

# Memorandum

## City of Lawrence

### Planning Department

TO: Lawrence Douglas County Metropolitan Planning Commission  
FROM: Planning Staff  
DATE: March 20, 2015  
RE: Item No. 5: Text Amendment for Value-added Agricultural Business Conditional Use

This memo is intended to clarify staff's recommendation on Standard H, compliance with the Access Management Standards.

Page 5-5 of the staff report notes staff's recommendation that the standard requiring compliance with the Access Management Standards (Standard H) be removed until the Access Management Standards have been revised to clarify how they apply to vested parcels and parcels in zoning districts other than the A and A-1 Districts.

Staff had discussed this proposal with the County Engineer who recommended that the standard be retained but revised to clarify how it applies to parcels that were created before, and those that were created after, the adoption of the Access Management Standards.

The proposed draft language was revised to incorporate the County Engineer's recommendation but the body of the staff report was not revised to indicate that staff recommends that Standard H be revised rather than removed. This was an oversight on staff's part.

The draft language provided on Page 5-7 of the staff report contains the following language that staff recommends for Standard H (language that is changed is in red, deleted text is ~~struckthrough~~, new language is underlined):

- a. Road Access and Frontage:
  - i. The site must have direct access to a full maintenance public road.
  - ii. ~~and the site shall meet the minimum frontage requirements in accordance with the Access Management Regulations. Access for parcels that were created prior to the adoption of the Access Management Standards, (October 25, 2006) will be dependent on the County Engineer's review of the anticipated traffic and the nature and condition of the adjacent road network. Additional conditions may be applied or access may be denied based on this review.~~
  - iii. Access and the minimum road frontage required in the Access Management Standards must be met for parcels that were created after the adoption of the Access Management Standards on October 25, 2006.

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

PC Staff Report  
03/23/15

**ITEM NO. 5 TEXT AMENDMENT FOR VALUE-ADDED AGRICULTURAL BUSINESS  
CONDITIONAL USE (MKM)**

**TA-14-00548:** Consider a Text Amendment to clarify locational and developmental standards for the *Value-added Agricultural Business* Conditional Use and to clarify the uses which are permitted on non-conforming vested properties. *Initiated by County Commission on 12/17/14.*

**RECOMMENDATION:** Staff recommends approval of the proposed amendment, TA-14-00548, to revise the standards for the *Value-added Agricultural Business* conditional use in Section 12-319-4.35 of the Zoning Regulations and that the Planning Commission forward a recommendation for approval to the Board of County Commissioners.

**Reason for Request:** The *Value-added Agricultural Business* use was added to the list of uses permitted with a CUP in 2008 with an amendment to the Zoning Regulations. Through the review of the first CUP application for a *Value-added Agricultural Business* use in 2014, standards related to the minimum site area and road access and frontage were found to be unclear. In addition, through the discussion of the CUP request, the Commission asked for clarification about uses which are allowed on non-conforming vested properties.

**RELEVANT GOLDEN FACTOR:**

- Conformance with the comprehensive plan.

**PUBLIC COMMENT RECEIVED PRIOR TO PRINTING**

- Property owners within the notification area of the previous *Value-added Agricultural Business* Conditional Use, CUP-14-00304, were notified of the proposed text amendment and the Planning Commission meeting date. Inquiries about the amendment were received, but no comments were received prior to the publication of this report.

**ATTACHMENTS**

- Attachment A – Chart of CUP Uses
- Attachment B – Initiation Memo
- Attachment C – 2008 Text Amendment Materials
- Attachment D – Complete Code Section

**RELEVANT DEFINITIONS**

*"Value-added Agricultural Business*

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

- a. A change in the physical state or form of the product (such as milling wheat into flour or making strawberries into jam).*
- b. The physical segregation of an agricultural commodity or product in a manner that results in the enhancement of the value of that commodity or product (such as an identity preserved marketing system)." (Section 12-319-4.35, Zoning Regulations)*

## OVERVIEW OF PROPOSED AMENDMENT

The amendment is focused on the *Value-added Agricultural Business* standards which have been identified as being unclear and will look into the uses which are permitted on vested nonconforming properties, as requested by the County Commission. The *Value-added Agricultural Business* use was added to the list of Conditional Uses in 2008 in response to a proposal to develop a business that pressed straw (not produced on the property) into bricks for use as heating fuel. The project did not progress and a Conditional Use Permit was not submitted at that time. The first application for a Conditional Use Permit was for the Central Soyfood Processing Facility. It was during the review of this CUP that the issues with the standards were identified. This text amendment is not geared to one particular use but will review the standards in question to determine the intent at the time, and develop appropriate language to clarify the meaning.

**Standard (g). Minimum Site Area:**  
**A minimum site area is consistent with the County adopted policy for agricultural uses.**

The staff memo, reports and meeting minutes reflect the original standard and the various changes which resulted in the current language (This standard was labeled '7' in the early memos and reports):

### April 14 and 16, 2008 BoCC Meetings:

Staff initiation memo included the following standard:

*"7. Minimum Site Area: A minimum site area of 80 acres is required for the operation of all value-added agricultural businesses"*

No discussion of the minimum area was reflected in the minutes and the text amendment was initiated.

### July 2008, Planning Commission Meeting

The staff report included the following revised standard:

*"7. Minimum Site Area: A minimum site area of 40 acres is required for the operation of all value-added agricultural businesses."*

The item was deferred from the July 21<sup>st</sup> to the July 23<sup>rd</sup> meeting so Linda Finger could be present to answer questions. Linda Finger provided the following information related to the minimum area and agricultural uses at the July 23<sup>rd</sup> meeting

*"Regarding standard number 7, since the County Commission sent this (text amendment) forward they have adopted by home rule resolution the administrative policy for what an agricultural use is. It is either 40 acres, or the determination that the owner is in agricultural production through the provision of a schedule F, which is filed with their federal income tax, which shows they have invested more than \$1,000 in farming. If the government believes they are agricultural then the County will believe that too, even if they do not have 40 acres. That is what the County Commission recently adopted so County staff felt they should change the minimum site area to be consistent with the County's adopted policy for agriculture uses."*

*"If it is an agricultural product they would not have to produce it onsite, but they could not claim it as an agricultural product simply because it was hay or straw brought in on their property."*

The definition of 'agricultural' is important when determining if a use is exempt from the Zoning Regulations and if a structure is exempt from the requirement to obtain a Building Permit. A structure that is used for strictly agricultural purposes is not required to obtain a Building Permit and an

*Agricultural* use is not subject to the Zoning Regulations. Much of the discussion appears to be intended to clarify that the *Value-added Agricultural Business* use was not considered *Agricultural* if it did not meet the definition the County had adopted. In that case, it is subject to the Zoning Regulations and any structures used in the production would be required to obtain a building permit and be compliant with building codes. If the property is over 40 acres, it appears it would meet the definition of an *Agricultural* use and would be exempt from the Zoning Regulations. However, bringing the commodities in from another site would remove the *Agricultural* designation and require compliance with Zoning Regulations and the Building Code.

