

PLANNING COMMISSION REPORT PUBLIC HEARING ITEM

PC Staff Report
5/19/14

ITEM NO. 1A: DE-ANNEXATION OF 87 ACRES LOCATED AT 2200 NORIA ROAD & 4600 EAST 23rd STREET. (DRG)

A-14-00073: Consider a request to de-annex approximately 87 acres located at 2200 Noria Rd and 4600 E 23rd St. Submitted by Barber Emerson, for Economic Development Corporation of Lawrence and Douglas County, property owner of record. *Initiated by City Commission on 3/25/14.*

STAFF RECOMMENDATION: Staff recommends forwarding the request to the City Commission with a recommendation of approval of the de-annexation of approximately 87 acres, located at 2200 Noria Road and 4600 East 23rd Street (northeast corner of Noria Road and East 23rd Street), based on the findings in this report with the omission of all right-of-way for Noria Road and East 23rd Street adjacent to said property.

Applicant's Reason for Request: *The subject property was annexed in 2000 when the then current owner sought to expand the available inventory of industrially zoned land to market for development. Prior to annexation, the property was used for agricultural purposes and it has continuously been used in that way ever since it was annexed into the city. Site development costs have been found to be cost prohibitive which led the owner to sell the land to an area farmer who wants the property to be de-annexed and rezoned to county agricultural district as conditions of the sale.*

KEY POINTS

- Subject property is actively being farmed for agricultural crop production. It has continuously been farmed in this manner since it was annexed by the City of Lawrence in 2000. Prior to annexation, the property was used for agricultural crop production.
- Upon annexation, the property was rezoned for general industrial uses and platted into two development lots. The property has been continuously marketed for sale but it remains undeveloped.
- City water and sanitary sewer utility infrastructure is found along the west side of Noria Road and a sanitary sewer main and manhole were extended over to the east side of Noria Road in the right-of-way. No utility infrastructure has been extended into the property.
- The property lies within Service Area 4 of the Lawrence Urban Growth Area. No area plan or sector planning work has been done in this area of the UGA.
- East Hills Business Park is directly west of the subject property. Noria Road separates the subject property from East Hills Business Park. The development pattern is distinctively different east of Noria Road as it transitions to rural agricultural land uses.
- *Horizon 2020* encourages the protection and preservation of high quality agricultural lands.
- The acquisition of the former Farmland Industries site (now known as Venture Park) and the ensuing development process involved with preparing this area for industrial type land uses is a strong indication of the community's desire to see expanded industrial and business type uses grow in the area west of East Hills Business Park.

- The rights-of-way dedicated on the final plats for Noria Road and East 23rd Street should be retained in the city limits and not included in the property to be de-annexed.

ASSOCIATED CASES/OTHER ACTION REQUIRED

- Request to vacate the Final Plat of East Hills Business Park East and Final Plat of East Hills Business Park East No. 2.
- Request to rezone the property from city IG District to county A District.

Other action required:

- City Commission determination regarding the de-annexation request and two plat vacations.
- Board of County Commissioners determination regarding the rezoning request.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- None

EXISTING CONDITIONS

Current Zoning and Land Use: IG (General Industrial) District; used for agricultural crop production.

Surrounding Zoning and Land Use: To the east: VC (County – Valley Channel) District; agriculture uses

To the north: A (County - Agriculture) District along east frontage of Noria Road and VC District to the east of the A District; agriculture uses

To the west: IG (City - General Industrial) District; industrial uses in East Hills Business Park

To the south: A (County - Agriculture) District; agricultural uses.

Site Summary

Gross Area in Platted Subdivisions (includes R/W): 88.392 acres

Gross Area requested for de-annexation: 86.992 acres

Subject property is located within Service Area 4 of the Urban Growth Area as defined in *Horizon 2020*.

