1500 Road prior to the commencement of the use.

**PUBLIC COMMENT RECEIVED PRIOR TO PRINTING**

- Karen Watney, a nearby resident and property owner, called to ask that the letter she provided in 2011 be included in the communications. She indicated that traffic is her principal concern.
- Letter from Eugene and Pamela Carvalho expressing concerns with the increased traffic. These letters are included with this staff report as an attachment.

## **GENERAL INFORMATION**

Current Zoning and Land Use: A (Agricultural) District and FF (Flood Fringe) Overlay District; existing residence and accessory buildings.

Surrounding Zoning and Land Use: A (Agricultural) District in all directions; surrounding uses include agriculture and rural residences.

### **Site Summary**

Subject Property: 10.48 acres

#### **Existing**

|                              |             |
|------------------------------|-------------|
| Accessory Building           | 1,440 sq ft |
| Residence including basement | 3,876 sq ft |
| Total Building area:         | 5,316 sq ft |

### **Summary of Request**

The proposed use will utilize the existing accessory building as a classroom/studio space and will include limited retail sales. The use may meet the definition of Agritourism but the applicant decided to pursue approval through Conditional Use Permit. The County Zoning Regulations allow a range of uses as Rural Home Business Occupations that include the instruction of students, and the use of detached accessory structures; however, the number of students proposed at one time (10-18 students) exceeds the maximum permitted for a Rural Home Business Occupation (6 students) and the retail sales may include items that were not produced on the site. A Rural Home Business Occupation permits the sale only of products that are produced on the premises. No specific conditional use enumerated in Section 12-319-4 of the Zoning Regulations definitively describes the proposed activity; however, the Zoning and Codes Director determined that the proposed use is most similar to a Recreation Facility (12-319-4.11).

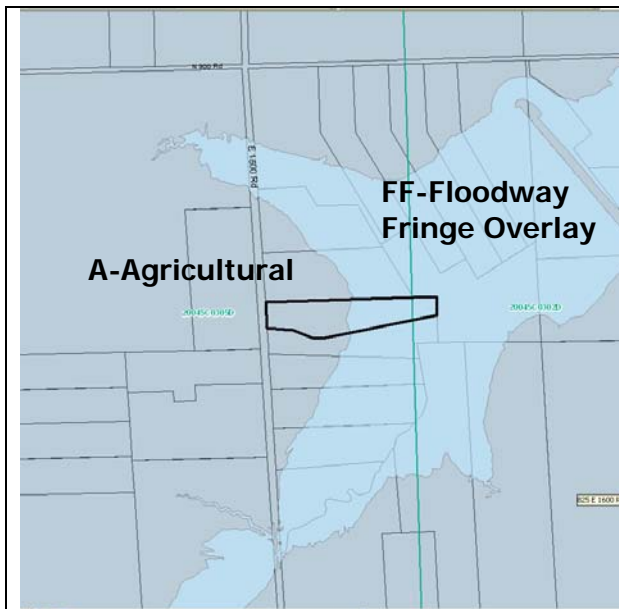
The applicant's Business Plan indicates that this will be a small part-time business with 2 to 4 classes per week. Ancillary retail hours are proposed from 9 AM to 4 PM on Friday and Saturdays. Between 10 to 18 roundtrips are anticipated during weeknight classes and between 15 to 30 roundtrips are anticipated on Friday and Saturday. The sample calendar provided in the Building Plan indicates that no classes will be conducted past 9 PM and that these will occur between Tuesday and Thursday. Friday and Saturday daytime only classes are planned from 9 AM to 4 PM. No classes are planned for Sunday and Monday.

The property owner had requested a Conditional Use Permit for a similar use in 2011 which was approved by the Board of County Commissioners. The use was not established and the approval expired as a permit for the use was not obtained from the Zoning and Codes Office within 1 year, as required in Section 12-319-2.

## **I. ZONING AND USES OF PROPERTY NEARBY**

The property is zoned A (Agricultural) District as is the surrounding area. The F-F (Floodway Fringe) Overlay District is located on the east portion of the subject property and extends to the north, south and east. (Figure 1) The immediate area contains rural residences and agricultural land uses. Parcels located on the east side of E 1500 Road, including the subject property, and parcels on the south side of N 900 Road in this area share common property lines and extend to a privately owned and maintained lake.

**Staff Finding** – The area is rural in character and is zoned A (agricultural) with portions being also zoned F-F (Floodway Fringe) Overlay District. Surrounding uses are predominantly rural residential and agricultural. The proposed request will not alter the base zoning or land uses of the area.



**Figure 1a.** Zoning in the area. Subject property outlined.

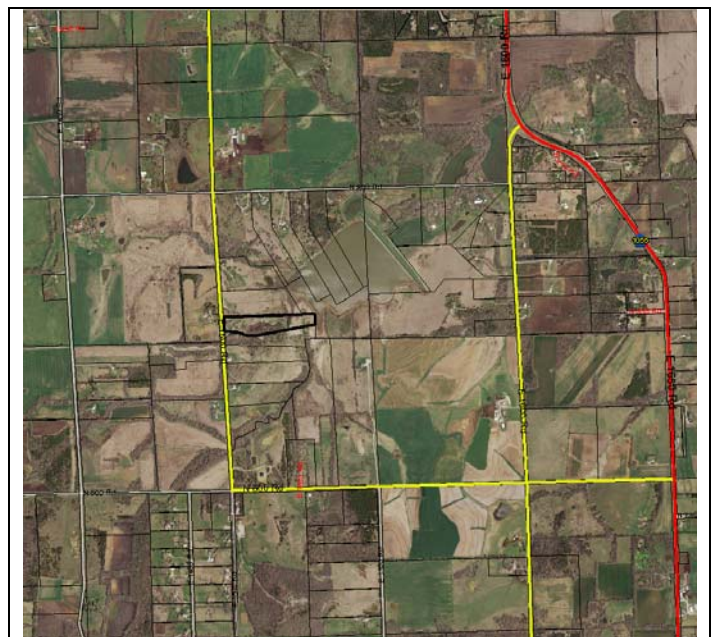


**Figure 1b.** Land uses in the area. Subject property outlined.

## II. CHARACTER OF THE AREA

This is a rural area with rural residences and agriculture being the predominate land uses. Residential parcels tend to be long and narrow with access to the abutting County roads. The section that the subject property is located on, Section 5, is bounded by Minor Collector roads on the west (E 1500 Road), the south (N 500 Road), and the east (E 1600 Road). East 1600 Road provides access to County Route 1055, a principal arterial (Figure 2).

