

STAFF REPORT

March 20, 2019

To: Southwest Consolidated Zoning Board
Fr: Diane Wicklund, AICP, Principal Planner
Re: Application No. SW-CU-3452 (GA)



APPLICATION INFORMATION

Applicant/Landowner: Curby Hughes, WCH Leasing, LLC.
Requested Action: Conditional Use Permit (CUP) **Renewal**
Purpose: CUP Renewal for an existing landscape contractor operation in conjunction with a wholesale tree nursery
Legal Description: Part of the SW Quarter of Section 1, Township 14, Range 22
Site Address: 14835 Gardner Road
Existing Land Use and Zoning: Landscape contractor yard operation; RUR, Rural Zoning
Existing Improvements: Office building (converted from a house), one greenhouse, and several accessory structures
Site Size: Approximately 20 acres

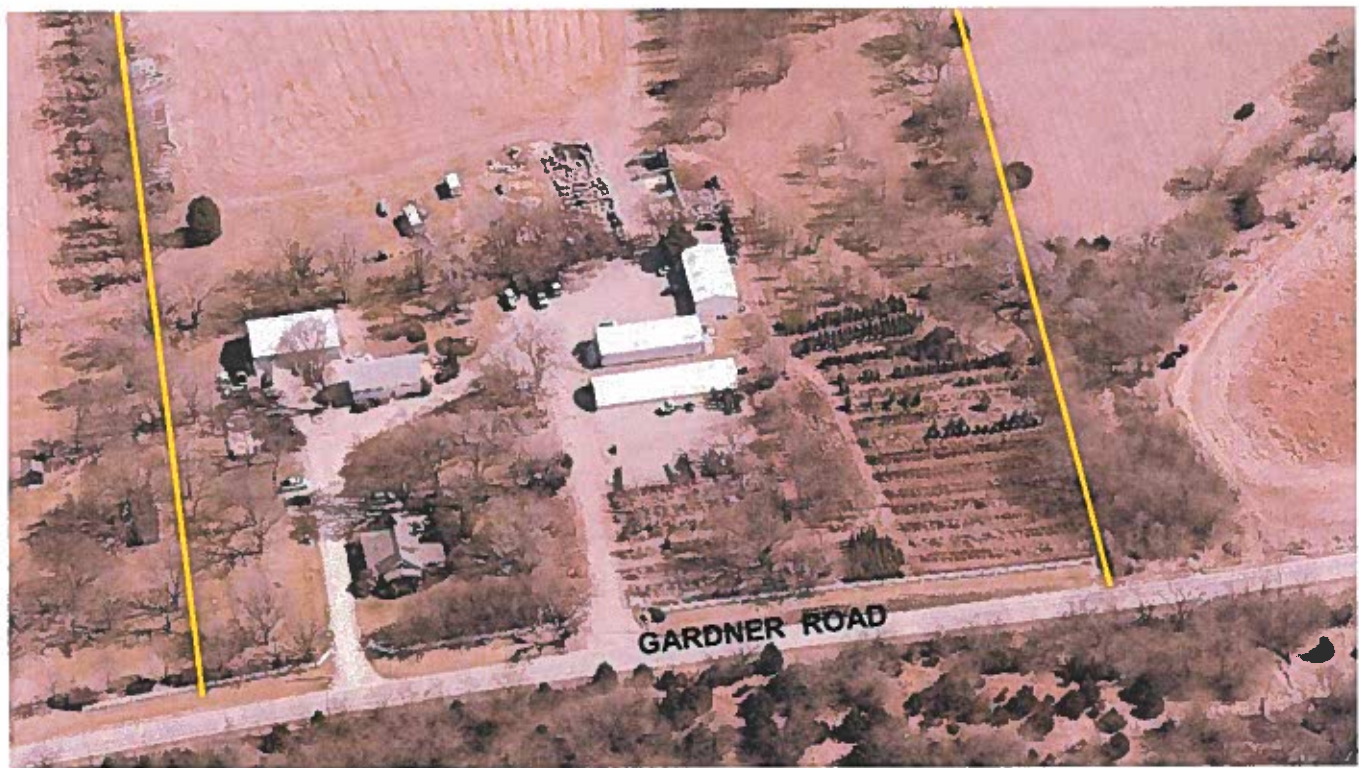
Proposal: The applicant/owner is requesting a Conditional Use Permit **renewal** for an existing landscape contractor operation in conjunction with a wholesale tree nursery. Existing improvements include an office building (converted from a house), one greenhouse, and several accessory buildings. *See the attached Applicant's Narrative for more details.* The owner has owned and operated this business on site since 1991.