STAFF REVIEW

Annexation Procedure

Staff is relying on Kansas Statutes 12-504 and 12-505 to establish the procedure for this de-annexation request. K.S.A. 12-504 allows for the "Petition for vacation of site or addition, street or alley, or for exclusion of land." K.S.A. 12-504 sets forth public notice provisions and states that the city or planning commission can hold a hearing to consider these matters. K.S.A. 12-505 establishes the proceedings for the hearing and provides factors by which to consider the petition.

This request was duly noticed to the public. The procedure for this petition will be a public hearing by the Lawrence-Douglas County Planning Commission. The Planning Commission will make a recommendation to the Lawrence City Commission. The City Commission will make the final decision on the request.

Background

The property was purchased in 1999 by Douglas County Development, Inc. (now known as The Economic Development Corporation of Lawrence and Douglas County). It was then annexed by the City the following year in early 2000. Concurrent with the property annexation was a rezoning request for general industrial and a one-lot subdivision plat for roughly the western half of the property. The rezoning and plat were necessary steps needed to prepare the property for industrial development with city water and sanitary sewer services. Since then, the 87-acre site has been on the market for sale, but it remains undeveloped.

Prior to acquisition of the property by Douglas County Development, Inc., the site was used for agriculture. It has continuously been used for agricultural crop production since being annexed by the city.

General Location and Site

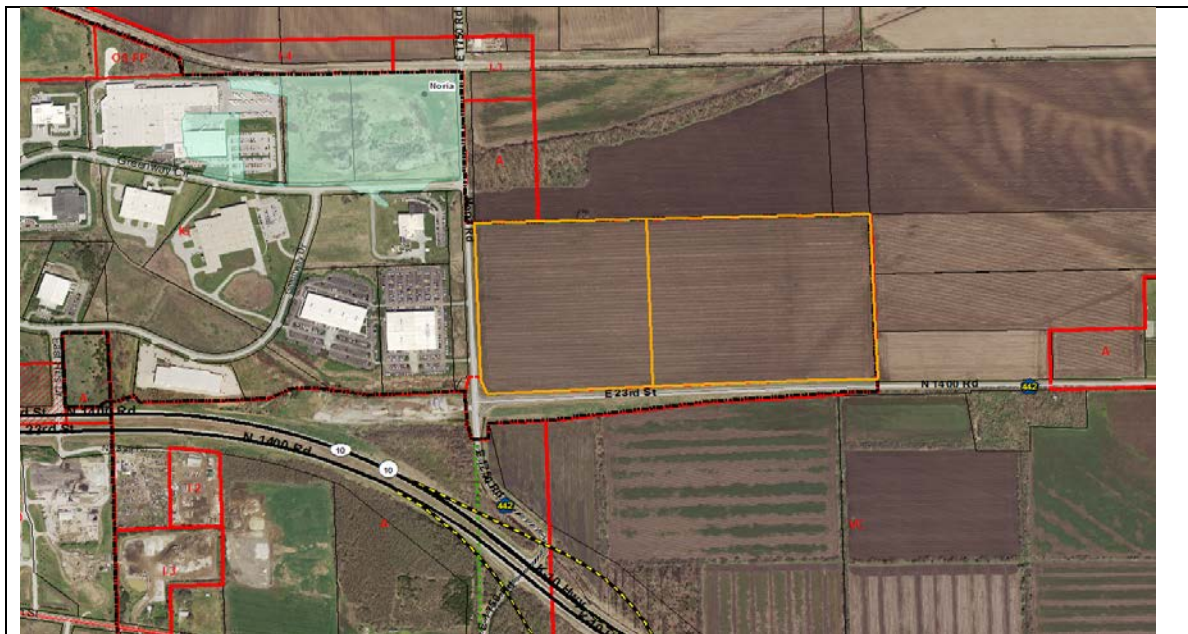


Figure 1. Subject property is shown in mustard yellow. Current city limits of Lawrence are represented with a thick black dashed line. Existing city and county zoning areas are shown as red lines and red text.

Characteristics

The site requested for de-annexation is located on the northeast corner of Noria Road and East 23rd Street approximately ¼ mile from the existing intersection of Noria Road and K-10 Hwy.

