

PLANNING COMMISSION REPORT
Regular Agenda –Public Hearing Item

PC Staff Report
9/22/14

**ITEM NO. 3 CONDITIONAL USE PERMIT FOR CENTRAL SOYFOODS LLC; 1168 E
1500 RD (MKM)**

CUP-14-00304: Consider a Conditional Use Permit for Central Soyfoods LLC, a Value Added Agriculture use, at 1168 E 1500 Rd. Submitted by David Millstein, property owner of record.

STAFF RECOMMENDATION: Staff recommends approval of the Conditional Use Permit, CUP-14-00304, for *Value Added Agriculture* subject to the following conditions:

1. The following standards shall apply to the use:
 - a. A maximum of 4 full-time equivalent employees are permitted.
 - b. The structure in which the use is conducted may be up to 3,600 sq ft.
 - c. No equipment that creates noise, vibration, electrical interference, smoke or particulate matter emission perceptible beyond the property lines or in excess of EPA standards is allowed.
 - d. All equipment and materials used in the business must be stored indoors.
 - e. No retail sales of products shall occur on the site.
 - f. Deliveries from trucks with a GVWR (Gross Vehicle Weight Rating) of more than 5 tons are limited to no more than 2 per week. This does not apply to incidental deliveries such as Fed Ex and UPS.
2. Provision of a revised CUP plan with the following changes:
 - a. General CUP notes added per Planning approval.
 - b. Parking area expanded to 5 parking spaces, with one being ADA accessible, and dimensions of the parking area noted on the plan.
 - c. Evergreen trees added to screen the south side of the parking area.
 - d. Location of holding pond/lagoon shown on the plan.
 - e. Standards listed in Condition No. 1 noted on the plan.
 - f. Addition of the following note: *"The Conditional Use Permit will be administratively reviewed by the Zoning and Codes Office in 5 years and will expire in 10 years from the approval date noted on the plan unless an extension is approved by the County Commission prior to that date."*

Reason for Request: *"We are making this request to modify the existing structure at this proposed location to house a new facility for Central Soyfoods LLC, a producer of organic tofu in Lawrence since 1978. The current facility is located at 710 E 22nd Street and has proven to be difficult to maintain the sanitary standards necessary for continued use."*

KEY POINTS

- The subject property is located on and takes access from E 1500 Road, which is classified as a Principal Arterial in the Douglas County Access Management Road Classification Map.
- The property is located within the Urban Growth Area of the City of Lawrence.

ATTACHMENTS

- A --CUP Plans
- B --Public Communications

ASSOCIATED CASES/OTHER ACTION REQUIRED

- Approval of the Conditional Use by Board of County Commissioners.
- Applicant shall obtain a permit for the Conditional Use from the Zoning and Codes Office prior to commencing the use.
- Applicant shall obtain a building permit from the Zoning and Codes Office for the conversion of the residence to a soybean processing facility prior to construction.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- The owner of the adjacent property to the south visited the planning office to discuss the project and expressed concern with possible impacts it could have on her property and property value.
- Email received from Wayne and Nancy Othick, property owners in the area, which expressed concern that allowing the use could lead to other types of factories or businesses in the area. They were also concerned with the possibility that the business might grow larger than currently proposed and that a lagoon for wastewater might contaminate the ground water.
- Phone call from Linda Long discussing possible impacts and conditions that could be applied.
- Email and phone calls from Michael Manley, property owner in the area, expressing opposition to the proposal.

GENERAL INFORMATION

Current Zoning and Land Use: A (Agricultural) District; vacant residence.

Surrounding Zoning and Land Use: A (Agricultural) District in all directions;
V-C (Valley Channel), F-F (Floodway Fringe Overlay), and F-W (Floodway Overlay) Districts to the north;
Surrounding land uses include agriculture, rural residences, the Wakarusa River, and woodlands.
(Figure 1)

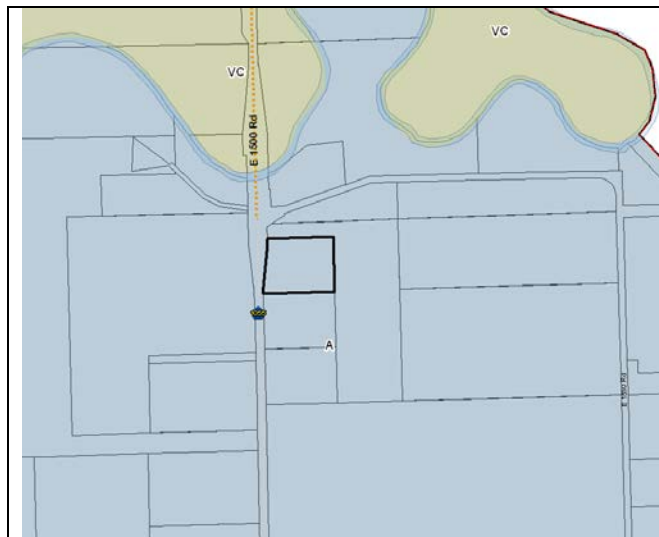


Figure 1a: Zoning of the area. Subject property is outlined.



Figure 1b: Regulatory Floodplain in the area. The dark area is the regulatory floodway, the lighter colored area is the regulatory floodway fringe.



Figure 1c: Land use in the area.

Site Summary

Subject Property:	Approximately 5 acres
Existing structure:	1,756 sq ft
Proposed structure:	2,812 sq ft
Bean bin	6 ft x 14 ft: ~320 sq ft (500 bushel capacity)

Summary of Request

The Conditional Use Permit is requested to accommodate a *Value Added Agricultural Use* on the subject property. The proposed use, a soybean processing facility, meets the definition of *Value Added Agriculture* provided in Section 12-319-7.35 of the County Zoning Regulations:

"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)."*

The proposed use, processing soybeans into tofu and tempeh, is a change in the physical state of the product and would fit example 'a' of the definition above.

The residence would be converted into a processing facility and a bean bin would be installed to the rear of the house. The on-site septic system would serve the employees; however, the water used in the processing and washing of the soybeans would be kept in a holding pond or lagoon. The holding pond will be engineered and will be regulated by the Kansas Department of Health and Environment (KDHE).

I. ZONING AND USES OF PROPERTY NEARBY

The subject property and surrounding area are zoned A (Agricultural) District. V-C (Valley Channel) zoning is located to the north in generally the same location as the F-F (Floodway Fringe Overlay) and F-W (Floodway Overlay) Districts associated with the Wakarusa River (Figure 1). Land uses in the nearby area include rural residences, agricultural land and riparian woodland.

Staff Finding – The area is rural in character and is zoned A (Agricultural) District with land to the north along the Wakarusa River also being zoned V-C (Valley-Channel) District and F-F (Floodway Fringe Overlay) and F-W (Floodway Overlay) Districts. Surrounding uses are predominantly rural residential and agricultural. A *Value Added Agriculture* Use could be compatible with the existing uses if conditions were applied to the use to insure compatibility with nearby residences.

II. CHARACTER OF THE AREA

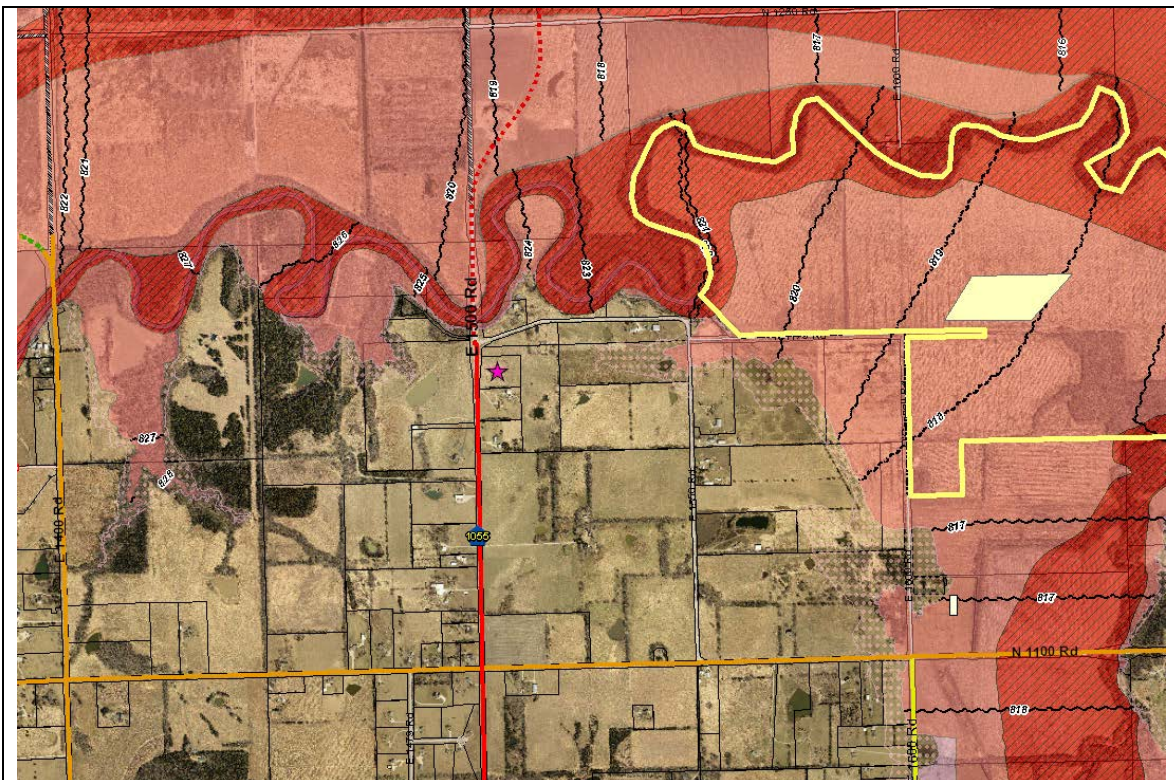


Figure 2: Characteristics of the area: Street network: Principal arterials shown in red, major collectors in orange, minor collectors in yellow. Boundary of the city property to the east with the proposed site of the Wakarusa Wastewater Treatment Plant shown in yellow. Floodplain shown in red. Subject property identified with a star.

The area is bounded on the north by the Wakarusa River and its associated floodplain, and contains primarily agricultural and rural residential land uses. Large parcel residential properties are located throughout the area and are adjacent to the south of the subject property on E 1500

Road. E 1500 Road, designated as County Route 1055 in the Douglas County Access Management Map, is classified as a principal arterial. Approximately one-half mile to the east of the subject property is property (approximately 530 acres) that has been annexed into the City and rezoned for development of the Wakarusa Wastewater Treatment Plant. The plant is expected to utilize approximately 16 acres of the property and the remainder will remain in agricultural use. (Figure 2).

Staff Finding – This is an agricultural area with rural residences. A city wastewater treatment plant will be located on a 530 acre lot to the east, but the majority of this lot will remain in agricultural production. County Route 1055, a principal arterial, provides access through the area. A *Value Added Agriculture* use should be compatible with the character of the area.

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

Applicant's response:

"The subject property is suitable for Central Soyfoods for several reasons: We now share a building with a roofing company on one side and a body shop on the other making pest control difficult and because of the nature of the materials used in the body shop, paint etc, fumes are a problem. A stand alone facility would be a step forward. Central is an agricultural enterprise based on value added agricultural processes. Its by-products are used by several local organic producers as fertilizer for the vegetables they grow and that are consumed by Lawrencians. This location allows us to have the flexibility to use any excess okara (the by-produce) in our own gardens to enrich the soil. The rural nature of this location will also provide our employees with a better working environment."

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

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

The existing structure will be enlarged to 2,812 sq ft and the processing facility will be located entirely within the structure. The facility has 5 part-time employees and produces tofu and tempeh for Lawrence and the surrounding area. Given the small scale of the proposed processing facility, the property is also well suited for the proposed conditional use, *Value Added Agriculture*. A Conditional Use Permit (CUP) does not change the base, underlying zoning.

Staff Finding – The property is suitable for the uses which are permitted within the A (Agricultural) District. The property is also suitable for the proposed *Value Added Agriculture* use,

a soybean processing facility, when approved as a Conditional Use, given the small scale of the facility.