**Staff Finding** – This is a rural area with a mix of rural residential and agricultural land uses. The subject property is located in a predominately rural residential area. The area has access to the road network with minor collectors providing access to a principal arterial, County Route 1055. The proposed use will occur within the accessory building and should be compatible with the character of the area. The road network should be able to accommodate the anticipated traffic.



**Figure 2:** Road network in the area. Yellow roads are Minor Collectors and the red road is a Principal Arterial.

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

Applicant's response:

*"A Conditional Use Permit does not alter suitability of property."*

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

Uses allowed in the A district include: farms, truck gardens, orchards, or nurseries for the growing or propagation of plants, trees and shrubs in addition other types of open land uses. It also includes residential detached dwellings, churches, hospitals and clinics for large and small animals, commercial dog kennels, and rural home occupations. The A District also allows retail nurseries that do not exceed a total of 3,500 SF of net retail space. The property is suited to the uses to which it is restricted in the A District.

The property is developed with a residence and an accessory building. No physical changes are being proposed with this Conditional Use. A Conditional Use Permit (CUP) does not change the base, underlying zoning.

**Staff Finding** – The property is suitable for the uses to which it is restricted under the A Zoning and is also suitable for the proposed recreation use with a limited retail element. The overall space dedicated to retail sales is clearly subordinate and accessory to the recreation activity.

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

This property is developed with a residence and accessory building. The residence was initially built in 1992 (2,276 sq ft). The detached garage building was constructed in 1997 (1440 sq ft). The A (Agricultural) District was adopted as part of the September 23, 1966 Zoning Regulations when the County adopted county zoning.

**Staff Finding** – The subject property is developed as a residential use. The County Zoning Regulations were adopted in 1966.

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

Applicant's Response:

*"Nearby properties will suffer no detriment. Additional road traffic is estimated to increase by 20 to 40 trips per week. Additional road traffic will be limited. No unusual noise will be generated. Building and parking are screened from public view by vegetation."*

Section 12-319-01.01 of the County Zoning Regulations recognize that *"Recognizing that certain uses may be desirable when located in the community, but that these uses may be incompatible with other uses permitted in a district certain conditional uses listed in section 12-319-4 below,*



*when found to be in the interest of the public health, safety, morals and general welfare of the community may be permitted, except as otherwise specified in any district from which they are prohibited.”* The proposed use falls under Section 12-319-4.11 ‘Recreation Facility’ of the Zoning Regulations for the Unincorporated Territory of Douglas County.

The use is adjacent to a designated rural minor collector road. The proposed use is similar to a Type II Home Occupation but because class size exceeds the maximum permitted as a home occupation (6 students) and the limited retail element includes items not produced on the premises, approval as a Conditional Use is necessary. Activity is primarily intended to be conducted indoors. No use of the lake is proposed as part of the application.

Staff received two communications from nearby property owners/residents who were primarily concerned with the amount of traffic being generated by this use. One letter expressed concern that the additional traffic may cause issues for the township that maintains the road. The Palmyra Township Trustee indicated the amount of traffic being generated with this proposed use would be acceptable and would not create issues with their maintenance of the road.

One concern raised by neighbors with the review of the previous Conditional Use Permit application was that the visitors to the CUP might use the lake that is jointly owned by the property owners in this area. A condition was applied to the previous CUP that restricted the patrons of the Conditional Use to utilize the lake. This condition should be applied to the current CUP to reduce the possibility of trespass onto the privately owned lake.

The limited scope of the project and inclusion of a condition limiting the hours of operation and restricting the size of the classes, as well as prohibiting the use of the lake, should mitigate any negative impacts that could result from the proposed use.

**Staff Finding –** The significant concern generated by this request was the impact of the additional traffic. The significant concern generated by the previous request was the potential for trespass to private property. The township indicated the amount of traffic being anticipated would not create a maintenance issue for them. The addition of conditions restricting the size of classrooms, the hours of operation and prohibiting the use of the lake should mitigate any detrimental effects. The proposed use as described in the applicant’s Business Plan does not pose detrimental impacts to the surrounding area.

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

Applicant’s Response:

*“The public gains the opportunity to engage in learning experiences in a natural environment which relates to agriculture and ag-related products. No hardship is expected to impact neighboring landowners.”*

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

Approval would benefit the property owner by allowing her to pursue the use according to her Business Plan. The benefit to the public from the approval of the CUP is limited to personal improvement skills related to a specified topic: *“Low-cost classes will be offered to adults on topics*

*of interest to the community, primarily focusing on arts/crafts, home decorating, and health and sustainable living (gardening, food preservation, etc.)”*

Denial of this request would affect the individual landowner by prohibiting the scope of the proposed use. The use could occur as a Type II Home Occupation but would be limited in the total number of students to six per class and the retail element of the business would be limited to those items which are produced on the premises.

As no negative impacts have been identified from the proposed use, there would be no gain to the public from the denial of the CUP.

**Staff Finding** – Denial of this request would create a hardship for the applicant in that she would be required to reduce the scope and nature of her proposal so it would meet the requirements of a Type II Home Occupation. There would be no gain to the public health, safety, and welfare as a result of the denial of this request as the recommended conditions would mitigate any negative impacts of the use.

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

Applicant's Response:

*"The Comprehensive Plan does not address Special Use Permits"*

The Comprehensive Plan recommends that agricultural uses continue to be the predominant land use within the areas of the county beyond the designated urban growth areas and that uses permitted in the rural area should continue to be limited to those which are compatible with agricultural production and uses. The subject property is not located within an identified urban growth area and is currently developed with a residence and an accessory structure. The only physical change being proposed is the creation of a parking area for the visitors. The proposed use would be compatible with agricultural production and uses

**Staff Finding** – The comprehensive plan recommends that uses in the rural area be limited to those compatible with agricultural uses and that the design should be consistent with the rural character. A Conditional Use Permit can be used to allow specific non-residential uses subject to approval of a site plan. This tool allows proportional development in harmony with the surrounding area. No physical changes, with the exception of a parking area, are proposed with this Conditional use. The proposed request is consistent with the Comprehensive Plan.

