

**EXCERPT MINUTES OF DECEMBER 7, 2017, WICHITA-SEDGWICK COUNTY METROPOLITAN
AREA PLANNING COMMISSION MEETING**

Case No. CON2017-00037- County Conditional Use to create a borrow pit on property zoned RR Rural Residential; generally located north of 95th Street South and West K-15 at 9529 South K-15 Highway, Derby, Kansas on property described as:

PT SE ¼ SEC 13 & PT GOV LOT 4 NW ¼ SEC 24 BEG ON S LI SE ¼ SEC 13 AT W KI ATSF ROW W 1370 FT 340 FT NE 810 FT NE 190 FT NLY 190 FT E 70 FT SLY ALG ROW TO BEG SE ¼ SEC 13-29-1E & NW ¼ SEC 24-29-1E.

BACKGROUND: The applicant is requesting a Conditional Use to permit a borrow pit on their property, which is zoned RR Rural Residential (RR). The intent is for the dirt to be used for construction project(s) in Derby by the contractor removing the dirt. The end result will be a pond for private use by the landowner.

According to information provided by the applicant/agent, the borrow pit will cover a little over 1 acre of land and be located south of the driveway in the southeast corner of the property. It is estimated that about 26,000 yards of dirt will be removed. Once work begins, it is anticipated the removal of the dirt will take between 60 and 90 days; however the exact time to complete the removal is unknown.

The applicant has indicated contact has been made with both KDOT and with the Railroad regarding this new activity (truck traffic) on the drive entrance to K-15 and crossing of the railroad. No objections have been made from either entity. Written confirmation of these contacts has been provided.

The owner/agent has stated an intent for the resulting pond to be for personal use only.

The applicant has indicated the County plans to extend 95th Street west from K-15 along the south side of his property and construct a new bridge over the Arkansas River. That project is proposed in the long range future Transportation Plans for the south area and are being supported by both the City of Derby and City of Haysville; however there is no specific timing anticipated for when and/or if the project would occur.

The matter was reviewed by staff and other agencies of the County regarding the impacts. Sedgwick County officials have discussed this issue with the agent regarding floodplain impacts and other potential state permitting requirements. To date, no other issues have been identified that would delay or negatively impact the proposed use.

Under the application of the definitions and requirements of the Unified Zoning Code, this activity is to be treated in the same manner as all other “mining and quarrying”, which include the provisions of the Supplementary Uses, Article III, Section III(d)(6)(gg) as follows:

Mining or Quarrying, sand and gravel extraction. Sand and gravel extraction operations shall be subject to the following conditions:

- (1) The extraction operation on the Site shall proceed in accordance with an operational plan approved by the Planning Commission. The perimeter of the lake excavation shall conform to the approximate size and shape indicated on the approved operational plan. To assist in the enforcement of the operational plan, a copy of the approved operational plan shall be posted in the extraction office.
- (2) The operational plan shall illustrate which area is to be excavated and at what time.

- (3) As part of the Conditional Use approval, the development plan for Uses after the conclusion of the extraction operation shall be submitted to the Planning Director for review and a recommendation to the Planning Commission as to whether or not the development plan is compatible with surrounding land uses, the *Comprehensive Plan* or other plans or policies being utilized by the City or County.
- (4) Abutting the perimeter of the application area, a minimum 60-inch high Fence shall be constructed prior to the beginning of any extraction operation and shall be maintained at the locations depicted on the approved operational plan. Said Fence shall be placed on steel posts that are not less than seven feet tall. The posts shall not be set more than 16 feet apart. The Fence shall be a minimum height of 60 inches and shall be of the following types of construction:
 - (a) a 48-inch high or higher chain link Fence with three or more strands of barbed wire; or
 - (b) a 48-inch high or higher solid metal or solid masonry Screening Wall with three or more strands of barbed wire; or
 - (c) a 48-inch high or higher wood Fence that may have cracks or openings not in excess of five percent of the area of such Fence, with three or more strands of barbed wire; whereby
 - (d) the term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of four inches apart and placed at the top of the Fence and gate at an angle not to exceed 160 degrees facing away from the excavation.
- (5) The extraction shall be to at least a minimum depth of six feet below the normal water table, as determined by the Director of Sedgwick County Code Enforcement.
- (6) The Owner of the property shall be responsible for minimizing blowing dust from the Site. To minimize blowing soil, overburden shall not be removed more than six months in advance of the lake being expanded into an area, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion. As part of the required operational plan, the site shall be divided into at least two distinct areas for the purpose of showing phased excavation over time.
- (7) All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses that will permit the establishment of sod cover to help prevent erosion.
- (8) To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no steeper than five horizontal to one vertical.
- (9) Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
- (10) The property shall be platted prior to the issuance of any zoning or Building Permits, except those permits necessary for the extraction operation.
- (11) No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the development area, unless duly authorized under provisions of this Code and amendments thereto.

