



Planning Division

**STAFF REPORT****Planning Commission Meeting: February 8, 2021**

<b>Application:</b>	<b><u>SU20-0006</u>: Request for approval of a special use permit for motor vehicle sales (Car Gallery)</b>
<b>Location:</b>	15695 US-169 Highway
<b>Owner:</b>	Tim and Deborah Worthy
<b>Applicant:</b>	Sam ElMasri, Car Gallery, Inc.
<b>Staff Contact:</b>	Jessica Schuller, AICP, Senior Planner

<b>Site Area:</b>	<u>2.12± acres</u>	<b>Plat:</b>	<u>Lot 1, Combs Addition</u>
<b>Proposed Use:</b>	<u>Motor Vehicles, All Types, Sales/Leasing/Rental</u>	<b>Existing Zoning:</b>	<u>M-2 (General Industrial)</u>

	<b>Plan Olathe Land Use Category</b>	<b>Existing Use</b>	<b>Current Zoning</b>
<b>Site</b>	<b>Industrial</b>	<b>Auto Repair</b>	<b>M-2</b>
<b>North</b>	Industrial	Auto Repair	M-2
<b>South</b>	Industrial	Mechanical Contractor	M-2
<b>East</b>	Industrial	Railway/Building Materials Store	CTY IP-2/M-2
<b>West</b>	Industrial	Manufacturing	M-2/MP-2

**1. Request:**

This is a request for a special use permit (SUP) to allow motor vehicle sales at 15695 US-169 Highway. The site is currently developed and consists of a 5,261 square foot building that was previously operating as a transmissions and auto repair shop. The subject property is currently zoned M-2 (General Industrial), which requires approval of a special use permit for motor vehicle sales, per Unified Development Ordinance (UDO) 18.20.500.

## 2. History:

The site was rezoned from county zoning to the M-2 District in 1985 (RZ-03-85). The site is platted as Lot 1 of the Combs Addition and the existing building was constructed in 1991. No changes to the exterior of the existing building are proposed with this application. An existing accessory garage structure is located towards the rear of the lot and is proposed to remain. Chain link fences with barbed wire exist around the perimeter of the rear of the lot and are proposed to remain. The site is a combination of paved, gravel, and grass areas. The paved areas are located in the front of the site and the only gravel is located to the rear, behind the gate.



*Aerial map of subject property.*



*View of property looking east from US-169 Highway*

### 3. Neighborhood Meeting/Public Notice:

The applicant notified neighbors within 200 feet of the subject property by certified letter, return receipt requested as required by the UDO. A neighborhood meeting was not required with this application as no residential development is located within 500', however, a neighborhood notice was provided to property owners within 500' of the project site, as required by UDO 18.40.030. Neither staff nor the applicant has received any public correspondence regarding this proposal.

### 4. Zoning Requirements:

- a. **Land Use** – The existing site is zoned M-2 (General Industrial) District. Per UDO 18.20.500, a SUP is required for the sale of motor vehicles within this District. The M-2 District permits a number of auto-oriented uses by right, such as repair services and auto body shops.
- b. **Setbacks/Open Space** – Existing structures on site are proposed to remain as they exist today. The structures comply with the setbacks of the M-2 District, as provided in UDO 18.20.200. Existing pavement towards the rear of the site does not comply with the current 10 foot parking/paving setback from property lines. This is considered an existing non-conforming site condition and is proposed to remain, per UDO 18.60.020.D.

### 5. Development Requirements:

- a. **Access/Streets** – The existing site is accessed via a driveway connecting to US-169 Highway at the southwest corner of the site. No changes to access are proposed with this application.

The existing trash container is visible from the roadway but will be moved to the rear of the site to eliminate visibility from the right-of-way.

- b. **Parking** – The subject property currently contains five guest parking spaces and one ADA (Americans with Disabilities Act) space, which will be striped upon approval of this application.

There are broken curbs and sidewalks on site, adjacent to the building, which will be repaired by the applicant.