Even though the subject property is currently in the city limits, it is not obvious by the existing land use pattern found in the area. On the west side of Noria Road the development pattern consists of industrial buildings and uses located in East Hills Business Park. East of Noria Road along East 23rd Street (N 1400 Road) the land use pattern dramatically changes to rural agricultural uses, primarily consisting of cropland fields. The subject property is actively farmed for crop production.

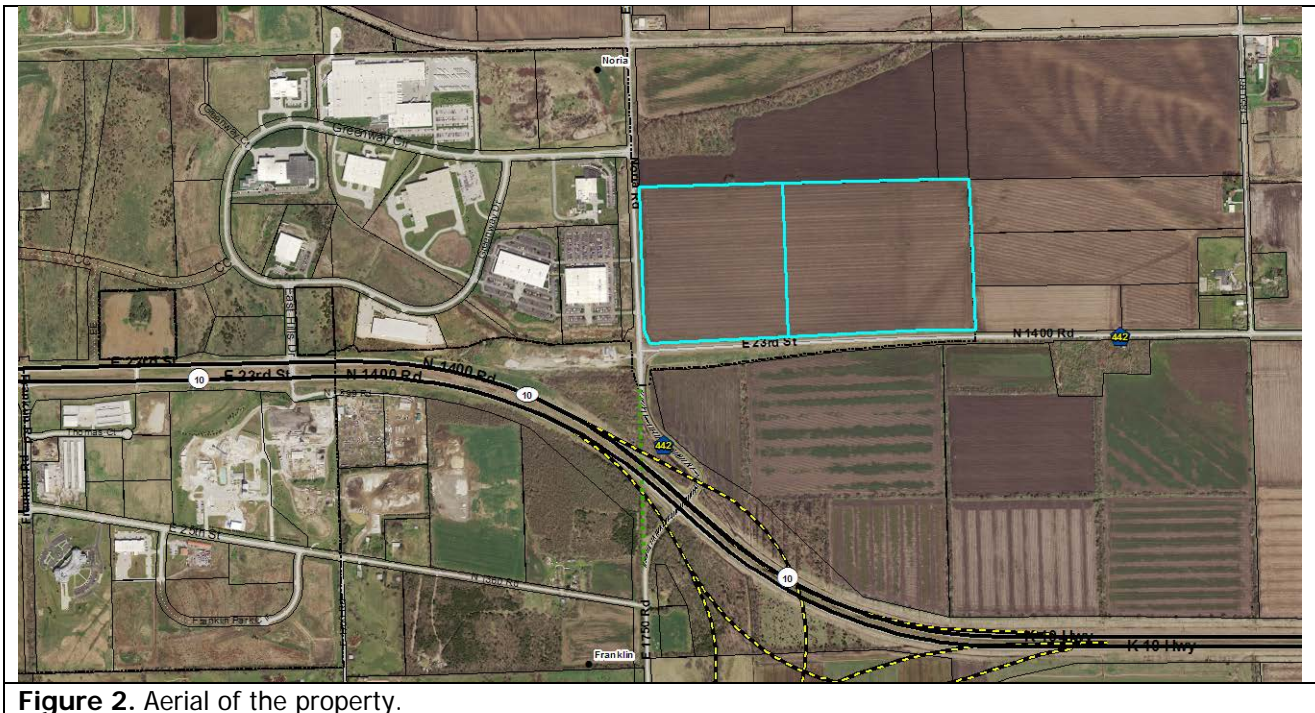


Figure 2. Aerial of the property.

Infrastructure and Utility Extension

City of Lawrence water service is available to be extended to the property from the existing 12" transmission main located on the west side of Noria Road. The Utility Department would require a water main extension to serve this property.

The City also has an 8" sanitary sewer crossing under Noria Road and a sanitary sewer manhole located in the right-of-way on the east side of Noria Road. No utility infrastructure has been extended beyond the street rights-of-way to provide utility services to the two platted lots in this request.