- (12) The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the City or County legal counsel (as applicable), prior to the commencement of any extraction operation, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
- (13) The storage of equipment or stockpiling of sand or overburden is not permitted closer than 100 feet to any public right-of-way or closer than 50 feet to any property line.
- (14) Nothing in the approval of a Conditional Use shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the extraction operation, the land surrounding the lake shall be properly graded and planted with a vegetative cover. Also, all stockpiled sand or over-burden and sand pumping and related equipment shall be removed from the subject site.
- (15) The length of time for the extraction operation and the hours of operation for removal of the overburden shall be set at the time of approval of the Conditional Use. Subject operation is to cease after that period of time with all equipment and materials associated with the operation removed from the premises.
- (16) Hours of operation for the removal of overburden shall be limited to 6:00 a.m. to sunset. The same hours of operation shall apply if sand removal is conducted with the use of non-electric driven equipment. If sand is removed with the use of an electrical pump, sand extraction may operate 24 hours a day.
- (17) All on-site water and sewage facilities shall be approved by and constructed to the standards of the Department of Code Enforcement for the County or Department of Environmental Services for the City.
- (18) Any water wells needed to operate the facility must comply with the Water Well Construction Standards contained in Article 30 of the Kansas Department of Health and Environment rules and regulations.
- (19) The applicant shall make the Site available to the Department of Code Enforcement for land in the County or Department of Environmental Services for land in the City for the installation and management of groundwater monitoring wells.
- (20) Any on-site storage of fuels or chemicals must be approved by the Sedgwick County Department of Environmental Resources for land in the County or Department of Environmental Services for land in the City.
- (21) A drainage plan shall be submitted to and approved by City or County Public Works (as applicable) prior to starting the extraction operation. All of the area included within the fenced sand extraction operation shall be graded in accordance with the approved drainage plan. Additional requirements, such as a public drainage easement, a floodway reserve, or a covenant authorizing the area of the Site for use as a detention storage facility for public drainage purposes, may be required as a condition of approval for the drain-age plan.
- (22) All operational roads shall be maintained in a sand or graveled condition and shall be treated water or other acceptable dust retardant to minimize blowing dust.

- (23) All applicable local, state, and federal permits necessary for the extraction operation shall be obtained and maintained.

The applicant is requesting that this operation not be declared as “mining and quarrying” subject to the provisions listed above. The applicant has indicated the site will be secured and maintained such to meet the spirit and intent of what the above standards are attempting to establish, however the above standards appear to be more applicable to commercial operations that are intended to exist for an extended period of time. This operation will be of relatively short duration and will be only for one user tied to a project or projects occurring in the City of Derby needing fill dirt. Given that the pit will only cover about 1 acre and be used for a pond upon completion of the excavation, the request for the waiver of the “mining and quarrying” standards appears reasonable. That waiver cannot be granted by the MAPC, therefore this case will be required to be considered by the Board of County Commissioners.

CHARACTER OF AREA: The character of the surrounding area is primarily rural. All of the surrounding properties within the unincorporated portion of Sedgwick County are zoned RR Rural Residential (RR). The land to the north and west is owned by Derby Recycling and Transfer Station, LLC. There is an old BZA case from 2000 regarding that property that appears to be unresolved. That property has both RR Rural Residential and GI General Industrial zoning.

The property to the south is agricultural. The railroad (BNSF) and K-15 Highway are the on the east side of the property. On the east side of K-15 Highway and north of 95th Street is a residential neighborhood within the City of Derby.

CASE HISTORY: The subject property is unplatted. The western portion of the property is in the designated FEMA 100-year flood plain; however the location of the proposed borrow pit/pond is outside that area. The floodplain from the Arkansas River in this area is larger to the south and west.