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

Staff Finding – The subject property was developed with a 1,756 sq ft residence in 1989. The proposal is to convert the existing structure into a soybean processing facility.

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

Applicant's Response:

"I see no detrimental impacts affecting adjacent property owners. Central Soy is a very small business and our business model is designed to restrict our growth to this region, freshness and responsive delivery restrict our size. At this point in time, we produce around 100,000 pounds of tofu per year. We employ 5 part time people and produce 3 times per week. We deliver the tofu using our own Transit Connect Van. At the current location we receive few deliveries; consisting of around 70 bushels of organic Kansas grown soybeans per month and other sundry items germane to the business. This location will allow us to install a bean storage bin to further reduce traffic. All of these facts translate to a very low impact on the location and the neighbors."

Section 12-319-1.01 of the County Zoning Regulations recognize that *"certain uses may be desirable when located in the community, but that these uses may be incompatible with other uses permitted in a district...when found to be in the interest of the public health, safety, morals and general welfare of the community may be permitted, except as otherwise specified in any district from which they are prohibited."* The proposed use is included in the Conditional Uses enumerated in Section 12-319-4 of the Zoning Regulations for the Unincorporated Territory of Douglas County as *Value Added Agriculture*.

Staff visited the existing production facility at 710 E 22nd Street to become familiar with the nature of the use. As the applicant noted, the facility shares a building with other uses. (Figure 3) The production machinery and the delivery vehicle are shown in Figures 5 and 6.

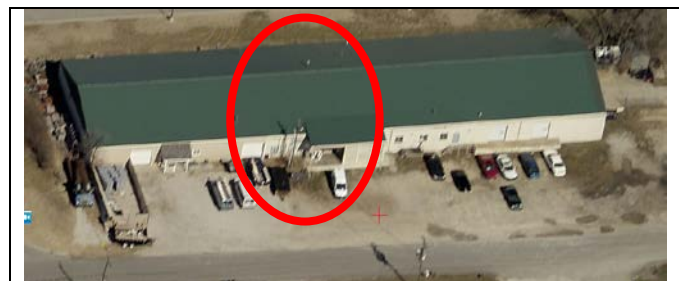


Figure 3. Current facility at 710 E 22nd Street. General location of Central Soyfood is circled.

There was no smell or noise from the processing apparent from outside the facility.

The soybeans are processed in the equipment shown in Figure 4a, then the curds are separated from the whey, pressed in the equipment shown in Figure 4b, and packaged in a separate room, behind the film in Figure 4b. There was also a cooler in the building. The applicant indicated the new facility would have a larger cooler.

The applicant indicated that they've been a small business since they began operation and they have no plans to expand. This is an important consideration since the scale and size of the operation is an important consideration in determining off-site impacts. He indicated that they could double production by adding an additional processing day and using the same equipment; however, he said the company serves Lawrence and the nearby area and is not intending to

expand its market. If any major growth to the facility were proposed it would require review to determine if the facility would remain compatible with the adjacent land uses or would need to relocate.



Figure 4a. Processing area



Figure 4b. Processing area for pressing the tofu.



Figure 5. Central Soyfood's delivery vehicle.



Figure 6. Okara, a byproduct of processing. Typically used as livestock feed or fertilizer.

The proposed location is adjacent to, and takes access from, a Principal Arterial. All processing will occur indoors and there will be no exterior storage of products or commodities. Soybean deliveries are from farms in the area and occur typically about once a month. With the installation of the bean bin, deliveries are expected to be less frequent. The facility will receive incidental deliveries, such as Fed Ex, UPS, etc. The owner indicated that the bean deliveries are made by a grain truck (Figure 7).



Figure 7. Example of soybean delivery truck.



Figure 8a. Structure for proposed location.



Figure 8b. Residential uses in the area.

Given the proximity of the rural residences (Figure 8), it is appropriate for the standards of a Type II Home Occupation that serve to minimize negative impacts to adjacent properties be applied to this CUP, in those cases where they are more stringent than the *Value Added Agriculture* use conditions. The following is a list of the *Type II Rural Home Business Occupation* standards found in Section 20-319-6.02(b) with staff's discussion following in *red* :

- 1) A maximum of 4 nonresident employees are permitted;
The standard for a Type II Rural Home Business Occupation and Value Added Agriculture are the same.
- 2) The business must be conducted within the dwelling unit or an accessory building that is no greater than 3600 sq ft in area;
The Value Added Agriculture use limits the area of all buildings used in the production to 10,000 sq ft. The Type 2 Rural Home Business Occupation area standard is more stringent in this case.
- 3) The majority of work related to agricultural implement repair or grading and earthwork activities must be conducted off premises;
Not applicable to the proposed use.
- 4) No equipment that creates noise, vibration, electrical interference, smoke or particulate matter emission that is perceptible beyond the property lines of the subject parcel is allowed;
The Value Added Agriculture use does not allow smoke or particulate matter emissions that exceeds EPA standards. Both standards should apply.
- 5) All equipment, materials, and vehicles must be stored indoors or otherwise completely screened from view of adjacent parcels and rights-of-way;
The standards are the same with the exception that vehicles are required to be completely screened with a home occupation.
- 6) No inventory of products can be displayed or sold on the premises except what has been produced on the premises;
There is no limitation on inventory of products or sales for the Value Added Agriculture use. No sales on the site are being proposed with this use but this standard should apply.
- 7) A minimum site area of 5 acres is required;

The *Value Added Agriculture* section notes that a minimum site area is consistent with the County adopted policy for agricultural uses. The Home Occupation standard should apply.

- 8) The site must have direct access to a section line road or highway;
The *Value Added Agriculture* use requires the site to have access to a full-maintenance public road. The Home Occupation standard is more restrictive.
- 9) Outdoor storage buildings and off-street parking spaces must be located at least 50 ft from all property lines and rights-of-way, or be screened so as not to be visible from off-site.
The *Value Added Agriculture* use requires that storage of all products be enclosed within a building or structure so that it is not visible from the site boundary/property lines but does not specify a distance from the property line. The Home Business standard is more restrictive in this case.

Standards that apply to *Value Added Ag* (Section 12-319-4.35) but not Home Occupation Business include:

- 10) Commercial vehicles that exceed 5 tons (gvw) in capacity shall be limited to 2 trips (to and from the site) per day.
The grain truck shown in Figure 7, an example of the typical delivery vehicle for Central Soyfoods, has a GVWR of 52,080 lbs or 26 tons. A typical UPS delivery truck has a GVWR of 5 tons. The standard for limited large truck deliveries should apply, and could be more restrictive given the residences in the surrounding area. The applicant indicated that a limit on deliveries of 2 deliveries by commercial vehicles that exceed 5 tons (GVWR) a week would be acceptable. This restriction would not apply to incidental deliveries by Fed Ex or UPS.
- 11) The site shall meet the minimum frontage requirements in accordance with the Access Management Regulations.
The subject property was created prior to 2006 in accordance with the Subdivision Regulations in place at the time; therefore it is a vested parcel. The County Engineer indicated he was satisfied with the access and frontage provided based on the low volume of traffic to be generated by this use.

To insure compatibility with the surrounding land uses, the following conditions are recommended, based on the standards of the Type 2 Home Occupation Business and the *Value Added Agriculture* use:

1. A maximum of 4 full-time equivalent employees are permitted.
2. No equipment that creates noise, vibration, electrical interference, smoke or particulate matter emission that is perceptible beyond the property lines or in excess of EPA standards is allowed.
3. All equipment and materials used in the business must be stored indoors.
4. The parking area shall be screened from the adjacent residence to the south with evergreen trees, such as cedars.
5. No retail sales of product shall occur on the site.
6. Deliveries from trucks with a GVWR (Gross Vehicle Weight Rating) of more than 5 tons are limited to no more than 2 per week. This does not apply to incidental deliveries such as Fed Ex, and UPS.

PUBLIC COMMENTS

The principle concerns raised by the members of the public that contacted the Planning Office were that this CUP would set a precedent for other businesses such as vehicle repair shops and convenience stores to locate in the area and that the business would have negative impacts such as odor, noise, and traffic that would negatively impact their properties and property values.

- The type of uses which are possible in this area are limited to those that are permitted by right in the A (Agricultural) District and those that are permitted as a Conditional Use. Section 12-319-4 lists the uses which may be permitted as Conditional Uses. A vehicle repair shop and convenience store are not permitted in the A District by right or as Conditional Uses; however, other uses included in the list of conditional uses could be possible if they were approved by the County Commission. The Conditional Use review process allows potential impacts of the use to be evaluated and conditions to be applied to minimize or eliminate impacts. Each Conditional Use Permit is evaluated on its own basis for compatibility with the surrounding area.

The proposed use meets the standards for a Type 2 Rural Home Business Occupation with the exception that the owner does not live on site. As home occupations are expected to occur on site with a dwelling and in close proximity to other dwellings, applying the standards of a Type 2 Home Occupation to the use will minimize negative impacts to insure compatibility with nearby properties.

- The facility will utilize the existing septic system, but wastewater from the soybean processing will be kept in a holding pond which is regulated by the Kansas Department of Health and Environment. The County Health Official indicated that an engineered lagoon or holding pond typically has little, if any, odor.

Staff Finding – The use is small scale and very similar to a *Type II Rural Home Business Occupation*. Applying the standards of a *Type II Rural Home Business Occupation* to the facility should insure compatibility with nearby residences.

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

Applicant's Response:

"While our current product provides a healthy, renewable foodstuff, a move to this proposed location would enhance our general operation and insure our future prosperity with no hardships imposed on the land or our neighbors."

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

Approval of this request would allow the landowner to relocate the business to the subject property.

No benefit would be afforded to the public health, safety, or welfare by the denial of the request as the business operation is small scale, a low traffic generator and would be located on a principal arterial. Application of the Type 2 Rural Home Business Occupation standards should insure compatibility with the nearby residences.

Staff Finding – In staff’s opinion, the approval of this request, with the *Type 2 Home Business Occupation* standards will result in a compatible project that will not harm the public health, safety or welfare. Denial of the request would prevent the relocation of the soyfood processing facility to this location.

VII. CONFORMANCE WITH THE COMPREHENSIVE PLAN

Applicant’s Response:

“I don’t see any reference to value added agriculture in Horizon 2020. There is a current emphasis on local food production and Central has been producing local organic food for over 45 years.”

The proposed use is a component of a local/regional food system: processing locally and regionally grown soybeans into tofu and tempeh for sale in the area. Chapter 16 of the Comprehensive Plan recommends the development of policies to support a sustainable local/regional food system; however, the policies and recommendations have not been developed at this time.

The Comprehensive Plan (Page 1-3, *Horizon 2020*) notes: *“It is the goal of the planning process to achieve a maximum of individual freedom, but public welfare must prevail. It is the intent to meet and safeguard individual rights and vested interests in a manner which will create the minimum disruption in individual freedoms and life values.”*

Staff Finding –A Conditional Use Permit can be used to allow specific uses that are not permitted in a zoning district with the approval of a site plan. This tool allows development to occur in harmony with the surrounding area and to address specific land use concerns. As conditioned, the proposed use is in compliance with the Comprehensive Plan.

CUP PLAN REVIEW

The proposal is to convert the vacant residence on the property to a soyfood processing facility. Proposed site improvements include a 1056 sq ft addition to the structure, an employee parking area, and a bin for soybean storage.

Parking and Access: The site plan identifies a 625 sq ft parking area east of the drive. Parking required for a Value-Added Agricultural use is 1 space per 2 employees. 5 employees would require 3 parking spaces. Per Section 12-316-4 a parking space must contain 180 sq ft; therefore, 3 parking spaces would require 540 sq ft. While the parking provided on the plan is compliant with the Zoning Regulations, Staff recommends providing a parking space for each employee to insure adequate parking is provided on the site. One ADA accessible parking space is required for this use.

Access to the site is accommodated via a 12 ft wide driveway to E 1500 Road. No change to the access is proposed by the applicant and none were identified as needed in the review of the application.

Landscape and Screening: The equipment and materials will be stored inside. Evergreen species such as cedar trees should be planted along the south side of the parking area to screen it from view of the adjacent residence to the south.

