

ORDINANCE NUMBER 2021- 21

GRANTING A SPECIAL USE PERMIT FOR A LANDSCAPING BUSINESS AND A VARIANCE TO SECTIONS 4:05.B AND 7:01.G.2 OF THE KENDALL COUNTY ZONING ORDINANCE TO ALLOW OFF-STREET PARKING IN THE FRONT YARD SETBACK AT 12830 ASHLEY ROAD AND IDENTIFIED BY PARCEL IDENTIFICATION NUMBER 08-02-300-012 IN LISBON TOWNSHIP

WHEREAS, Section 13:08 of the Kendall County Zoning Ordinance permits the Kendall County Board to issue special use permits and place conditions on special use permits and provides the procedure through which special use permits are granted; and

WHEREAS, Section 7:01.D.30 of the Kendall County Zoning Ordinance permits the operation landscaping businesses as a special use in the A-1 Agricultural Zoning District; and

WHEREAS, Section 13:04 of the Kendall County Zoning Ordinance permits the Kendall County Board to issue variances to the Kendall County Zoning Ordinance provides the procedure through which variances are granted; and

WHEREAS, Section 4:05.B of the Kendall County Zoning Ordinance restricts off-street parking within the required front yard setback; and

WHEREAS, Section 7:01.G.2 of the Kendall County Zoning Ordinance establishes the required front yard setback on properties zoned A-1 Agricultural District at one hundred fifty feet (150') from the centerline of the road where the right-of-way is not dedicated; and

WHEREAS, the property which is the subject of this Ordinance has been, at all relevant times, and remains currently located within the A-1 Agricultural Zoning District and consists of approximately 1.5 +/- acres located at 12830 Ashley Road (PIN: 08-02-300-012), in Lisbon Township. The legal description for the subject property is set forth in Exhibit A attached hereto and incorporated by reference, and this property shall hereinafter be referred to as "the subject property"; and

WHEREAS, the subject property is owned by Lorena and Jose DeJesus Gutierrez and Refugio and Etelvina Alvarez and shall hereinafter be referred to as "Petitioner"; and

WHEREAS, the Petitioner own and operate JJ Gutierrez Lawn Care, LLC, a landscaping company; and

WHEREAS, on or about August 2, 2021, Petitioner's representative filed a petition for a special use permit for the operation of a landscaping business and a variance to allow off-street parking in the required front yard setback at the subject property; and

WHEREAS, following due and proper notice by publication in the Kendall County Chronicle on September 1, 2021, the Kendall County Zoning Board of Appeals held a public hearing on September 27, 2021, at 7:00 p.m., in the County Board Room of the Kendall County Office Building at 111 W. Fox Street in Yorkville at which the Petitioner's representative presented evidence, testimony, and exhibits in support of the requested special use permit and variance and zero members of the public asked questions or testified in favor or in opposition to the request; and

WHEREAS, based on the evidence, testimony, and exhibits, the Kendall County Zoning Board of Appeals has made their findings of fact and recommended approval of the special use permit and variance with conditions as set forth in the Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals, dated September 27, 2021, a true and correct copy of which is attached hereto as Exhibit B; and

WHEREAS, the Kendall County Planning, Building and Zoning Committee of the Kendall County Board has reviewed the testimony presented at the aforementioned public hearing and has considered the Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals, and has forwarded to the Kendall County Board a recommendation of approval of the requested special use permit and variance; and

WHEREAS, the Kendall County Board has considered the recommendation of the Planning, Building and Zoning Committee and the Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals, and has determined that said petition is in conformance with the provisions and intent of the Kendall County Zoning Ordinance; and

WHEREAS, the special use permit and variance shall be treated as a covenant running with the land and is binding on the successors, heirs, and assigns as to the same special use conducted on the property; and

NOW, THEREFORE, BE IT ORDAINED, BY THE COUNTY BOARD OF KENDALL COUNTY, ILLINOIS, as follows:

1. The Findings of Fact and Recommendation of the Kendall County Zoning Board of Appeals attached hereto as Exhibit B is hereby accepted and the Findings of Fact set forth therein are hereby adopted as the Findings of Fact and Conclusions of this Kendall County Board.
2. The Kendall County Board hereby grants approval of Petitioner's petition for a special use permit for the operation of a landscaping business and a variance to Sections 4:05.B and 7:01.G of the Kendall County Zoning Ordinance allowing off-street parking in the required front yard setback on the subject property subject to the following conditions:
 - A. The site shall be developed substantially in accordance with the site plan attached hereto as Exhibit C and aerial showing the site plan attached hereto as Exhibit D, including the addition of a raingarden as shown on Exhibit C.
 - B. A variance to Sections 4:05.B and 7:01.G.2 of the Kendall County Zoning Ordinance shall be granted allowing off-street parking no closer than forty-seven feet (47') from the centerline of Ashley Road.
 - C. The owners of the business allowed by the special use permit shall maintain the parking area shown on the site plan and in substantially the same location as depicted on the site plan attached hereto as Exhibit C. The parking area shall be gravel.
 - D. The owners of the businesses allowed by this special use permits shall diligently monitor the property for leaks from equipment and vehicles parked and stored items stored on the subject property and shall promptly clean up the site if leaks occur.
 - E. Any new structures and signs constructed or installed on the property shall not be considered for agricultural purposes and must secure applicable building permits.
 - F. Equipment and vehicles related to the business allowed by the special use permit may be stored outdoors.

- G. None of the vehicles or equipment parked or stored on the subject property related to the business allowed by the special use permit shall be considered agricultural vehicles or agricultural equipment.
- H. All of the vehicles and equipment stored on the subject property related to the business allowed by the special use permit shall be maintained in good condition with no deflated tires and shall be licensed if required by law.
- I. Except for the purposes of loading and unloading, all landscape related materials shall be stored indoors or in the designated storage areas shown on the site plan attached hereto as Exhibit C. The maximum height of the piles of landscaping related material shall be seven feet (7'), provided a Stormwater Management Permit is issued.
- J. One (1) two (2)-sided business related sign may be installed in substantial the location shown on the site plan attached hereto as Exhibit C. The sign shall be a maximum of six feet (6') wide and three feet (3') tall. The sign may be elevated no greater than one point five feet (1.5') from the ground.
- K. A minimum of sixteen (16) arborvitae shall be planted and maintained in substantially the locations shown on the site plan attached hereto as Exhibit C. The arborvitae shall be a minimum of three feet (3') tall at the time of planting and shall grow to approximately twelve feet (12'). Damaged or dead arborvitae shall be replaced on a timeframe approved by the Kendall County Planning, Building and Zoning Department.
- L. A minimum of fifteen (15) blue spruce trees shall be planted by June 30, 2022, and maintained in substantially the locations shown on the site plan attached hereto as Exhibit C. The blue spruce trees shall be a minimum of five feet (5') tall at the time of planting and shall grow to approximately twenty feet (20'). Damaged or dead blue spruce trees shall be replaced on a timeframe approved by the Kendall County Planning, Building and Zoning Department.
- M. No landscape waste generated off the property can be burned on the subject property.
- N. A maximum of five (5) employees of the business allowed by this special use permit, including the owners of the business allowed by this special use permit, may report to this site for work. No employees shall engage in the sale of landscaping related materials on the property.
- O. No customers of the business allowed by this special use permit shall be invited onto the property by anyone associated with the use allowed by this special use permit.
- P. The hours of operation of the business allowed by this special use permit shall be Monday through Saturday from 6:00 a.m. until 6:00 p.m. The owners of the business allowed by this special use permit may reduce these hours of operation.
- Q. The noise regulations are as follows:

Day Hours: No person shall cause or allow the emission of sound during daytime hours (7:00 A.M. to 10:00 P.M.) from any noise source to any receiving residential land which exceeds sixty-five (65) dBA when measured at any point within such receiving residential land, provided; however, that point of measurement shall be on the property line of the complainant.