Minutes from this meeting reflect that Standard 7(g) was revised as:

Minimum Site Area: A minimum site area of 40 acres is required for the operation of all value-added agricultural business. **is consistent with the County adopted policy for agricultural uses.**

#### **September 15, 2008: Board of County Commissioners meeting**

Minutes reflect that the County Commission adopted the text amendment with the language proposed by the Planning Commission.

#### **INTENT**

In staff's opinion, Standard 7(g) was intended to provide guidance as to when a Conditional Use Permit is required for a *Value-added Agricultural Business* use. In the event the use does not meet the definition of 'Agriculture' a CUP is required. The exemption for *Agricultural* uses is specifically listed in Section 12-304-6.01 of the Zoning Regulations:

*"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 erections or maintenance of buildings thereon as long as such buildings are used for strictly agricultural purposes."*

The County Resolution defining *Agricultural* uses and the *Value-added Agricultural Business* text amendment occurred at about the same time, and, in staff's opinion, Standard 7 (g) is no longer needed, now that the resolution has been adopted.

The Conditional Use Permit standards as a whole are intended to minimize negative impacts and ensure compatible development. The establishment of a minimum area would not serve to minimize negative impacts as there is no standard related to the location of the facility on a site. Standard (e) requires that negative impacts be contained on the property—"associated noise, light, and vibrations from the production operation shall not be perceptible at the site boundary/property lines." It may be appropriate to include 'odor' as one of the negative impacts as that was a concern with the soyfood processing CUP.

Removing standard (g) would allow the minimum site area to be determined on a case-by-case basis depending on the location of the facility on the site, and the construction and design of the facility. These factors would have more of an impact on regulating negative impacts than the establishment of a minimum area for all *Value-added Agricultural Business* uses. The type of possible uses vary greatly: jelly or salsa production, prepping and packaging of vegetables, wheat weaving, soyfood processing, distillery, compression of straw into fuel blocks, etc.

Other standards applied to the use, such as a limitation on the number of employees, the maximum size of the building, and a limit on the number of deliveries by larger commercial vehicles, serve to ensure the scale of the facility remains small enough to be compatible with adjacent properties. In

staff's opinion, the standards regulating the scope of the project and the standards prohibiting negative external impacts beyond the property lines, in addition to any specific conditions that are applied to the project based on its unique characteristics and location, should minimize negative impacts and result in compatible development without the need to set a minimum area requirement.

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

Prior to the County Commission's initiation of the *Value-added Agricultural Business* text amendment, the County Planning Resource Coordinator and Public Works Director took the question of the Access Management Standards to the County Commission. The following excerpt is from the April 16, 2008 Board of County Commission meeting minutes:

*"The Board discussed whether the access, if determined safe, to a 'value-added agriculture business' property should have to meet the minimum frontage requirements or be considered as having vested rights to a road cut with less than the minimum road frontage. The Board broadened the discussion to all conditional use requests, not just requests for value-added agricultural businesses. Johnson stated he felt the Board created the access dilemma for existing parcels when the new regulations were adopted and that parcels with less than the required road frontage should be permitted access."*

The item was tabled for further discussion and the following is an excerpt from the May 5, 2008 minutes:

*"The Board discussed adding a clause to the text amendment that in addition to meeting frontage requirements, the applicant must also meet eligibility by an evaluation of the existing divisions and frontage based on land use intensity and safety as determined by the Public Works Director. Jones stated we have the right to consider access in light of safety and this clause should apply to all Conditional Use Permits (CUPs).*

*Browning asked if CUPs in general or value added CUPs are under the same minimum frontage requirements as residential. Johnson stated technically the answer is "no." Browning then clarified on an existing parcel that doesn't meet our current requirements, we will issue the residential permit if the division existed prior to the regulations. But the regulations should say that it doesn't apply to CUPs. "*

*After further discussion, it was the consensus of the Board to table the item for consideration of non-residential properties."*

Staff was unable to find any further minutes related to the Access Management Standards.

The overall purpose of the Access Management Standards is to insure safety on the adjacent roadways. As the County Engineer noted in the 2008 County Commission discussions, if the Access Management Standards are intended to prohibit non-residential driveway permits to properties that were divided prior to 2006 the standards should be revised to clarify that.

The question before us at this time is should only the existing properties that have the required frontage per the Access Management Standards be allowed to develop with a *Value-added Agricultural*

*Business* use, regardless of the nature of the use. A connected question is whether any CUPs or site plans should be granted to properties that do not meet the Access Management Standards. The chart in Appendix A shows various properties that have had CUP approval since the adoption of the Access Management Standards and the Subdivision Regulations in 2006 that do not comply with the Access Management Standards.

In addition, the frontage requirements listed in the Zoning Regulations for properties in the R-1, B-1, B-2, B-3, I-1, I-2, I-3, I-4, and V-C Districts do not comply with the frontage requirements in the Access Management Standards. (Figure 1)

12-318 HEIGHT, AREA AND BULK REQUIREMENTS											
12-318-1. Height, area and bulk requirements for the various districts shall be indicated in the chart below, together with other height, area, and build requirements contained in this Resolution.											
12-318-2. The minimum lot sizes listed in any Zoning District of less than one acre are applicable only where an approved sanitary sewer system is available.											
Article	District	Max. Feet in Height	Max. Height in Stories	Min. Depth of Front yard in Ft.	Min. Width of Side yard in Ft. (2 required)	Min. Depth of Rear Yard in Ft.	Min. Lot/Parcel Area Per Family in Acres or Sq. Ft.	Min. Lot / Parcel Area in Sq. Ft.	Min. Lot/ Parcel Width at road right-of-way or road easement line (in Feet) <sup>1</sup>	90% of Min. Lot/ Parcel Width (in feet)	Min. Depth of Lot/ Parcel in Feet
6	"A" Agricultural	35	2 ½	50*	10	30	3 acres *	3 acres *	250*	225	250
				75**			3 acres**	3 acres**	330**	297	250
				100***			5 acres***	5 acres***	500-660***	450-594	250
				150****			10 acres****	10 acres****	1320****	1188	300
7	"A-1" Suburban Home Residential	35	2 ½	50*	10	30	3 acres *	3 acres *	250*	225	250
				75**			3 acres**	3 acres**	330**	297	250
				100***			5 acres***	5 acres***	500-660***	450-594	250
				150****			10 acres****	10 acres****	1320****	1188	300
8	"R-1" Single Family Residential	35	2 ½	25		30	10,000	10,000	75	N/A	120
9	"B-1" Neighborhood Business	35	2 ½	40	Dwellings: 10 Other bldgs: 20	30	15,000	15,000	75	N/A	125
							--		N/A		
9A	"B-3" Limited Business	25	2	50		50	43,560	87,120	150	N/A	125
10	"B-2" General Business	45	3	40	Dwellings: 10 Other bldgs: 20	30	15,000	15,000	75	N/A	75
							--		N/A		
11	"I-1" Limited Industrial	45	2	50	20	30	--	43,560	150	N/A	200
12	"I-2" Light Industrial	55	4	25	10	Dwellings: 30	15,000	15,000	75	N/A	125
						Other bldgs: 20	--	7,500	75	N/A	100
13	"I-3" & "I-4" Heavy Industrial	--	--	25	10	20	--	15,000	100	N/A	150
14	"V-C" Valley Channel	35	2 ½	50	15	50	5 Acres	5 Acres	300	N/A	300
28	"F-W" Floodway	-- SAME AS UNDERLYING ZONING DISTRICT REGULATIONS --									
	"F-F" Floodway Fringe	-- SAME AS UNDERLYING ZONING DISTRICT REGULATIONS --									
*	Property which takes access from and has the required frontage on a Local road										
**	Property which takes access from and has the required frontage on a Minor Collector road										
***	Property which takes access from and has the required frontage on a Major Collector or Minor Arterial road										
****	Property which takes access from and has the required frontage on a Principal Arterial road										

Figure 1. Zoning District Requirements Table from 12-318.