The property is accessed from Gardner Road by two existing driveways. All parking is kept on the property behind the buildings. There is existing landscape screening along the front of the property (adjacent to the street) that screens the use from the street view. On the south side of the property, there is a tree and shrub storage area which is continually full (the stock is rotated in and out for landscape jobs off-site) and this area also provides sufficient screening of the material and equipment storage from the street. Furthermore, the greenhouse and two machine sheds on the south side of the property also screen the use from the street.

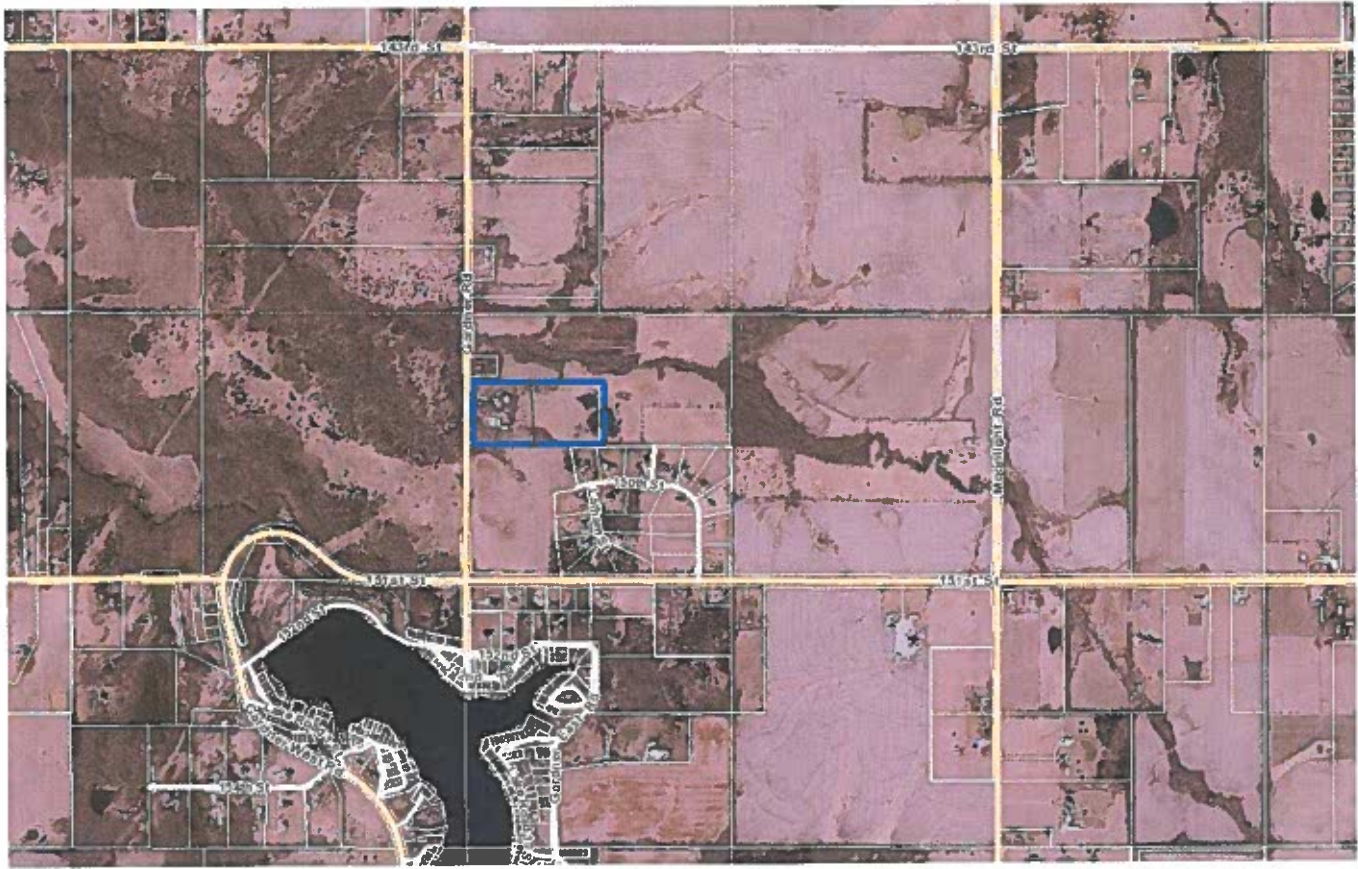
Recommendation Summary: Staff is recommending approval of the renewal of the Conditional Use Permit with stipulations. For more detail, please see the entire staff report.