ADJACENT ZONING AND LAND USE:

NORTH:	RR	rural residential
SOUTH:	RR	rural/agricultural
EAST:	RR & Derby	single family home
WEST:	RR	rural/agricultural

PUBLIC SERVICES: The improvements on the property are served by both on-site water and on-site wastewater treatment. Access to the property is from K-15 Highway with the western portion of the intersection with 95th Street being the “access road/driveway” serving the property, with a crossing of the railroad at grade.

CONFORMANCE TO PLANS/POLICIES: The 2035 Wichita Future Growth Concept map (MAPC approval November 19, 2015) indicates the site is in the “rural area” of Sedgwick County and is adjacent to the “Small City Urban Growth Area” for the City of Derby.

This use is considered appropriate for this area.

RECOMMENDATION: Based upon the information available at the time the staff report, staff recommends the request be **APPROVED**, provided the Board of County Commissioners waive the Supplementary Use restrictions applicable to “mining and quarrying”, and subject to the following conditions:

1. The excavation activity shall be restricted to the area shown on the site plan submitted by the applicant/agent and shall not be perpetuated beyond the agreement to provide dirt for the project(s) within the City of Derby, with all excavation activity to be completed by the end of December, 2018.

2. All permits and approvals that might otherwise be identified and needed shall be obtained, with copies placed on file with the Metropolitan Area Planning Department, including documentation from KDOT, Burlington Northern/Santa Fe Railroad, and appropriate State and Federal agencies, if any.
3. If the Zoning Administrator finds there is a violation of any provision or condition of the Conditional Use, or any other provision of the Unified Zoning Code (UZC), the Zoning Administrator shall enforce all remedies of Section VIII of the UZC, and with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The zoning, uses and character of the neighborhood, as noted above, are rural. The impact from this use will be minimal during the excavation process and virtually nonexistent upon completion.
2. The suitability of the subject property for the uses to which it has been restricted: The property is already being used as permitted for its RR Rural Residential classification. This activity will simply add an amenity to the land for future use and enjoyment of the owners
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The requested authorization to permit the borrow pit that will become a pond should have no impact on nearby properties. The location will keep impacts primarily to the public road system which is fully capable of handling the brief increase in truck traffic.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: There is no impacts evident under either situation that dominate. The requested use is reasonable and will enhance value of the land.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2035 Wichita Future Growth Concept map (MAPC approval November 19, 2015) indicates the site is rural. Staff believes this project is in conformance with the adopted Plan.
6. Impact of the proposed development on community facilities: The proposed use will have no detrimental impact on community facilities.

DAVE YEAROUT, Planning Staff presents the Staff Report. He added that that City of Derby, Planning Commission did not indicate the desire to make formal comments to the board on this request.

WARREN said he has a few question and one was already answer as to what did the City of Derby had to comment. He said looking at an aerial for 95th Street it takes a slight turn to the south. His said there are a number of agencies that need to approve this item and his concern is of a pond located close to the property line that could make the decision of making 95th a major corridor difficult in the near future.

YEAROUT said he talked with Sedgwick County Public Works specifically whether 95th Street would be further improved, as it would move west and even across the river. He said the comments from Public Works were that in the long-range plan it is identified as a potential for an expansion or improvement of 95th Street from K-15 west and tying to 81 Highway. It is not even not within the transportation tip and nothing is being locked within the next 20 years. He said according with Public Works it would start further back to the west because they would

have to bridge over the railroad track and the river, if it would get that far down. He said in the meantime there would be other borrow pits in the area

WARREN said if approved it would be about a one-acre pond, and he asked what is in place to make sure it's not expanded into a much larger pond.

YEAROUT replied if approved it would be restricted to the acre showed. He said the applicant indicated that they have written documentation that both KDOT and the railroad company are okay. There was also the concern with the site being close to the river whether there would be other flood plain impacts or other issues. County officials responsible for that have evaluated and there are no concerns He said the applicant indicated they would not be going down to the ground water at this location.

RICHARDSON commented that he does not see the one-year period as a recommendation in the staff report and asked if it needs to be added.

YEAROUT said the restriction is that it would be good until the end of December of 2019.

RICHARDSON replied that he sees it in the report.

FOSTER commented that he wants to make sure that under the final recommendation in the staff report it states that supplementary use restrictions applicable to mining and quarrying would waive the supplementary use regulations .He thought the idea was that they would meet the intent.

YEAROUT said that the intent was to waive the full listing, but the applicant indicated willingness to meet the intent not necessarily by having them as hard conditions.