Figure 1. Zoning District Requirements Table from 12-318.

In staff's opinion, the question of the applicability of the Access Management Standards is broader than just the *Value-added Agricultural Business* use. Staff recommends that the language be removed from this particular use until a County policy has been adopted regarding the applicability of the Access Management Standards to non-residential uses, including uses which require additional permits and uses in other zoning districts. When the policy has been adopted, the Zoning Regulations should be revised as needed.

Until that time, the County Engineer would determine access on a case by case basis by evaluating the anticipated traffic, the adjacent road network, and the condition of the roads. A permit may be denied, or conditions restricting the intensity of the use may be applied, to insure safety.

## USE OF VESTED NONCONFORMING PROPERTIES

### Section 11-101(e)(2) Lot of Record or Non-Conforming Lots/Parcels

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

The language provided in the Subdivision Regulations indicates that a non-conforming parcel in the A, A-1, or R-1 Districts that was legally created may continue to be used for any use that is allowed in that district. Staff contacted the County Counselor for an explanation of the term 'individual ownership' to see if properties that were owned jointly or owned by corporations were included. The County Counselor indicated this was meant to insure that there was one deed for the property, that it had not been divided by deed into separate ownership but did not exempt properties that are owned jointly by husband/wife, trusts, or corporations.

The question was brought up about the meaning of the words 'allowed in the District'. Did this apply only to Residential and Agricultural uses, or did it apply to uses which required County Commission approval, such as Site Plans, Conditional Use Permits, Temporary Business Uses, and Rural Home Business Occupations?

The Zoning Regulations contain provisions related to non-conforming uses (Section 12-320) but does not address nonconforming lots or parcels. A non-conforming use is defined in Section 12-303-1.64 as *"Any building or land lawfully occupied by a use at the time of passage of this Resolution or amendment thereto which does not conform after the passage of this Resolution or amendment thereto with the use regulations of the district in which it is located."*

The comprehensive revision of the Zoning Regulations may include additional information related to the use of non-conforming lots or parcels; however, at this time, the only guidance provided is that in the Subdivision Regulations. If the Commission determines that the use of non-conforming parcels or lots in the A, A-1, and R-1 District should be limited, a text amendment to the Subdivision Regulations could be initiated.

### Proposed Article Changes

Changes to the text are shown on the following pages and are noted in red. Additions are underlined; and deleted text is ~~struck through~~. The entire Section 12-319-4.35 is provided at the end of this report as Attachment A for reference.

### Amend Section 12-319-4 Conditional Uses Enumerated

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

- a. A change in the physical state or form of the product (such as milling wheat into flour or making strawberries into jam).

- b. The physical segregation of an agricultural commodity or product in a manner that results in the enhancement of the value of that commodity or product (such as an identity preserved marketing system).

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

- a. Employees: A maximum of 4 full-time equivalent employees shall be allowed.
- b. Buildings or Structures:
  - i. The total square footage for all buildings used in the operation, production, and storage of materials shall not exceed 10,000 sq feet.
  - ii. Structures are required to be upgraded to meet commercial building code requirements if used for more than storage of raw agricultural materials.
- c. Deliveries to/from the site: Commercial vehicles that exceed 5 tons (gvw) in capacity shall be limited to two trips (to and from the site) per day.
- d. Environmental considerations: No part of the production of the value-added product may result in dispersal of smoke or particulate matter emissions that exceeds federal EPA standards.
- e. Equipment: All equipment used in the production of the value-added product shall be located wholly within a building or structure, or be screened from public rights-of-way and adjacent residential buildings.
- f. ~~Off-site impacts: In either case,~~ The associated noise, odor, light, and vibrations from the production operation shall not be perceptible at the site boundary/property lines.
- g. ~~Minimum Site Area: A minimum site area is consistent with the County adopted policy for agricultural uses.~~
- h. Road Access and Frontage:
  - i. The site must have direct access to a full maintenance public road.
  - ii. ~~and the site shall meet the minimum frontage requirements in accordance with the Access Management Regulations. Access for parcels that were created prior to the adoption of the Access Management Standards, (October 25, 2006) will be dependent on the County Engineer's review of the anticipated traffic and the nature and condition of the adjacent road network. Additional conditions may be applied or access may be denied based on this review.~~
  - iii. Access and the minimum road frontage required in the Access Management Standards must be met for parcels that were created after the adoption of the Access Management Standards on October 25, 2006.
- i. Signage: One sign, limited to no more than 6 square feet in area, shall be visible from a public road, identifying the business. The sign shall be located no closer than 10 feet from the road easement/right-of-way line. No other signs may be posted or erected on the property.

#### CONFORMANCE WITH THE COMPREHENSIVE PLAN

*Horizon 2020* promotes agricultural land uses as the predominant land uses within the rural areas of the county. The plan encourages uses which allow the farmer to sell directly to a consumer to provide flexibility to farmers and an incentive to retain agricultural land in production. The current text amendment seeks to clarify standards associated with the established *Value-added Agricultural Business* use.

#### CRITERIA FOR REVIEW AND DECISION-MAKING

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



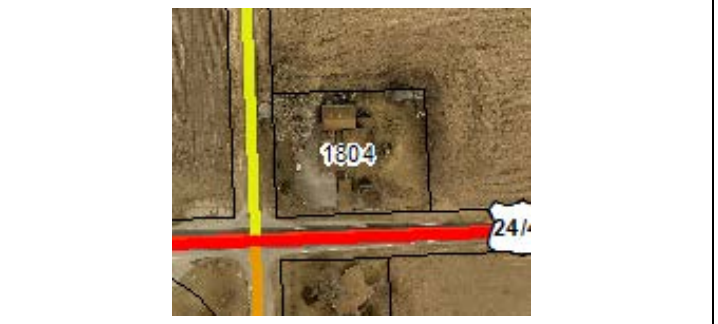







**1) Whether the proposed text amendment corrects an error or inconsistency in the Zoning Regulations or meets the challenge of a changing condition;**

The proposed text amendment corrects an inconsistency in the Zoning Regulations. Two standards were identified as being unclear through a review of the first *Value-added Agricultural Business* Conditional Use application. Standard (g) discussed a minimum site area, but did not provide a required minimum area. Standard (h) required compliance with the Access Management Standards, but related County Commission discussions indicated that the Access Management Standards were not intended to apply to non-residential uses. The amendment proposes revised language to clarify these standards.