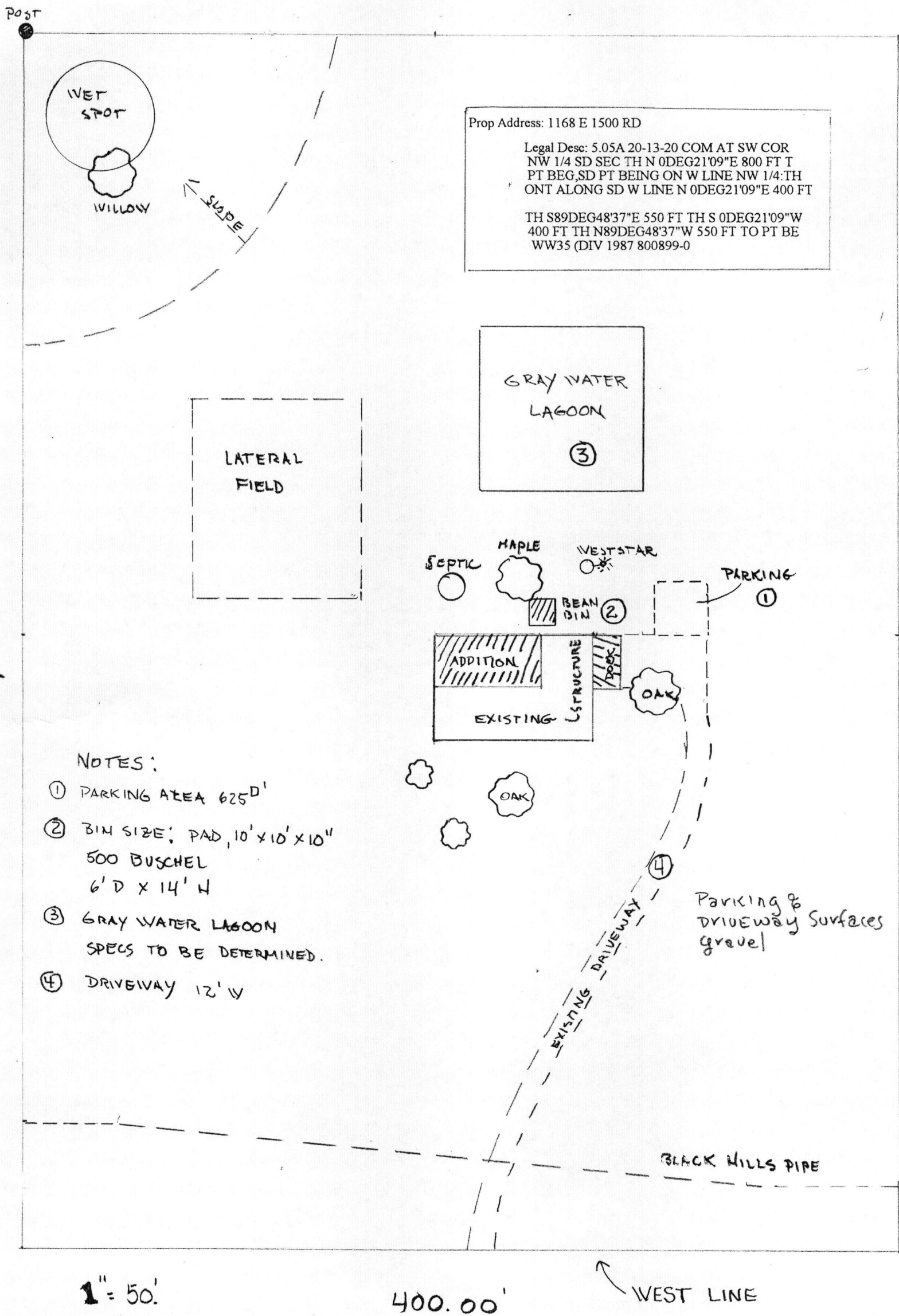
Limits and Conditions:

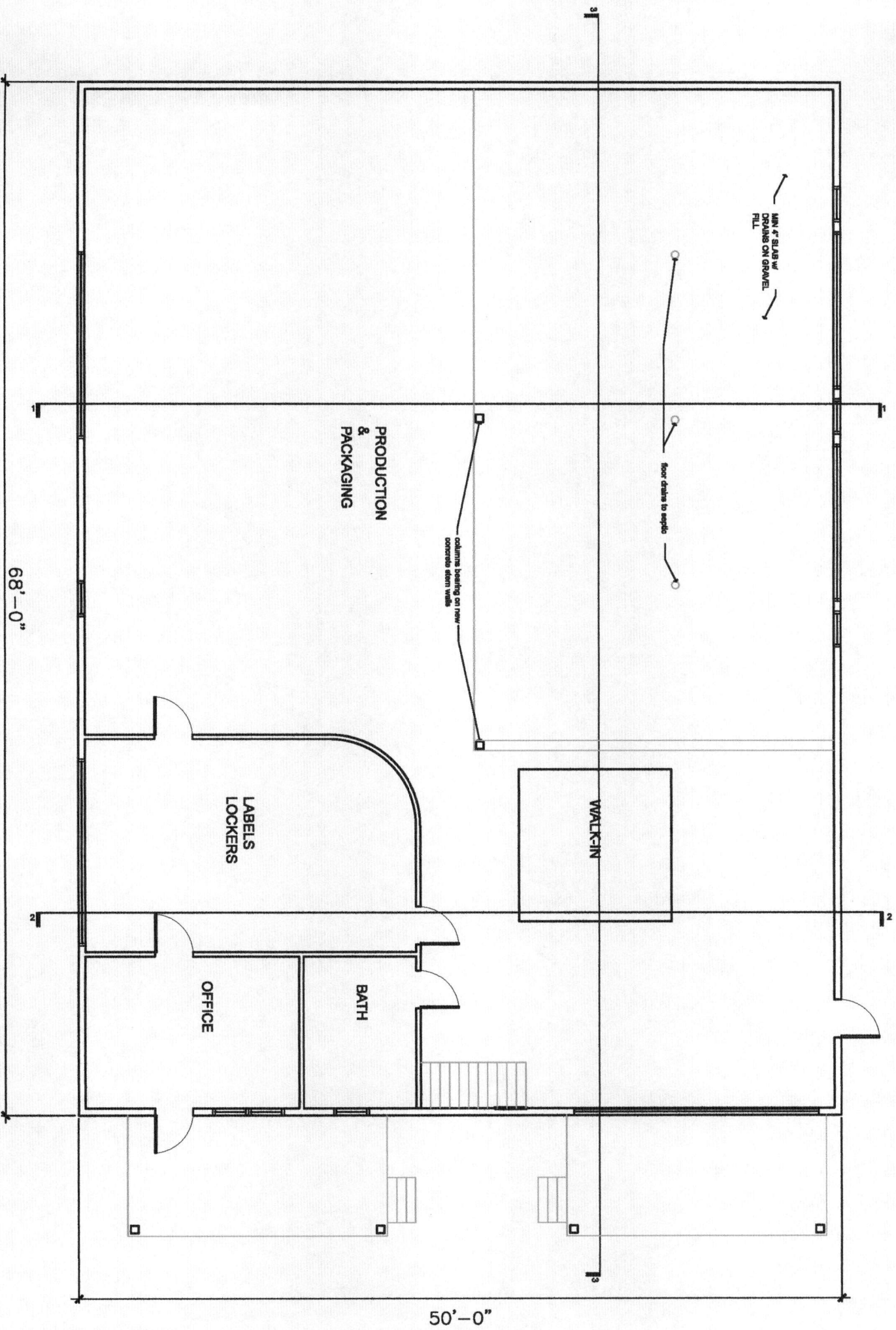
The standards of a *Type 2 Rural Home Business Occupation* should apply, in addition to the standards for the *Value Added Agriculture* use to insure compatibility with the nearby residential uses. The use should be administratively reviewed by the Zoning and Codes Office every 5 years to insure compliance with the standards of the Conditional Use Permit. Expiration dates are often applied to Conditional Uses so they may be re-evaluated to determine if they remain compatible with the development in the area. A 10 year time limit is recommended for this CUP with an extension possible by the Board of County Commissioners.

Conclusion

The *Value Added Agriculture and Type 2 Rural Home Business Occupation* standards placed on the Conditional Use should insure compatibility with surrounding properties. The use requires a Conditional Use Permit which is obtained from the Douglas County Zoning and Codes Office. The building must comply with minimum building code standards for non-residential uses and a building permit will be required for changes to the structure. The proposed CUP complies with the County Zoning Regulations and the land use recommendation of *Horizon 2020*.

Site Plan Proposed tofu facility





1 Plan
1/8" = 1'-0"

1168 EAST 1500

REVISIONS

Permit Documents

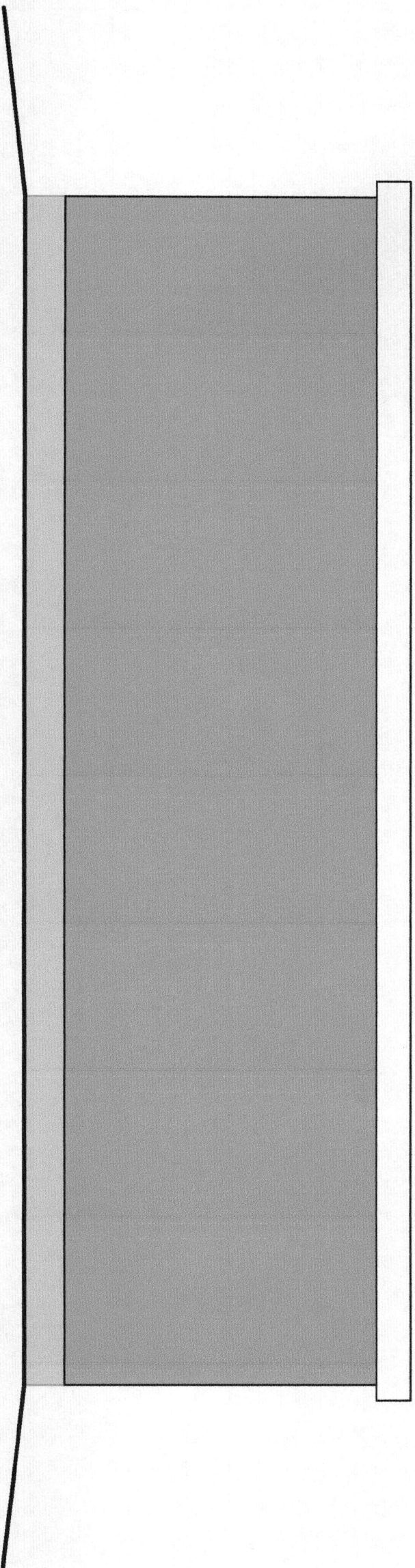
ISSUE DATE AUGUST 06, 20

SCALE 1/8" = 1'-0"