## **STAFF REVIEW (Site Plan)**

The use will be housed in the accessory structure. Off street parking would be provided in a 61' by 60' area for up to 12 off-street parking spaces.

**Parking and Access:** The site plan identifies 12 parking spaces to be located along the existing buildings and to include a paved area for an accessible space. The application states that a maximum of 18 students plus one instructor would be expected. There is not a specific use to classify the parking requirement for this activity; however, a recreation use typically uses the parking requirements for a church or other assembly use: 1 space per 5 seats. As this use is a classroom setting, the school parking requirement might be appropriate. This is also 1 space per 5 seats. As the facility has seating for 18 students, 4 parking spaces would be required per the Parking Regulations in Section 12-316 of the Zoning Regulations. Additional parking is being

provided for the retail use, and in anticipation of patrons driving separately. The site is large enough to accommodate occasional overflow parking.

Access to the site is accommodated via a residential driveway to E 1500 Road. The Zoning and Codes Office noted that this driveway is not Code compliant, as each parcel is required to have its own access to the adjacent road. Installation of an access drive providing direct access for this parcel to E 1500 Road is a condition of approval for the CUP.

**Landscape and Screening:** The plan shows landscape along the county road and along the south property line. Various stands of mature trees are located throughout the property. There is no exterior storage or activity associated with this use that requires screening. The existing landscape is consistent with the residential character of the property and surrounding area.

**Limits and Conditions:** Typical business hours are identified in the Business Plan as between 1 PM and 9 PM Tuesday through Thursday and between 9 AM and 4 PM on Friday and Saturday. A condition should be included which limits the business hours to 9 PM and this should be noted on the plan. A limitation on class size to no more than 18 persons and 1 instructor is noted on the plan. The plan should also note that only one class will be held at a time.

As discussed earlier in the staff report, the use of the lake for business or commercial activity either as part of a class or as a public recreation facility, was identified as a concern to area residents and property owners with the previous CUP. A condition prohibiting the use of the lake for business and commercial activities associated with this CUP should be included to address this concern.

With the proposed conditions, the use should be compatible with the surrounding land uses.

### **Conclusion**

This property is primarily to be used as a residence with a classroom/retail sales area in the accessory structure. The size of the classes and the inclusion of a retail element requires a Conditional Use Permit rather than registration as a Home Occupation. Changes to the accessory building to comply with Douglas County Construction Code standards for a non-residential use may be necessary. The proposed CUP complies with the County Zoning Regulations and the land use recommendation of *Horizon 2020*.

# **Business Profile for *Good Earth Gatherings***

## **Mission Statement**

*Good Earth Gatherings (GEG)* will offer unique learning opportunities and related retail items.

## **Description**

*GEG* will be a small, part-time business featuring community outreach, education and ancillary retail.

Affordable classes will be offered for adults on topics of interest to the community, primarily focusing on arts/crafts, home decorating, and healthy and sustainable living (gardening, food preservation, etc.).

Ancillary retail offerings will reflect the content of the class topics. Retail offerings will include supplies for projects taught in the classes, items handcrafted by the owner and other regional artisans, and some will be related items purchased at wholesale for resale.

Classes will be offered two to four times per week. The ancillary retail shop will be open in conjunction with classes and three to four weekends per month.

## **Targeted Market**

*GEG* will attract patrons from the community (*Lawrence, Baldwin, and surrounding areas*) who are interested in arts/crafts, home decorating, and sustainable living practices.

## **Growth Plan**

*GEG* will be a small, part-time business. Operating hours will include 2-4 classes per week and ancillary retail hours 3-4 weekends per month.

## **Competition**

*GEG* will be unique in that the intention of the business is not to compete with area businesses. Rather, *GEG* is intended to fill a gap. The classes which will be offered are not available anywhere else locally, and the ancillary retail offerings will likewise be unique.

*GEG* will practice **cooperation** rather than competition with existing local businesses. It is *GEG*'s intention to work with local businesses which may have related offerings in order to enhance both businesses. The classes offered will be sometimes taught by the owner and sometimes taught by other local experts – many with businesses of their own they can promote through *GEG*. For example, *GEG* may offer a class on growing herbs and partner with a local nursery to provide plants in conjunction with the class. In this way, *GEG*, the local nursery, and the community all benefit.

## Marketing

GEG will market through advertising in the Merc News, listing relevant classes in the “Sustainable Lawrence” e-newsletter, and producing a newsletter, website and blog for the business. GEG will partner with local businesses for mutual promotion.

## Neighborhood Impact

The business will be located in an existing building adjacent to the owner’s rural residence.

Additional traffic to the area will be limited. The maximum occupancy of the business will accommodate the anticipated range of 10-18 students plus an instructor.

The residence and business will be landscaped. Parking and building will be screened from public view by vegetation.

No unusual noise will be produced by this business.

Expected hours of operation will be daytime to early evening.

Depending on the classes offered, 10 to 18 roundtrips may be generated during weeknight classes. Weekend ancillary retail hours may generate approximately 15 to 30 roundtrips from a Friday to Saturday.

Sample GEG Calendar:

| MON. | TUES.  | WED.  | THUR.  | FRI.   | SAT.   | SUN. |
|------|--|---|--|--|--|------|
|      |  | 1<br>7pm-9pm CLASS:<br><u>Freeing Creativity:</u><br><u>Art Journaling</u>  | 2  | 3<br>9am-4pm OPEN  | 4<br>9am-4pm OPEN<br>1pm-4pm CLASS:<br><u>Thyme for Herbs:</u><br><u>10 Herbs for Every</u><br><u>Garden</u> | 5    |
| 6    | 7<br>7pm-9pm CLASS:<br><u>Wool Appliqué</u>  | 8   | 9<br>1pm-3pm CLASS:<br><u>Creating Table-Top</u><br><u>Gardens (featuring</u><br><u>plants from Sunrise</u><br><u>Nursery)</u> | 10   | 11<br>9am-4pm OPEN<br>1pm-4pm CLASS:<br><u>Beautiful Wools</u><br><u>with Nature’s Dyes</u>                  | 12   |
| 13   | 14<br>7pm-9pm CLASS:<br><u>Making &amp; Using</u><br><u>Herbal Vinegars</u><br><i>(featuring herbs from</i><br><i>Vinland Valley</i><br><i>Nursery)</i>              | 15<br>1pm-3pm CLASS:<br><u>Nature Printing</u>                              | 16<br>7pm-9pm CLASS:<br><u>Silk Scarves with</u><br><u>Dyes from Nature</u>  | 17<br>9am-4pm OPEN<br>1pm-4pm CLASS:<br><u>Creating Miniature</u><br><u>Gardens</u>        | 18   | 19   |
| 20   | 21<br>1pm-3pm CLASS:<br><u>Wool Appliqué</u>   | 22  | 23<br>7pm-9pm CLASS:<br><u>Decorating with</u><br><u>Naturals for the</u><br><u>Holidays</u>                                   | 24<br>9am-4pm OPEN<br>1pm-4pm CLASS:<br><u>Easy &amp; Safe Food</u><br><u>Preservation</u> | 25<br>9am-4pm: OPEN  | 26   |
| 27   | 28<br>7pm-9pm CLASS:<br><u>Beautiful &amp; Simple</u><br><u>Decorating Tips</u><br><i>(Guest Instructor: Jane</i><br><i>Doe from Lawrence</i><br><i>Home Design)</i> | 29<br>7pm-9pm CLASS:<br><u>Freeing Creativity:</u><br><u>Art Journaling</u> | 30   |  |  |      |



### **Operating Procedures/Personnel**

*GEG* will be a small, sole-proprietorship business. The business will be operated by the owner.

### **Relevant Education/Experience of Owners**

*GEG* will be the sole proprietorship of Tamara Fairbanks-Ishmael. Tamara has worked as a sales manager, business owner, public school teacher, community college instructor, and professional speaker. She has a master's degree in Liberal Arts from Baker University.

### **Community Benefits**

*GEG* will benefit the community in several ways:

- *GEG* offers unique classes primarily related to arts/crafts, decorating, and healthy and sustainable living, benefiting individuals and the local community.
- *GEG* offers unique, often hand-made, class-related retail items which are not available otherwise locally.
- *GEG* partners with other local business owners to enhance existing businesses.

### **Contact**

Tamara Fairbanks-Ishmael  
858 E. 1500 Rd.  
Baldwin City, KS 66006  
785-331-4213  
tsfairish@sbcglobal.net

Lawrence-Douglas County Metropolitan Planning Commission

RE: CUP-10-5-11 Conditional Use Permit for Good Earth Gatherings.

We write this to express concern about a Conditional Use Permit for Good Earth Gatherings at 838 E 1500 Road submitted by Tamara Fairbanks-Ishmael. East 1500 Road is primarily agricultural and residential. A business that “provides community outreach, education, and ancillary retail sales” has a very different flavor and can change the character of the neighborhood. By definition, a “community” enterprise involves a group of people at one set time (such as for a class). And “retail” implies that customers would come and go throughout the day. I offer the following items for the Commission’s consideration:

- There may be home-based businesses in the neighborhood, but I am not aware of any that I would consider a “retail” business. We have not observed other home businesses in the neighborhood, such as the one on 1450 Road, to have multiple customers at any one time. A car or two now and then is not intrusive.
- In rural areas, sound carries incredibly far. We could reasonably expect the traffic noise, possible traffic congestion, car doors, people noise, etc., (especially if there is a class having several participants) to be heard and magnified in the immediate neighborhood. . Additionally, most of the activities would probably occur on weekends when residents are home and most bothered by noise. .
- This particular stretch of E 1500 road has had its share of problems with noise over time. Gradually, with the help of a noise ordinance and the Sheriff’s office, things have improved, but there are still pockets of noise that are irritants. Approving a retail business along that road may take us another direction-- back to a noise level that is infringes of the personal expectations of peacefulness and may prevent some neighbors from their enjoyment of peace and quiet (which is why some of us moved to the rural areas in the first place). . During some years, we were literally confined to the house.
- I also have a concern about increased traffic on that road. The landowners along the road all contributed to surfacing the road. The township maintains the road, but the wear and tear of customer traffic can be detrimental to stretch of road that already is prone to potholes and cracking. We have learned in the past that we have to dodge potholes for many months before the crew shows up to fix them.
- I understand this venture is primarily a “community outreach” (???), “education,” and “ancillary retail sales,” but I am concerned that enterprise, will grow which will increase the problems listed above. At that point it would be too late for the neighborhood to object to the business. We have our chance now.
- Ms. Fairbanks-Ishmael has not lived in the neighborhood very long—if she had intended to start a business venture, she should have bought property that was already zoned for business. When we bought property, we looked for a neighborhood that had no apparent existing businesses and was primarily agricultural and residential.

We write this with great reluctance because we want to be a good neighbors and don’t wish to block someone from fulfilling a dream, but we also don’t want to be blaming ourselves for not

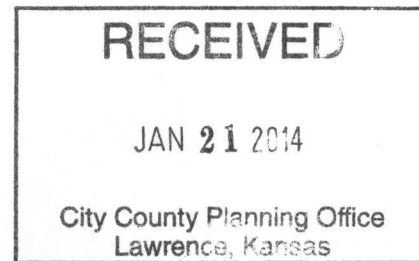
voicing an objection when given the opportunity. We moved to the “country” to leave the traffic noise and congestion of town behind. We accept the noise related to farming, ranching, improving one’s property (such as cutting trees or adding an outbuilding, mowing, etc.) because those activities are central to a rural community. But we cannot stand back and implicitly approve increased intrusion in a neighborhood through a retail business.

I ask the Planning Commission to seriously consider our comments about the impact on the neighborhood as they make their decision. . Thank you for the opportunity to comment.

Karen and Lynn Watney

847 E 1500<sup>th</sup> Road

Ms. Mary Miller  
City of Lawrence, Douglas County  
Planning & Development Services  
6 East 6<sup>th</sup> St  
P.O. Box 708  
Lawrence, KS 66044



Dear Ms. Miller:

I am responding to your letter regarding a conditional use permit for Good Earth Gatherings.