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

The proposed amendment is consistent with the Comprehensive Plan and the purpose of the Zoning Regulations in that it includes standards and processes to insure the compatibility of development with existing land uses, while encouraging the development of agricultural related industry in the unincorporated portions of Douglas County.

<p><b>CUP-14-00295</b> <b>Creekwood Lawn/equip storage</b> <b>Approved 10/8/2014</b> Lawn business, without residence Vested, nonconforming parcel on principal arterial</p> <ul style="list-style-type: none"><li>• 1320 ft of frontage required - 626 ft provided.</li><li>• Minimum 10 acres required - 3.9 acres provided.</li></ul>	
<p><b>CUP-13-00482</b> <b>838 E 1500 Rd</b> <b>Good Earth Gatherings/ classes</b> <b>Approved on Feb 19, 2014.</b> Vested nonconforming parcel on minor collector</p> <ul style="list-style-type: none"><li>• 330 ft of frontage required -- 251 ft provided.</li></ul>	
<p><b>CUP-13-00492</b> <b>1804 E 1500 Rd</b> <b>The FETE/ banquet facility</b> <b>Approved on March 19, 2014.</b> Access on E 1500 Rd, minor collector.</p> <ul style="list-style-type: none"><li>• 330 ft of frontage required -- 177 ft provided.</li><li>• Minimum 3 acres required -- .8 acres provided.</li></ul>	
<p><b>CUP-12-00154</b> <b>Kanwaka Mini-storage</b> <b>Parcel w of 757 Hwy 40 (star)</b> <b>Approved on November 28, 2012,</b> <b>CUP expired</b></p> <p>Access for all properties comes from a principal arterial 1320 ft of frontage required and minimum area of 10 acres.</p> <ul style="list-style-type: none"><li>• 3 parcels frontage: 394 ft, 197 ft, and 193 ft</li><li>• 3 parcels area: 3, 1.3, and 1.4 acres</li></ul>	

<p><b>CUP-3-1-11</b> <b>1193 N 1250 Rd</b> <b>Lawrence Landscape</b> <b>Approved on July 6, 2011</b></p> <p>Located on major collector</p> <ul style="list-style-type: none"><li>• 500 ft of frontage required - 483 ft provided.</li></ul>	
<p><b>CUP-04-3-11</b> <b>1898 E 56 Road</b> <b>Big Springs Indoor Sport Center</b> <b>Approved July 6, 2011</b></p> <p>Project consists of several parcels, 2 are landlocked and 2 have access to Hwy 40, a principal arterial.</p> <p>1320 ft of frontage required for parcels which access a principal arterial / 326 ft frontage provided for both parcels. (E 56 appears to be a private road which matches the driveway. The CUP report noted that the property takes direct access to Hwy 40.)</p>	
<p><b>CUP-8-9-09</b> <b>RWD # 5 Booster Station</b> <b>1292 N 1100 Rd</b> Located on a Major Collector</p> <ul style="list-style-type: none"><li>• 660 ft frontage required – 50 ft provided</li><li>• 5 acres min required - .09 acre provided</li></ul>	
<p><b>CUP-05-02-08</b> <b>Lone Star Bison Ranch</b> (CUP approvals expired) Located on principal arterial</p> <p>1320 ft of frontage required – 934 ft provided.</p>	

**CUP-02-04-07**  
**Child Care at First United Methodist**  
**Church 867 Hwy 40**  
**Approved May 16, 2007**  
Located on principal arterial  
1320 ft of frontage required – 520 ft  
provided



# Memorandum

## City of Lawrence

### Planning & Development Services

**TO:** Board of County Commissioners  
**CC:** Craig Weinaug  
**FROM:** Mary Miller, City/County Planner  
**Date:** December 5, 2014  
**RE:** Request for Initiation of Text Amendment to clarify locational and developmental standards for *Value-added Agricultural Business* Conditional Use and to clarify the uses which are permitted on non-conforming vested properties

The *Value-added Agricultural Business* use was added to the list of Conditional Uses in Section 12-319-4 of the Zoning Regulations with the adoption of Text Amendment, TA-05-06-08, in September of 2008. The Central Soyfoods Conditional Use Permit application, CUP-14-00304, was the first application for a *Value-added Agricultural Business* that has been submitted under the revised regulations. Through the review of the CUP application, the following provisions and standards of the Code were identified as being difficult to implement due to a lack of clarity: the minimum site area required for a *Value Added Agricultural Business* use; the road access and frontage required for non-conforming vested parcels; and whether uses which require additional approvals, such as a Conditional Use Permit, are allowed on non-conforming vested properties.

The specific Code sections and language are listed below, with a notation as to the type of change that would be made with the amendment.

Staff requests the Board of County Commissioners initiate a text amendment to the *Zoning Regulations for the Unincorporated Territory of Douglas County* to clarify the following standards:

<b>MINIMUM SITE AREA</b>	<b>Section 12-319-4.35(g)</b>
<b>Minimum Site Area: A minimum site area is consistent with the County adopted policy for agricultural uses.</b>	

The draft code language which was proposed with the Value Added Agricultural Business CUP text amendment included a requirement for a minimum site area of 80 acres. The language was revised at the Planning Commission meeting to reference County policy for agricultural uses. The current standard does not reference a specific area requirement and agricultural uses are not required on a site with a *Value Added Agricultural Business*.

- The text amendment would review existing *Value Added Agricultural Business* uses in other communities to determine if a minimum site area should be required and, if so, establish the minimum site area.



**ROAD ACCESS AND FRONTAGE**

**Section 12-319-4.35(g)**

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

This standard does not provide guidance for non-conforming vested properties (properties that were legally created prior to the adoption of the 2006 Subdivision Regulations, and that no longer comply with the standards). County staff requested an interpretation from the County Commission as to the standard in relation to vested properties at their April 16, 2008 meeting. The following is an excerpt from that meeting:

*"Browning stated the Access Management Regulations were not restricted to application of only residential properties and that he would apply the same process to any use on a 'vested' parcel of land. He asked if the Board would agree with this interpretation of the regulations. The board discussed whether the access, if determined safe, to a 'value-added agriculture business' property should have to meet the minimum frontage requirements or be considered as having vested rights to a road cut with less than the minimum road frontage. The Board broadened the discussion to all conditional use requests, not just requests for value-added agricultural businesses. Johnson stated he felt Board created the access dilemma for existing parcels when the new regulations were adopted and that parcels with less than the required road frontage should be permitted access."*

- The revised regulations would clarify the frontage requirements for vested properties.