Close Up View of Subject Property (approximate property boundary outlined in yellow)



Aerial View of Subject Property (close up view of the landscape contractor yard area)



Aerial View of Surrounding Area (subject property outlined in blue)

Zoning/CUP History

March 21, 1991: The Board of County Commissioners approved Resolution No. 024-91, a Conditional Use Permit to allow the establishment and operation of a contractor shop/yard for a landscape and irrigation construction business. Approval was subject to the following stipulations:

1. That the permit have a five (5) year term from the date of approval by the Board of County Commissioners of this permit request. **Renewed in 1996 and 2001.**
2. That additional right-of-way to sixty (60) feet from centerline be dedicated for Gardner Road adjacent to this tract within forty-five (45) days of approval of the permit. **Completed.**
3. That all aspects of the uses approved by this permit shall be conducted in a manner which is and remains fully consistent with the statements, plans, descriptions and explanations provided in the Statement of Intent, the site plan drawings and the descriptions and explanations included in the record of the proceedings with regard to this permit application and also in a manner which is and remains consistent with the above stated stipulations which shall prevail over any inconsistencies which may exist with respect to the other descriptions and explanations of the uses. **Complies – on-going.**

October 24, 1996: The Board of County Commissioners approved Resolution No. 111-96, a continuation/renewal of the originally approved Conditional Use Permit subject to the following stipulations:

1. The term of the permit shall be for a period not to exceed twenty (20) years, commencing with approval of this Resolution by the BOCC. Planning staff shall inspect the subject property from time-to-time (but in no event less than every five years) to assure that the applicant's use of the property is in compliance with the terms and requirements of this permit and the County's zoning and subdivision regulations. Non-compliance may result in termination of the permit or an application for permit amendment, which is subject to BOCC approval. ***This resolution expired in 2016, which is the reason for this CUP renewal application.***
2. That the operation be conducted as per the applicant's narrative (Exhibit A) and site plan (Exhibit B). ***Complies – on-going.***
3. That right-of-way dedication of 60 ft. from centerline (section line) of Gardner Road occur. ***Completed.***
4. That no retail sales of landscape materials or related item shall occur from this property. ***Complies.***

September 20, 2001: The Board of County Commissioners approved Resolution No. 076-01. The applicant proposed changes to the CUP in 2001, amending the original Conditional Use Permit subject to the following stipulations:

1. All of the terms and provisions of Resolution No. 111-96 shall remain the same, except as modified by the following amendments:
 - a. The site plan originally approved by Resolution No. 111-96 shall be replaced by the site plan attached hereto as "Exhibit A", which depicts the additions of the 2,640 sq. ft. storage building and the 3,000 sq. ft. storage building. ***Complies. The 2,640 sq. ft. building was constructed in 2001. The 3,000 sq. ft. building is currently under construction.***
 - b. Within 30 days of completion of each of the subject buildings, landscaping shall be planted adjacent to the east side of Gardner Road. The landscaping shall be planted according to the following schedule: deciduous trees and evergreen trees shall be planted on 15 ft. centers; evergreen trees shall be at least 5-6 ft. tall at time of planting; deciduous trees shall be 2 inch caliper or larger; all trees shall be continuously maintained and replaced if dead. ***Complies. The landscaping has been installed/planted.***
 - c. That within 90 days of completion of the first building, 1,000 sq. ft. of existing deteriorated/dilapidated building, as shown on the site plan, shall be removed. ***Complies. A demolition permit was issued in 2002.***

Minimum Infrastructure Requirements

The *Johnson County Zoning and Subdivision Regulations* state that the minimum infrastructure requirements shall be guidelines for interpretation of the minimum infrastructure required for each conditional use.

