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Sedgwick County

525 North Main Street 3rd
Floor
Wichita, KS 67203

Legislation Text

File #: 18-033, Version: 1

CON2017-00037 - A COUNTY CONDITIONAL USE FOR A BORROW PIT ON PROPERTY GENERALLY LOCATED ON THE EAST SIDE OF K-15 HIGHWAY AND NORTH OF 95TH STREET SOUTH (9529 SOUTH K-5 HIGHWAY).

Presented by: Dale Miller, Director of Metropolitan Area Planning Department.

RECOMMENDED ACTION: Approve the Conditional Use, subject to the conditions recommended by the Metropolitan Area Planning Commission (MAPC), adopt the findings of the MAPC and authorize the Chairman to sign the prepared resolution.

Background: The applicant is requesting a Conditional Use in a RR Rural Residential District (RR) to allow a borrow pit on their property. 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 owner/agent has stated an intent for the resulting pond to be for personal use only.

The applicant has indicated both KDOT and the Burlington Northern/Santa Fe Railroad have approved this new activity (truck traffic) on the drive entrance to K-15 and crossing of the railroad. Written confirmation of these contacts has been provided.

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.

The application was submitted to the City of Derby for review and comment. The City of Derby reported no objections to this request.

Technically, this request is subject to the extensive requirements as a "mining and quarrying" use of the Unified Zoning Code. Because this is not a commercial extraction activity intended for operation for an extended period of time, the applicant is requesting the specific requirements applicable to "mining and quarrying" be waived, with the understanding the applicant will operate the extraction process in compliance with the "spirit and intent" of those requirements to the greatest extent possible.

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.

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.

Analysis: The request was heard by the Metropolitan Area Planning Commission (MAPC) on December 7, 2017. MAPC recommended approval of the request by a 12-1 vote. The MAPC recommendation is 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. The performance standards and requirements specified in the Supplementary Uses, Article III, Section III(d)(6)(gg) of the Unified Zoning Code are waived; provided, the operation shall be conducted within the spirit and intent of said standards to the greatest extent possible by the owner and/or the operation of the extraction activity.
3. 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.
4. 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.

There were no protest petitions submitted in opposition to the request. A number of area property owners appeared at the MAPC meeting and spoke in opposition.

Alternatives: Approve the Conditional Use, subject to the conditions recommended by the Metropolitan Area Planning Commission (MAPC), adopt the findings of the MAPC and authorize the Chairman to sign the prepared resolution. (Requires a simple majority vote); or Deny the application, by making alternative findings, and override the MAPC recommendation. (Two-thirds majority vote required.).

Return the case to the MAPC for further consideration with a statement specifying the basis for the BoCC’s failure to approve or deny the application. (Requires a simple majority vote).

Financial Considerations: There are no additional financial considerations to the County associated

with this application.

Legal Considerations: The different alternatives and vote requirements are included within the "Alternatives" section above. The authority for action on this matter is K.S.A. 12-757.

Policy Considerations: The MAPC recommendations are based upon the findings of fact stated in the MAPC minutes.