Our concern has mainly to do with the road. When we moved here some 40 years ago, the stretch of E 1500 Rd (about a mile of the Palmyra Township) we currently share with The Good Earth Gatherings was a dirt road with two farmsteads intended primarily to accommodate the traffic of the local residents. This road has always been minimally maintained, and nearly every year, the spring thaw would create impassable mud holes at the bottom of the hill. The school bus could not pass for days to pick up our child. We would have to find circuitous back roads to the 59 Highway to get anywhere.

Since then many families have built homes in the Quantrill's Acres and beyond as well as five additional homes on this short stretch of E1500. The increased traffic created so much dust that for a period, we nearly stopped gardening and shut ourselves in the sealed house. About 10 years ago, some of the people who had to drive through the tunnel of dirt several times a day initiated a petition to the county and the township to pave the road based on the high density of use. The petition resulted in a deal by which the concerned residents raise 60% of the cost of paving and the Palmyra Township will allocate 40% of the cost and will bear the responsibility to maintain the paved road. In this way about 30 families had united to pay \$500-600 each to improve the quality of the road.

Some of the unintended consequences of the improved road have been that it further increased the non-resident traffic and everyone seems to be travelling much faster than they used to. Our farm is at the top of the hill, and our driveway exits at the top of a blind hill, and we've had several near-misses at our driveway. Just picture, if you will, a typical car travelling more than 50mph suddenly appear 50 feet from you. Our trips to the mailbox have become exercises in calculated risks, and we can no longer take a casual walk on the road nor is it safe for a bike ride.

It has been about 10 years since the paving of the road. We are disappointed that the road has not been maintained very well. For a comparison, the Wakarusa Township portion of the E1500 Rd was paved at the same time. Since the paving, the Wakarusa Township portion has been repaved three times, but the Palmyra side has been oiled once without applying new surface. In my casual observation, every square foot of the paving on the Palmyra side seems to be checked with cracks and

ready to be shattered with the spring thaw. Even today, days after a snowy weather, the main hill which faces north remains treacherous with icy patches.

Because of my concern for the road, I have always chosen to market my products (I have operated my small farm-based business, Prairie Found Farm & Studio, for over 30 years) at the Lawrence Farmers Market, teach my classes at the Powell Garden near Kansas City, and participate in various regional shows in Missouri and Kansas.

In conclusion, let me say that I am torn between supporting the Good Earth Gatherings and opposing it. I consider myself a naturalist and much of what I do relates to what I grow and what I gather in the wild, and I see the Good Earth Gatherings as having kindred interests, and I want to give them my full support. On the other hand, as a long time resident on this troubled road already confronting far more risks than we should, it would be difficult to support an activity which will definitely increase drivers unfamiliar with this road thus increasing the risk we face. In considering this request from the Good Earth Gathering, please bring in to the discussion a county road engineer and the Palmyra Township management to get their professional evaluation on the road safety issue. Finally, if you are going to allow a customer based business on this rural road, please consider allowing the business to have large enough signs to be placed strategically to guide their customers to the business. Our experience has been that most people who live in town seem to have difficulty navigating the rural roads which have very few signs or landmarks.

Thank you for giving us an opportunity to express our concerns to the Planning & Development Services.

Sincerely,

*Eugene and Pam Carvalho*  
*1-16-14*

Eugene & Pamela Carvalho  
859 E1500 Rd



January 24, 2014

6 East 6<sup>th</sup> Street

City of Lawrence, Kansas

Douglas County, Kansas

RECEIVED

JAN 24 2014

City County Planning Office  
Lawrence, Kansas

Planning Commission Members,

The **Declaration of Restrictive Covenants** for the section of land, Section 5, Township 14, Range 20 of Douglas County, Kansas, that is described in the CUP-13-00482 denies use of any land for noxious or offensive activities.

As an owner of a home and property around the lake located on the same section of land that Fairbanks-Ishmael is requesting a Conditional Use Permit, I do not want this area and lake to become a for-profit recreational facility for the community. I purchased my home and extra acreage around the home and adjacent to the lake for privacy, and have retired on these acres. I do not want to look out on an amusement and water park.

The property around CUP-13-00482 will be subject to increased noise levels. This will have a negative impact on the number of water fowl and their nesting habitats. Other wild animals such as beaver, turkey, ducks, geese, white pelican, coyotes will then be affected.

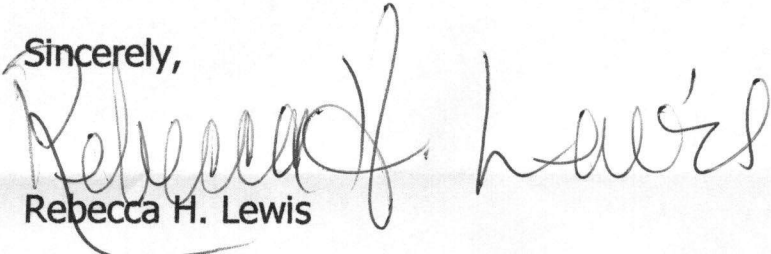
Parking of cars and vehicles on the designated 10 acres of grass will add heat to the area from reflection off metal and glass. The lake has fallen to new low levels due to drought. I feel that any addition of extra heat will add to the decrease in water level.

Increased traffic on E. 1500 Road will add to the deterioration of the back top road that is already patched in numerous places. This is a narrow, hilly

road with no shoulders which adds to the safety problems of increased traffic flow, especially in the summer for farm crops and livestock hauling.

I urge the Planning Commission Members to deny the application for the Conditional Use Permit ( CUP-13-00482 ) for the issues stated above.

Sincerely,



Rebecca H. Lewis

1548 N. 800 Road

Baldwin City, KS 66006

785-594-3456

8243

Cash

DECLARATION OF RESTRICTIVE COVENANTS

We, the undersigned, being the owners of the following-described property, to-wit:

The Northwest Quarter (NW $\frac{1}{4}$ ) of Section 5,  
Township 14, Range 20, in Douglas County,  
Kansas (see attachment for lot numbers),

do hereby declare and publish the following as restrictions upon the use of said property, building requirements, and occupancy restrictions, and do declare and publish that said restrictions shall constitute a covenant running with the land.

1. The described restrictions shall be imposed upon the above described land which shall hereinafter be referred to as the "property".

2. No residence or home may be built or erected upon any of said lots having less than 1,500 square feet of living area excluding porches, basement and garage and all of said residences or homes shall have no less than a two-car garage.