Water: Water is currently provided by Johnson County Rural Water District 7. There is a 6-inch water line that runs along the west side of Gardner Road.

Sewers: Wastewater disposal is provided by an on-site private septic system.

Stormwater: There are no new buildings proposed with this renewal and no changes proposed in the current business operations. Therefore, stormwater management studies are not required.

Public Safety: Police protection is provided by the Johnson County Sheriff's Department.

Fire Protection is provided by Johnson County Northwest Consolidated Fire District. The nearest fire station is approximately 2.5 miles to the north at 29520 W. 127th St.

Transportation: Access to this property is from Gardner Road, a paved street and County-maintained.

Summary: The existing infrastructure continues to be adequate to serve the existing use, a landscape contractor business and wholesale tree nursery.

STAFF ANALYSIS

Landscape contractor yards are allowed in the Rural Zoning District when associated with a wholesale nursery, provided that a Conditional Use Permit is first granted.

The Regulations, the *Rural Comprehensive Plan* and laws in Kansas indicate that consideration should be given to whether the proposed conditional use is in the interest of the public health, safety, morals, and the general welfare of the community. The conditional use permit application has been considered with regard to:

1. Whether the use would be consistent with the zoning and uses of nearby properties. Zoning and surrounding uses are residential, agricultural or vacant. There is RUR, Rural zoning to the north, east and west. To the south is RN2, Residential Neighborhood 2 zoning (the Mulberry Hill Estates subdivision). The landscape contractor use has existed on site since 1991 (28 years) and continues to be consistent with the zoning and surrounding uses. The existing buildings are located on the interior of the property and landscape screening along the front of the property, adjacent to the street, softens the view of the buildings and the use. Therefore, the existing use (landscape contractor operation in conjunction with a wholesale tree nursery) continues to be consistent with the existing zoning and surrounding properties and uses.
2. Whether the use is compatible with the character of the neighborhood. The character of the area is a mixture of residential, vacant and agricultural uses. The surrounding lots/parcels are large in size and many are currently vacant. There has been very little change in the surrounding area since the last CUP renewal in 2001. The only change has been a new residential subdivision to the south (Mulberry Hill Estates) which was platted in 2004 with 22 lots (2-acre lot sizes). The closest home in that subdivision to the landscape contractor yard area on the subject property is about 700 feet. There have been no known complaints of the landscape contractor business and the use has been in continual compliance with the CUP stipulations since 1991. The existing use and buildings are screened from the street view by existing landscaping along the front of the property along the street. In addition, the storage bins for landscape materials is located in the interior (and back) of the property and three of the existing accessory buildings block the view of the storage bins/area. Therefore, the

existing use (landscape contractor operation in conjunction with a wholesale tree nursery) continues to be compatible with the character of the neighborhood and surrounding area.

3. Suitability of the property for uses to which it has been restricted. The subject property is zoned RUR, Rural, with a CUP for a landscape contractor yard in conjunction with a wholesale tree nursery. The property continues to be suitable for the existing use.
4. Extent of detrimental effects to nearby parcels should the conditional use be approved. The applicant owns the adjacent property to the north and east (a total of 80 acres). The most affected properties will likely be the property to the north, if the applicant sells that property in the future and the subdivision to the south. However, the existing structures and activity areas are screened and set back a distance that far exceeds the underlying zoning standards, as such, effects to nearby properties continue to be minimal. Furthermore, there have been no known complaints of the landscape contractor business and the use has been in continual compliance with the CUP stipulations since 1991.
5. Length of time the property has remained vacant as zoned. The property is currently used as a landscape contractor yard and has been since 1991.
6. Relative gain to the public health, safety and welfare as opposed to the hardship imposed upon the landowner by denying the request. There would be no gain to the public health, safety and welfare if the CUP renewal request is denied. The existing landscaping, screening and existing structures continue to blend in with the surrounding area and the use has not had any detrimental effects to nearby properties over the last 28 years that it has been operating.
7. Whether the use is in keeping with the Comprehensive Plan. The *Rural Comprehensive Plan: A Plan for the Unincorporated Area of Johnson County* (Plan) indicates this site within the Rural Policy Area. The Plan indicates that agricultural and residential uses on tracts no smaller than 10 acres would be the standard, appropriate land uses and densities in the Rural Policy Area. With the approved CUP renewal, the request effectively meets the intent of the Comprehensive Plan. The *Plan* does not specifically address conditional use permits.