The applicant proposes to park 15 vehicles inside the existing building with an additional 15 vehicles proposed to be parked along the southern property line directly south of the building. Staff is supportive of this area becoming a parking area provided that these spaces be designated with appropriate striping. Up to 35 vehicles will be parked behind the building within the fenced portion of the site, for a total of 50 vehicles parked outdoors. The vehicles within the fenced area will not be accessible to the general public. The exterior parking areas are not illuminated and no additional lighting is proposed with this application.

- c. **Landscaping** – New shrubs will be provided along the front row of parking adjacent to US-169 to provide screening to a height of 3 feet, as required by UDO, Section 18.30.130. Additionally, two trees will be placed in the frontage area, meeting requirements of UDO 18.30.130 for Non-Residential Landscape buffers. Shrubs will be provided on the north side of the building to screen existing building mounted utilities.

Additional landscaping along property lines is not required with this application, as the application is a change of use that does not increase the existing building square footage or parking area (UDO 18.30.130.J).

- d. **Public Utilities** – The site is located within the City of Olathe Sanitary Sewer service area and WaterOne service area. No changes to utilities are proposed with this application.
- e. **Stormwater/Detention** – The applicant is not proposing changes to impervious surface area on site; therefore no new stormwater improvements are required.

## 6. Time Limit:

Special Use Permits are required for uses that the City has determined are higher-intensity land uses that require greater consideration, requirements, and review to ensure compatibility with surrounding uses, orderly growth and development, and consistency with goals and vision of the City as a whole. For this reason, special use permits are also different than by-right permitted land uses in that by-right uses do not require a time restricted permit. Motor vehicle sales are identified in the UDO as requiring a Special Use Permit.

Unless otherwise specified, special use permits are approved for a five (5) year period (UDO 18.40.100.F.4). In this particular case, staff recommends the initial permit be valid for a two (2) year term. This provides the ability to follow up and confirm site maintenance of the specified improvements that will bring the property into compliance with the UDO. Staff has collaborated with the applicant on the stipulations and necessary site improvements. While the applicant would prefer an initial time period longer than two (2) years, they are amenable to this time period and understand the current recommendation.

## 7. Analysis:

The future land use map of the Comprehensive Plan identifies the subject property as “Industrial.” Staff is supportive of the proposed use as Motor Vehicles, All Types, Sales/Leasing/Rental is a commercial use that relies on an increased amount of outdoor space, as is commonly found in industrial areas. This site was previously the location of another type of vehicle-oriented service business and is surrounded by industrial and commercial establishments.

The following are criteria for considering special use applications as listed in Unified Development Ordinance (UDO) Section 18.40.100.F:

### ***A. The conformance of the proposed use to the Comprehensive Plan and other adopted planning policies.***

The future land use map of the Comprehensive Plan identifies the subject property as “Industrial.” The property is zoned M-2 which allows for a variety of general industrial uses in addition to some commercial uses, including Motor Vehicle Sales with a special use permit. This application complies with the following principle of the *Comprehensive Plan*:

- **Principle ES-3:** *“Strengthen and revitalize existing commercial centers.”*

Approval of the special use permit request will allow a new business to locate on, and make improvements to, an existing commercial site.

***B. The character of the neighborhood including but not limited to: land use, zoning, density (residential), architectural style, building materials, height, structural mass, siting, open space and floor-to-area ratio (commercial and industrial).***

The area surrounding this site consists of commercial and industrial uses. The surrounding buildings are primarily one-to-two stories in height and were constructed between the late 1980's and early 2000's. Businesses in the corridor primarily have limited parking in the front of the building, with additional parking and storage areas located behind the buildings.

***C. The zoning and uses of nearby properties and the extent to which the proposed use would be in harmony with such zoning and uses.***

The area surrounding this site is also zoned M-2 and consists of uses such as mechanical contracting, painting services, automotive repair, and manufacturing. Approval of the special use permit for vehicle sales will be in harmony with surrounding uses, many of which are also automotive in nature.

***D. The suitability of the property for the uses to which it has been restricted under the applicable zoning district regulations.***

The property is suited for occupancy by a variety of M-2 District uses including motor vehicle sales with a special use permit. The M-2 District permits a broad range of commercial and general industrial uses. Motor vehicle sales require a special use permit in the M-2 District to ensure compatibility with surrounding uses. There is no City zoning district that allows this use by right.