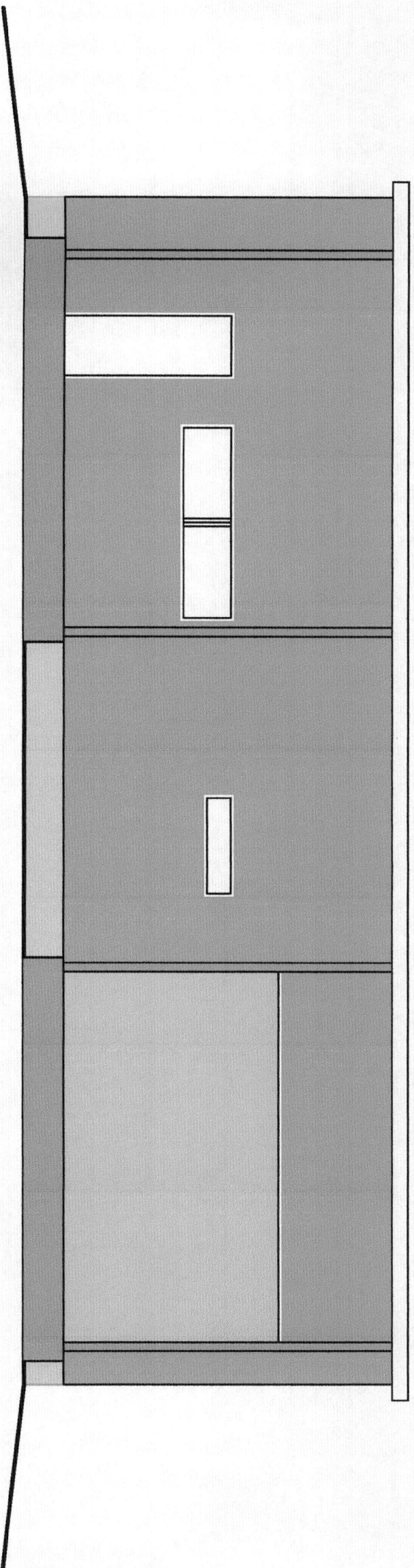
PROJECT NO

DRAWN BY

TITLE
PLAN



1 North ELEVATION
3/16" = 1'-0"



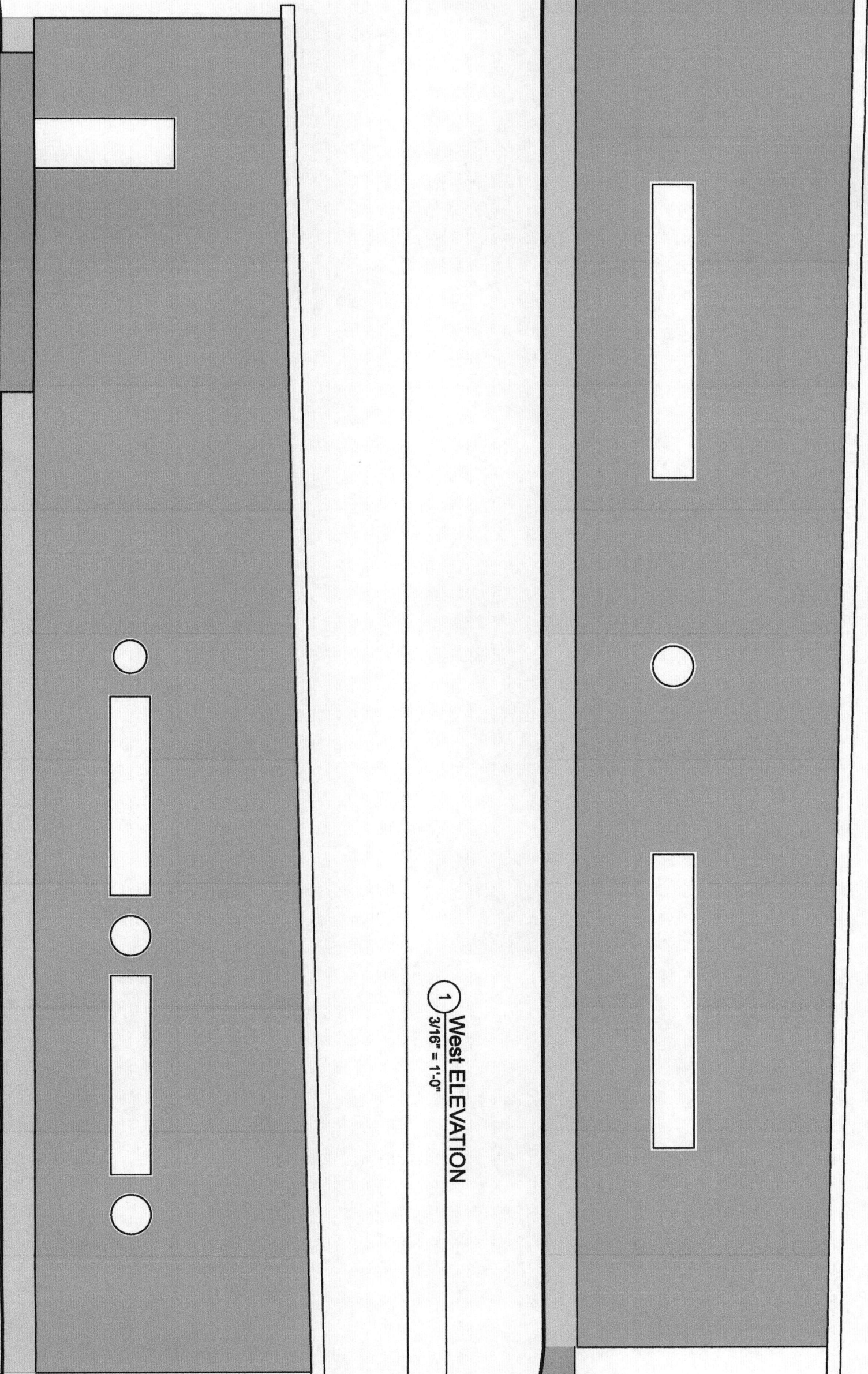
2 South ELEVATION
3/16" = 1'-0"

1168 EAST 1500

REVISIONS	
Permit Documents	
ISSUE DATE	AUGUST 05, 20
SCALE	3/16" = 1'-0"
PROJECT NO	
DRAWN BY	
TITLE	
ELEVATIONS	

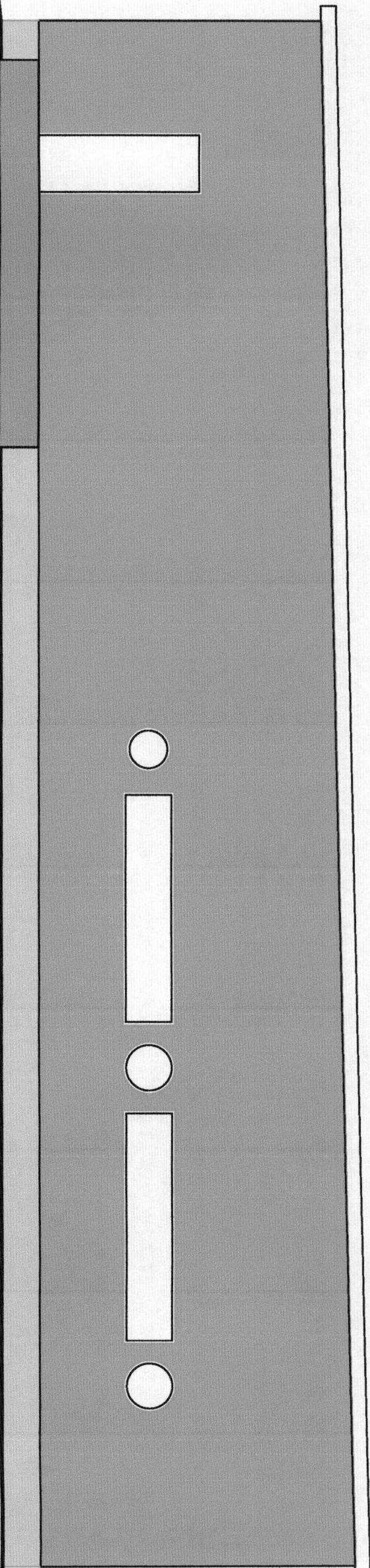
1 West ELEVATION

3/16" = 1'-0"



2 East ELEVATION

3/16" = 1'-0"



1168 EAST 1500

REVISIONS

Permit Documents

ISSUE DATE AUGUST 05, 20

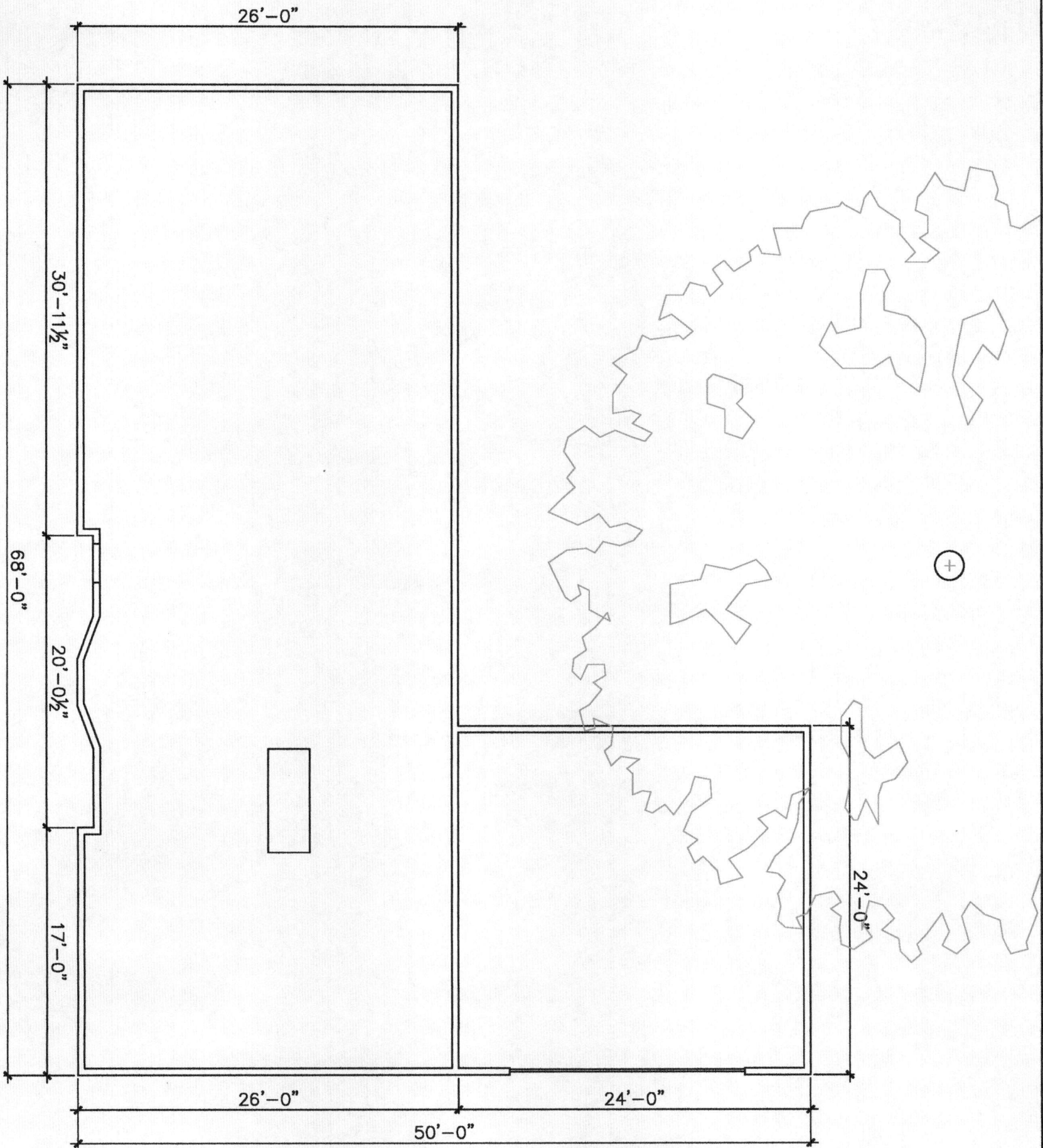
SCALE 3/16" = 1'-0"

PROJECT NO

DRAWN BY

TITLE

ELEVATIONS



1 EXISTING PLAN
1/8" = 1'-0"

1168 EAST 1500

REVISIONS

Permit Documents

ISSUE DATE AUGUST 06, 20

SCALE 1/8" = 1'-0"

PROJECT NO

DRAWN BY

TITLE

EXISTING PLAN

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

From: copl28 [<mailto:copl28@peoplepc.com>]

Sent: Tuesday, August 19, 2014 1:30 PM

To: City Hall email

Cc: copl28@peoplepc.com

Subject: Proposed Tofo Factory

Att: Lawrence Douglas County Planning Commission:

Sirs:

We are sending this e-mail in reference to the proposed "factory" that maybe built within an existing modular home at the North corner of 1175 and Haskell Avenue. We have been in this county and this area for over 36 years; we had a home-based business for many years on our property through the county; we are told that this project being proposed will not have anyone living on site, as we were required. We think that by allowing this gentlemen, (we do not want anyone to not be able to make a living), to move to this area, which is sub-ag, this will decrease the values of our homes and become a traffic problem for those living close by. County told us that we had to keep all equipment from view of the road-which we did, is this going to happen with this project? It does seem that by allowing this business to come into our area, that you, as the commission, will be setting our area up for more of these factories or any other type of business; quick shop, auto body anything that maybe wanted to be placed on property in this area. We did not move to the country over 36 years ago to see this happen. We also understand that ,if, this owner wants, he may add onto this existing building to have more room for his products along with hiring more employees. A lagoon maybe a possibility, if, septic is not able to hold the water from this product. Have you given thought to what could happen to any surrounding wells, if, this was to happen?We are not sure it would, but, what if it did cause damage to someones well, if, that is only water source? We appreciate your reading this and we, along with other neighbors are not wanting this project to take place in our area due to many of the mentioned items and of course if the base product of soybeans would be a pollution product; please leave our area free from this.