Zoning and Subdivision Regulations

Article 23, Sec. 6 (C) establishes that the granting of the requested CUP shall not be recommended unless the Zoning Board first makes a finding that the following conditions are met:

1. *Is in harmony with the general purpose and intent of the regulations.* This CUP is in harmony with the general purpose and intent of the Regulations as described under the Golden Review section of this staff report on pages 5-6.
2. *Will not impair the adequate supply of light and air to adjacent property.* Granting this CUP renewal will continue to have no impact on the supply of light and air to adjacent properties. The existing buildings exceed the setback requirements of the underlying zoning district.

3. *Will not increase hazards from fire or other dangers.* Granting this CUP renewal will not increase hazards from fire or other dangers. There is limited chemical and fuel storage on site. Fuel storage is inspected annually by the Fire Inspector.
4. *Will not increase traffic on streets beyond their capacity.* As mentioned above, the applicant is not requesting any revisions to the current operation of the landscape contractor use or any new buildings, and, therefore traffic will not increase on the streets beyond their capacity.
5. *Will not increase potential for flood damages to adjacent property or lead to additional public expense for flood protection, rescue or relief.* Granting the CUP will not have any impact on flooding. There are no floodplain areas on the subject property.
6. *Will not otherwise unduly impair the public health, safety, comfort, morals, or general welfare of the inhabitants of the County, or otherwise create a nuisance or nuisance-like situation.* Granting the CUP renewal will not impair the public health, safety, comfort, morals, or general welfare of the County residents; nor will it create any nuisance-like situations. This has been demonstrated/proven over the last 28 years since the business has been operating.
7. *Will not pollute the air, land, or water.* The CUP should not add to pollution of the land or water.

COUNTY DEPARTMENT AND OTHER AGENCY COMMENTS

Public Works Department: Received and stated no concerns or issues regarding the application.

Building Codes Department: Received and stated no concerns or issues regarding the application.

RECOMMENDATION

Planning staff recommends **approval** of a Conditional Use Permit Renewal for the continued operation of a landscape contractor yard in conjunction with a wholesale tree nursery, subject to the following stipulations:

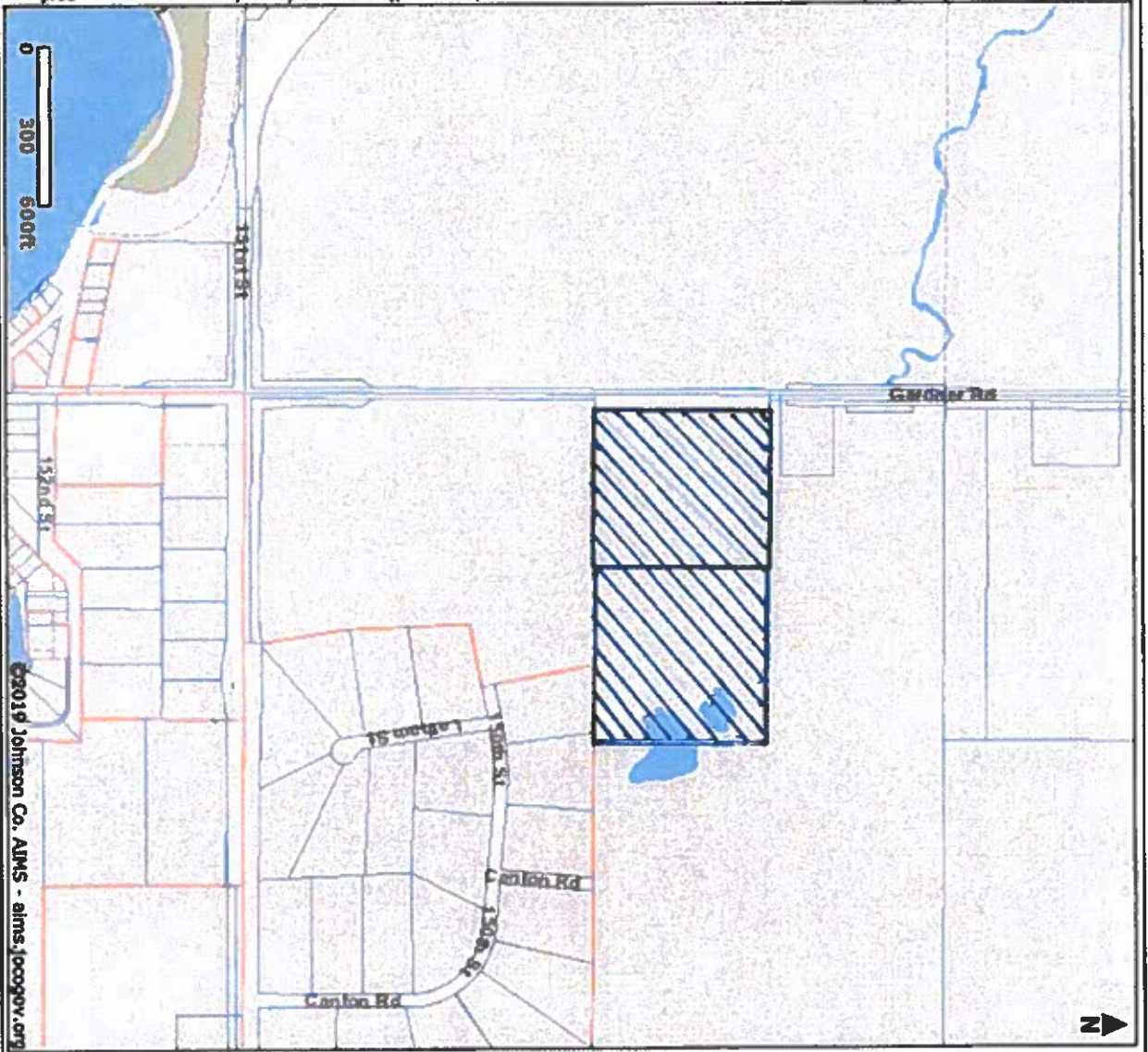
1. This permit allows for the continued use and operation of a landscape contractor yard in conjunction with a wholesale tree nursery in the location and manner as shown on the Site Plan (Exhibit A). Any changes to the business operations and/or request for new buildings may require an amendment to the CUP.
2. The term of the permit shall be for a period not to exceed twenty (20) years, commencing with the date of approval of this resolution by the Board of County Commissioners.
3. That no retail sales of landscape materials or related items shall occur from this property.
4. All landscape screening shall be continually maintained and any dead trees shall be replaced for the duration of the CUP.
5. Hours of Operation: April-November: Monday-Friday, 7:30 a.m.-6:00 p.m., Saturday, 7:45 a.m.-1:00 p.m. December-March: Monday-Friday, 8:00 a.m.-5:00 p.m.
6. Traffic Routes: Vehicles will access the site from the two existing driveway entrances.
7. Traffic Volume: Employee Vehicles: 8-10 per day. Delivery Trucks: 2-4 per month.
8. Staffing Levels: April-November: 7-10 on-site. 9-12 off-site. December-March: 7-8 on-site.

9. Parking: Office Staff parks directly east and north of the Office. Field Staff parks east of the 30x70 Shop Building.

REASONS FOR RECOMMENDATION OF APPROVAL:

1. The use (an existing landscape contractor business in conjunction with a wholesale tree nursery) continues to be consistent with surrounding zoning and land uses.
2. The existing use continues to be consistent with the *Rural Comprehensive Plan*.
3. The existing use continues to be compatible with the agricultural and residential character of the area.
4. There have been no known detrimental effects to nearby properties since the business started in 1991.
5. The landscape contractor business has operated for 28 years on-site with no known complaints and the applicant has been in continual compliance with the approved stipulations of the existing CUP since 1991.
6. The proposed conditional use permit satisfies the "Standards for Issuance of CUP" [Article 23 Sec. 6 (C)].
7. Granting the CUP renewal will not impair the public health, safety, comfort, morals, or general welfare of the County residents; nor will it create any nuisance-like situations. This has been demonstrated/proven over the last 28 years since the business has been operating.

