

PLANNING COMMISSION REPORT
Regular Agenda – Public Hearing Item
Joint Hearing with Baldwin City Planning Commission

PC Staff Report
9/22/14

ITEM NO. 1 CONDITIONAL USE PERMIT FOR CREEKWOOD LAWN; 1753 N 700 RD (SLD)

CUP-14-00295: Conditional Use Permit request for a Truck Storage Facility for Creekwood Lawn, located at 1753 N 700 Road. Submitted by Shelby Franklin, property owner of record. *Joint meeting with Baldwin City Planning Commission.*

STAFF RECOMMENDATION: Staff recommends approval of a Conditional Use Permit for a Truck Storage Facility and forwarding of it to the County Commission with a recommendation for approval, based upon the findings of fact presented in the body of the staff report, and subject to the following conditions:

1. Provision of a note on the face of the site plan stating, "The Conditional Use Permit shall expire on December 31, 2019."
2. The applicant shall obtain from Douglas County a building permit as a condition of continued operation.
3. The applicant shall work with the Douglas County Public Works Office to widen the driveway per County specifications.
4. The applicant shall obtain from Douglas County a local floodplain development permit.

Attachments:

Attachment A: Area Map

Attachment B: Site Plan

Attachment C: Floodplain Boundary Map

Reason for Request: *To store my equipment/trucks for my business. [Previous application] I failed to get the information in on time and last year's CUP expired.*

KEY POINTS

- Site includes existing building used for storing equipment related to business activity.
- Conditions of approval of original 2003 CUP not met including execution of a local floodplain development permit and historic environs review.
- Historic Environs review no longer applicable. State law was revised in July 2013 eliminating requirement for review of project impact on historic property for properties located in the environs of a listed property.
- Local Floodplain Development Permit is required for this property. Applicant is working with County staff.

DESCRIPTION OF USE

This property is used for storage of trucks, equipment and materials related to a landscape business. Site activity includes some exterior storage. The purpose of this request is to permit the storage of vehicles and equipment as allowed, with a Conditional Use Permit, in the A (Agricultural) District.

The existing building was originally constructed as an agriculture building and exempt from building inspection review. The applicant has stated the intent to construct a residence at this location and

the building would then be an accessory building to the residence. To date a residence has not been constructed at this site.

This business could potentially operate as a home occupation if the applicant resided at this location. Currently this building is considered an accessory structure with no primary use (residence).

ASSOCIATED CASES/OTHER ACTION REQUIRED

- CUP-12-17-02: Creekwood Lawn Company Storage Shed
 - PC approved on 1/22/03
 - BOCC approved on 2/24/03
 - Conditions of approval not met, application expired on 2/24/2004.
- CUP-12-00030: Conditional Use Permit for a *Truck Storage Facility* for Creekwood Lawn
 - PC approved on 8/20/12
 - BOCC approved on 9/13/12
 - Conditions of approval not met, application expired on 9/13/2013
- Board of County Commissioner's approval of this Conditional Use Permit, CUP-14-00295
- Release of Conditional Use Permit by the Douglas County Zoning and Codes Office

PUBLIC COMMENT

No public comment was received prior to the printing of this staff report.

I. Zoning and uses of Properties nearby

Current Zoning and Land Use:	A (Agricultural) District; existing building and exterior storage on 3.87 acres.
Surrounding Zoning and Land Use:	A (Agricultural) District in all directions. Rural residential homes located along township roads. Surrounding uses include: <ul style="list-style-type: none">• Public school building and Vinland Fairgrounds located to the northwest.• Rural residential homes along the north side of N 700 Road to the north and along E 1750 Road to the south.• Agricultural field to the east and west.