FOSTER commented that he would appreciate it if that were looked at.

RICHARDSON comments that it is not within the Planning Commission to waive the mining requirements and only the County Commission can do that.

YEAROUT replied correct and with that request, it will automatically go in front of the Board of County Commission for final action.

DAILEY asked if the dirt is left on site would they have to go through with this.

YEAROUT said if the dirt if moved somewhere else on site there would not be a case, but if the dirt is hauled somewhere else off site than it is another case.

JESSY WATSON, 9529 SOUTH K-15, DERBY, KANSAS, said he wants to build a pond and would not need a permit if they want to stock pile the dirt but there was a project where somebody could use it and figured they could dig it, move it, and not stockpile it, making it an eye sore for everybody else. He said there is a lot of flood plain in the back of the property and cannot have the dirt there. He does not believe other places onsite would be a good idea to stockpile it, and the best way is to remove it from the property. He also has it set to where the local boy scouts would be able to camp and fish. In his opinion, a water fountain in the pond would raise his property value.

MR. MORRIS 9339 SOUTH K-15 HIGHWAY, DERBY, KANSAS, said he owns the property north to the proposed site. He said they are on well water and the soil in the area will not take a pond and drain. Since they

share an easement, he is afraid they will be left with an eyesore of a sand pit not a pond. He said they are not on rural water but on well water and wonders what could happen if they dig to deep and contaminate his well water. He said he could not get rural water due to the railroad line. His next concern is traffic coming in and out of their easement. He imagines there will be heavy vehicles coming through and he wants to know who will repair the road since he paid a lot of money for it last year, and there is not plan whatsoever for that. He said opposes and protests the application.

CHRIS LOVELESS, 9715 S. 63RD EAST, DERBY, KANSAS said he owns property straight to the south a farmland. His big concern is where the water from the pond will be discharched. He adds that if the water goes into his cropland, it will be detrimental. He is also concerned with ground contamination that could affect other people to the south besides him. He asked if there is study on the load of water coming off the highway and if would affect the pond.

WATSON said the water currently goes across the highway adjacent to his driveway and runs back past the windmill and enters the creek. He said the water would come out the back of the pond and go back to the creek. As far as the soil content, he had the soil checked through APEX and said the molding will hold the pond to make sure it has a bottom. As far as the well, the creek bottom is roughly 25-foot above the field and they would only go 15-feet, only 10 foot above the creek and about 30 to 40 feet above the well waterbed. He said if he cannot get the permit to take the dirt out of his property, he would stockpile the dirt. He said he is not present to discuss whether he can dig the pond or not. It is whether he can expose the dirt or stockpile it. Concerning the easement, they will be entering on his property and would not be entering on his neighbor's easement. He said last year Sedgwick County took over 550 loads of brush out of the creek and that did not damage the easement; he does not think this would cause damage. He said there has been previous legal deals with the men that spoke and believes that is where the objection is coming from, not so much with the pond but prior altercations. Concerning dirt questions, APEX is present to answer any questions.

Inaudible question from the public.

CHAIR J. JOHNSON said for applicant only to address questions from the Planning commission.

Motion to approve by **MILES** second by **KLAUSMEYER**.

RICHARDSON commented that the staff reports talks about requiring permits to excavate concerning flood control and asked if that is true.

YEAROUT said the language is to assure that if determined that additional permits are needed by State, County or any other agencies permits would be obtained. The pond is not large enough to warrant a permit under the State requirements for the construction of the pond and this would not affect the flood plain. He adds that the County has also indicated that this will not require permits under a flood plain improvement project. He adds language was added to cover all bases.

GREENE asked if the motion includes language about the waiver from the Board of County Commissioners. He said the recommended action was to approve provided the Board of County Commissioners waived the supplementary use with restrictions applicable to mining and quarrying.

MILES replied she is fine.

WAGGONER recommends making sure that the second clarifies the understanding of the motion.

KLAUSMEYER said he understands.

FOSTER said if they are not allowed to recommend waiver of the supplementary use regulations, he asks if that should be strike out from the recommendation.

WAGGONER said the Planning Commission cannot waive but can recommend waiver.

CHAIR J. JOHNSON commented that is what the motion says.

MOTION: To approve subject to staff recommendation

MILES moved, **KLAUSMEYER** seconded the motion, and it carried (12-1).