**USE OF VESTED NON-CONFORMING PARCELS**

**Section 11-101(e)(2)(iv)**

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

This Code reference from the Subdivision Regulations notes that a vested property may be used for any use allowed within the District without requiring that the property be replatted or divided through a Certificate of Survey. The Zoning Regulations are silent regarding the type of uses which are allowed on non-conforming vested lots or parcels but do contain a section regarding nonconforming uses and structures (Section 12-320).

- The text amendment would revise Section 12-320 of the Zoning Regulations to include a provision clarifying the uses which are permitted on vested non-conforming platted lots, lots of records, or parcels.

## Minutes from County and Planning Commission meetings

**April 14, 2008 Board of County Commissioners minutes  
Initiation of text amendment****ZONING & AMENDMENT 04-14-08**

The Board considered initiation of an amendment to Article 19 of the County Zoning Regulations to add a new conditional use for "value-added agricultural business" to the regulations, based on Commission discussion with Bill Schaetzel at the March 24, 2008, meeting. A second amendment recommended for initiation by staff and the County Counselor to Article 19 was for correction to errors of codification that have occurred in Article 19. Linda Finger, Planning Resource Coordinator, and Evan Ice, County Counselor, were present for the discussion.

Jones asked if Finger had talked with anyone in the agricultural community regarding the proposed language for the "value-added agricultural business" use. Finger stated she spoke with Bill Wood in the Douglas County Extension Office, who said the language for "value-added agricultural business" fits how Extension has discussed it. He said they used the USDA definition, which is what Finger used to create the draft language.

Jones asked how wide open was the concept of "value-added agriculture business". Finger stated the applicant would have to meet the requirements as defined by USDA Regulations and the specific development criteria recommended. Adding the development criteria made this use more restrictive than it would be if added to an Industrial zoning category.

Johnson stated he would not be in favor of narrowing the language of the proposed regulations any further. As Conditional Use Permits, the Board will find out what the specific use is that is proposed, how it is intended to operate, and how the use fits with the development criteria proposed. Finger added that a Conditional Use Permit has an appeals procedure should, once the use is in operation, the neighbors believe the use is not being operated as it was approved. Approval of a site plan for a permitted use in a zoning district does not have an appeal procedure.

The Board discussed changes in wording to reflect the number of truck trips in and out of the property; having direct access to a full maintenance public road; meeting the minimum frontage requirements; and, the need to require all CUPs to meet all applicable state and federal laws, not just this proposed use.

It was the consensus of the Board to table the item for staff to making the wording revisions discussed and to place on the agenda for the Wednesday, April 16, 2008 meeting.

**April 16, 2008 Board of County Commissioners minutes  
Initiation of text amendment (continued)****PLANNING 04-16-08**

The Board considered initiation of a text amendment to Article 19 of the Zoning Regulations to correct codification errors that have occurred over time in that article of the regulations. Staff also added a "compliance with all applicable state and federal laws" language to the general CUP review criteria in accordance with the previous direction of the County Commission during their discussion of the new "value-added agricultural business" use. Linda Finger, Planning Resource Coordinator, was present for the discussion.

Jones moved to initiate the amendment with revisions as indicated by Staff during the meeting for public hearing in June by the Planning Commission. Motion was seconded by McElhaney and carried unanimously.

Minutes from County and Planning Commission meetings

**April 16, 2008 Board of County Commissioners minutes**  
**Discussion of Access Management Standards**

**MISCELLANEOUS & ACCESS REQUIREMENT 04-16-08**

Linda Finger, Planning Resource Coordinator, and Keith Browning, Director of Public Works, asked the Board for an interpretation regarding application of the Access Management Regulations to the proposed new conditional use of "Value Added Agriculture Businesses".

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

Item was tabled for further discussion.

**May 5, 2008 Board of County Commissioners minutes**  
**Discussion of Access Management Standards (cont.)**

**PLANNING&WORK SESSION ITEM 05-05-08**

The Board continued their discussion regarding "value added agriculture" compliance with access management regulations, as tabled from the April 14, 2008 work session. Linda Finger, Planning Resource Coordinator; Keith Browning, Director of Public Works; and Keith Dabney, Director of Zoning were present for the discussion.

The Board discussed adding a clause to the text amendment that in addition to meeting frontage requirements, the applicant must also meet eligibility by an evaluation of the existing divisions and frontage based on land use intensity and safety as determined by the Public Works Director. Jones stated we have the right to consider access in light of safety and this clause should apply to all Conditional Use Permits (CUPs).

Browning asked if CUPs in general or value added CUPs are under the same minimum frontage requirements as residential. Johnson stated technically the answer is "no." Browning then clarified on an existing parcel that doesn't meet our current requirements, we will issue the residential permit if the division existed prior to the regulations. But the regulations should say that it doesn't apply to CUPs.

After further discussion, it was the consensus of the Board to table the item for consideration of non-residential properties



PC Minutes 7/21/08

**ITEM NO. 7      AMENDMENTS TO COUNTY ZONING REGULATIONS (JCR)**

**TA-05-06-08:** Consider amendments to Article 19, County Zoning Regulations, to add a new use for 'value-added agricultural business.' Initiated by County Commission April 14, 2008.

**STAFF PRESENTATION**

Mr. Joe Rexwinkle presented the item.

**PUBLIC HEARING**

No public comment.

**COMMISSION DISCUSSION**

Commissioner Rasmussen asked why it was limited to just four full-time equivalent employees.

Mr. Rexwinkle said he could not answer that question because he did not draft that specific language.

Commissioner Hird said it was a type two business in the existing Code. He agreed it made no sense.

Commissioner Hird asked what the interplay was between the value-added agricultural business and agri-tourism.

Mr. Rexwinkle said a component of the agri-tourism use might be a value-added agricultural use by producing something on a property that draws people, but the standards probably would not go the full extent of what someone might want to do with agri-tourism.

Commissioner Hird said there were a lot of cases where a Conditional Use Permit was required, and that the people subject to that face the same problems getting financed that builders do. He said the same thing applies to people in the agricultural world and he wondered if there was a kind of zoning contemplated for value added or agri-tourism.

Mr. Rexwinkle said that Mary Miller or someone who has been working on the County Zoning re-write might be best suited to answer those types of questions.

Commissioner Finkeldei said on behalf the committee for County Zoning re-write that it is on the agenda Wednesday. He said they spent a lot of time narrowing the Conditional Use Permits down and allow a lot more permitted uses. He said they have been trying to get away from a complex Conditional Use Permit within the middle of the zoning code.

Commissioner Harris said the wording of the three examples was confusing and not entirely necessary. She wondered about instances where they would not want to have agri-cultural product changed to a chemical that may not be good for the environment.

Mr. McCullough said that Planning was shepherding the item through for the County Planning Officer, Linda Finger. He said that comments or questions could be taken to her.

The Commission had questions that could be best answered by Linda Finger, who was not present, so they decided to defer the item to Wednesday.

**ACTION TAKEN**

Motioned by Commissioner Hird, seconded by Commissioner Moore, to defer item 7 until the Wednesday, July 23, 2008 Planning Commission meeting.