***E. The length of time the property has remained vacant as zoned.***

The building on the subject property was constructed in 1991 and has been occupied since that time. The most recent occupancy was an automotive transmission shop.

***F. The extent to which approval of the application would detrimentally affect nearby properties.***

The proposed special use will not have an impact on noise, aesthetics, traffic, lighting, or other characteristics of the surrounding area. The property is located adjacent to other commercial and industrial properties along US-169 Highway and was previously used for automotive repair.

***G. The extent to which development under the proposed district would substantially harm the value of nearby properties.***

The new business will generate sales tax revenue and provide economic development opportunities for the City and should have no negative impacts on surrounding property values. Surrounding properties consist of other automotive and industrial type businesses. The applicant is making aesthetic improvements to the site related to landscaping, signage and pavement repairs which will benefit nearby property values.

***H. The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the use, or present parking problems in the vicinity of the property.***

The proposed development will not adversely affect the adjacent road network. The site is accessed from US-169, a Kansas State Highway with adequate capacity to support the commercial development.

***I. The extent to which the proposed use would create air pollution, water pollution, noise pollution or other environmental harm.***

Staff is not aware of any potential for unlawful levels of air, water or noise pollution with the proposed development. Landscaping is being added to the site and there is no increase in impervious surface. The proposed use is subject to all local, state, and federal environmental regulations.

***J. The economic impact of the proposed use on the community.***

The development follows the economic sustainability goals of the Comprehensive Plan by encouraging private investment in the community and reinvestment in an existing commercial property.

***K. The gain, if any, to the public health, safety, and welfare due to denial of the application as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application.***

The proposed special use does not negatively impact public health, safety, or welfare as presented. Denial of the special use permit would create a hardship for the property owner and the applicant who would not be able to relocate their business to Olathe. City staff and the applicant agree the special use permit offers a service to the community while providing consistency with surrounding properties.

**8. Staff Recommendation:**

a. Staff recommends approval of SU20-0006 with conditions, for the following reasons:

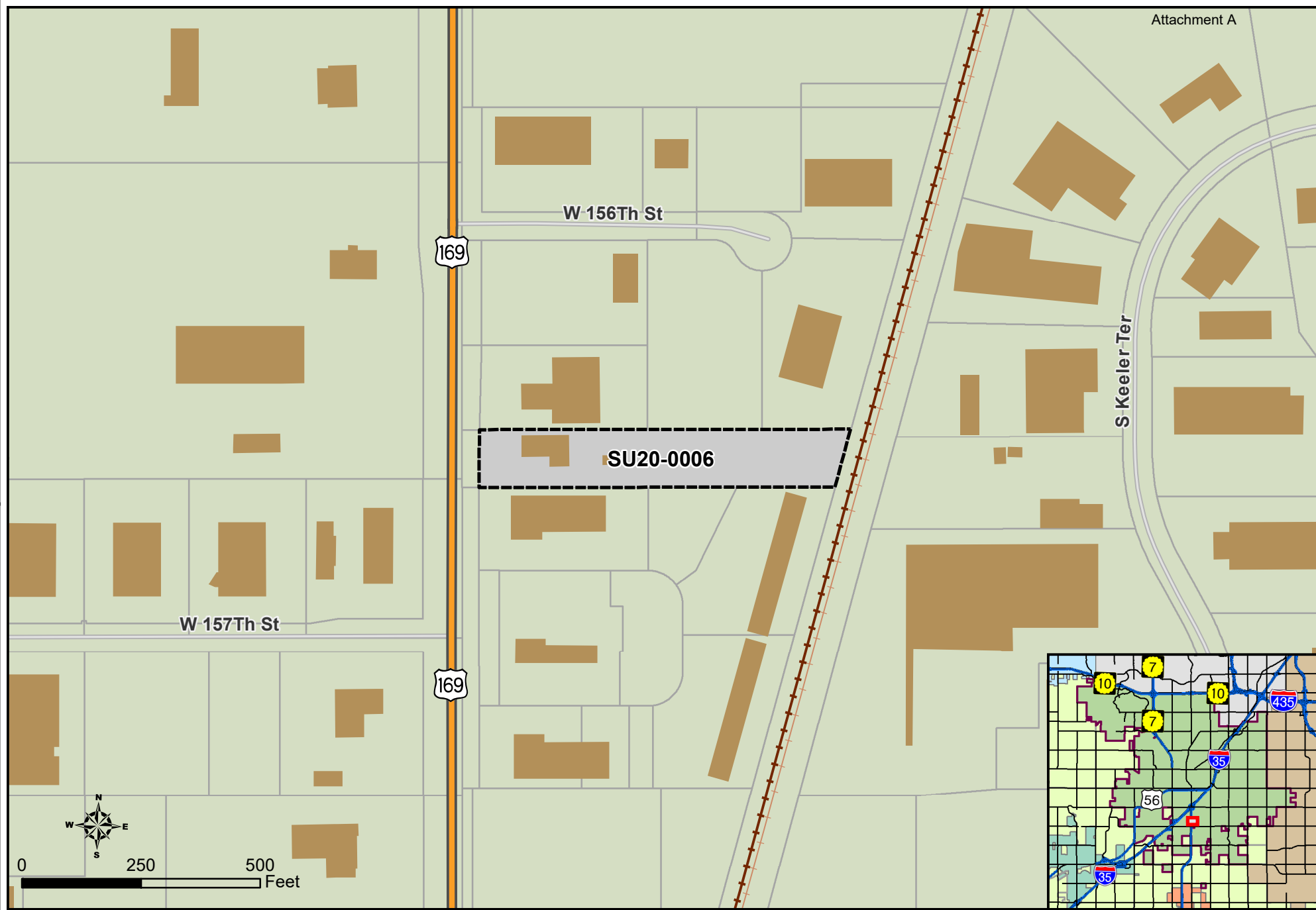
1. The proposal conforms to the Goals, Objectives and Policies of the Comprehensive Plan.
2. The proposal complies with the Unified Development Ordinance (UDO) criteria for considering special use permit requests.
3. The applicant will address all site improvements as identified in Section 5 of this report.

b. Staff recommends approval of SU20-0006 subject to the following stipulations:

1. The special use permit to allow motor vehicle sales is valid for a period of two (2) years following the date of Governing Body approval.
2. The maximum number of vehicles for display or sales permitted to be located outdoors is 50 vehicles. These vehicles will be restricted to the rear of the lot

and to designated spaces on the southside of the structure as shown on the site plan.

3. The portion of fence running east/west at the rear of the building must be removed prior to issuance of a Change of Occupancy permit to allow fire access to the rear of the building.
4. An approved fire department "Knox" county keyed cylinder must be installed at an accessible location on the entry side of the gate to the stored cars lot.
5. Wind signs, including pennants, streamers, balloons, whirligigs or similar devises, are not permitted along the street frontage.
6. The existing non-conforming monument sign must be removed, per UDO 18.50.190.S.5. In the interim, a temporary sign face may be attached for the new business, not to exceed the existing sign face.
7. Metal siding located along areas of fencing must be removed.
8. Exterior ground-mounted or building mounted equipment including but not limited to, mechanical equipment, utilities' meter banks and coolers must be screened from public view with three (3) sided landscaping or an architectural treatment compatible with the building architecture, per UDO Section 18.30.130.
9. Vehicles for inventory, sales, or display located south of the building (as shown on the site plan) must be parked in designated, striped, parking spaces. Parking in front of the building is for customer and employee parking only.
10. Sidewalks and curbs adjacent to the building must be repaired.
11. Customer parking spaces in front of the building must be striped.
12. Stipulations numbered 6-11 must be completed within 6 (six) months of the date of Governing Body approval.