3. All buildings, including out buildings, to be constructed on the property must be completed, including paint or its equivalent, within six months from the starting date of said construction.

4. No residence or any other building may be built upon said lots without first obtaining the approval of the plans for said building by the declarant.

5. No hogs, goats or poultry may be maintained or kept on any of said property.

6. No kennel for the raising or boarding of dogs shall be maintained on the property.

7. No mobile homes, house trailers, travel trailers, or double wide mobile homes may be used as a residence or occupied in any manner on any of the above described property.

8. No unuseable cars, machinery, appliances or other items of junk or salvage shall be stored or kept upon said property, and any owner of such items shall within one week from the date of notification by declarant, remove all said items from the property.



9. No one shall occupy a basement on said property while his residence is being completed upon said property.

10. No noxious or offensive activity shall be carried on upon the property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any of the other owners of the property.

11. No portion of the property may be divided into or sold in tracts containing less than 10 acres.

12. These restrictions may be amended by the consent of the owners of three-fourths of the total land area located within said property description.

13. These covenants shall run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty years from recordation, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless amended as hereinabove provided.

14. Enforcement of these restrictions may be by any proceeding allowable at law or equity.

15. Invalidity of any provision here in shall not affect any other provision contained herein.

IN WITNESS WHEREOF, the undersigned owners have placed said restrictions upon all property hereinabove described, which restrictions shall run with the land.

Roger N. Harris  
Roger N. Harris

Jane R. Harris  
Jane R. Harris

STATE OF KANSAS )  
COUNTY OF DOUGLAS ) ss:

BE IT REMEMBERED, that on this 2nd day of September, 1986, before me, the undersigned, a notary public in and for said county and state, came Roger N. Harris and Jane R. Harris, husband and wife, personally known to me to be the same persons who executed the foregoing instrument, and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last above written.