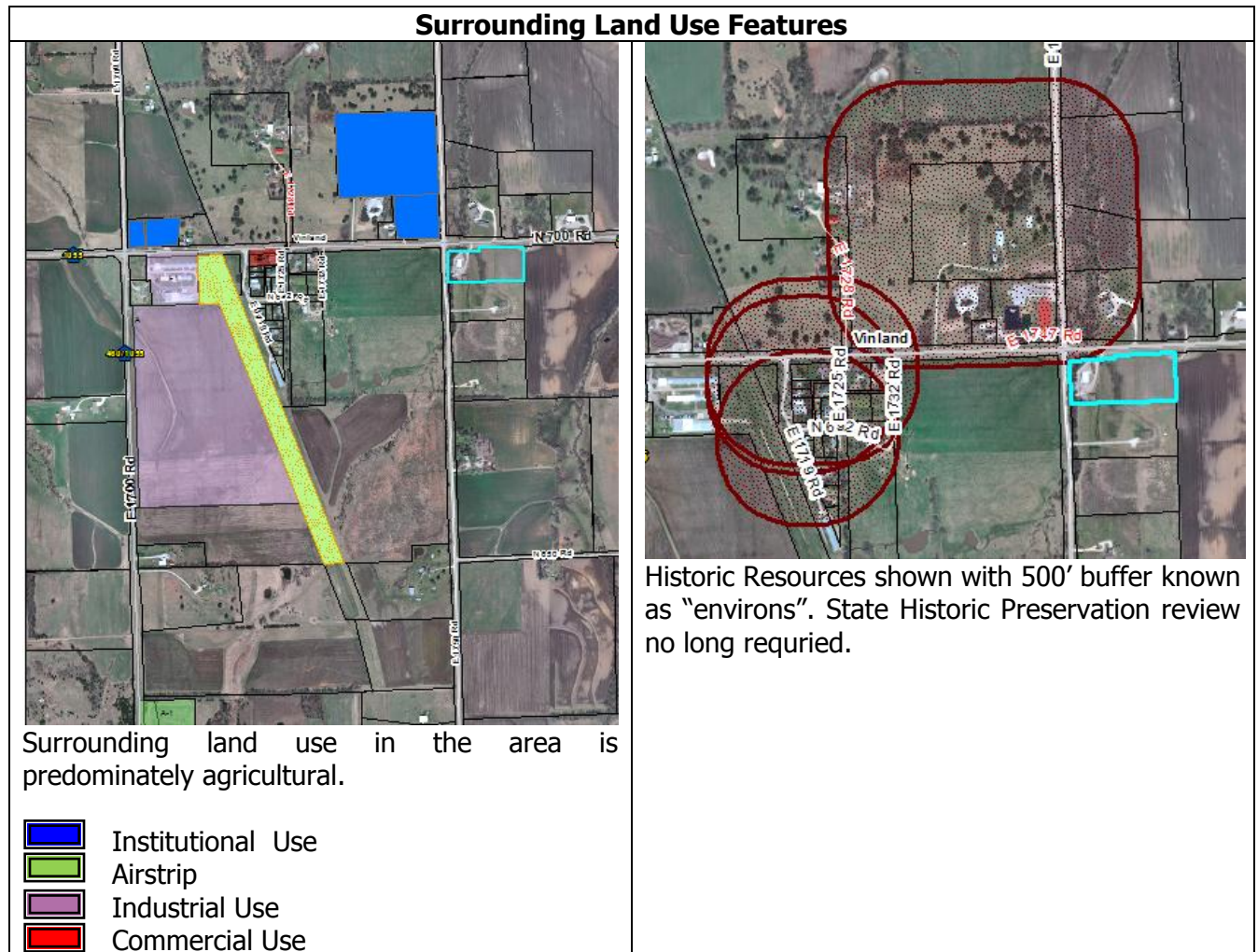
Staff Finding – this property is surrounded by A (Agricultural) zoning. Surrounding uses include both residential and non-residential uses.

II. CHARACTER OF THE AREA

The property is located within 3 miles of Baldwin City and within the unincorporated area of the Vinland community in Douglas County. This unincorporated portion of Douglas County includes predominantly rural residences clustered along the County roads. McFarlane Aviation, a manufacturing business, a private grass air strip, and several other non-residential uses are also located in the immediate area. Several properties in the area are of historic significance.

The subject property is located within the proximity of a designated historic building (the Vinland Fair Grounds Exhibit Building). Changes in State regulations no longer subject this property to review by the State Historic Preservation Office. Previous approval required historic design review by

the State Historic Preservation Office as a condition of approval. Based on changes to State law this condition is no longer applicable to this request.



Additionally, the property is encumbered by the Coal Creek Tributary floodplain. The applicant is working with county staff to meet the requirements for a local floodplain development permit.

Staff Finding – This portion of Douglas County includes a rich variety of uses and activities. The area is within 3 miles of Baldwin City but is identified as Vinland, an unincorporated town in Douglas County. The overall character of the area is rural with a mix of rural residential homes on smaller lots and larger agricultural tracts in the immediate area. The area includes several historically listed buildings and properties as well as extensive floodplain generally located west of E 1750 Road.

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

Applicant's response: *"The property is perfectly suitable for my needs."*

A Conditional Use Permit (CUP) does not change the base, underlying zoning. The suitability of the property for agricultural or rural residential use will not be altered. The subject property is located within the community of Vinland and within 3 miles of Baldwin City. The subject property area is

zoned for agricultural uses. The applicant has expressed a desire to ultimately construct a residence in this location. If or when that happens, a Conditional Use Permit for Truck Storage would no longer be required since the use could qualify for home occupation registration

The A (Agricultural District) is the predominant zoning district for the unincorporated portions of Douglas County. The purpose of this district is intended to *"provide a full range of agricultural activities, including processing and sale of agricultural projects raised on the premises, and at the same time, to offer protection to agricultural land from the deprecating effect of objectionable, hazardous and unsightly uses. The district is also intended for purposes of protecting watersheds and water supplies to provide for spacious development, to protect forest areas, and scenic areas, and to conserve fish and wildlife, to promote forestry, growing of natural crops and grazing and to prevent untimely scattering of more dense urban development."* Section 12-306-1.