Thank you. Wayne and Nancy Othick

1144 E 1550 Road

Lawrence, Kansas

Mary Miller

From: Mary Miller
Sent: Tuesday, August 19, 2014 3:41 PM
To: Mary Miller
Subject: RE: Proposed Tofo Factory

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

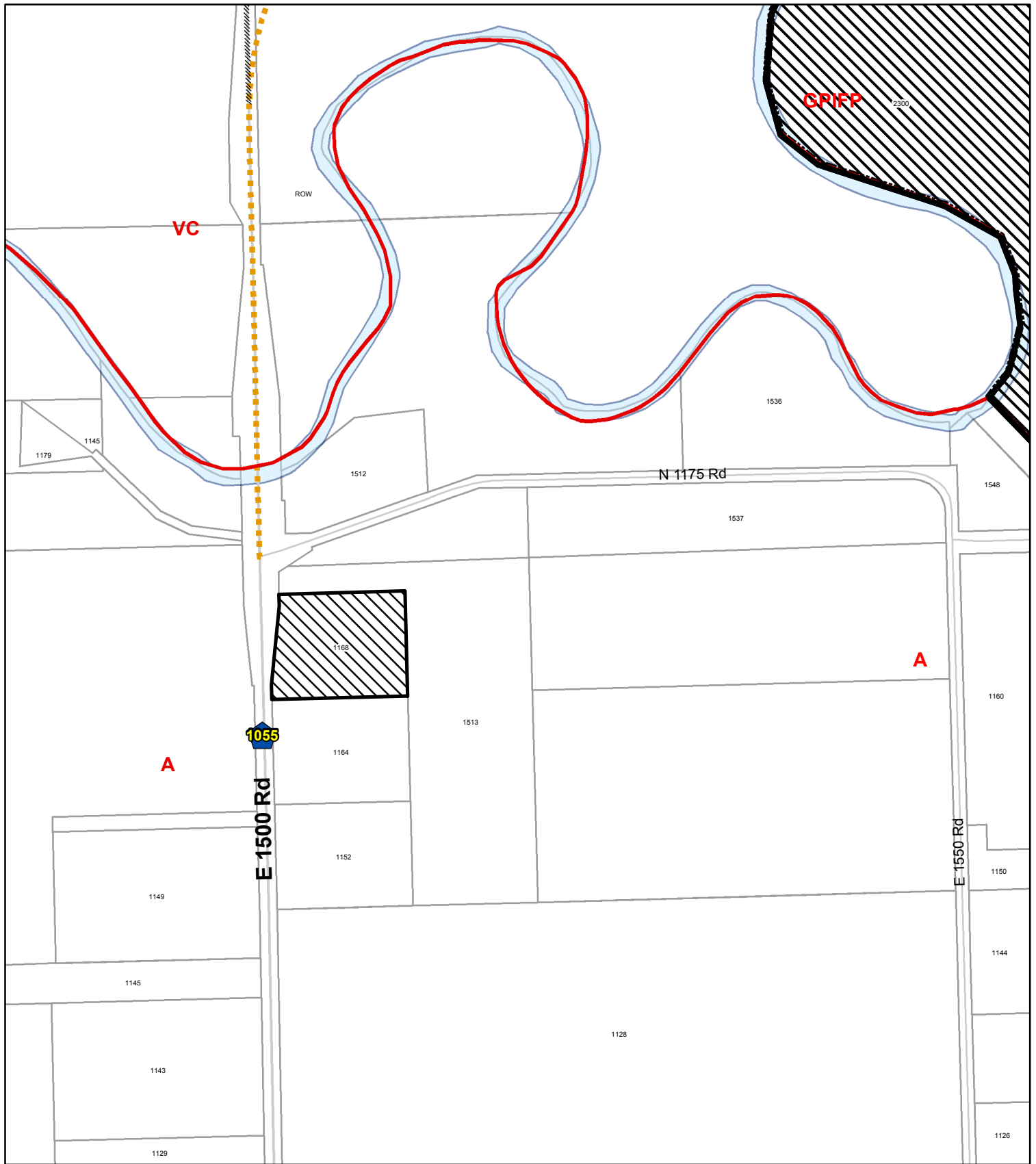
From: cop128 [mailto:cop128@peoplepc.com]
Sent: Tuesday, August 19, 2014 1:30 PM
To: City Hall email
Cc: cop128@peoplepc.com
Subject: Proposed Tofo Factory

Att: Lawrence Douglas County Planning Commission:

Sirs:


We are sending this e-mail in reference to the proposed "factory" that maybe built within an existing modular home at the North corner of 1175 and Haskell Avenue. We have been in this county and this area for over 36 years; we had a home-based business for many years on our property through the county; we are told that this project being proposed will not have anyone living on site, as we were required. We think that by allowing this gentlemen, (we do not want anyone to not be able to make a living), to move to this area, which is sub-ag, this will decrease the values of our homes and become a traffic problem for those living close by. County told us that we had to keep all equipment from view of the road-which we did, is this going to happen with this project? It does seem that by allowing this business to come into our area, that you, as the commission, will be setting our area up for more of these factories or any other type of business; quick shop, auto body anything that maybe wanted to be placed on property in this area. We did not move to the country over 36 years ago to see this happen. We also understand that ,if, this owner wants, he may add onto this existing building to have more room for his products along with hiring more employees. A lagoon maybe a possibility, if, septic is not able to hold the water from this product. Have you given thought to what could happen to any surrounding wells, if, this was to happen?We are not sure it would, but, what if it did cause damage to someones well, if, that is only water source? We appreciate your reading this and we, along with other neighbors are not wanting this project to take place in our area due to many of the mentioned items and of course if the base product of soybeans would be a pollution product; please leave our area free from this.

Thank you. Wayne and Nancy Othick
1144 E 1550 Road
Lawrence, Kansas



**CUP-14-00304: Conditional Use Permit for the Relocation
and Expansion of Central Soyfoods, LLC
Located at 1168 E 1500 Road**

Lawrence-Douglas County Planning Office
September 2014

 Subject Property



PETEFISH

PETEFISH, IMMEL, HEEB & HIRD, LLP
Attorneys at Law
— Est. 1915 —

John J. Immel*
Richard W. Hird**
Thomas H. Johnson**
Cheryl L. Denton**
Terence E. Leibold**
Steven J. Koprince***
Amanda M. Wilwert *

**Admitted in Kansas*

***Admitted in Kansas and Missouri*

****Admitted in Kansas and District of Columbia*

RECEIVED

SEP 22 2014

**City County Planning Office
Lawrence, Kansas**

842 Louisiana Street
P.O. Box 485
Lawrence, KS 66044-0485
(785) 843-0450 Tel
(785) 843-0407 Fax
www.petefishlaw.com
tleibold@petefishlaw.com

Olin K. Petefish (1912-2001)
Jeffrey O. Heeb (retired)

September 22, 2014

Via Hand Delivery

Lawrence-Douglas County
Metropolitan Planning Commission
6 East 6th Street
Lawrence, Kansas 66044

Re: September 22, 2014 Commission Meeting

Ladies and Gentlemen:

I am writing on behalf of Willis and Linda Long in opposition to the application for a Conditional Use Permit for Central Soyfoods LLC, at 1168 E. 1500 Road, which is Item No. 3 on the agenda for the September 22, 2014 Planning Commission Meeting.

Mr. and Mrs. Long's home is on the property located at 1164 E. 1500 Road, which is the property that is immediately adjacent to and south of the subject property. They also own a parcel that borders the subject property on the north and east. Mr. and Mrs. Long bought their property to make their home and they enjoy living in the County away from the businesses located in the City. Now they are faced with an industrial use being brought to their doorstep, and they oppose the County's allowing an industrial use being brought so close to residential properties and on such a small lot.

Mr. and Mrs. Long have several reasons for their opposition to the application for the conditional use permit, which will be addressed below, but their primary objection is that the application of Central Soyfoods does not comply with the County's Code, and cannot legally be approved.

1. **The application does not satisfy the requirements of the County's Code.**

Section 12-319-4.35 of the County's Code allows conditional use permits for Value-added Agricultural Businesses so long as the business meets certain location and development standards. Although Planning Staff has addressed some of these requirements, Planning Staff did not adequately address all of them. In particular, the Code requires that Value-Added Agricultural Businesses meet the following requirements:

- "Structures are required to be upgraded to meet commercial building code requirements if used for more than storage of raw agricultural materials." (12-319-4.35.b.)
- "Minimum Site Area: A minimum site area is consistent with the County adopted policy for agricultural uses." (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." (12-319-4.35.h.)

The problem with Central Soyfoods' application is that it seeks to convert a residential dwelling that is non-conforming and expand the building by over 60% and convert it to an industrial use without having to comply with the County's current zoning regulations. The law is clear that an owner cannot expand or change the use of a non-conforming property without complying with the current zoning regulations, and the Planning Commission should not set bad precedent by ignoring the change in the non-conforming use simply because the Staff likes the idea of a Value-added Agricultural business.

Commercial Building Codes. Because the application for the CUP proposes to manufacture tofu and tempeh at the location and not just to store raw materials, the County's Code requires that the structure be upgraded to meet commercial building codes. Although this is a requirement for approval of the CUP, the Planning Staff failed to address this requirement in its report and does not propose that this requirement be added to the conditions for approval. There is no indication anywhere in the Staff's report that the upgrade to the building must meet all the commercial building code requirements. Without this upgrade, then the CUP cannot be legally approved.

Minimum Site Area. In its report, Planning Staff acknowledges that the *Value Added Agriculture* section requires "a minimum site area consistent with the County adopted policy for agricultural uses." Instead of addressing the minimum site area for agricultural uses, the Planning Staff merely concludes that the Home Occupation standard of five acres should apply. The Staff does this even though Staff states that the Home Occupation standards should only apply if those standards are stricter. That is not the case here.

The County's adopted policy for minimum site areas is provided in the Height, Area and Bulk Requirements of the County's Code (Section 12-318). Under these Requirements, the minimum site area for agricultural uses is ten acres for property that takes access from a Principal Arterial Road. Because the property that is the subject of the CUP application takes access to a Principal Arterial Road and only has a site area of five acres, the property does not meet the minimum site area required by the *Value Added Agriculture* section. The Planning Staff states that the property is a vested parcel since it was created before 2006. Although this is correct, this does not allow the property owner to change the use of the property without complying with the current Height, Area and Bulk Requirements.

Because the property was created before 2006, the property is a non-conforming use of the property (See Section 12-320-2.01.b.—made non-conforming through the adoption of the Height, Area and Bulk requirements under section 12-318). Under Section 12-320-1, the non-conforming use “may be continued,” but “[n]o non-conforming building, structure, or use shall be changed, extended, enlarged or structurally altered” subject to four exceptions that do not apply to this case. Furthermore, under state law, if there is “any alteration” to a building or use in the building, then the zoning regulations currently in effect shall apply. K.S.A. 12-758(a).

In this case, Central Soyfoods proposes two major alterations that if allowed to be done would require the property to comply with the current zoning restrictions, including lot area restrictions. First, Central Soyfoods proposes to increase the size of the building from 1,756 square feet to 2,812 square feet—an increase of over 60%. Second, Central Soyfoods proposes to change the use of the property from residential to industrial. Because of these changes, the property loses its right to continue the non-conforming use and must fully comply with the Height, Area and Bulk requirements under section 12-318.

And as mentioned above, because the property takes its access to a Principal Arterial road, the Height, Area and Bulk requirements under section 12-318 requires the property to have a minimum area of ten acres. Because it does not, the CUP cannot be approved.