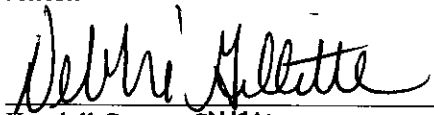
Night Hours: No person shall cause or allow the emission of sound during nighttime hours (10:00 P.M. to 7:00 A.M.) from any noise source to any receiving residential land which exceeds fifty-five (55) dBA when measured at any point within such receiving residential land provided; however, that point of measurement shall be on the property line of the complainant.

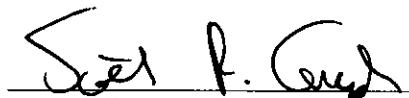
EXEMPTION: Powered Equipment: Powered equipment, such as lawn mowers, small lawn and garden tools, riding tractors, and snow removal equipment which is necessary for the maintenance of property is exempted from the noise regulations between the hours of seven o'clock (7:00) A.M. and ten o'clock (10:00) P.M.

- R. At least one (1) functioning fire extinguisher and one (1) first aid kit shall be on the subject property. Applicable signage stating the location of the fire extinguisher and first aid kit shall be placed on the subject property.
 - S. The owners of the business allowed by this special use shall reside at the subject property as their primary place of residence.
 - T. The owners of the business allowed by this special use permit acknowledge and agree to follow Kendall County's Right to Farm Clause.
 - U. The property owner and operator of the business allowed by this special use permit shall follow all applicable Federal, State, and Local laws related to the operation of this type of business.
 - V. Failure to comply with one or more of the above conditions or restrictions could result in the amendment or revocation of the special use permit.
 - W. If one or more of the above conditions is declared invalid by a court of competent jurisdiction, the remaining conditions shall remain valid.
3. This special use permit and variance shall be treated as a covenant running with the land and is binding on the successors, heirs, and assigns as to the same special use conducted on the property.
 4. The Zoning Administrator and other appropriate County Officials are hereby authorized and directed to amend the Official Zoning Map of Kendall County to reflect this special use permit.

IN WITNESS OF, this ordinance has been enacted by a majority vote of the Kendall County Board and is effective this 19th day of October, 2021.

Attest:


Kendall County Clerk
Debbie G. Hette


Kendall County Board Chairman
Scott R. Gryder

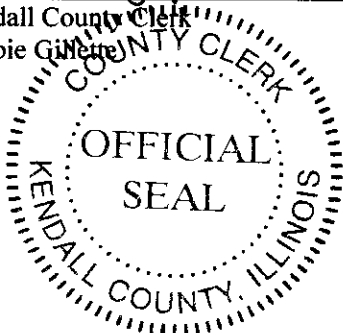


Exhibit A

LEGAL DESCRIPTION

THAT PART OF THE SOUTHWEST $\frac{1}{4}$ OF SEC 2, TOWNSHIP 37 NORTH, RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID SOUTHWEST $\frac{1}{4}$; THENCE NORTH ALONG THE WEST LINE OF SAID SOUTHWEST $\frac{1}{4}$ 505.85 FEET FOR A POINT OF BEGINNING; THENCE EASTERLY ALONG A LINE FORMING AN ANGLE OF 87 DEGREES 09 MINUTES 00 SECONDS WITH THE LAST DESCRIBED COURSE MEASURED COUNTER-CLOCKWISE THEREFROM, 200.78 FEET; THENCE NORTH PARALLEL WITH SAID WEST LINE 316.80 FEET; THENCE WESTERLY ALONG A LINE FORMING AN ANGLE OF 98 DEGREES 00 MINUTES 00 SECONDS WITH THE LAST DESCRIBED COURSE, MEASURED CLOCKWISE THEREFROM 202.50 FEET TO SAID WEST LINE; THENCE SOUTHERLY ALONG SAID WEST LINE 335.00 FEET TO THE POINT OF BEGINNING, IN LISBON TOWNSHIP, KENDALL COUNTY, ILLINOIS.