This district allows a variety of land uses including traditional agricultural uses, but also detached residential structures and *"Accessory open or enclosed storage of farm materials, products or equipment, accessory farm buildings, including barns, stables, sheds, tool rooms, shops, bins, tanks, and silos, and other accessory buildings and uses, including but not limited to accessory private garages, servants' quarters, guest houses, swimming pools, home barbecue grills, customary church bulletin boards or identification signs not exceeding 30 square feet in area for permitted public and semi-public uses, accessory storage, and accessory off-street parking and loading spaces."* Section 20-306-2.19.

In this application the building is not accessory structure as there is no primary structure currently built on this site. The building is considered to be a primary use. As a commercial use Truck Storage is allowed in the A (Agricultural) District subject to a Conditional Use Permit.

The applicant has stated multiple times that the long term plan for the property is as a future residence with the business qualifying and registering as a home occupation. To date no building permit has been requested for residential construction on this site. The subject property is 3.8 acres and consistent with the rural residential development pattern for parcel sizes in this area.

This property has a history of non-compliance and complaints from adjacent property owners regarding exterior storage of materials. The 2012 CUP application was revised to add landscaping along the south and east sides of the property to increase the buffer between the subject property and the adjacent residential uses. The scope of the business has expanded and contracted since 2002 when the building was constructed. At one time, the applicant had employees that were dispatching from this site, leaving their personal vehicles at site and taking job vehicles to their destinations. This clearly commercial activity was included as part of the violations and complaints. There are no current complaints regarding this property.

Previous review of this application found the existing zoning to be suitable to the area. The *Truck Storage* use was approved in 2003 and 2012 subject to conditions. Conditions of approval were not met and the approvals expired.

The expectation of this use was that a residence would be constructed as the primary use and the business activity would become secondary. Active residential use is anticipated to curtail complaints because the applicant would be residing at this location.

Staff Finding – Approval of the Conditional Use Permit does not alter the base zoning district. The existing A (Agricultural) District is suitable for this location.

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

The subject property includes a 60' by 40' building constructed in 2002 but no residence. The structure was constructed as an agricultural building; therefore no building permit was issued. The original CUP was approved by the Planning Commission on January 22, 2003. The County Commission approved the CUP on February 24, 2003. The original conditions of approval were not met and thus expired. A second CUP was considered in 2012 with approval. This application also included conditions that were not met and thus expired. The applicant has operated a business from this location [storage of equipment and materials] from this site since 2002. In addition to the enclosed building, exterior storage of material is located along the west property line. City and County staff have worked with the applicant to establish an area outside of the regulatory floodplain for this exterior storage.

This application represents the final attempt by County Zoning staff to implement full compliance with this property owner.

Staff Finding – The subject property is developed with an existing building used for storage of equipment related to a landscape business. The County Zoning Regulations were adopted in 1966, this property has been zoned "A (Agricultural)" since that time.

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

Applicant's Response: "*Nothing will affect nearby properties.*"

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 Section 12-319 Supplemental Use Regulations – Conditional Uses – Temporary Uses.

-4.24 Conditional Uses Enumerated, of the County Zoning Regulations listed as a "*Truck Storage Facility*" use. The Regulations describe a *Truck Storage Facility* as follows:

12-319-4.24. Truck Storage Facility ancillary uses, open or enclosed, provided that wholesale and retail sales not be permitted on the premises. Open storage must meet the minimum yard requirements of the district in which it is located and must be screened by a view reducing wall, fence or landscaping material from adjacent public roads and adjoining properties.

The existing building has been used for equipment storage of the applicant's lawn service business. The plan shows an area for external storage of mulch and an area for vehicle (employee) and equipment storage along the west side of the property.

Notes on the face of the plan address the limitation of the use to the storage of equipment and materials for the lawn care business. Storage of equipment for other purposes or businesses is prohibited. This plan shows screening along the south side to address the standards of the use stated above. The existing vegetation along the west property line provides adequate screening. This area also includes floodplain. The site plan shows that the storage areas are outside of the

regulatory floodplain. The applicant is working with County staff to complete the local Floodplain Development Permit required for this property.