Road Access and Frontage.

Likewise, Central Soyfoods' application for the CUP must be denied because the property does not have sufficient road frontage.

Under the *Value Added Agriculture* section, the property “shall meet the minimum frontage requirements in accordance with the Access Management Regulations.” (12-319-4.35.h.) The Access Management Regulations requires a minimum of 1,320 feet of road frontage for properties that obtain their access to a Principal Arterial road. (Section 9-501.) The Access Management Regulations provide exceptions for residential properties (see Section 9-502 and 9-512) or in the situation in which the minimum frontage impairs the owner's access to public roads (see Section 9-507), but none of the exceptions applies to this case. The alteration of the building to allow for an industrial use is obviously not a residential use and the owner's access to the road is not impaired. Thus, the minimum road frontage of 1,320 feet is required. But Central

Soyfoods' parcel only has roughly 400 feet of road frontage, and therefore, the application does not comply with the Access Management Regulations or the *Value Added Agriculture* section.

Again, because Central Soyfoods is attempting to substantially change the use and size of the building, it must comply with the current zoning restrictions, including, the Height, Area and Bulk requirements under section 12-318. And for parcels that take their access to a Principal Arterial road, Section 12-318 requires a minimum of 1,320 feet of road frontage.

For these three reasons, the approval of Central Soyfoods' application for a CUP would be contrary to the *Value Added Agriculture* section and therefore, it should be denied.

2. The presence of the industrial use raises security issues.

Mr. and Mrs. Long also believe that approval of the CUP raises security issues that should be addressed. Currently, Mr. and Mrs. Long live next to a residential dwelling that currently can only have a single family occupying that home. If the CUP is approved there will be no one residing in the property, and the people who will have access to the property will be the 5+ employees of Central Soyfoods, delivery drivers, and others who need to access the property for purposes of operating an industrial site. Because Central Soyfoods states that these employees are all part-time, the likely turnover of those employees are higher than they would be if they were full-time employees. And this turnover prevents the neighbors from getting to know any of them so that they know who should be lurking around the property. The employees will be unknown to the neighbors, but those employees and drivers will all now have the opportunity to scope out neighboring residences. This is a great concern for Mr. and Mrs. Long who now have to be diligent in ensuring their safety from the employees of the Central Soyfoods' industrial site.

3. There is no adequate protection for drainage of the gray water.

I understand that Central Soyfoods' industrial process uses a significant amount of water. The Staff report does not make it clear whether Rural Water District No. 4 will allow a residential water meter to be used for industrial purposes. And because of the amount of water used in the industrial process, Central Soyfoods produces a significant amount of "gray water." Although I understand that Central Soyfoods' application did not include any method for the proper discharge of this waste water, the Planning Staff noted that a lagoon will have to be "located" as shown on the plan. Mr. and Mrs. Long believe that not only should a lagoon be "located" it must be constructed in a manner which prevents discharge of the gray water from the property. Mr. and Mrs. Long's property also borders the subject property on the North and east and the natural flow of water from the subject property flows toward the northeast corner of the subject property and onto Mr. and Mrs. Long's property. The Planning Commission cannot approve the CUP without adequate assurance that the discharge of the "gray water" will not be allowed to flow off of the subject property onto Mr. and Mrs. Long's property.

4. **The proposed industrial use is not compatible with the area.**

Planning Staff has determined that the industrial use proposed by Central Soyfoods is compatible with the residential and agricultural nature of the neighboring properties. Mr. and Mrs. Long are not opposed to Value-added Agricultural businesses being located in the County, but they are opposed to industrial business being located on tracts of only five acres right in the midst of residential properties. Industrial businesses ought to be located on tracts larger than five acres as required by current code. Because the tract owned by Central Soyfoods is only five acres, the industrial manufacture of soybean products should not be located there, and the CUP should be denied.

Mr. and Mrs. Long bought their property so that they could live in the County away from industrial uses. Yet, they are now faced with a proposed industrial use at their doorstep.

The Longs' property is significant for historical reasons. The Hoover Barn is located near the subject property. The Hoover Barn was part of the Douglas County farm home, which was also known as the Douglas County Poor Farm. Enclosed with this letter is a description of the history of the Poor Farm.

An industrial use is not compatible with the adjacent historical Hoover Barn and the location of the Douglas County Poor Farm. By allowing an industrial use at this location, the Planning Commission would set precedent for the location of other industrial uses in this area, and the risk of losing the use of the area as residential and agricultural is high, and the historical uniqueness of the property would be swallowed by the industrial use.

Furthermore, if the CUP were approved, because the subject property is non-conforming, it would likely never be allowed to be used for residential again, and the property would either remain industrial or vacant.

And Central Soyfoods, like so many other owners of industrial land, is not a good steward of the land it owns. During the time that Central Soyfoods owned the subject property, it did nothing to keep up the appearance of the property. Enclosed are photographs of the subject property compared to the Longs' property. The fact that Central Soyfoods has failed to adequately maintain the property is a bad sign of how it plans to maintain the property once the industrial use is placed in the property. Furthermore, Central Soyfoods failed to maintain its current property in Lawrence in a manner that complied with the FDA's regulations. On July 2, 2014, the FDA sent a warning letter to Central Soyfoods that noted "serious violations" of the FDA's regulations. A copy of the FDA's letter is enclosed with this letter.

The failure of Central Soyfoods to adequately maintain its current facility in compliance with law and its failure to maintain the subject property while it owned the property does not give Mr. and Mrs. Long any confidence that once a CUP was approved that Central Soyfoods would be a good neighbor. As everyone knows, actions speak louder than words, and Central Soyfoods' promises to comply with the CUP conditions should hold little weight when its

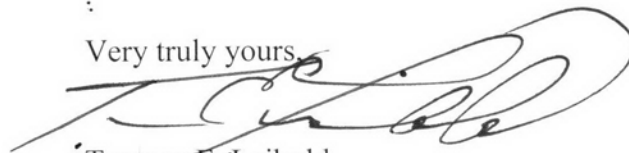
actions reveal an industrial company that is not concerned with complying with the law or ensuring its property is properly maintained. Because of these failures, the Longs are reasonably concerned by the presence of the industrial use so close to their home.

Finally on this issue, the presence of the industrial use will have a negative impact on the value of the residential properties near the industrial site: "[A]ccording to the Appraisal Institute[, a]n unkempt yard, . . . or having certain commercial facilities nearby, such as a power plant or funeral home, can reduce the value of surrounding homes by as much as 15%." Brian O'Connell, 7 Neighborhood Threats to Your Home's Value, found at <http://realestate.msn.com/7-neighborhood-threats-to-your-homes-value>. The subject property is located closed to the Longs' property. I enclose photographs of the property from the Longs' home. The close proximity of an industrial use may significantly reduce the value of the Longs' property.

Again, while the Longs do not oppose a Value-added Agricultural business in the County, the business should not be located near to residences and on such a small tract of land.

For all these reasons, Mr. and Mrs. Long oppose the Planning Commission's approval of the CUP of Central Soyfoods LLC, and they request that the Planning Commission deny the CUP.

Very truly yours,



Terence E. Leibold
Petefish, Immel, Heeb & Hird, L.L.P.

Enclosures

cc: Mr. and Mrs. Long

DOUGLAS COUNTY POOR FARM

I AM GOING TO TALK TO YOU TODAY ABOUT THE Douglas County Poor Farm. The English definition of the Poor Farm is the Almshouse, where the paupers are supported. There was even a Poor Commissioner.

SHOW MAP OF DOUGLAS COUNTY

Douglas County Commission minutes of January 30, 1866 show the purchase of the 110 acre farm from George Stern for \$2,200. Four days later plans for a "Farmhouse, two stories high and 24 feet wide by 36 feet long to be built on the county farm and used for a County Asylum for the poor" were noted. The building cost 3,760. A Superintendent was employed in March 1866 for the sum of \$1,200 a year for himself and his family.

It was suggested the Poor Farm be located two to four miles of the County seat because the Poor Commissioner made visits to the Poor Farm about once a week, but not regularly enough so that he could show up unexpectedly so he had an opportunity to see the real condition of the institution and the kind of care the inmates were receiving.

In 1877 according to a newspaper article in an account written by George Hollingbery who was unhappy with the obvious neglect and mistreatment of the inmates of this county home he stated "an aged Irishman died at the county farm and was buried unceremoniously in the county farm burying place which was situated on the bank of the Wakarusa River, in a narrow strip of land between the river and the road, and used as a cow pasture, said burying has long been without any protection from the desecrating root of pigs, or tramped of horses and cattle. This is another instance of the notorious want of decency that has long characterized the management of the asylum for the aged, sick and

friendless poor of the county. Because of this article a special meeting of the county commissioners was held in January 1888 to investigate the poor farm situation. They wanted all who had complaints against the present superintendent Mr. Dodge or against his management of the poor farm to come before him. Some felt that Mr. Dodge was a common drunkard, and a profane and brutal man, and such facts were well known. The pauper sick were fed on cornbread and fat meat. Others who were called upon to testify were Mr. Wheadon, Col. Sam Walker, Mr. Doolittle, ex-sheriff Carnen, William Marshall, Charles Gomer, Swan Johnson (a Swede), J. B. Walton, George Nell, H. D. Whitman and Dr. Morris. Several of those who testified thought Mr. Dodge was a good farmer but drank too much and they all felt he should be removed as superintendent of the home.

That's all we know about the Poor Farm from 1866 - 1911.

The "new" building, known as the Poor Farm, was accepted by the Board of County Commissioners from the builder on March 13, 1911. "Bids for the building were let on July 23, 1910." John H Petty was low bidder at \$22,944.00. The building contained 35 rooms.

In a 1918 Thesis written by Frances Maude Ellis it stated "That Douglas County provided everything and paid the superintendent and his wife \$50. a month, the cook \$20. the hired man \$25. a month making a total of \$95 a month for help in farming the 200 acres and for caring for the 20 inmates. But Douglas County had a new modern instillation in which it is easier to do the work for the inmates than in some of the other institutions.

The cost per year for caring for each inmate was \$206.89 which seems very low in comparison to other almshouses. A great deal of the food was produced on the farm and with the present system of management the inmates seem to receive good care with not a great deal of expense to the county.

Frances also researched 17 other poor farms in Kansas

On March 15, 1927, the main barn was destroyed by fire. A former resident names W. J. Welshimer had been dismissed earlier from the home and was convicted by a jury in the District Court on May 7, 1927 of arson in the fourth degree for the burning of the barn. When he appeared for sentence to the penitentiary, Welshimer made the following statement, 'you wouldn't keep me at the County Home, so I had to fix it so you would keep me some place.'

On April 13, 1944 the home was destroyed by fire. Eight of the 34 elderly residents of the County Home were burned to death- three of the dead were women. The 34-year old brick and frame structure was a total loss.

George Hoskinson, superintendent, and the six employees of thee home rescued the other 26 residents. Two elderly men sleeping in the basement, awakened Hoskinson and his wife about 1:30 a.m.- they found flames and smoke in the basement laundry room. Efforts with a fire extinguisher failed and the employees aided the aged residents in exiting the burning building.

Mrs. Hoskinson drove the truck to a nearby farm to call the fire department, when they arrived the roof was already on fire and it was too late.

Mr. Hoskinson stated that he helped one inmate out twice and she returned to to burning building and died in the flames.

I remember two of the people very well ~~who died in the fire~~. John Chance and Lizzie Raandolph – I remember well. Aunt Cora and Uncle Charlie Wheadon help one man after he was brought from the burning house. He broke loose and went back in to get a pair a rubber knee boots and he never returned.

County Welfare Director, Mrs. Mildred Watson and two members of the staff, Miss Cecelia Robinson and Mrs. Margaret Pierce, arranged temporary quarters in the community building for the displaced residents.

The county quickly bought a home at 1003 W 4th to be used as a "convalescent hospital." It was three stories tall and had a red tile roof.

After the fire county commissioners announced that a small farmhouse would be build 300 feet southwest of the burned home. The livestock and equipment was sold in a sale.

In 1953 Mr. and Mrs. Gerald Hoover purchased the farm.