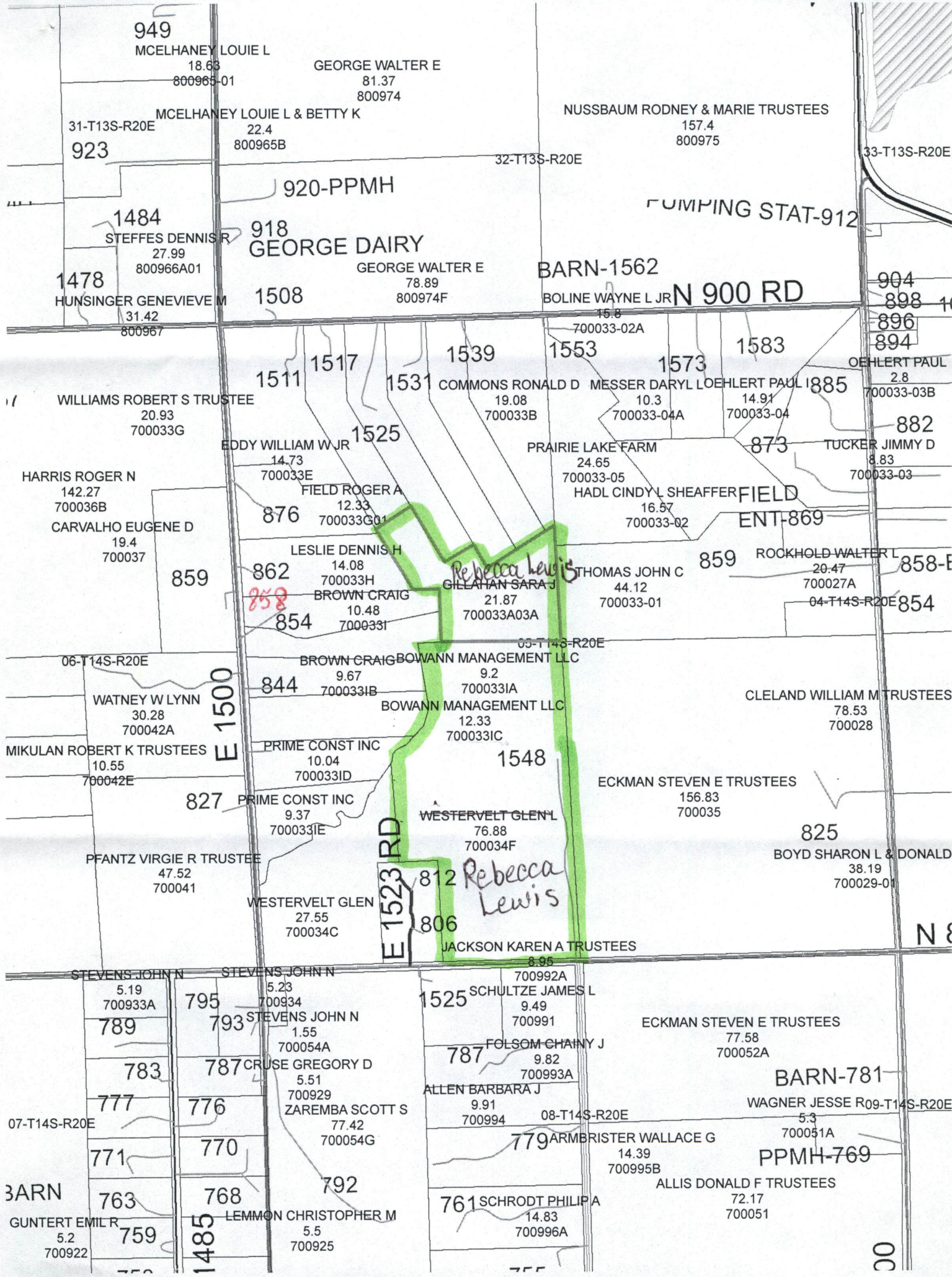
Susan S. Postlethwaite  
Notary Public

My commission expires July 10, 1990



396mc 245





949

MCELHANEY LOUIE L

18.63

800965-01

GEORGE WALTER E

81.37

800974

NUSSBAUM RODNEY & MARIE TRUSTEES

157.4

800975

31-T13S-R20E

923

22.4  
800965B

32-T13S-R20E

33-T13S-R20E

920-PPMH

1484

STEFFES DENNIS R

27.99

800966A01

918

GEORGE DAIRY

GEORGE WALTER E

78.89

800974F

BARN-1562

BOLINE WAYNE L JR

N 900 RD

904

898

896

894

OEHLERT PAUL

2.8

700033-03B

1478

HUNSINGER GENEVIEVE M

31.42

800967

1508

1511

1517

1539

1553

1573

1583

WILLIAMS ROBERT S TRUSTEE

20.93

700033G

COMMONS RONALD D

19.08

700033B

MESSER DARYL LOEHLERT PAUL

10.3

700033-04A

14.91

700033-04

HARRIS ROGER N

142.27

700036B

CARVALHO EUGENE D

19.4

700037

EDDY WILLIAM W JR

14.73

700033E

FIELD ROGER A

12.33

700033G01

PRAIRIE LAKE FARM

24.65

700033-05

HADL CINDY L SHEAFFER FIELD

16.57

700033-02

ENT-869

885

882

883

700033-03

TUCKER JIMMY D

8.83

700033-03

859

ROCKHOLD WALTER L

20.47

700027A

04-T14S-R20E

858-E

854

06-T14S-R20E

WATNEY W LYNN

30.28

700042A

MIKULAN ROBERT K TRUSTEES

10.55

700042E

E 1500

BROWN CRAIG BOWANN MANAGEMENT LLC

9.67

700033IB

BOWANN MANAGEMENT LLC

12.33

700033IC

PRIME CONST INC

10.04

700033ID

827

PRIME CONST INC

9.37

700033IE

PFANTZ VIRGIE R TRUSTEE

47.52

700041

WESTERVELT GLEN

27.55

700034C

WESTERVELT GLEN L

76.88

700034F

1548

812

806

JACKSON KAREN A TRUSTEES

8.95

700992A

1525

SCHULTZE JAMES L

9.49

700991

787

FOLSOM CHANNY J

9.82

700993A

ALLEN BARBARA J

9.91

700994

08-T14S-R20E

779

ARMBRISTER WALLACE G

14.39

700995B

ALLIS DONALD F TRUSTEES

72.17

700051

BARN-781

WAGNER JESSE R09-T14S-R20E

5.3

700051A

PPMH-769

BARN

GUNTERT EMIL R

5.2

700922

763

759

768

LEMMON CHRISTOPHER M

5.5

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792

761

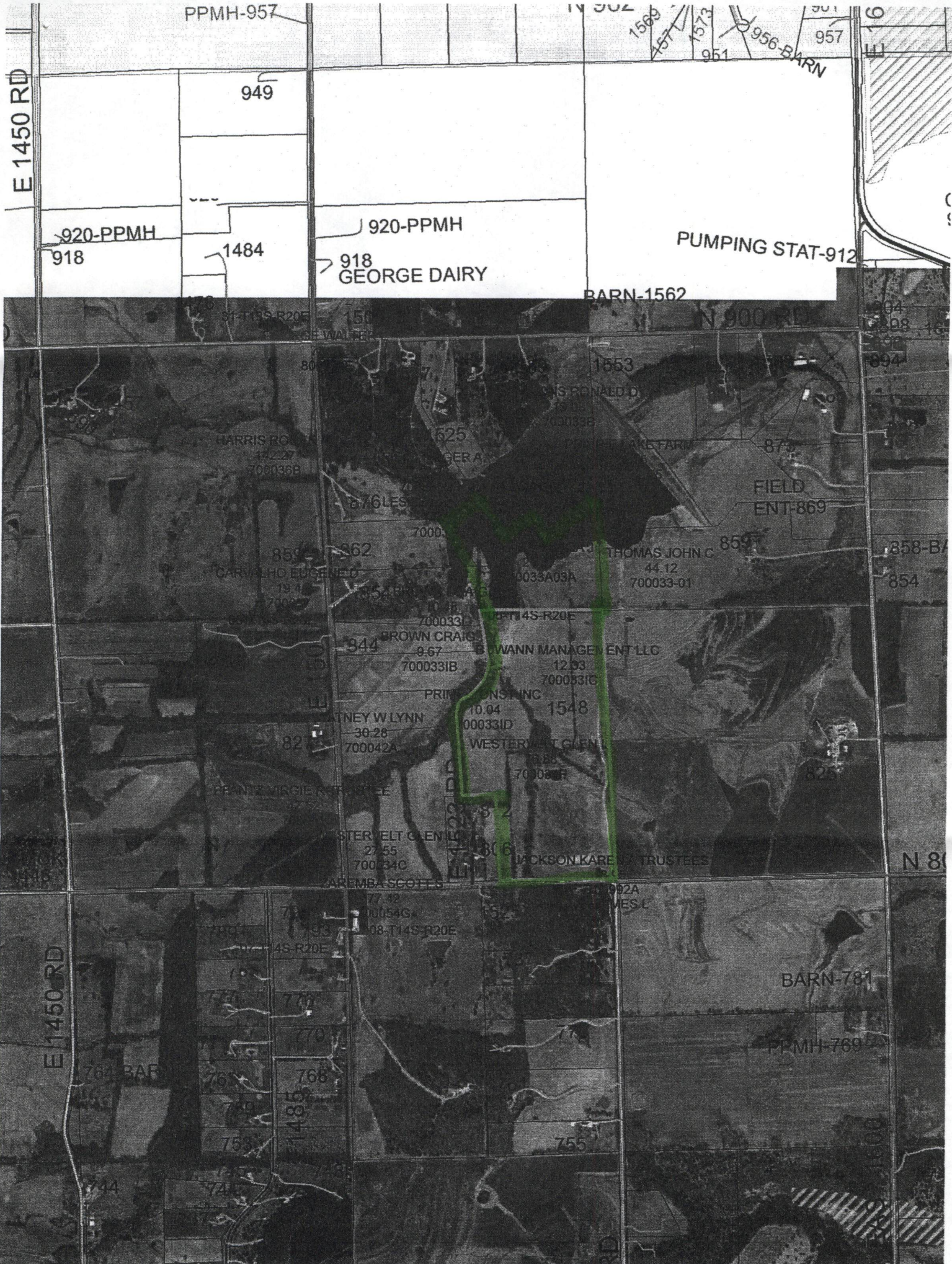
SCHRODT PHILIP A

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700996A

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January 27, 2014

Lawrence-Douglas County Metropolitan Planning Commission  
RE: CUP-13-00482; Good Earth Gatherings

Dear Commission Members,

Thank you for the opportunity to comment on the Conditional Use Permit for Good Earth Gatherings. I provided comments when GEG applied for the CUP two years ago, which is also included in your information, but I wanted to write again to restate and reinforce my position.