Motion carried 9-0.

PC Minutes 7/23/08

**ITEM NO. 7      AMENDMENTS TO COUNTY ZONING REGULATIONS (JCR)**

**TA-05-06-08:** Consider amendments to Article 19, County Zoning Regulations, to add a new use for 'value-added agricultural business.' Initiated by County Commission April 14, 2008.

**STAFF PRESENTATION**

Mr. Joe Rexwinkle was not present at the meeting. Mr. Scott McCullough recapped that the item was deferred from the Monday Planning Commission meeting so that Linda Finger could attend for questioning.

Commissioner Harris said the descriptions for what a value added business is seemed confusing and seemed to be geared more toward a business plan rather than how you would treat such a business in a zoning regulation. (she referred to page 19-11). She wanted more simple clear language.

Ms. Linda Finger said that they started with the USDA definitions. She put on the overhead projector her suggested word changes. She stated that if people are out growing products organically the County Commission does not want them to get caught up in this regulation. They want to encourage niche farming in the county. She suggested changing the example to say 'such as production of products from raw agricultural materials' to be more succinctly what was intended. The County Commission does not want to discourage the production of raw materials. They do want to have some control over how those raw materials are then produced into something else and/or processed. She said that processing involves the changing of the material. She said that one individual they have talked to wants to take raw products such as hay or straw and compress and create compound little bricks; and that would be marketable as a different product. The individual has not processed anything from them, but has produced a more compact form of the original agricultural product. Ms. Finger thought if it was clearer more clear that it was the production of products from raw agricultural materials that than the definition would work. She also stated that standard #2 was not meant to just capture agricultural structures, because there may be an accessory building on a property. There could be, what was formerly a residential building or some other type of outbuilding, that was not used for agricultural. If the building is used for production it needs to be included, so the 'agricultural' adjective needs to be stricken. Regarding standard number 7, since the County Commission sent this forward they have adopted by home rule resolution the administrative policy for what an agricultural use is. It is either 40 acres; or the determination that the owner is in agricultural production through the provision of a schedule F, which is filed with their federal income tax, which shows they have invested more than \$1,000 in farming. If the government believes they are agricultural than the County will believe that too, even if they do not have 40 acres. That is what the County Commission recently adopted so Count Staff felt they should change the minimum site area to be consistent with the County's adopted policy for agriculture uses.

Mr. McCullough added this is an offshoot of something the State is trying to encourage.

Ms. Trudy Rice, County Extension Director, said the three definitions that Commissioner Harris referred to were taken from the USDA's website of how they have determined 'value-added.' Kansas State University has a value added center that is encouraging this type of value added to agricultural products to enhance the economic growth of the community as well as the economic status of the farmer. The Kansas Department of Commerce and Department of Agriculture are both actively encouraging value added through education and grants that are available to producers, organizations, and communities.

Commissioner Harris said that the second definition could possibly be taken out. She asked if there was a difference between the first definition and the second definition.

Ms. Rice said that the first definition was changing the physical state. She did not think it would make a difference to take out the second definition. USDA was trying to come at it in that it was selling a finished product rather than a commodity. Traditional agricultural has been commodity based, and this is more of a product based that is ready to be consumed by the consumer.

Commissioner Finkeldei said it was very unlikely someone would sell something that decreased the value of the commodity they were working with.

Ms. Rice said that an example of definition number two could be if someone decided to market birdseed and they produced two or three of the grains that went into the birdseed and purchased the fourth grain, that would be considered a production of a product that enhances its value. She went on to say her example could probably fall under the third definition and that definition two might not be necessary.

Commissioner Harris said getting to the point of using some of the products on the land, she thought as it is written that was not required. She said someone could actually bring all the natural resources from outside and manufacture them onsite and then ship them off. She wondered if that was what they really want.

Ms. Finger said yes, that is what the County Commission anticipated. If it is an agricultural product they would not have to produce it onsite, but they could not claim it as an agricultural product simply because it was hay or straw brought in on their property. That is precisely what the one property owner who has contacted Ms. Finger wants to do. She said that he has about 80 acres and is not farming it for hay or straw. The amount of product that he could create from his own 80 acres would be processed in less than a day and a half so it would not be worth the effort. The concept is to provide an area where others who have hay and straw that are within a reasonable marketing distance can take it to be processed so it would still be an agricultural product.

Ms. Rice said that not all agricultural producers have their skill set in marketing or a finished product, that this really is an advantage to agricultural producers because they can still produce that product and market it for a higher resale value because someone else in the neighborhood or in the community is providing the marketing or value added service.

Commissioner Harris said some other ordinances say that there should be 50% of the product coming from the property. She said that if that is not what they are wanting, but are wanting to use the neighboring area, should it be worded to say a certain percentage should come from the county or surrounding area, so that manufacturing facilities are not created in the country.

Ms. Rice said that currently 'local food for local people' uses a 100 mile radius.

Commissioner Harris said it would make sense to have some language that refers to reasonably nearby in the county.

Ms. Finger said that was a reasonable consideration. She stated there was minimal discussion about that at the County Commission meeting, only to the extent that the County Zoning Administrator had raised the question of how to monitor where it comes from. She said that criteria can be placed that says it has to come from Douglas County but what if it was next to the Jefferson County line, why could they not cross the border. The County Commission felt that the Planning Commission would be better to have the first shot at what that standard should be.

Ms. Rice said currently the 'local food for local people' use a 100 mile radius.

Ms. Finger said they would be fine with the 100 mile radius if the Planning Commission wanted to add it to one of the standards.

Commissioner Harris said that the section does not really describe the goals in encouraging these businesses in the county. It would be helpful in making judgment calls on something they would have goals to shoot for. There is no reference to disposal of sewage, using water, noxious discharge or odor, which she felt could be a factor.

Ms. Rice said definition four was the closest to that because it talks about air quality.

Commissioner Harris said those were only air quality issues, not liquid emissions, odor, sewage, water use, etc. and that there might be need to address those depending on the size of the business.

Ms. Finger said those issues could be looked at on an individual basis when the Commission evaluates the use. She asked if Commissioner Harris wanted to set standards.

Commissioner Harris said she did not want to set standards today but she noticed in the Special Use Permit language that some of the Special Uses have a lot of conditions attached to them and some do not. It depends on the intensity that is expected, such as daycare versus quarry. She also expressed concern about the limit of five ton loads going in and out of the facility two times a day.

Ms. Finger said that Keith Browning, County Public Works Director/County Engineer, was present at the County Commission meeting when it was discussed. The County Commission felt that two trips were reasonable and would help limit the intensity of use because manufacturing production would have many more than two trucks coming in at any time. They moved the tonnage up from two to five and the trips from one to two. She said that the number of four employees was based on making it similar to the Home Occupation regulations for some equivalency.

Commissioner Hird asked if any thought was given to the seasonality of the workers.

Ms. Finger said it was full time equivalents and that would allow seasonable employees to be increased, which also corresponds with Home Occupation type 2.