Figure 3. Infrastructure in the area. Subject property is outlined in magenta.

COMPREHENSIVE PLAN

The subject property is located within Service Area 4 of the Urban Growth Area as shown in Map 3-1 of *Horizon 2020*. Policies that are supportive of the property remaining in the city are as follows:

Policy 1.3.1(d)

Within Service Areas 2, 3 and 4 of the UGA, require agreements to hook into the public sewer system when property is within 1000' of existing sewer facilities.

Policy 1.3.1(e)

Within Service Areas 2, 3 and 4 of the UGA, require agreements to annex at time of municipal utility service provision.

Policy 3.1(c)

Properties within the UGAs should be encouraged to annex consistent with a service delivery plan.

Chapter Seven, Industrial and Employment-Related Land Use, in *Horizon 2020* talks about the existing inventory of industrial areas in the community and identifies potential areas for expanded industrial related land uses. East Hills Business Park is described as being on the eastern edge of Lawrence on the north side of Kansas Highway 10. It "serves as the eastern gateway to the community and the City should continue to examine future development plans for this area to ensure they reflect the image and quality the community seeks in gateway development." Consideration of expanding this industrial park area is discussed with particular attention given to the former "Farmland Industries site" immediately to the west. No mention is made of expanding the industrial area to the north or east of East Hills Business Park.

Recent development of Venture Park (former Farmland Industries site) expands the available vacant land inventory for prospective industrial related land uses in this area. The community's efforts to acquire and build the infrastructure needed for industrial development in the new Venture

Park area is consistent with the recommendations found in *Horizon 2020*. As a result, industrial related development east of Noria Road appears to no longer be a high priority of the community at this time.

Chapter Sixteen, Environment, in *Horizon 2020* recognizes it is important to protect and preserve “high quality agricultural land” because it “requires less intervention to produce high yields of crops with high nutrition”. The eastern portion of the subject property has Class II soils meeting this criterion. The remainder of the property has Class III soils which require more intervention to produce high crop yields according to the National Resources Conservation Service.

FUTURE DEVELOPMENT

The subject property is on the eastern edge of the developed industrial area known as East Hills Business Park. Noria Road is a clear demarcation boundary between the existing built urban area to the west and rural agricultural land uses found east of the road. Based upon recent city actions to construct the infrastructure in the Venture Park development area (former Farmland Industries site), it appears that the city's emphasis for new industrial development has shifted away from the subject property. While city utilities are adjacent to the property, they have not been extended beyond Noria Road into the two platted lots making up the property request. Therefore, there should be no public loss or damages sustained by a decision to de-annex the property from the boundaries of the city.

KANSAS STATE STATUTE FACTORS

State Statute Section 12-505 provides factors to consider:

1. No private rights will be injured or endangered by such vacation or exclusion, and;
2. The public will suffer no loss or inconvenience, and that;
3. In justice to the petitioner or petitioners the prayer of the petitioner ought to be granted,
4. The governing body shall order that such vacation or exclusion, or both, be made.

The Planning Commission should weigh the statutory factors in determining whether the prayer to de-annex the property should be granted. In staff's opinion, no private rights will be injured or endangered by the governing body de-annexing only the property represented by the platted lots in the Final Plat of East Hills Business Park East Addition and Final Plat of East Hills Business Park East No. 2 Addition. Similarly, the public will suffer no loss or inconvenience by the de-annexation of just these platted lots contained in said two final plats.



Figure 4. Depiction of city boundary after de-annexation of property in the petition.

LAW OFFICES
BARBER EMERSON, L.C.