PIN: 08-02-300-012

Common address: 12830 Ashley Rd., Newark, IL 60541

Exhibit B

The Kendall County Zoning Board of Appeals approved the following Findings of Fact and Recommendation at their meeting on September 27, 2021, by a vote of five (5) in favor and zero (0) in opposition. Members Clementi and Whitfield were absent.

FINDINGS OF FACT-SPECIAL USE PERMIT

*That the establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare. **Provided the site is developed in accordance with the submitted site plan and provided a variance is granted regarding the location of the parking area, the operation of the special use will not be detrimental to the public health, safety, morals, comfort, or general welfare. The owners of the business allowed by the special use permit will not invite the public onto the property. Only landscape related materials and equipment will be stored at the subject property.***

*That the special use will not be substantially injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood. The Zoning classification of property within the general area of the property in question shall be considered in determining consistency with this standard. The proposed use shall make adequate provisions for appropriate buffers, landscaping, fencing, lighting, building materials, open space and other improvements necessary to insure that the proposed use does not adversely impact adjacent uses and is compatible with the surrounding area and/or the County as a whole. **Appropriate restrictions may be placed in the special use permit to regulate the number of employees, hours of operation, site landscaping, and noise. Therefore, the neighboring property owners should not suffer loss in property values and the use will not negatively impact the adjacent land uses.***

*That adequate utilities, access roads and points of ingress and egress, drainage, and/or other necessary facilities have been or are being provided. **If Lisbon Township approves the new access point, then adequate points of ingress and egress will be provided. No customers will be allowed on the property and employees will not be able to use the well or restrooms in the existing house. The owners of the business allowed by the special use permit have applied for the applicable stormwater permit.***

*That the special use shall in all other respects conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the County Board pursuant to the recommendation of the Zoning Board of Appeals. **Provided a variance is granted for the location of the parking area, the special use shall conform to the applicable regulations of the district.***

*That the special use is consistent with the purpose and objectives of the Land Resource Management Plan and other adopted County or municipal plans and policies. **True, the proposed use is consistent with an objective found on Page 9-21 of the Kendall County Land Resource Management Plan which calls for "a strong base of agricultural, commercial and industrial uses that provide a broad range of job opportunities, a healthy tax base, and improved quality of services to County residents".***

FINDINGS OF FACT-VARIANCE

*That the particular physical surroundings, shape, or topographical condition of the specific property involved would result in a particular hardship or practical difficulty upon the owner if the strict letter of the regulations were carried out. **The subject property is approximately two hundred feet (200') deep as measured from west to east. It would be difficult to have off-street parking and the proposed business on the subject property without a variance for parking.***

*That the conditions upon which the requested variation is based would not be applicable, generally, to other property within the same zoning classification. **Most A-1 zoned properties, including properties that have existing special use permits for landscaping businesses, are larger and wider and do not have a need for a variance with regards to parking in the front yard setback.***

*That the alleged difficulty or hardship has not been created by any person presently having an interest in the property. **The owners did not create the size or configuration of the subject property.***

*That the granting of the variation will not materially be detrimental to the public welfare or substantially injurious to other property or improvements in the neighborhood in which the property is located. **The requested variance should not negatively impact any of the neighbors and will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood.***

*That the proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets or increase the danger of fire, or endanger the public safety or substantially diminish or impair property values within the neighborhood. **Allowing the parking encroachment will not impair any of the above items.***

RECOMMENDATION

Approval subject to the following conditions and restrictions:

1. The site shall be developed substantially in accordance with the submitted site plan and aerial showing the site plan, including the addition of a raingarden as shown on the submitted site plan.
2. A variance to Sections 4:05.B and 7:01.G.2 of the Kendall County Zoning Ordinance shall be granted allowing off-street parking no closer than forty-seven feet (47') from the centerline of Ashley Road.
3. The owners of the business allowed by the special use permit shall maintain the parking area shown on the site plan and in substantially the same location as depicted on the submitted site plan. The parking area shall be gravel.
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5. Any new structures and signs constructed or installed on the property shall not be considered for agricultural purposes and must secure applicable building permits.
6. Equipment and vehicles related to the business allowed by the special use permit may be stored outdoors.
7. None of the vehicles or equipment parked or stored on the subject property related to the business allowed by the special use permit shall be considered agricultural vehicles or agricultural equipment.
8. All of the vehicles and equipment stored on the subject property related to the business allowed by the special use permit shall be maintained in good condition with no deflated tires and shall be licensed if required by law.
9. Except for the purposes of loading and unloading, all landscape related materials shall be stored indoors or in the designated storage areas shown on the submitted site plan. The maximum height of the piles of landscaping related material shall be seven feet (7'), provided a Stormwater Management Permit is issued.
10. One (1) two (2)-sided business related sign may be installed in substantial the location shown on the submitted site plan. The sign shall be a maximum of six feet (6') wide and three feet (3') tall. The sign may be elevated no greater than one point five feet (1.5') from the ground.

11. A minimum of sixteen (16) arborvitae shall be planted and maintained in substantially the locations shown on the submitted site plan. The arborvitae shall be a minimum of three feet (3') tall at the time of planting and shall grow to approximately twelve feet (12'). Damaged or dead arborvitae shall be replaced on a timeframe approved by the Kendall County Planning, Building and Zoning Department.
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13. No landscape waste generated off the property can be burned on the subject property.
14. A maximum of five (5) employees of the business allowed by this special use permit, including the owners of the business allowed by this special use permit, may report to this site for work. No employees shall engage in the sale of landscaping related materials on the property.
15. No customers of the business allowed by this special use permit shall be invited onto the property by anyone associated with the use allowed by this special use permit.
16. The hours of operation of the business allowed by this special use permit shall be Monday through Saturday from 6:00 a.m. until 6:00 p.m. The owners of the business allowed by this special use permit may reduce these hours of operation.
17. The noise regulations are as follows:

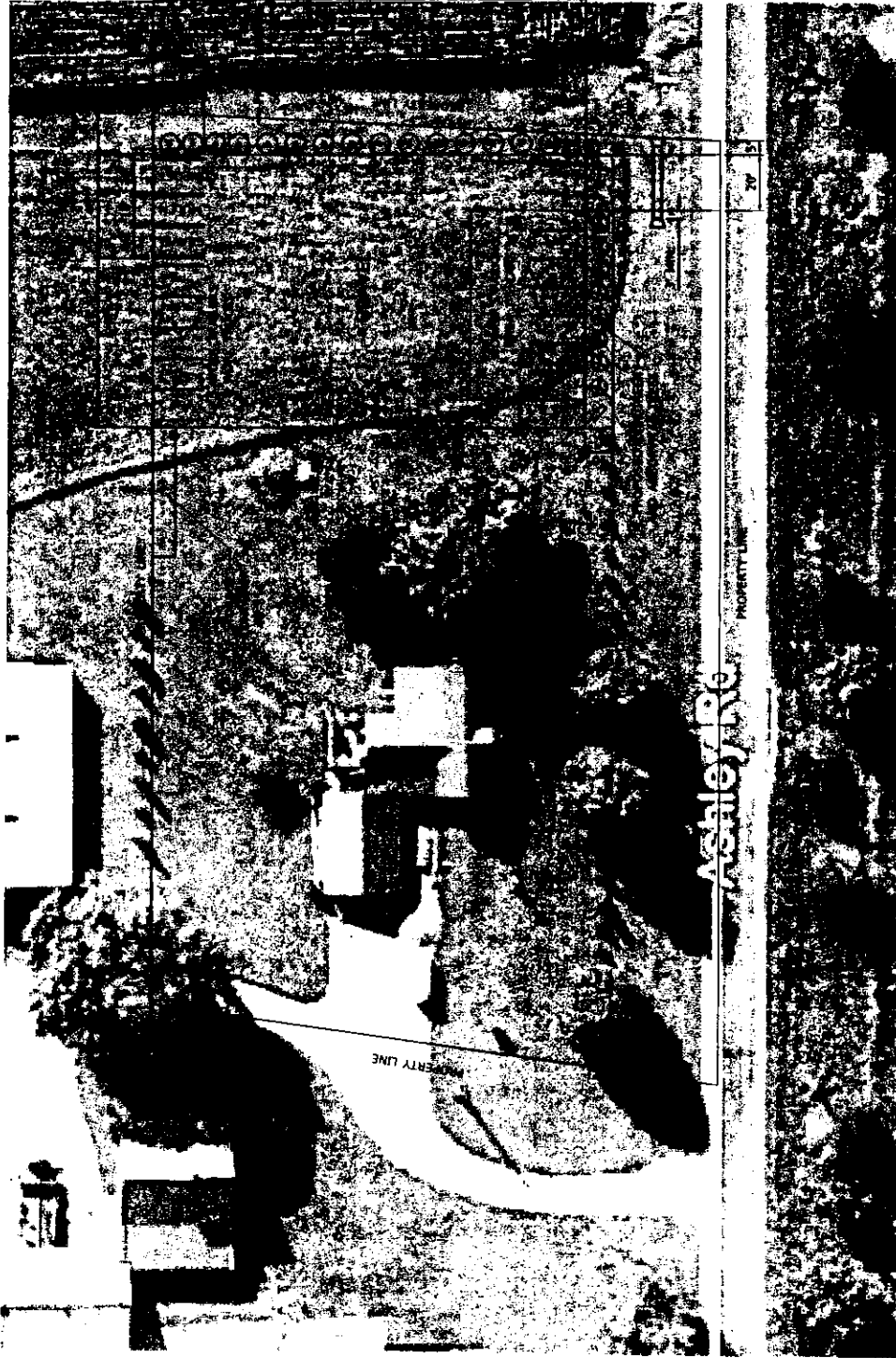
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18. At least one (1) functioning fire extinguisher and one (1) first aid kit shall be on the subject property. Applicable signage stating the location of the fire extinguisher and first aid kit shall be placed on the subject property.
19. The owners of the business allowed by this special use shall reside at the subject property as their primary place of residence.
20. The owners of the business allowed by this special use permit acknowledge and agree to follow Kendall County's Right to Farm Clause.
21. The property owner and operator of the business allowed by this special use permit shall follow all applicable Federal, State, and Local laws related to the operation of this type of business.

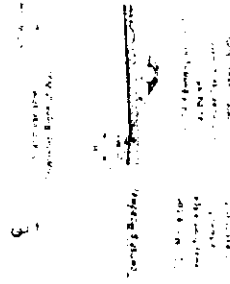
22. Failure to comply with one or more of the above conditions or restrictions could result in the amendment or revocation of the special use permit.
23. If one or more of the above conditions is declared invalid by a court of competent jurisdiction, the remaining conditions shall remain valid.
24. This special use permit shall be treated as a covenant running with the land and is binding on the successors, heirs, and assigns as to the same special use conducted on the property.

Exhibit D



Roadways without Curb

Typical Section



6'	
GUTIERREZ LAWN CARE INC. (815) 955-3448	
1.5'	

NOTE: SIGN WILL BE ILLUMINATED BY GROUND SOLAR LIGHTS

SIGN DETAIL

<table border="1"> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>		NO.	DATE	DESCRIPTION										DESIGNED: <u>ACE</u> DRAWN: <u>ACE</u> CHECKED: <u>SEA</u> DATE: <u>07/20/21</u>	PROJECT NUMBER: <u>11886</u> FILE: <u> </u> SCALE: <u>1" = 10'</u>	MISSOURI, LANSBRI AND RANNEY, INC. CONSULTING ENGINEERS MR 12830 ASHLEY ROAD, NEWARK, IL 60541 WWW.MISSOURIENGINEERS.COM	12830 ASHLEY ROAD, NEWARK, IL 60541	SHEET NUMBER 2 / 1
NO.	DATE	DESCRIPTION																
AERIAL PLAN																		