Approval of the CUP will provide an opportunity for the applicant to be compliant with the minimum zoning regulations and standards. As a Conditional Use Permit, the issues of screening and buffering to reduce undesirable impacts such as noise and view on residential properties to the south can and should be provided and maintained.

Staff Finding – Approval of this request will not detrimentally impact adjacent property owners so long as adequate screening is maintained and encroachment into the regulatory floodplain with exterior storage of materials is avoided.

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: *"There is no destruction of value in my property. I am just following protocol for having a building on my property."*

The purpose of this criterion is to compare the effect of denial of the request on the public health, safety and welfare to the effect of denial on the individual landowner. If the request were denied, the existing business would be required to relocate to a commercial or industrially zoned location. The impact to the existing building would be significant in that the investment could not easily be reused except as a strictly agricultural use or with the construction of a residence as a primary use.

Approval of the subject property neither directly benefits the community nor harms the public health, safety and welfare, as the underlying A (Agricultural) zoning district is unchanged. Approval allows an existing business to remain in Douglas County operating from its current location. The impact of the use for storage of trucks and lawn equipment is comparable to other similar requests for *Truck Storage Facilities*.

Staff Finding – There is no significant gain to the public's health, safety and welfare by permitting the continued use as a Conditional Use Permit. The underlying A (Agricultural) zoning remains unchanged. Denial of the request would prevent the applicant from continuing to operate a business from this location. Approval of the request benefits the applicant by allowing continued operation the business.

VII. CONFORMANCE WITH THE COMPREHENSIVE PLAN

Applicant's Response: *"I still plan on building a home on my property"*

This property is not located within the Baldwin City Urban Growth Boundary. It is, however, located within 3 miles of the city limits of Baldwin City. The comprehensive plan recommends that agricultural uses continue to be the predominant land use within the areas of the county beyond the designated urban growth areas. *Horizon 2020* encourages the support of local businesses to *"ensure their retention and to facilitate expansion plans for the future."* Industrial uses are directed to urban areas where services such as sewer, water and transportation options are available. *Horizon 2020* does not address conditional use permits as a tool to achieve specific policies. This use does not have a high demand for water and sewer services as a storage facility.

Staff Finding – The Comprehensive Plan recommends that uses in the rural area be limited to those compatible with agricultural uses and that the design should be consistent with the rural character. A Conditional Use Permit can be used to allow specific non-residential uses. This tool allows proportional development in harmony with the surrounding area. The proposed request is consistent with the Comprehensive Plan.

STAFF REVIEW

Joint Hearing

County Resolution No 80-5 established the policy that a joint hearing be held for requests within 3 miles of the incorporated cities in Douglas County so that the County Commission would have the benefit of both Planning Commissions' recommendations. A joint meeting is being held between the Lawrence/Douglas-County Metropolitan Planning Commission and Baldwin City Planning Commission. Both recommendations will be forwarded to the Board of County Commissioners.

Site Summary:

Subject Property: 3.8 acres
Existing Building: 2,400 SF (40'x 60')
Off Street Parking Required: 1 space per two employees—[No on-site employees]
Employees leave personal vehicles on site while business vehicles are taken to specific job sites.
28' by 23' space provided for employees parking – approximately 3 spaces are provided.

STAFF REVIEW

Development History

- 2001 Building constructed.
- 2002 **CUP-12-17-02:** *Truck Storage Facility* for Creekwood Lawn was approved by the Planning commission and County Commission subject to conditions and to expire February 2013.
- 2003 Application expired since conditions of approval were not met within 12 months of approval.
- 2012 **CUP-12-00030:** *Truck Storage Facility* for Creekwood Lawn was approved by the Planning Commission and County commission subject to conditions and to expire December 2017.
- 2013 Application expired since conditions of approval were not met within 12 months of approval.
- 2013 Changes in state law no longer require environs review for historic properties.
- 2014 **CUP-14-00295:** *Truck Storage Facility* for Creekwood Lawn -- new application

Between 2001 and 2005 the County Zoning staff had engaged in communications with the applicant regarding various violations. Communications between County staff and the applicant also occurred in 2012 seeking resolution.

The subject property is located in the southeast portion of Douglas County within the Vinland area. The original 2002 application was the result of a change in the County Zoning Regulations relating to Home Occupations. This business could not operate as a home occupation use without a primary residential structure on site.

The existing building has never had an inspection because it was constructed under the Agricultural Building exemption. In the past the applicant indicated to County Staff that he would like electrical

service extended to the building. A Douglas County inspector visited the site and did a cursory review of the building, notifying the applicant of additional information needed to bring the building into compliance with minimum building codes. The building is not an “agricultural building”. As a condition of approval, staff recommends the applicant obtain a commercial building permit for the existing structure and that the building be improved to meet current code requirements.