1211 MASSACHUSETTS STREET
POST OFFICE BOX 667
LAWRENCE, KANSAS 66044

(785) 843-6600
FACSIMILE (785) 843-8405

JOHN A. EMERSON
BYRON E. SPRINGER
RICHARD L. ZINN
CALVIN J. KARLIN
JANE M. ELDREDGE
MARK A. ANDERSEN*
TERRENCE J. CAMPBELL*
MATTHEW S. GOUGH*

Matthew S. Gough
Email: mgough@barberemerson.com

*ADMITTED IN KANSAS AND MISSOURI

LINDA K. GUTIERREZ
CATHERINE C. THEISEN
MATTHEW B. TODD

RICHARD A. BARBER
(1911-1998)

GLEE S. SMITH, JR.
OF COUNSEL

February 28, 2014

VIA HAND DELIVERY AND E-MAIL

Mr. Scott McCullough, Director
Planning and Development Services
City Hall, 6 E. 6th Street
Lawrence, KS 66044

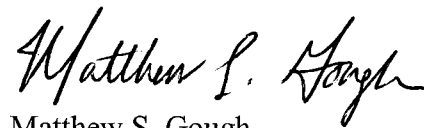
*Re: 2200 Noria Road and 4600 East 23rd Street (collectively, the "Property")
Re-Zoning Application*

Dear Scott:

I enclose a re-zoning application submitted by the Economic Development Corporation of Lawrence and Douglas County, f/k/a Douglas County Development, Inc. (referred to herein as the "**Applicant**"), together with an application fee. Please do not hesitate to contact me if you require additional information.

Very truly yours,

BARBER EMERSON, L.C.


Matthew S. Gough

MSG:plh

cc: Denny Ewert (via e-mail only)
Matthew H. Hoy (via e-mail only)



City of Lawrence
Douglas County

PLANNING & DEVELOPMENT SERVICES

Lawrence Douglas County
Metropolitan Planning Office

6 East 6th Street, P.O. Box 708, Lawrence, KS 66044
(785) 832-3150 Fax (785) 832-3160
<http://www.lawrenceks.org/pds/>

**ZONING MAP AMENDMENT
APPLICATION**

Pre-Application Meeting
required minimum 7 days
before submission

Planner _____

Date _____

Fee _____

*Fees vary, contact office

OWNER INFORMATION – *NOTE: OWNER IS THE APPLICANT*

Name(s) Economic Development Corporation of Lawrence and Douglas County, a Kansas corporation

Contact Matthew H. Hoy, Attorney

Address 900 Massachusetts Street, Suite 500, PO Box 189

City Lawrence State Kansas ZIP 66044

Phone (785) 843-0811 Fax (785) 843-0341

E-mail mhoy@stevensbrand.com Mobile/Pager () _____

CONTRACT PURCHASER INFORMATION

Contact Roger and Gaye Kitsmiller, Attn: Matthew Gough

Company Barber Emerson, L.C.

Address 1211 Massachusetts Street

City Lawrence State KS ZIP 66044

Phone (785) 843-6600 Fax (785) 843-8405

E-mail mgough@barberemerson.com Mobile/Pager () _____

Pre-Application Meeting Date February 26, 2013 Planner Scott McCullough

PROPERTY INFORMATION

Present Zoning District IG Proposed Zoning District A

Present Land Use Agriculture Proposed Land Use Agriculture

Legal Description (*may be attached*) See attached

Address of Property 2200 Noria Road and 4600 E. 23rd Street, Lawrence, KS

Total Site Area 87 acres, more or less

Number and Description of Existing Improvements or Structures None



Are you also submitting any of the following applications?			
<input type="checkbox"/> Building Permit	<input type="checkbox"/> Subdivision Plat	<input type="checkbox"/> Special Use Permit	<input checked="" type="checkbox"/> Zoning Change
<input type="checkbox"/> Variance	<input checked="" type="checkbox"/> Other (specify): De-annexation & Plat Vacation Petition		

Please indicate the reason for requesting rezoning. (Attach additional sheets if needed.)

The subject property (the "Property") consists of approximately 87 acres located at 2200 Noria Road and 4600 E 23rd Street, and is presently zoned "IG." However, industrial development of the Property has proven cost-prohibitive and unrealistic because of the Property's geographic realities. For example, the Property is partially situated in the 100-year floodplain, and industrial development would likely require a significant amount of additional fill (estimated at 6 feet) to be added to the site, and compacted for three years. These obstacles have caused the Property to remain on the market unsold and undeveloped for approximately fifteen years under its current zoning designation.