I wish to make the following comments about the Business Profile for Good Earth Gatherings:

#### Traffic

The people who live on this portion of 1500 Road paid for the construction of the road. It was intended to be local traffic only—those who live along 1500 Road and connecting roads. Maintenance of the road, which is the responsibility of the township, has been haphazard, slow and piecemeal. If GEG is allowed to open, traffic will significantly increase proportionately adding wear and tear to the strip of road between 950 Road and the business, which is the part of the road that is always in the worst condition. If the township needs to add staff to keep the road repaired in that section (I have been told they have had to lay off three people), will GEG provide the funds for the additional crew and materials?

#### Noise

Noise carries far and wide in rural areas. We live a quarter mile from a neighbor, and we can hear their hot tub running and when they are talking outside. While GEG will not have outdoor activities, the simple acts of opening and closing car doors; people greeting one another; and cars parking, starting and running will cause significant noise. Eighteen at the same time plus the comings and goings during retail hours! Classes and retail operations being held evenings and Saturdays are when most people are home and enjoying the benefits of country life. These benefits will be greatly diminished if GEG is allowed to operate in this neighborhood community.

#### Setting Precedent

1500 Road is a rural and primarily residential neighborhood. People live here because they enjoy the rural nature of the area and living in a natural environment. We want to preserve that setting.

I am most concerned about setting precedent. If this business is allowed, other businesses may spring up and it will be difficult to deny future requests when a precedent has been set. There are several lots along this road and the opportunity for a business may lure others to open businesses. This is hard to predict but most troubling.

#### Additional Neighborhood Impact

I am concerned that the business plan is misleading about the impact on the community.

- The owner states that the business will be located in an existing building adjacent to the owner's residence. Technically that may be true, but it is my understanding that another outbuilding will be built to store the equipment that is currently stored in the existing building. So the final

outcome will be an additional building on the property. In fact, there is already a builder's sign in the driveway. Of concern here is if Ms. Fairbanks-Ishmael is misleading you in this fact, what other parts of her proposal are misleading?

- Landscaping does not screen public view overnight. It takes years for "vegetation" to grow to the size that it would screen cars, people, and activity.
- A sign is to be erected next to the driveway. How big will this sign be? Will it be lighted? This is the only business sign on this road and this certainly will have an impact on the neighborhood.
- Her plan indicates 10 to 18 roundtrips generated during the weeknight and retail hours may generate 15 to 30 roundtrips on the weekend. According to her sample calendar, there may be up to four classes per week; up to 18 students + 1 instructor per class which is 76 roundtrips for classes alone. Add the retail operation two days per week and there will easily be over 100 roundtrips per week. Another misleading fact in her proposal. And if the business grows and retail sales increase, there is no way to estimate the number of roundtrips evenings and weekends. The Commission can limit the number of people attending a class, but there is no way to limit the number of customers at a retail facility.
- Another impact is the trash. Trash is picked up in this neighborhood on Tuesdays. Usually the Fairbanks-Ishmael's do not take the empty trash cans back from the driveway for 1-2 days later. If this generates more trash, that is additional empty trash cans sitting in the driveway for days.

I am not opposed to the business—I am opposed to its location. With the number of classes she plans to have, and especially since there is a retail operation involved, why can't she buy or rent business space in zoned areas like other businesses? I am confident there are plenty of spaces in Lawrence, Baldwin City, or Eudora that would be suitable, reasonably priced, and draw from the same customer base as her home. I'm sure those communities would welcome her business. From my viewpoint, when other space is available, there is no reason to allow a zoning variance to a neighborhood that is zoned agricultural/residential.

For the reasons I have stated, I am strongly opposed to this use permit. I do not know how Ms. Fairbanks-Ishmael can state unequivocally that "nearby properties will suffer no detriment" and that "no hardship is expected to impact neighboring landowners." In reality, Ms. Fairbanks-Ishmael has not approached neighbors to explain her plan, has not asked for their feedback so it could be addressed before she finalized her plan, and, in fact, she has never introduced herself to us since she has lived here. How can she be so sure that there will be no hardship or suffer no detriment when she doesn't even know our expectations for the neighborhood or concerns about a business in the neighborhood? Had she done that long ago, I would have hoped that as a responsible neighbor she would have changed her plans and selected another location.

I urge you to deny this request. Thank you again for the opportunity to comment.

Sincerely,

Karen Watney  
847 E 1500<sup>th</sup> Road  
Baldwin City, KS



Plan Not to Scale

#### Legal Description:

Legal Description: 10.1A: 5-14-20 COM AT SW COR NWQR TH N 0DEG52'02"W 183.39 FT TO PT BEG, SD PT BEING ON W LINE NW QR; TH CONT ALONG SD LINE N 0DEG52'02"W 250 FT TH S88DEG42'52"E 1663.08 FT TH S01DEG17'33"W 180.85 FT TH S83DEG35'03"W 1122.94 FT TH 87DEG41'38"W 100 FT TH N69DEG38'13"W 202.36 FT TH N85DEG35'51"W 250 FT TO PT BEG WW35(DIV 2006 7000331)

#### Proposed Use:

Part-time business featuring community outreach, education and ancillary retail. Low-cost adult classes on topics of interest to community, focusing on arts/crafts, home decorating, and healthy and sustainable living (gardening, food preservation, etc.). Ancillary retail will reflect class topics and include project supplies for classes.

#### General Area



#### General Notes:

1. Maximum occupancy of business will accommodate a total of 18 students and 1 instructor.
2. No more than 1 class shall be conducted /offered at a time.
3. Use of the lake for public, business, commercial and recreational activities associated with the home occupation is prohibited.

#### Parking:

1. 11 spaces provided 9' by 18'
2. One space provided paved 16' by 18' for accessible parking.

858 E 1500 Road  
CUP-10-5-11; Good Earth Gatherings

Tamara Fairbanks-Ishmael  
858 E 1500 Road  
Baldwin, KS 66006



**CUP-13-00482: Conditional Use Permit for Good Earth Gatherings, a Small Business  
Located at 858 E 1500 Road**