Commissioner Finkeldei asked if there was a time rush on this or if it could be reworked and brought back to Planning Commission.

Ms. Finger said a time delay might affect one applicant because he might lose grant funding, but the County would like to get it right the first time.

Commissioner Carter said that getting it right the first time would delay it.

## **PUBLIC HEARING**

No public comment.

## **COMMISSION DISCUSSION**

Commissioner Moore asked what Commissioner Harris had in mind for the goals.

Commissioner Harris said she had the Michigan Agricultural Tourism Advisory Commission Local Zoning Guidebook which had examples of goals. She read some examples from the book: *intends goals and purposes to promote and maintain local farming, to increase community benefits by having fresh local*

*produce for sale, and increase positive growing businesses that contribute to the general economic conditions.*

Commissioner Finkeldei asked if the Zoning Regulations would need to be rearranged.

Ms. Miller said yes, it would need to be reworked.

Commissioner Harris wondered if the new comments could be incorporate in the new form.

Mr. McCullough said that it is doable and Commissioner Harris' comments could be incorporated.

Commissioner Hird was not extremely concerned about the definitional section because subparts 1, 2, & 3 were illustrative of the main concept. He was concerned however about the limitation of 4 full-time equivalent employees. He understood that it came from the type 2 Home Occupation licensing but felt that type 2 Home Occupation licensing was for less intense and smaller activities that take place inside a home and has its own set of limits on square footage and other requirements. The value added business can have the need for a significant number seasonal workers. It is a great way to encourage employment in the county but flexibility needs to be allowed to business owners. He also stated that 10,000 square feet for the buildings was very small.

Commissioner Singleton was concerned about environmental issues and felt that other environmental issues other than air quality should be addressed.

Commissioner Finkeldei asked if this is passed this would be the first step and then the applicant would have to submit a Conditional Use Permit, and then Planning Commission could condition the environmental factors.

Mr. McCullough said that was correct, they would be subject to the County Health Codes.

Commissioner Blaser felt they should get this started so that the one applicant so far could proceed.

Commissioner Carter asked if the 4 employee requirement was okay with the current applicant.

Ms. Finger said yes, it was okay for him, and he does understand that he will have to go through the Conditional Use Permit process.

Commissioner Harris said she would like the following words stricken from the paragraph:

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

Commissioner Finkeldei said the reason the words were there was because they do not want this to apply to a person who produces something onsite and does all the work themselves onsite, they would not have to have a Conditional Use Permit. If someone grew strawberries onsite and created jam in the basement this would not apply to them. He felt that they should clear up the language to say 'not produced entirely on site.'

Mr. McCullough said that maybe they could define agricultural product and agricultural commodity.

Ms. Finger said that it could be helpful to add definitions for agricultural product and agricultural commodity. It may complicate matters to say that it is not entirely produced onsite.

Commissioner Harris asked if the wording 'entirely produced onsite' could be added.

Ms. Finger said that might capture someone who may have any part of production.

Commissioner Moore asked if they were confusing raw commodity with the end product. He said that Commissioner Harris was saying if it is entirely produced onsite that is fine if the raw commodity comes from outside.

Commissioner Harris was also concerned that they are not setting up a business that brings its raw commodities totally from the outside to be manufactured into a product.

Ms. Finger said that a business does not have to produce any of the agricultural product onsite, but it has to be an agricultural product that is produced, it just may not be on the land where it is being changed into a commodity.

Ms. Rice gave the example of 'local food for local people', do individual marketing, so they can be a broker for the fruits and vegetables, a collection site for the fruits and vegetables, make jam onsite, and also work with restaurants or vendors to sell that food.

Commissioner Harris was still not comfortable with the language because there might be consequences.

#### **ACTION TAKEN**

Motioned by Commissioner Moore, seconded by Commissioner Blaser, to approve the proposed amendments [TA-05-06-08 to Chapter XI, Article 19 of Douglas County Code (Zoning Code)] with the following changes and forward to the Douglas County Board of County Commissioners.

#### **35. Value-added Agricultural Business.**

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

- 1. A change in the physical state or form of the product (such as milling wheat into flour or making strawberries into jam).*
- 2. ~~The production of a product in a manner that enhances its value, as demonstrated through a business plan (such as organically produced products).~~*
- 3. The physical segregation of an agricultural commodity or product in a manner that results in the enhancement of the value of that commodity or product (such as an identity preserved marketing system).*

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

- 1. Employees: A maximum of 4 full-time equivalent employees shall be allowed.*
- 2. Buildings or Structures: The total square footage for all buildings used in the operation, production, and storage of materials shall not exceed 10,000 sq feet. ~~Existing agricultural structures are required to be upgraded to meet commercial building code requirements if used for more than storage of raw agricultural materials.~~*



3. *Deliveries to/from the site: Commercial vehicles that exceed 5 tons in capacity shall be limited to two trips (to and from the site) per day.*
4. *Environmental considerations: No part of the production of the value-added product may result in dispersal of smoke or particulate matter emissions that exceeds federal EPA standards.*
5. *Equipment: All equipment used in the production of the value-added product shall be located wholly within a building or structure, or be screened from public rights-of-way and adjacent residential buildings. In either case, the associated noise, light and vibrations from the production operation shall not be perceptible at the site boundary/property lines.*
6. *Storage of products: Shall be enclosed within a building or structure so that it is not visible from the site boundary/property lines.*
7. *Minimum Site Area: A minimum site area ~~of 40 acres is required for the operation of all value-added agricultural businesses.~~ **is consistent with the County adopted policy for agricultural uses.***
8. *Road Access and Frontage: The site must have direct access to a full maintenance public road, as defined in Chapter XI, Subdivision Regulations, Douglas County Code, and the site shall meet the minimum frontage requirements in accordance with the Access Management Regulations.*
9. *Signage: One sign, limited to no more than 6 square feet in area, shall be visible from a public road, identifying the business. The sign shall be located no closer than 10 feet from the road easement/right-of-way line. No other signs may be posted or erected on the property.*

Motion carried 8-1, with Commissioner Harris voting in opposition



Minutes from County and Planning Commission meetings

**September 3, 2008 Board of County Commissioners minutes**  
**Approval of Text Amendment**

**PLANNING & TEXT AMENDMENTS 09-03-08**

The Board considered TA-05-06-08, amendments to Article 19, of the County Zoning Regulations, to add a new use for 'value-added agricultural business.' The item was initiated by the County Commission on April 14, 2008. J Rexwinkle, Lawrence and Douglas County Metropolitan Planning Staff, presented the amendment.

Johnson expressed interest in having Development Standard 3 refer to gross vehicle weight, "gvw", in addition to the tonnage amount, as he felt this would make the standard easier to enforce. There was brief discussion on the merits of using 'gvw' alone or in conjunction with '5 tons' in the regulations. It was determined that using the two terms in conjunction with each other would provide greater clarity in the regulations.