Multiple considerations support the rezoning of the Property for agricultural use. First, the property is currently being used for agriculture. Horizon 2020 instituted a policy of preserving High Quality Agricultural Land, a category which includes the Property. The Contract Purchaser proposes to continue the Property's use for agricultural purposes. Selling the property to the Contract Purchaser would both further the preservation goals of Horizon 2020 and further EDC's mission to create jobs for Lawrence, by allowing EDC to recoup its investment in the Property for use in other job-creation opportunities.

In reviewing and making decisions on proposed zoning map amendments, the Planning Commission and the City Commission are required consider the following criteria. The Development Code places the burden on the applicant to show that an application complies with such criteria. Please respond to the following criteria to the best of your knowledge. (Attach additional sheets if needed.)

1. How does the request conform with the Comprehensive Plan, Horizon 2020?

Rezoning the Property for agricultural use is appropriate under Policy 2.7 of Horizon 2020 Chapter 16, to "encourage the preservation of High Quality Agricultural Land for current and future agricultural use." The Property encompasses land that has been classified as Class II High Quality Agricultural Land (see



Horizon 2020 Map 16-4). If approved, the rezoning will advance Horizon 2020's policy of encouraging the use of the Property for agricultural purposes in the future.

The rezoning of the Property is also consistent with Chapter 7 of Horizon 2020, which designates locational criteria for industrial developments. This criteria recommends that land for industrial developments "lie primarily outside of the regulatory floodplain." Because the Property lies partially within the regulatory floodplain, the Property's current designation for industrial development is not ideal under Horizon 2020's industrial development criteria.

2. To what extent will approving the rezoning detrimentally affect nearby properties?

The rezoning will have no detrimental impact on nearby properties, because the Property is adjacent to other properties used for agriculture, and because this rezoning request does not accompany a proposed change in use.

3. Describe the character of the neighborhood.

The Property is adjacent to Douglas County "A" and "V-C" zoning districts to the South, East, and North. The East Hills Industrial Park, which borders the Property to the West, is zoned "IG" by the City.

4. What is the suitability of the subject property for the uses to which it has been restricted under the existing zoning regulations?

There is no proposed change in use.

5. What is the length of time the subject property has remained vacant as zoned.

The Property has been vacant at all times.



6. What is the gain, if any, to the public health, safety, and welfare if this application were approved as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application?

Horizon 2020 encourages the preservation of High Quality Agricultural Land, and the approval of the rezoning request advances that public purpose. Denial of the application may preclude the Applicant from completing the sale of the Property to the Contract Purchaser, which may frustrate the Applicant's general purpose of promoting economic development and job creation opportunities in the community.

SIGNATURE

I/We, the undersigned am/are the **(owner(s))**, **(duly authorized agent)**, **(Circle One)** of the aforementioned property. By execution of my/our signature, I/we do hereby officially apply for rezoning as indicated above.

Signature(s):  Date February 28, 2014

Jerry Samp, Chairman of the Board of Economic Development Corporation of Lawrence and Douglas County, a Kansas not for profit corporation.

STAFF USE ONLY

Application No. _____

Date Received _____

Planning Commission Date _____

Fee \$ _____

Date Fee Paid _____



City of Lawrence Douglas County

PLANNING & DEVELOPMENT SERVICES

Lawrence Douglas County Metropolitan Planning Office

6 East 6th Street, P.O. Box 708, Lawrence, KS 66044
(785) 832-3150 Fax (785) 832-3160
<http://www.lawrenceks.org/pds/>

OWNER AUTHORIZATION

I, Jerry Samp, hereby referred to as the "Undersigned", acting as Chairman of the Board of Economic Development Corporation of Lawrence and Douglas County, Inc. (the "Applicant"), and being of lawful age, do hereby on this 28th day of February, 2014, make the following statements to wit:

1. I/We the Undersigned, on the date first above written, am an authorized agent of Applicant, which is the lawful owner in fee simple absolute of the following described real property (the "Property"): Lot One, Block One, East Hills Business Park East; and Lot One, Block One, East Hills Business Park East No. 2.
2. I/We the undersigned, have previously authorized and hereby authorize Roger and Gaye Kitsmiller, or their representatives (the "Contract Purchaser"), to act on the Applicant's behalf for the purpose of making application with the Planning Office of Lawrence/Douglas County, Kansas or other bodies, regarding the de-annexation, vacation of East Hills Business Park East and East Hills Business Park East No. 2 (the "Plats") (but excluding public right-of-way for Noria Road and East 23rd Street, if any), and re-zoning the Property. Such authorization includes, but is not limited to, all acts or things whatsoever necessarily required of Applicant in the application process.
3. It is understood that in the event the Undersigned is a corporation or partnership then the individual whose signature appears below for and on behalf of the corporation or partnership has in fact the authority to so bind the corporation or partnership to the terms and statements contained within this instrument.

IN WITNESS THEREOF, I, the Undersigned, have set my hand and seal below.

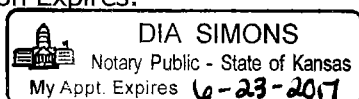
Economic Development Corporation of Lawrence and Douglas County, Inc.,
a Kansas not for profit corporation

By: Jerry Samp
Jerry Samp, Chairman of the Board

STATE OF KANSAS
COUNTY OF DOUGLAS

The foregoing instrument was acknowledged before me on this 28th day of February, 2014, by Dia Simons.

My Commission Expires:



Dia Simons
Notary Public



PROPERTY OWNERSHIP LIST CERTIFICATION

As required by Article 13, Section 20-1301(q) of the Development Code, the applicant is responsible for providing certified Ownership information (including names and mailing addresses) of all real property owners within a defined radius from the subject property. The Planning Department is required by the Development Code to use the submitted Ownership list to mail notice of the public hearing to surrounding property owners regarding this Application.

Ownership Information

The applicant is responsible for providing certified Ownership information. Current Ownership information shall be obtained from the Douglas County Clerk. Ownership information will be considered current if it is **no more than 30 days old** at the time an application is submitted to the Planning Department.

Radius of Notification

The Ownership list shall include the record Owner of the subject property and all Owners of property located within 200 feet of the subject property. If the subject property is adjacent to the City limits the area of notification shall be extended to at least 1,000 feet into the unincorporated area.

A map of the "Radius of Notification" can be obtained **at the Applicant's request** at the Planning Office. The map indicates ownership of each property and can be used to check the accuracy and completeness of the Ownership List. The map will be supplied **at the Applicant's expense. Allow 10 business days** to receive the map.

THE FOLLOWING IS TO BE COMPLETED AND SUBMITTED BY THE APPLICANT.

I certify that I have read and understood the above information and that the submitted Ownership list:

1. was obtained from and certified by the Douglas County Clerk,
2. is current (**no more than 30 days old**), and
3. includes all property owners within the required notification radius of the subject property.