Approval of this request would allow a commercial type business. The subject property is not located within any urban growth area. It should be noted that if the applicant resided on this property, this use may qualify as a Home Occupation and a CUP would not be required.

Setback Requirements - Building setback requirements for the “A” District are as follows: Front Yard - 50’; Side Yard - 15’; Rear Yard - 50’. Setback requirements are measured from the property lines. The building is accessed from N. 700 Road. The existing structure complies with the minimum yard requirements. The subject property is described by metes and bounds; it is not a platted property. The storage areas are generally setback from the west property line 15’ or more. Additionally, since this area is encumbered by regulatory floodplain staff required the applicant to show that the storage areas were also located outside of the floodplain.

Access to the site - Specific access to the site is provided via a driveway from N. 700 Road. The record for this property includes a discussion between the property owner and the Public Works Director regarding the existing access to the property. It is recommended that the driveway be made wider – to 30’ to accommodate trucks. The applicant has been notified that when a residence is constructed that access will be required to be relocated opposite of the entrance on the north side of Route 460 at 1758 N. 700 Road. A separate access for a residence will not be permitted for this property.



Screening and Outdoor Storage- The site plan drawing shows that the area is substantially screened by dense vegetation along the county roadways. Additional screening was added to the site to screen the exterior areas from adjacent property to the south and east.

Floodplain-As noted in the description of the neighborhood above, a portion of this property is encumbered by the regulatory floodplain of Coal Creek. There is no floodplain development permit for this property. From the site plan and visual inspection by Douglas County inspection staff, it appears that development of the site has occurred outside the limits of the floodplain. Prior to the adoption of the August 2010 FEMA maps, the property was not in the regulatory floodplain. The applicant is working with county staff to acquire a local floodplain development permit for the current use of the property.

Time Limit -This use is clearly a business. The existing building is not used for any agricultural purpose. This property has been the subject of zoning violations and complaints from nearby residents. At present, complaints appear to be resolved. Staff recommends, based on comments from the Douglas County Zoning and Codes office this approval should be limited to 5 years at this location. If the applicant wishes to intensify the use (e.g. include a business office, expand employees, include more storage of materials and supplies) then an appropriate commercial or industrial zoning district would be required or the business would need to be relocated to an appropriately zoned property. The applicant could reapply for another Conditional Use Permit. Staff will consider the compliance and any complaints in review of a future application. If a residence is constructed on this property the use would be required to be registered as a home occupation.

A Conditional Use Permit with a time limit is recommended to expire on one of two dates to allow better administration of enforcement by County Staff. These date ranges are:

- January 1/December 31 or
- June 30/July 1.

Staff recommends this CUP expire on December 31, 2019. This time limit is intended to provide the applicant adequate time to make permanent arrangements for the continued operation of this business.

Conclusion

A Conditional Use Permit does not allow the range of uses found in commercial or industrial districts. Approval of a CUP can be tailored to address specific issues such as intensity or frequency of use, include time limitations, and provide screening requirements.

This use could have existed as an extension of a Home Occupation if a single-family residence was already constructed on this property. The applicant has indicated a long term plan to establish a residence on this property. Denial of the request would result in the relocation of the business to another commercial or industrially zoned location. The access to the property is immediately adjacent to a paved road and county highway network. The County Public Works Director indicated that the existing driveway width should be widened.

All vehicles and equipment are intended to be stored within the existing building or in designated areas on the site. It is assumed that only minor maintenance of these vehicles will also be provided within this building. Service to vehicles or storage of vehicles not associated with this business are prohibited.

This Conditional Use Permit (CUP-14-00295) would allow the continued operation of an existing landscape business in Douglas County for a limited time.

Shelby D. Franklin Property, 1753 N 700 Road Baldwin City, KS

CUP-12-17-02

- Topography shown as 2' intervals
- Employees shall not work on property except to pick up, drop off and/or service vehicles, equipment and for machinery
- Particulate on west side of building serviced by A-1
- Water is the only utility on the property
- Dimensions of adjacent roadways shown
- "The approved use for this site is an interior equipment storage facility for vehicles and all related lawn care machinery. Repair and/or servicing stored vehicles and/or all related lawn care machinery other than that necessary for standard maintenance/upkeep is prohibited"
- "Any exterior storage of material shall be located completely screened per section 19-4 (24) of the City Zoning Regulations"
- "The addition of exterior storage of materials shall first require a revision to the site plan portion of the CUP."
- Existing landscaping shown. Barren shown is in the process of being completed and will be planted with Evergreen trees for screening in September/October.