**MOTOR VEHICLE SALES FOR CAR GALLERY**  
**SU20-0006**



User: jaredmd  
Date: 2/2/2021

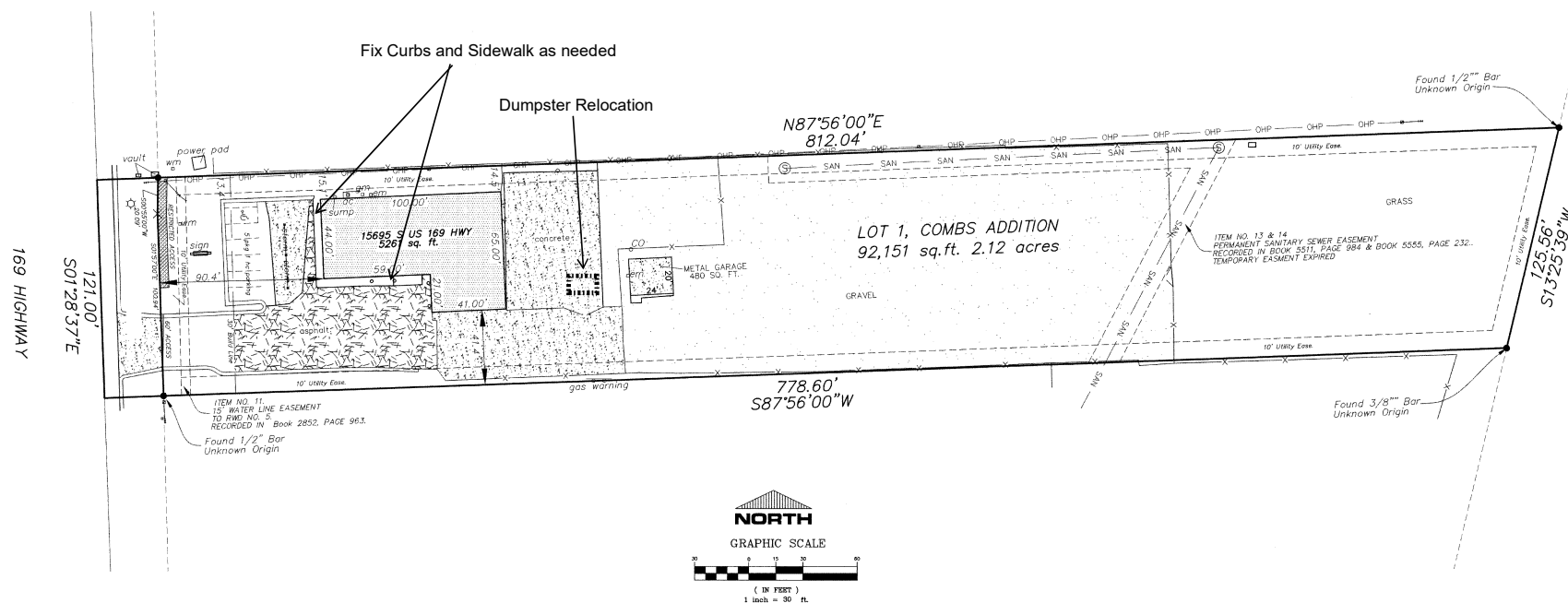




LOT 1, COMBS ADDITION, A SUBDIVISION IN THE CITY OF OLATHE, JOHNSON COUNTY, KANSAS

LEGAL DESCRIPTION: ALL OF LOT 1, COMBS ADDITION, A SUBDIVISION IN THE CITY OF OLATHE, JOHNSON COUNTY, KANSAS AS SHOWN ON RECORDED PLAT FILED IN PLAT BOOK 78, PAGE 5.

BEARING BASED ON FINAL PLAT OF COMBS ADDITION



TITLE POLICY FURNISHED BY: SECURITY FIRST TITLE : COMMITMENT NO. 2413509, DATED NOVEMBER 29, 2020 AT 7:00 AM.

SURVEYORS NOTES:

1. There is no visible evidence of earth moving or construction
2. There is no visible evidence of storm or sidewalk repairs or construction
3. There is no visible evidence of wetlands (A National Wetlands Inventory map was provided showing a general reference to a freshwater pond but no physical evidence was found on site)
4. I69 Highway access points on the West side of property with restrictions.
5. Current Land Owner – Timothy W. Voss, 10001 Voss Road, Northbrook, IL, Worthy.
6. There are adequate public utilities for this site.
7. This property is not in a flood plain per Firm Map No. 20091-00C936, Revised August 3, 2009
8. Total Land Area = 92,151 sq.ft. 2.12 acres
9. This property lies in zone X, and has of 0.2% annual chance flood, areas of 1% annual chance flood and depths of 1.5 to 3 feet with drainage areas less than 1 square mile, and areas protected by levees from 1% annual chance flood. FIRM map No. 20091-00C936 ANEL 93 of 161.