Signature Jerry Samp, Alms

2-28-14
Date

Printed Name Jerry Samp



City of Lawrence
Douglas County
PLANNING & DEVELOPMENT SERVICES

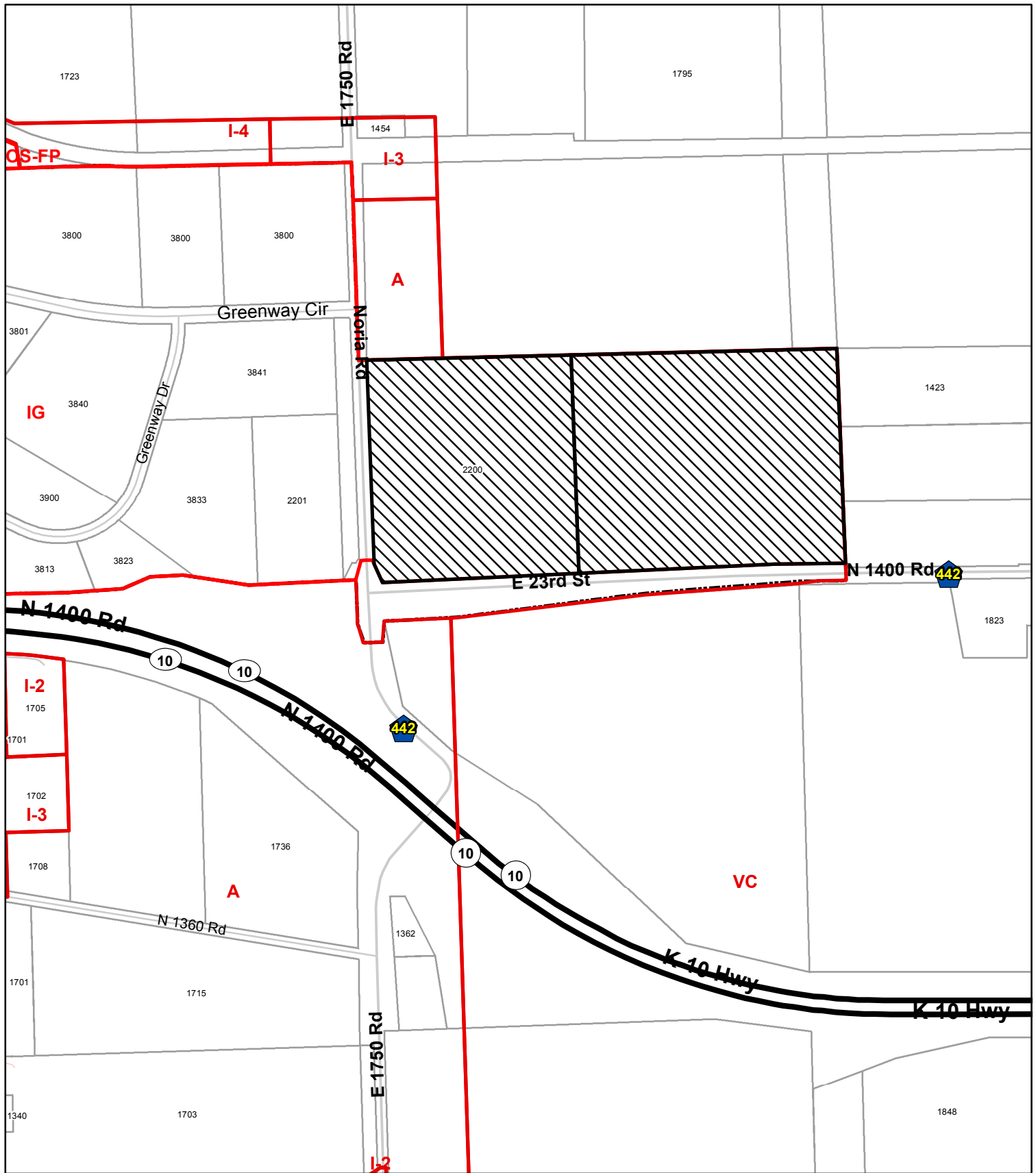
**Lawrence Douglas County
Metropolitan Planning Office**
6 East 6th Street, P.O. Box 708, Lawrence, KS 66044
(785) 832-3150 Fax (785) 832-3160
<http://www.lawrenceks.org/pds/>

EXHIBIT A – LEGAL DESCRIPTIONS

Lot One, Block One, East Hills Business Park East;

and

Lot One, Block One, East Hills Business Park East No. 2.



**A-14-00073 & Z-14-00072: De-Annex and Rezone Approx. 87 acres from IG District to A District
 Vacate Final Plats of East Hills Business Park East and East Hills Business Park East No. 2
 Located 2200 Noria Road and 4600 E 23rd Street**