Johnson moved to approve item TA-05-06-08, Text Amendment to Chapter XI, Article 19 of the Douglas County Code (Zoning Code) with the following language recommended by the Planning Commission on July 23, 2008, and with the addition of the reference to gross vehicle weight in Development Standard 3:35. Value-added Agricultural Business. A business that economically adds value to an agricultural product as a result of a change in the physical state of an agricultural commodity that is not produced on the site, by manufacturing value-added products for end users instead of producing only raw commodities. Value-added products may include:

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

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

- a. Employees: A maximum of 4 full-time equivalent employees shall be allowed.
- b. Buildings or Structures: The total square footage for all buildings used in the operation, production, and storage of materials shall not exceed 10,000 sq feet. Structures are required to be upgraded to meet commercial building code requirements if used for more than storage of raw agricultural materials
- c. Deliveries to/from the site: Commercial vehicles that exceed 5 tons (gvw) in capacity shall be limited to two trips (to and from the site) per day.
- d. Environmental considerations: No part of the production of the value-added product may result in dispersal of smoke or particulate matter emissions that exceeds federal EPA standards.
- e. Equipment: All equipment used in the production of the value-added product shall be located wholly within a building or structure, or be screened from public rights-of-way and adjacent residential buildings. In either case, the associated noise, light and vibrations from the production operation shall not be perceptible at the site boundary/ property lines.

Minutes from County and Planning Commission meetings

- f. Storage of products: Shall be enclosed within a building or structure so that it is not visible from the site boundary/property lines.
- g. Minimum Site Area: A minimum site area is consistent with the County adopted policy for agricultural uses.
- h. Road Access and Frontage: The site must have direct access to a full maintenance public road, as defined in Chapter XI, Subdivision Regulations, Douglas County Code, and the site shall meet the minimum frontage requirements in accordance with the Access Management Regulations.
- i. Signage: One sign, limited to no more than 6 square feet in area, shall be visible from a public road, identifying the business. The sign shall be located no closer than 10 feet from the road easement/right-of-way line. No other signs may be posted or erected on the property.

Motion was seconded by Jones and carried 2-0.

**September 15, 2008 Board of County Commissioners minutes  
Approval of Resolution 08-39, amending the Zoning Regulations  
with the Value-Added Agricultural Use.**

**ZONING & RESOLUTION 09-15-08**

The Board considered the approval of Resolution 08-39, amending the Zoning Regulations, Chapter XII, Article 19, to add a new conditional use for Value-Added Agricultural Business and to reformat the existing Article by creating sections 19-2 Time Limitations and 19-3 Amending or Revocating a Conditional Use Permit. The BOCC approved text amendments TA-05-06-08 and TA-05-07-08 at the September 3, 2008. Linda Finger, Planning Resource Coordinator, presented the item.

Jones moved to approve Resolution 08-39, amending the Douglas County Zoning Regulations, Chapter XII, Article 19 Supplemental Use Regulations - Conditional Uses - Temporary Uses to: Add a new use of Value Added Agriculture; identify the applicability of State and Federal Regulations; and to reformat existing text to create separate subsections for time limitations and the amendment or revocation process for a Condition Use Permit. Motion was seconded by McElhaney and carried unanimously.

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

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

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

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

**RESOLUTION NO. 08-25**

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

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

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

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

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

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

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

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

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

**WHEREAS**, the Building Code generally requires a building permit for the erection, construction, alteration, moving, converting, extension or enlargement of a building,

except a building permit is not required for a building to be used solely for agricultural purposes if the owner completes and files with the building official certain specified certificates and applications.

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

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

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

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

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

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

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

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

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

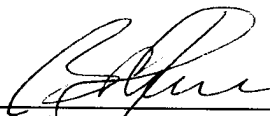
2. Applicability of Other Regulations. The foregoing administrative policy does not mean that the actual use of the building need not satisfy the other requirements or prohibitions of an agricultural building or any other applicable governmental regulations. The use of any building, even though previously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

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

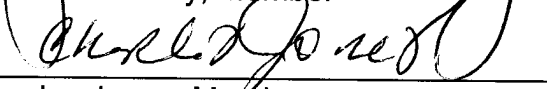
4. Effective Date. This Resolution shall take effect and be in force from and after its adoption.

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


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

  
\_\_\_\_\_  
Bob Johnson, Chair

  
\_\_\_\_\_  
Jere McElhaney, Member

  
\_\_\_\_\_  
Charles Jones, Member

ATTEST:

  
\_\_\_\_\_  
Jameson Shew, County Clerk

## Mary Miller

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**To:** Bryan Culver  
**Subject:** RE: Value added agricultural business c u p

Begin forwarded message:

**From:** Willis Long <[longbell61@aim.com](mailto:longbell61@aim.com)>  
**Date:** March 19, 2015 at 8:28:43 PM CDT  
**To:** [amalia.graham@gmail.com](mailto:amalia.graham@gmail.com), [jonjossierand@gmail.com](mailto:jonjossierand@gmail.com), [pkelly@usd497.org](mailto:pkelly@usd497.org),  
[bcculver@gmail.com](mailto:bcculver@gmail.com)  
**Subject:** Fwd: Value added agricultural business c u p

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

From: Willis Long <[longbell61@aim.com](mailto:longbell61@aim.com)>  
To: jlong500g <[jlong500g@gmail.com](mailto:jlong500g@gmail.com)>  
Sent: Thu, Mar 19, 2015 8:12 pm  
Subject: Value added agricultural business c u p

I am writing as 3min. is not enough time to express myself , and get all my questions answered .

I would like to know how you would feel to work your entire life to get what you have, only to have 15% taken away because of decision being made by others .Please give this some thought . some would think it is neat to have an ag. business in the county ,but to do this it shouldn't have negative affect on others . We will loose \$65,000 in property value as there is vacant property is only 250 ft. from us. Decisions are being made and we have had no say, (we are not getting help on how to get through the process)  
We do what we think is right but no one is listening .(I am frustrated)

This C U P has so many open holes that I think it needs to be tabled till the County gets their new Planner hired. We can then have someone writing the policy after looking at the county as a whole and not just at one parcel.

There are a lot of parcels in Douglas County that were divided before 2006 some as small as 1 acre, that is only 1 of many reasons there should be acreage requirements. If it takes 10 acres to build in the county why on earth would you allow someone to build a stand alone commercial rental factory that can be up to 10,000 sq. ft. on any thing under 40acres?

I wont get into the road frontage, but I would like to know what is meant by agriculture ?(plant , animal, etc .)

Dose this c u p mean it will be allowed as long as there is some sort of ag. product in it ?

I also need someone to explain to me how a person can take a property that has always been a resident , in what country people call neighborhoods tear it down and rebuild a completely different stand alone commercial factory

and not have to be in commercial zoning. To change the ordinances allowing rural properties to be converted into factories depletes the regulations set-in place to protect property owners .

I don't believe this would ever happen in the city limits so why should we hurry this to make it happen in the county .

Please consider tabling all of this till the New County Planner gets it revised .

Thank You  
Linda Long