Existing Zoning M-2, General Industrial

To Car Gallery Inc, Security First Title Insurance , their successors or assigns.

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1,2,4,,7a,7b(1),8,9 16 & 17 of Table A A thereof. The fieldwork was completed on 12-11-2020



Robert M. Layton, Professional Land Surveyor, KS 1266

12/14/20  
Date Prepared: 12-11-2020

**ALTA NSPS LAND TITLE SURVEY**

PT. OF SOUTHWEST QUARTER  
SECTION 12-14-23  
CITY OF OLATHE, JOHNSON CO. KANSAS



**CIVIL ENGINEERS**  
**LAND SURVEYORS - LAND PLANNERS**

122 N. WATER STREET  
OLATHE, KANSAS 66061  
PHONE: (913) 764-1076 FAX: (913) 764-8635

Scale: 1"=50'	Drawn By: RML	Project: 35673
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AD PROJECT # 35673      12-14-23      ALTA NSPS LAND TITLE SURVEY

AD PROJECT # 35673

Items of Schedule B:

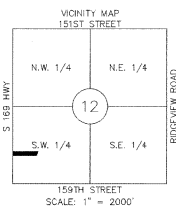
8. Easements, restrictions, setback lines or servitudes, if any, reflected on the plat of said land recorded in Plat Book 78 at Page 5. (shown)
9. Controlled access to highway as set out in Warranty Deed recorded in Book 2017 at Page 278. (shown)
10. Temporary Easement Agreement with the Kansas Department of Transportation 10. recorded in Book 2017 at Page 280. (expired)
11. Right-of-Way Easement granted to Rural Water District No. 5, Johnson County, Kansas recorded in Book 2852 at Page 963. (shown)
12. Terms and provisions of Resolution No. 97-1008 authorizing the construction of a sanitary sewer system designated as Line H Lateral Sewer, in the Upper Cedar Creek Basin, Project No. 13995 recorded in Book 5115 at Page 769. (resolution to construct)
13. Permanent Sanitary Sewer Easement and Temporary Construction Easement as taken by the City of Olathe, Kansas in Eminent Domain Proceedings filed in the District Court of Johnson County, Kansas as Suit No. 98C02675 and recorded in Book 5511 at Page 984. (shown)
14. Permanent Sanitary Sewer Easement granted to the City of Olathe, Kansas, a municipal corporation recorded in Book 5555 at Page 232. (shown)

LEGEND

- BAR FOUND AS DESCRIBED  
 Ⓢ SET 1/2" X 24" REBAR WITH  
 PLASTIC KS CLS 93 CAP  
 U/E UTILITY EASEMENT  
 B/L BUILDING LINE  
 1000 ————— EXISTING CONTOUR LINE