- * When employees are not working, there are company trucks in these spaces. *
- * Mulch is not stored year round, I bring it in for spring and then again for fall *
- * We dump a majority of our grass clippings + brush at the city compost, we report monthly to Cassanda Ford *

Legal Description

S. 21 A 15-14-20 B. 1/4 NW Cor
NE 1/4 TH N 89° 40' 7" E 657.25' S. 20 PT
Being on N Line NE 1/4 TH S 0° 3' 9" E
602.1 FT TH S 89° 40' 7" W 657.25' S. 20 PT
Being on W Line NE 1/4 TH N 0° 3' 9" W 602.1' to Pt B. 1/4, Less S. 21 A D. 864/34
1/4 NW 55 (Div 20) 70011615

Contour line (2' elevation intervals)
Parcel Ownership Boundary
August 5, 2010 FEMA Flood Maps
500 YEAR, 0.2 POT ANNUAL CHANCE
100 YEAR, ZONE AE

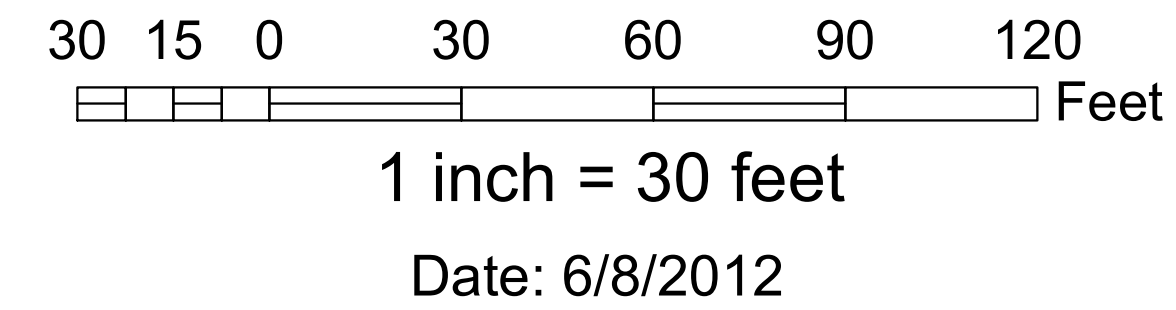
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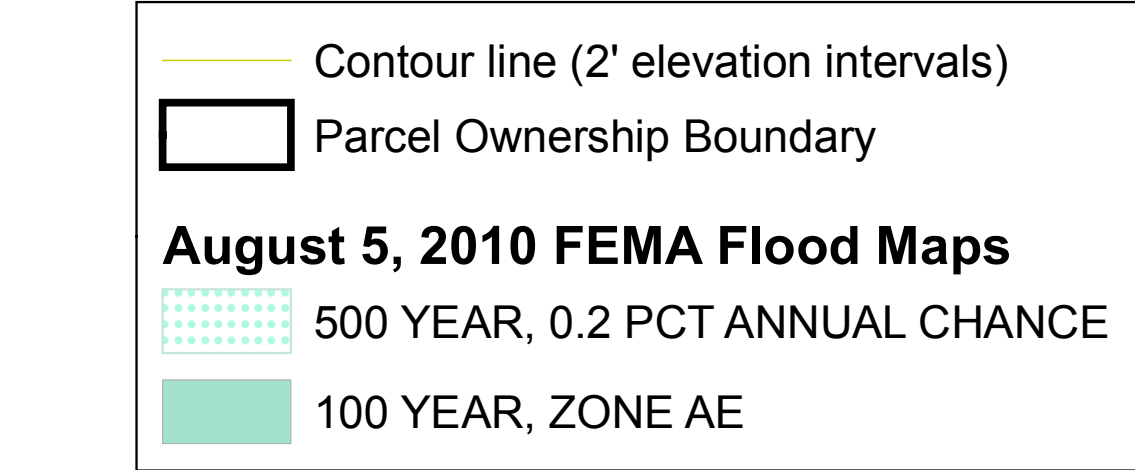


Shelby D. Franklin Property,
1753 N 700 Road
Baldwin City, KS

General Notes:
a. Topography shown on 2' intervals
b. Employees shall not work on property except to pick up, drop off and or service vehicles, equipment and/or machinery
c. Portajohn on west side of building serviced by A-1
d. Water is the only utility on the property
e. Dimensions of adjacent roadways shown
f. The approved use for this site is an interior equipment storage facility for vehicles and all related lawn care machinery. Repair and/or services stored vehicles and/or all related lawn care machinery other than that necessary for standards maintenance/upkeep is prohibited.
g. Any exterior storage of material shall be located completely screened per section 12-319-4.31 of the County Zoning Regulations.
h. The addition of exterior storage of materials shall first require a revision to the site plan portion of the CUP
i. Existing landscaping shown, berm shown is in the process of being completed and will be planted with evergreen trees for screening in September/October 2012.
• When employees are not working, there are company trucks in the spaces
• Much is not stored year-round. Large deliveries are madetot the site for spring and fall.
• The majority of grass clippings and brush are dumped at the City Compost facility, we report monthly to Cassandra Ford.
Legal Description:
Legal Description: 5.01 Ac., S15-T14-R20 beginning at the north west corner of the NE 1/4 TH N89DEG40'07"E 659.23 FT,SD PT BEING ON N LINE NE 1/4;TH S 0DEG03'09"E 662.1 FT THS89DEG40'07"W 659.23 FT,SD PT BEING ON W LINE NE 1/4;TH N 0DEG03'09"W 662.1 FT TO PT BEG,LESS 5.01A D 804/391 WW35 (DIV2003 7001168)