Enclosures: Vicinity Map, Applicant's Narrative, and Site Plan



Johnson Co AIMS Map

SW-CU-3462 (GA)
Curby's Lawn and Garden Renewal

LEGEND

- Parcel Line
- Plot
- Original Lot
- Lot Line



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JOHNSON COUNTY
AIMS GIS & Mapping

2/5/2019

Curby's
Lawn & Garden, LLC

SW-CU-3452 (GA) 1-14-22
14835 Gardner Road Curby's Renewal

P.O. BOX 301 • OLATHE, KANSAS 66051 • 913-764-6159 • FAX 913-884-6163

1. Hours of Operation:
 - a. April - November: Mon – Fri 7:30am – 6:00pm, Sat 7:45am – 1:00pm
 - b. December - March: Mon-Fri 8:00am – 5:00pm
2. Traffic Routes:
 - a. Vehicles will access the site from the 2 existing driveway entrances.
3. Traffic Volume:
 - a. Employee Vehicles: 8 -10 per day
 - b. Delivery Trucks: 2 - 4 per month
4. Staffing Levels:
 - a. April – November: 7-10 Onsite, 9-12 Offsite
 - b. December – March: 7-8 Onsite
5. Parking:
 - a. Office Staff: Parks directly East and North of Office.
 - b. Field Staff: Parks East of 30' x 70' Shop Building.

I would request that the CUP be for an additional 20 years, since the last CUP was for that length of time. I have owned and operated on this site since 1991, and have had no public or neighbors complain to date. The property has both a 16" and a 26" Southern Star gas line that transverse it almost at a 45% angle, thus making it not desirable for residential development. I also own the property for an additional 1320' to the East and 660' to the North of this property to complete an 80 acre parcel. Due to the fact, that Century Link was not able to provide my location with high speed internet, in 2018 I was able to contract with Comcast Business to bring high speed internet to the site. This was an upfront cost of approximately \$10,000, with most business software operating in the cloud I had 2 choices. I could either move my company to another location, or spend the money, and stay where I have been since 1991.

If I can answer any additional questions, please feel free to contact me at 913-764-6159.

Thank you,



W. Curby Hughes

RECEIVED

FEB 05 2019

JOHNSON COUNTY
PLANNING AND BUILDING CODES

To: Curby Hughes
Subject: RE: Curby's Lawn & Garden

ADDENDUM TO APPLICANT'S NARRATIVE

Production Areas:

1. Greenhouse: We grow perennials from bareroot divisions that are planted in 1 gallon pots. We also grow shrubs from bareroot plants that are planted in 3 and 5 gallon pots. This process is completed in 3 to 6 month cycles, depending on the size of the bareroot plant, and weather conditions.
2. Tree/Large Growing Shrub Area: This area is to the South/East of the greenhouse. The trees and large shrubs are planted in the ground, and then are harvested after they have reached a size that is large enough to be installed on jobs. This process takes between 3 and 5 years to complete.

Tree and Shrub Holding Areas:

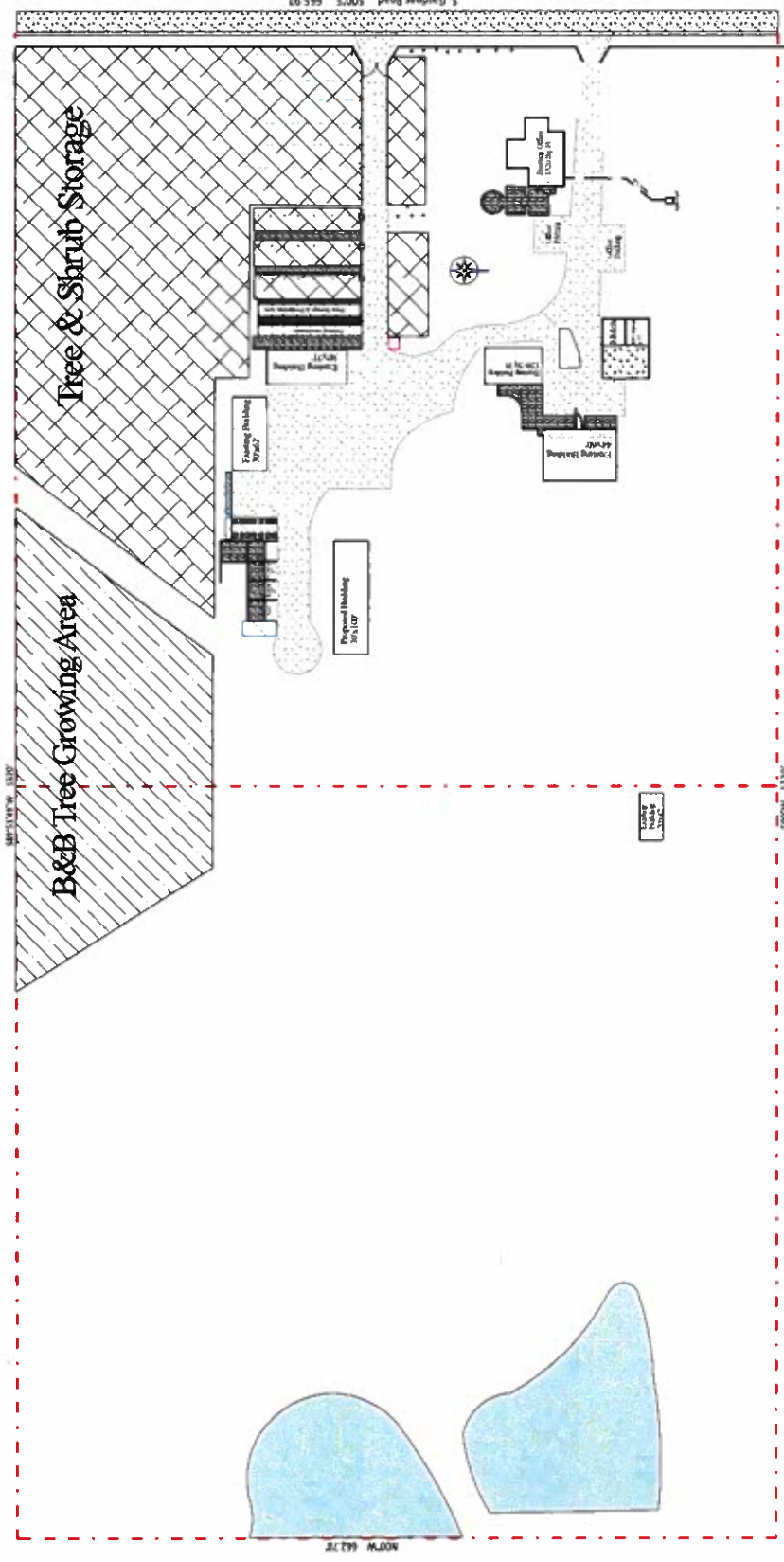
1. Deciduous Trees can only be harvested, for transplanting after they have lost their leaves. This process will happen after the frost has dissipated, during the months of February through April, in this area. Harvesting, or digging, needs to be completed before the trees leaf out in the Spring. After the trees have been balled, we place them in the holding area, for use on our jobsites. The holding area will have trees and shrubs that are from our fields, as well as from other nurseries.

Company:

All plants and trees that we produce, are used in landscapes in the Kansas City Metropolitan area. We install landscaping and irrigation systems on primarily new construction sites throughout the area. Our services are completed on homes, new home entries, and commercial buildings. We do not perform tree removal, snow removal, or lawn maintenance services, such as lawn spraying or mowing.

Company Background:

I started Curby's Lawn & Garden in April 1984, on the S/E corner of 175th & I-35. That location is now under the North bound entrance ramp onto I-35 from 175th Street East, some of you may remember this location as the Abercrombie Farm. In February 1991, I purchased 20 acres at the current location, from an Olathe Builder who had owned it for about 1 ½ years. He had purchased it from Wayne and Jeanne Ruppenthal, who lived next door at 14785 S Gardner Rd. Jeanne Ruppenthal's father Loren Savage purchased the original 160 acre farm in 1919, and lived in the home (now office) until his passing. In 1999, I had the good fortune of being able to purchase the remaining 60 acres from Jeanne, to complete the 80 acre tract. In February of this year, I completed 28 years on this farm, and in April, I will complete 35 years in business. The average length of employment for a Curby's Lawn & Garden employee is over 10 years in length. I have 2 employees with over 20 years of service, 5 with over 15 years, and 4 with over 10 years. I am fortunate to have a strong viable company, with an incredible staff.



Revision #:

Date: 2/5/2019

Scale:

1" = 100'

Landscape Plan:

14835 S Gardner Road

Landscape Design by: (913)764-6159

Curby's Lawn & Garden