**PREPARED FOR:**  
**CAR GALLERY INC.**  
8665 151ST STREET  
OVERLAND PARK, KANSAS 66223  
PHONE: 913-897-8277

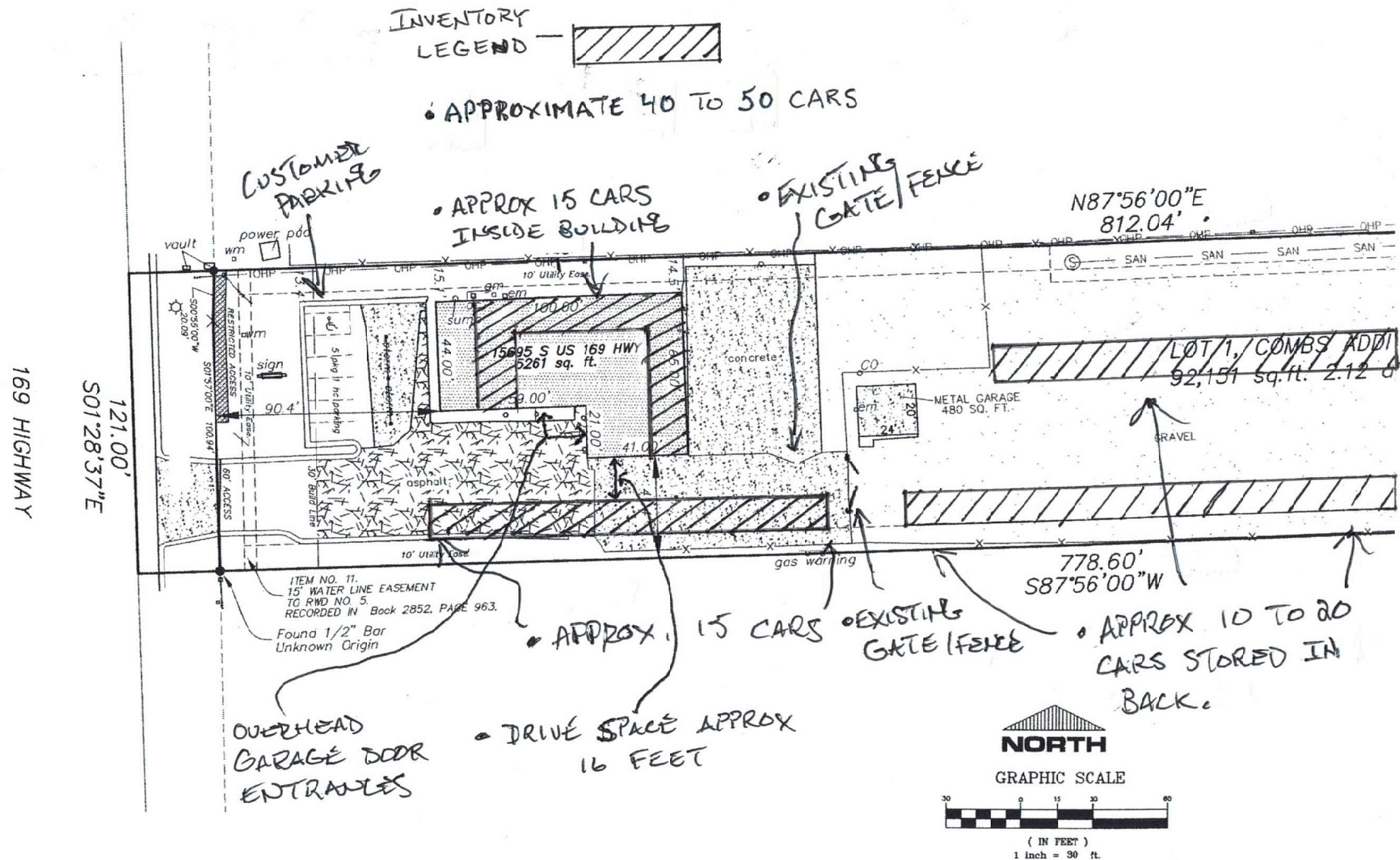
**PREPARED BY:**  
**ALLENBRAND-DREWS & ASSOCIATES, INC.**  
122 N. WATER STREET  
OLATHE, KANSAS 66061  
PHONE: (913) 764-1076  
FAX: (913) 764-8635



PROJECT LOCATION  
SECTION 12-14-23

# ALTA / NSPS LAND TITLE SURVEY

LOT 1, COMBS ADDITION, A SUBDIVISION IN THE CITY OF OLATHE, JOHNSON CO.



TITLE POLICY FURNISHED BY: SECURITY FIRST TITLE : COMMITMENT NO. 2413509, DATED NOVEMBER 29, 2020 AT 7:00 AM.