The county had problems with the old house (that had been purchased on West 4th street) and on November 4, 1958 voters approved construction of a new County Nursing home. The old home was sold and purchased in 1982 by Medical Arts Center.

Funds from the sale of the old county farm house and the house on West 4th and a two year 1&1/2 mill levee financed a new \$280,000 Douglas County Home, which then became Valleyview Care Home at 2528 Ridge Court. It opened in April 1961.

I have pictures of the remaining buildings that were on the Poor Farm and still remaining today.

SHOW SLIDES

Hoovers House
County Well
2 pictures of cave

Chicken house
Garage
Barn

Distance from barn
Dynamite bldg.

Articles on table; Journal World 1946 along with other paper work.

*Anschutz library at KU. And the State of Kansas Historical
library in Topeka*

Home Inspections, Compliance, Enforcement, and Criminal Investigations Compliance Actions and Activities Warning Letters 2014

Inspections, Compliance, Enforcement, and Criminal Investigations

Central Soyfoods 7/2/14



Department of Health and Human Services

Public Health Service
Food and Drug Administration
Kansas City District
Southwest Region
8050 Marshall Drive, Suite 205
Lenexa, Kansas 66214-1524

Telephone: (913) 495-5100

July 2, 2014

WARNING LETTER

**UNITED PARCEL SERVICE
SIGNATURE REQUIRED**

CMS#433431

Mr. David T. Millstein
Central Soyfoods LLC
710 E. 22nd Street, Ste C
Lawrence, Kansas 66046-3118

Dear Mr. Millstein:

The Food and Drug Administration (FDA) conducted an inspection of your food processing facility, located 710 E. 22nd Street, Ste C, Lawrence, Kansas, from May 20 through May 21, and July 1, 2014. The inspection revealed serious violations of FDA's Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food (CGMP) regulation, Title 21, Code of Federal Regulations, Part 110 (21 CFR Part 110). These conditions cause the food products produced and stored at your facility, including Hickory Smoked, Firm (type), and Garlic Herb Tofu to be adulterated within the meaning of section 402(a)(4) [21 U.S.C. 342(a)(4)] of the Federal Food, Drug and Cosmetic Act (the Act) in that they have also been prepared, packed or held under insanitary conditions whereby they may have become contaminated with filth or may have been rendered injurious to health. You can find the Act and its implementing regulations at www.fda.gov¹.

CGMP violations:

1. You failed to take effective measures to exclude pests from the processing areas and protect against the contamination of food on the premises by pests, as required by 21 CFR 110.35(c) and evidenced by the following:

- a. What appeared to be a live roach was found on the leg of a food processing table inside the finished product packaging area.
- b. What appeared to be a live roach was found under a pallet of dried soybeans in the warehouse area of the plant.
- c. An apparent gnaw hole was found on a bag of Nigari (lot# 110415), an ingredient used in the production of your tofu.
- d. Apparent rodent droppings were found around bags of dried soybeans in the warehouse area. The warehouse is directly adjacent to the production area.

2) The facility and procedure used for cleaning and sanitizing of equipment has not been shown to provide adequate cleaning and sanitizing treatment as required by 21 CFR 110.35(d)

(5). Specifically, on May 20, 2014, after producing tofu your procedure for cleaning and sanitizing food contact equipment by using hot water only does not provide adequate cleaning and sanitizing. The inside of the smoker used to smoke tofu contained accumulated debris. The corners of a metal food cart found in the packaging area contained debris.

3) Failure to take apart equipment as necessary to ensure thorough cleaning as required by 21 CFR 110.80(b)(1), Specifically, You do not fully disassemble all food contact equipment after processing and before the start of manufacture. The barrels with the screens used to extract the soy milk from the soy pulp had accumulated food debris inside parts of the screen.

4) Failure to have smoothly bonded or well-maintained seams on food contact surfaces, to minimize accumulation of food particles and the opportunity for growth of microorganisms as required by 21 CFR 110.40(b). Specifically, on May 20, 2014, during the manufacture of hickory smoked, firm (type), and garlic herb tofu several food contact tables and a food cart were found to have unsanitary welds. Also in the production area inside the hopper and the holding vats for the soybeans prior to the cooking kettle had rough welds.

5) Failure to properly store equipment, remove litter and waste, and cut weeds or grass that may constitute an attractant, breeding place, or harborage area for pests, within the immediate vicinity of the plant buildings or structures as required by 21 CFR 110.20(a)(1). Specifically, during the inspection conducted on May 20, 2014, the following harborage areas were found inside and outside your facility:

- a. Several bags of soybean meal were stored outside on the loading dock area. One bag was split open and apparent rodent droppings were found in and around the spilled food product.
- b. The area around the loading/receiving dock and door is overgrown and weeds are not trimmed around the front and side of the facility. Unused equipment is also stored outside on the loading/receiving dock

6) Instruments used for measuring conditions that control or prevent the growth of undesirable microorganisms are not accurate as required by 21 CFR 110.40(f). Specifically, on May 20, 2014, during the inspection of your facility, the temperature of cooling tofu was taken and the thermometer used by your employee read **(b)(4)** degrees F. The temperature of the Tofu was also taken with an FDA calibrated thermometer and the temperature recorded was 135 degrees F.

The above items are not intended to be an all-inclusive list of the violations at your facility. It is your responsibility to ensure compliance with the applicable laws and regulations administered by FDA. You should take prompt action to correct these violations. Failure to do so may result in regulatory action being initiated by the FDA without further notice. These actions include, but are not limited to, seizure and/or injunction.

Section 743 of the Act (21 U.S.C. 379j-31) authorizes FDA to assess and collect fees to cover FDA's costs for certain activities, including re-inspection-related costs. A re-inspection is one or more inspections conducted subsequent to an inspection that identified noncompliance materially related to a food safety requirement of the Act, specifically to determine whether compliance has been achieved. Re-inspection-related costs means all expenses, including administrative expenses, incurred in connection with FDA's arranging, conducting, and evaluating the results of the re-inspection and assessing and collecting the re-inspection fees (21 U.S.C. 379j-31(a)(2)(B)). For a domestic facility, FDA will assess and collect fees for re-inspection-related costs from the responsible party for the domestic facility. The inspection noted in this letter identified noncompliance materially related to a food safety requirement of the Act. Accordingly, FDA may assess fees to cover any re-inspection-related costs.

Please respond in writing within fifteen (15) working days from your receipt of this letter. Your response should outline the specific actions you are taking to correct these violations and prevent their recurrence. If you cannot complete all corrections before you respond, please explain the reason for your delay and state when you will correct any remaining violations.

Your written response should be sent to the Food and Drug Administration, Attention: Danial S Hutchison. If you have questions regarding any issues in this letter, please contact Mr. Hutchison at (913) 495-5154 or Danial.Hutchison@fda.hhs.gov.

Sincerely,
/S/
Cheryl A. Bigham
District Director

Page Last Updated: 07/14/2014

Note: If you need help accessing information in different file formats, see Instructions for Downloading Viewers and Players.

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[Website Policies](#)

U.S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993
Ph. 1-888-INFO-FDA (1-888-463-6332)
Email FDA



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U.S. Department of Health & Human Services

Links on this page:

1. <http://www.fda.gov/>

CENTRAL SOYFOOD PROPERTY -NOT MAINTAINED FOR 4 YEARS





CENTRAL SOYFOOD PROPERTY -NOT MAINTAINED FOR 4 YEARS
Photo taken Sept.15, 2014 3 days after trying to shame owners
into mowing yard before meeting

Long Residence 9/12/2014



CENTRAL SOYFOOD 9/12/2014



Long Residence next door

1160 E 1500 Rd

1160 E 1500 Rd

Lawrence, Kansas

Street View - May 2011

CENTRAL SOYFOOD Property 2011









THE FOLOWING IS FROM MIKE MANLEY, 1548 NORTH 1175 ROAD, LAWRENCE KANSAS 66046,

REGARDING CENTRAL SOYFOODS LLC CONDITIONAL USE PERMIT APPLICATION, SUBJECT TO PUBLIC HEARING 9/22/14 AS CUP-14-00304:

FACTS WE KNOW ABOUT DAVID T. MILLSTEIN (President of Central Soyfoods) obtained using GOOGLE:

ISSUE # 1: FDA Warning Letter to Central Soyfoods, citing Serious Violations, July 2014.

A warning letter from the Kansas City District FDA office, dated July 2, 2014, was sent to Central Soyfoods LLC and is an item of public record. The letter cites numerous "serious violations" of FDA Good Manufacturing Processes for manufacturing of food for human consumption. Full text can be found at the following website.

<http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2014/ucm404543.htm>

I am concerned, regardless of whether all violations cited below have been/will be found by the FDA to be corrected, that these types of inherent issues will follow the Central Soyfoods facility from their current location within the city limits, out to the proposed relocation site at 1168 E. 1500 Road. The rodent and health issues cited by the FDA are of concern to myself and others I have spoken with in our rural residential neighborhood.

Below are excerpts of the exact text of the FDA letter (font sizes modified for emphasis).



Department of Health and Human Services

Public Health Service
Food and Drug Administration
Kansas City District
Southwest Region
8050 Marshall Drive, Suite 205
Lenexa, Kansas 66214-1524

Telephone:(913) 495-5100

July 2, 2014

WARNING LETTER

**UNITED PARCEL SERVICE
SIGNATURE REQUIRED**

CMS#433431

Mr. David T. Millstein
Central Soyfoods LLC
710 E.22nd Street, Ste C
Lawrence, Kansas 66046-3118

Dear Mr. Millstein:

The inspection revealed serious violations of FDA's Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food (CGMP) regulation

in that they have also been **prepared, packed or held under insanitary conditions whereby they may have become contaminated with filth or may have been rendered injurious to health.**

- 1. You failed to take effective measures to exclude pests from the processing areas and protect against the**

contamination of food on the premises by pests, as required by 21 CFR 110.35(c) and evidenced by the following:

a. What appeared to be a **live roach** was found on the leg of a **food processing table** inside the finished product packaging area.

b. What appeared to be a **live roach** was found under a **pallet of dried soybeans** in the warehouse area of the plant.

c. An **apparent gnaw hole** was found on a **bag of Nigari** (lot# 110415), an ingredient used in the production of your tofu.

d. **Apparent rodent droppings** were found **around bags of dried soybeans** in the warehouse area. The warehouse is directly adjacent to the production area.

2) The facility and procedure used for cleaning and sanitizing of equipment has not been shown to provide adequate cleaning and sanitizing treatment as required by 21 CFR 110.35(d)(5). Specifically, on May 20, 2014, after producing tofu your procedure for cleaning and sanitizing food contact equipment by using hot water only does not provide adequate cleaning and sanitizing. The **inside of the smoker used to smoke tofu contained accumulated debris**. The corners of a metal food cart found in the packaging area contained debris.