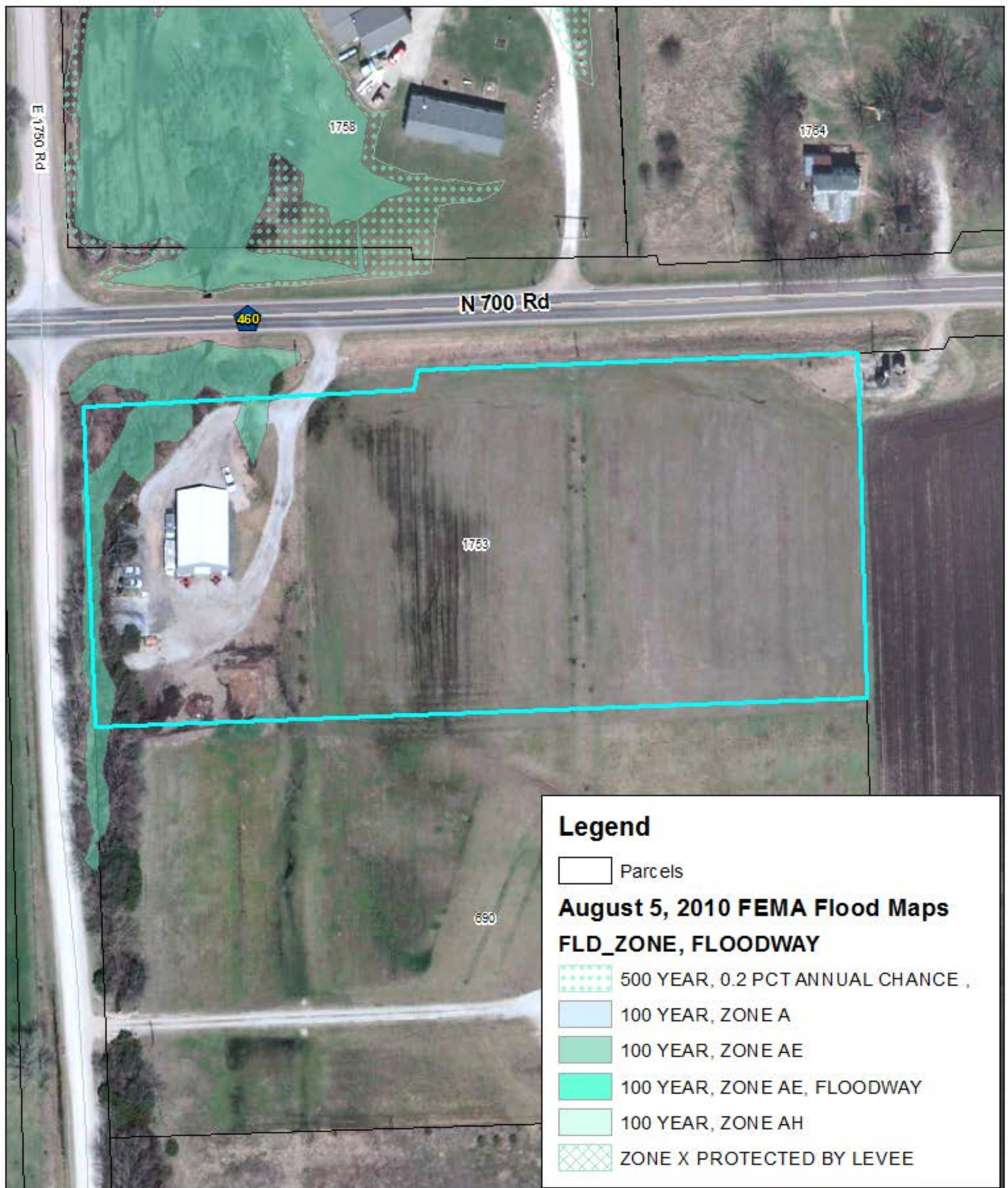


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Drawing prepared by Lawrence-Douglas County Planning and Development Services Department
Aerial Photo was flown in the spring of 2009
June 7, 2012