## Items of Schedule B:

8. Easements, restrictions, setback lines or servitudes, if any, reflected on the plat of said land filed in Plat Book 78 at Page 5. (shown)

9. Controlled access to highway as set out in Warranty Deed recorded in Book 2017 at Page 278. (shown)

10. Temporary Easement Agreement with the Kansas Department of Transportation 10. recorded in Book 2017 at Page 280. (expired)

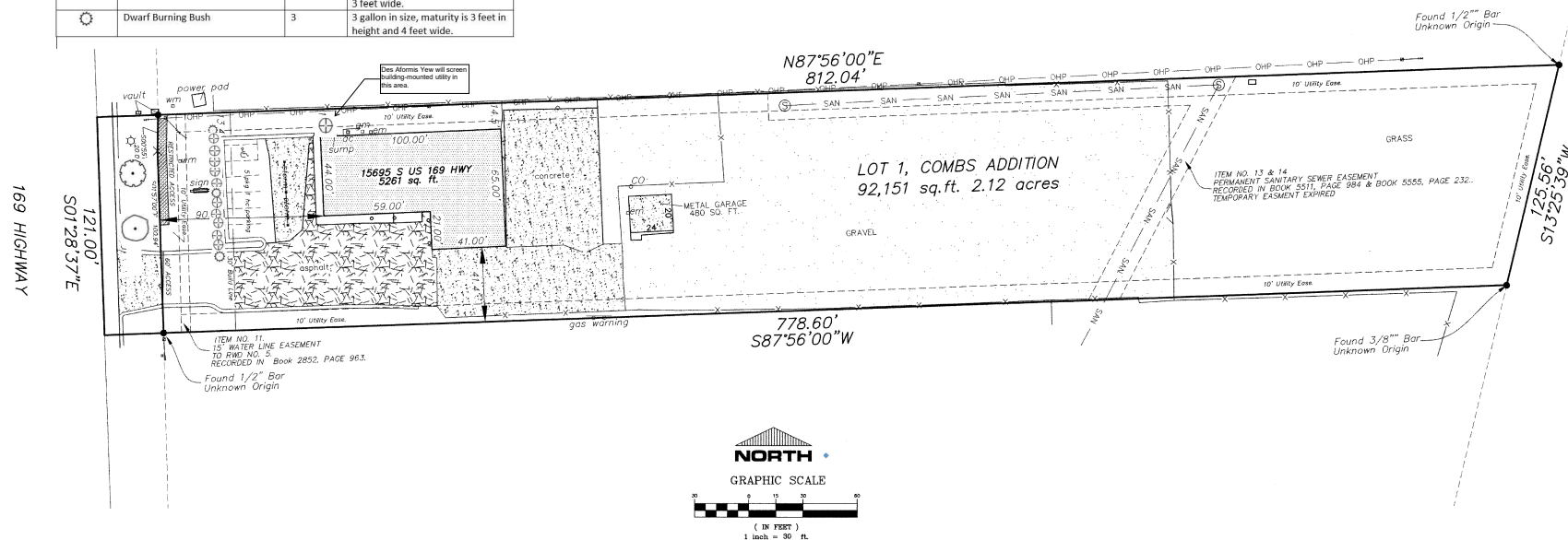
## LEGEND

	WATER METER		STORM SEWER
	ELECTRIC METER		OVERHEAD POWER LINE
	AIR CONDITION PAD		OHP
	STORM INLET		

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13. Permanent Sanitary Sewer Easement and Temporary Construction Easement as taken by the City of Olathe, Kansas in Eminent Domain Proceedings filed in the District Court of Johnson County, Kansas as Suit No. 98C02675 and recorded in Book 5511 at Page 984. (shown)

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Existing Zoning M-2, General Industrial

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Robert M. Layton, Professional Land Surveyor, KS 1266

12/14/20  
Date Prepared: 12-11-2020

AD PROJECT # 35673      12-14-23      ALTA NSPS LAND TITLE SURVEY

**ALTA NSPS LAND TITLE SURVEY**

**PT. OF SOUTHWEST QUARTER  
SECTION 12-14-23  
CITY OF OLATHE, JOHNSON CO. KANSAS**



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PHONE: (913) 764-1078 FAX: (913) 764-8635

Scale: 1"=50'	Drawn By: RML	Project: 35673
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Scale: 1"=50'	Drawn By: RML	Project: 35673
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23 ALTA NSPS LAND TITLE SURVEY