3) **Failure to take apart equipment as necessary to ensure thorough cleaning** as required by 21 CFR 110.80(b)(1), Specifically, You do not fully disassemble all food contact equipment after processing and before the start of manufacture. **The barrels with the screens used to extract the soy milk from**

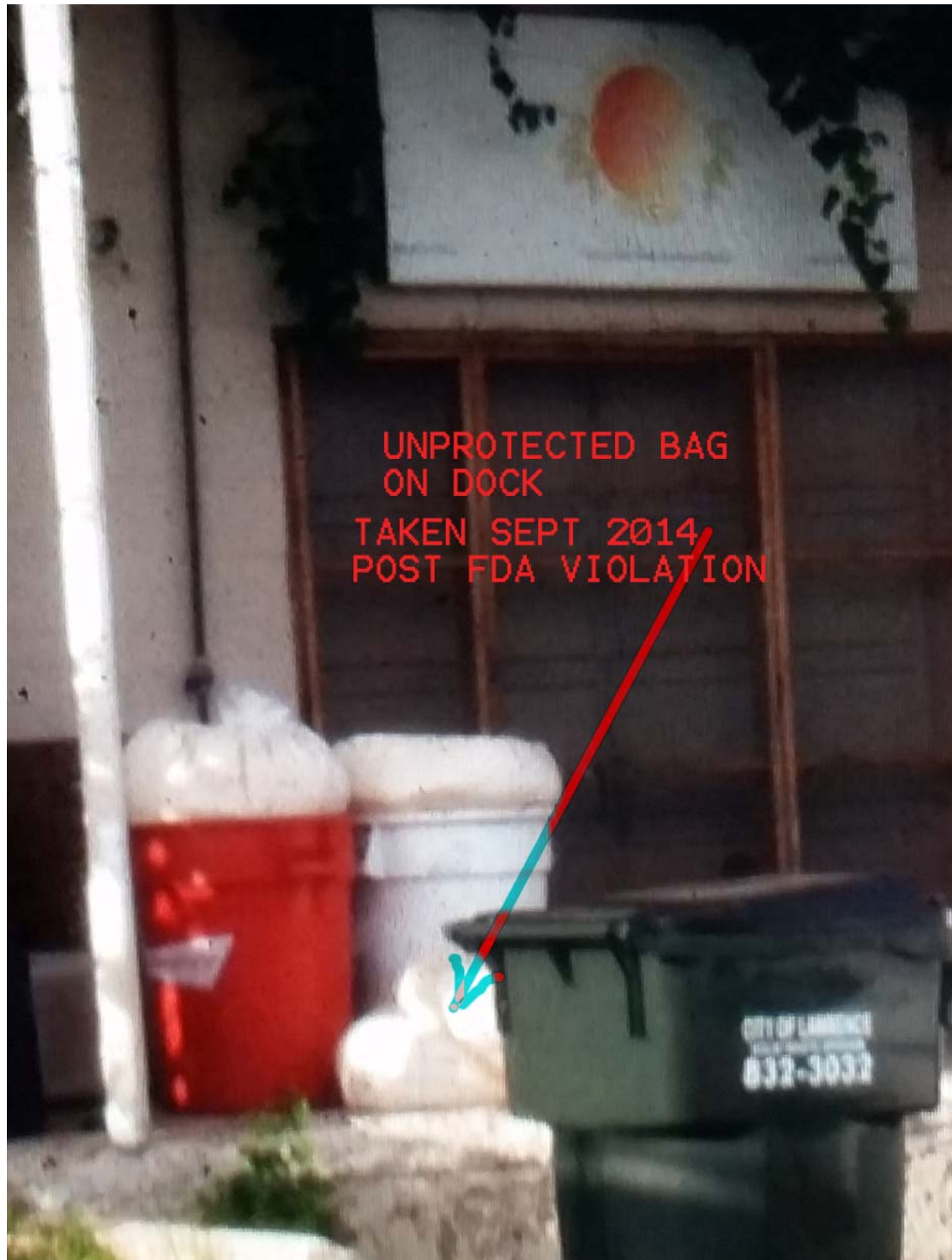
the soy pulp had accumulated food debris inside parts of the screen.

4) Failure to have smoothly bonded or well-maintained seams on food contact surfaces, to minimize accumulation of food particles and the opportunity for growth of microorganisms as required by 21 CFR 110.40(b). Specifically, on May 20, 2014, during the manufacture of hickory smoked, firm (type), and garlic herb tofu several food contact tables and a food cart were found to have unsanitary welds. Also in the production area inside the hopper and the holding vats for the soybeans prior to the cooking kettle had rough welds.

5) **Failure to properly store equipment, remove litter and waste, and cut weeds or grass that may constitute an attractant, breeding place, or harborage area for pests,** within the immediate vicinity of the plant buildings or structures as **required** by 21 CFR 110.20(a)(1). Specifically, during the inspection conducted on May 20, 2014, the following harborage areas were found inside and outside your facility:

a. Several bags of soybean meal were **stored outside on the loading dock area. One bag was split open and apparent rodent droppings** were found in and around the spilled food product.

(NOTE: PHOTO BELOW WAS TAKEN AT CENTRAL SOYFOODS FACILITY IN SEPTEMBER 2014, AFTER THE FDA WARNING LETTER. ARE THESE BAGS OF SOYBEAN MEAL STILL BEING STORED OUTSIDE ON THE LOADING DOCK AREA?)



b. The area around the loading/receiving dock and door is overgrown and weeds are not trimmed around the front and side of the facility. Unused equipment is also stored outside on the loading/receiving dock

6) Instruments used for measuring conditions that control or prevent **the growth of undesirable microorganisms** are not accurate as required by 21 CFR 110.40(f). Specifically, on May 20, 2014, during the inspection of your facility, the temperature of cooling tofu was taken and the thermometer used by your employee read **(b)(4)** degrees F. The temperature of the Tofu was also taken with an FDA calibrated thermometer and the temperature recorded was 135 degrees F.

The above items are not intended to be an all-inclusive list of the violations at your facility.

Sincerely,
/S/
Cheryl A. Bigham
District Director

ISSUE # 2: Long-term Neglect of property at 1168 E 1500 Road

Central Soyfoods acquired the property at 1168 E 1500 Road in 2010. The first set of photos, below, were obtained using GOOGLE STREET VIEW and were dated September 2011. The previous owner of the property was an elderly lady who mowed the property weekly and had pride in her property and consideration for the overall upkeep of our neighborhood (THE ADVANTAGE OF HAVING A HOMEOWNER PRESENT ON THE PROPERTY).

After acquisition by Central Soyfoods/Millsteins, it can already be seen that mowing became infrequent and the property began to be overrun by weeds and brush. Because tall weeds provide a breeding ground for rodents -- plus the snakes that feed on them -- these creatures have increased dramatically causing a health and safety hazard for their neighbors.



THE SECOND SET OF PHOTOS, BELOW, WERE TAKEN SEPTEMBER 12, 2014, BY MIKE MANLEY. THE CENTRAL SOYFOODS PROPERTY IS SHOWING THE LONG-TERM EFFECTS OF SEVERAL YEARS OF NEGLECT AND ABSENTEE OWNERSHIP. THE LONG'S HAVE MOWED THE CENTRAL SOYFOODS PROPERTY (FOR FREE -- MULTIPLE TIMES) IN AN ATTEMPT TO KEEP IT FROM APPEARING ABANDONED AND REFLECTING BADLY ON THEIR ADJACENT RESIDENCE AND ACREAGE.



THE LONGS HAVE BEEN APPROACHED ABOUT 50 TIMES OVER THE PAST 4 YEARS BY STRANGERS, LOOKING FOR CHEAP REAL ESTATE, ASKING WHO OWNS THE APPARENTLY ABANDONED PROPERTY NEXT DOOR.

THE 3-4 YEAR DURATION OF THESE DETERIORATING CONDITIONS IS THE UNFORTUNATE OUTCOME OF ABSENTEE OWNERSHIP AND NEGLECT OF PROPERTY. AS THE MILLSTEINS ARE ATTEMPTING TO REQUEST AN EXCEPTION TO GOOD PLANNING PROCEDURES -- THEY SHOULD HAVE AT LEAST TRIED TO BE GOOD NEIGHBORS BY KEEPING THE PROPERTY MOWED AND MAINTAINED,

RATHER THAN ALLOWING IT TO DETERIORATE TO THE POINT THAT IT'S OBVIOUS NO ONE LIVES THERE. THEIR PROPERTY HAS BECOME AN EYESORE IN OUR OTHERWISE PLEASANT RURAL RESIDENTIAL AREA.

I find it curious that the above letter from the FDA dated July 2 , 2014 stated the following as a violation at Central Soyfoods current location at 710 E. 22nd Street:

The area around the loading/receiving dock and door is overgrown and weeds are not trimmed around the front and side of the facility.

To Summarize: THE Central Soyfoods/MILLSTEIN PROPERTY HAS HAD LITTLE OR NO MAINTENANCE FOR 3 YEARS. I REALIZE YOU MAY NOT HAVE SEEN THIS COMPELLING EVIDENCE OF NEGLECT AND DERELICTION WHEN YOU INITIALLY LOOKED AT THE SOYFOODS PROPOSAL. IT SPEAKS VOLUMES ABOUT THE IMPORTANCE OF BEING A HOMEOWNER AND RESIDENT. I HAVE A LOT OF PRIDE IN OUR NEIGHBORHOOD AND I HOPE YOU WILL CONSIDER THE LASTING IMPACT YOUR DECISION WILL HAVE ON OUR NEIGHBORHOOD-- GIVEN THE HISTORY OF THIS INDIVIDUAL'S NEGLECT OF THE PROPERTY AND DISREGARD FOR THE RESULTING IMPACT ON ADJACENT RESIDENTS AND THE GENERAL NEIGHBORHOOD. WHEN I HEAR CHILDREN GIVE EXCUSES FOR THEIR BAD BEHAVIOR -- ALL I HEAR IS " BLAH BLAH BLAH BLAH BLAH -- DOG ATE MY LAWNMOWER -- BLAH BLAH BLAH " . PICTURES ARE WORTH A THOUSAND BLAH BLAH BLAHS. -- ACTIONS HAVE CONSEQUENCES and I BELIEVE THEY HAVE MADE THEIR BED AND NOW THEY HAVE TO SLEEP IN IT. - SORRY ABOUT THE SPEECH - THERE'S MORE.

I Attempted to shame Susan Millstein into mowing her yard and gave her 4 days (I would have been over there in 30 minutes with a push mower). Anyway below is just another picture taken Sept 15, 2014. -- AS OF THIS WRITING I AM NOT SURE IF THEY HAVE HAD A DEATH BED CONVERSION AND HAVE MOWED THEIR PROPERTY THE DAY BEFORE THEIR MEETING --FIGURING YOU HAVE NOT HAD TIME TO INSPECT THEIR PROPERTY.



CENTRAL SOYFOOD PROPERTY -NOT MAINTAINED FOR 4 YEARS
Photo taken Sept.15, 2014 3 days after trying to shame owners
into mowing yard before meeting

THIS PHOTO IS WHAT THE LONGS HAVE HAD TO LOOK AT FOR 4 YEARS. GREAT BREEDING GROUNDS FOR RODENTS/SNAKES (who eat the rodents). Unfortunately GREEN IS NOT CLEAN (in this case).



One more quote from the FDA

Failure to properly store equipment, remove litter and waste, and cut weeds or grass that may constitute an

**attractant, breeding place, or
harborage area for pests, within the
immediate vicinity of the plant buildings or structures as
required** by 21 CFR 110.20(a)(1).

THE PREVIOUS FACTS ARE ALL PUBLIC KNOWLEDGE AND I BELIEVE SHOULD BE
CONSIDERED WHEN MAKING AN IRREVOCABLE DECISION ABOUT THE FUTURE
OF OUR NEIGHBORHOOD -- WHICH WE ARE ALL PROUD OF. MOST OF THE
RESIDENTS OF THE IMMEDIATE NEIGHBOORHOOD HAVE LIVED HERE ON
AVERAGE 25-35 YEARS AND HAVE NEVER SEEN THIS LEVEL OF NEGLECT.

**HAVE PRIDE IN
LAWRENCE-- PLEASE --
VOTE NO!**

PART 2 --(COMMON SENSE)

THE PSYCHOLOGICAL WAR ON THE WOMEN OF OUR COMMUNITY.

To understand our the mindset of the rural homeowner please read Truman Capote's book "IN COLD BLOOD". Strange people creep the Bejesus out of some of our residents. -- We want neighbors we can trust, not transient/unknown workers who rotate in and out. Having a resident neighbor is an infinitely better situation -- as they are close by and have concern about your well being and are there at night if you have an emergency -- having a non-resident based business will prevent this sense of security -- which can only be accomplished by have a long term resident -- who genuinely cares about you.

QUESTIONS:

1. Will the employees be Drug Tested Frequently and have a Criminal background check. -- Our lives and sense of security depend upon this. -- PLEASE PUT YOUR SELF IN OUR POSITION AND HAVE SOME CONSIDERATION ABOUT HOW YOU WILL BE DESTROYING OUR NEIGHBORHOOD.

2. When Central Soyfoods first bought the residence they had some of their employees living in the house. One night Willis Long was walking on his property only to discover -- strange people trespassing on his property by his barn. -- AGAIN if this was his wife -- the phrase "CREEPS THE BEJESUS OUT OF ME" would apply.

3. If the Central Soyfood Property is zoned for a business -- can it ever be a residence again-- Please be positive about this. Otherwise you will PERMANENTLY RUIN OUR NEIGHBORHOOD.