Floodplain Boundary Map



Legend

Parcels

August 5, 2010 FEMA Flood Maps FLD_ZONE, FLOODWAY

- 500 YEAR, 0.2 PCT ANNUAL CHANCE
- 100 YEAR, ZONE A
- 100 YEAR, ZONE AE
- 100 YEAR, ZONE AE, FLOODWAY
- 100 YEAR, ZONE AH
- ZONE X PROTECTED BY LEVEE

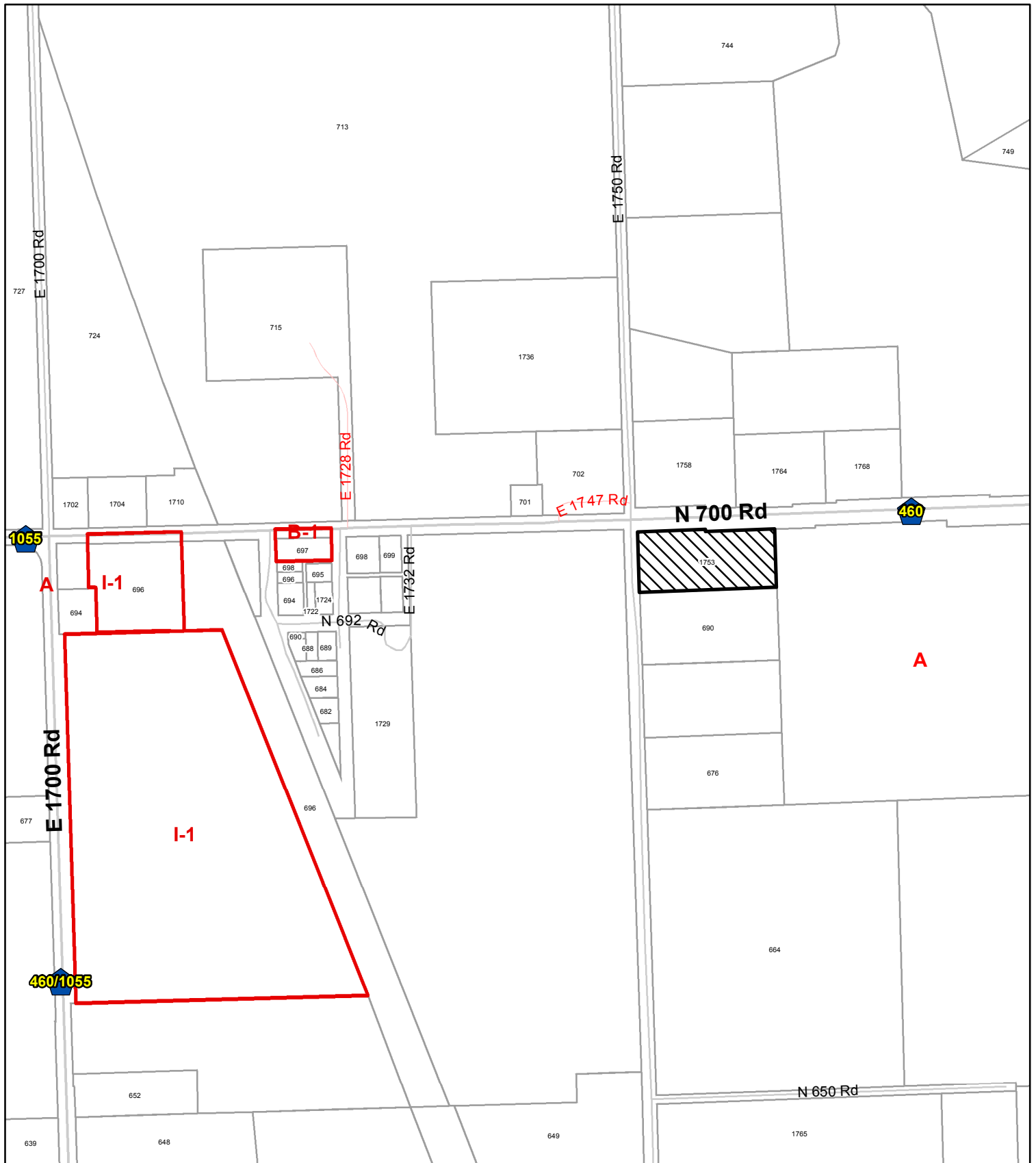
50 25 0 50 100 150 200
Feet

1 inch = 102 feet

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Date: 8/16/2012



**CUP-14-00295: Conditional Use Permit for Creekwood Lawn Equipment Storage
Located at 1753 N 700 Road**

Lawrence-Douglas County Planning Office
September 2014

 Subject Property

