CITY OF WICHITA

Wichita-Sedgwick County Metropolitan Area Planning Department

December 7, 2018

Allen L. Thome Revocable Trust
4542 South Maize Road
Clearwater, KS 67026

Baughman Company, P.A.
Attn: Russ Ewy
315 Ellis
Wichita, KS 67211

RE: CON2018-00034 - County request to renew a Conditional Use Permit for Mining and Quarrying of fill material located on the south side of 55th Street South approximately ¼ mile west of 87th Street West.

Dear Applicant:

At its regular meeting on **September 20, 2018**, the Wichita - Sedgwick County Metropolitan Area Planning Commission considered the above captioned request. The action of the MAPC was to **APPROVE** the request in accordance with the attached resolution.

If you have any questions concerning this application, please contact our office at 268-4421.

Sincerely,

David L. Yearout, AICP
Principal Planner

Copies to: MABCD – Kelly Dixon
Michael O'Donnell, BCCC District II, County Mail Stop #320
Justin Waggoner, Assistant County Counselor, Mail Stop #349
Brad Christopher, Wichita Airport Authority, Mail Stop #10

CONDITIONAL USE RESOLUTION NO. CON2018-00034

WHEREAS, Allen L. Thome Revocable Trust, (owner and applicant), by Baughman Company, P.A. (agent), pursuant to Section V-D of the Wichita-Sedgwick County Unified Zoning Code (herein referred to as Unified Zoning Code), requests a Conditional Use to permit a mining and quarrying facility (borrow pit) on property zoned SF-20 Single-Family Residential District located on the south side of West 55th Street South and approximately 1/4–mile west of South 87th Street West, Wichita, Kansas, and legally described as:

> The North ½ of the NE ¼ of Section 29, Township 28 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas; except the north 300 feet thereof, and except the east 545 feet thereof, and except the west 650 feet thereof, and the except the south 50 feet thereof, and except road right-of-way.

WHEREAS, proper notice as required by the Unified Zoning Code and by the policy of the Metropolitan Area Planning Commission (hereinafter referred to as MAPC) has been given; and

WHEREAS, the MAPC did, at the meeting of September 20, 2018, consider said application; and

WHEREAS, the MAPC has authority to permit a Conditional Use, subject to any special conditions deemed appropriate in order to assure full compliance with the criteria of the Unified Zoning Code.

NOW, THEREFORE, BE IT RESOLVED by the Metropolitan Area Planning Commission that this application be approved to permit a mining and quarrying facility (borrow pit) on property zoned SF-20 Single-Family Residential District located on the south side of West 55th Street South and approximately 1/4–mile west of South 87th Street West, Wichita, Kansas, and legally described as:

The North ½ of the NE ¼ of Section 29, Township 28 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas; except the north 300 feet thereof, and except the east 545 feet thereof, and except the west 650 feet thereof, and the except the south 50 feet thereof, and except road right-of-way.

Subject to the following conditions:

1. The extraction operation on the site shall proceed in accordance with an operational plan to be approved by the Planning Commission. The perimeter of the 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 on the site.

2. If the excavation creates areas with standing water, the excavation operation will abide by the rules and design requirements set forth in the Federal Aviation Administration Advisory Circular 150/5300-33B "Hazardous Wildlife Attractants On or Near Airports" to prevent the site from attracting any hazardous wildlife.

3. The operational plan shall illustrate which area is to be excavated and in what phase.

4. 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.

5. Adjacent to the perimeter of the excavation area, a minimum 48-inch high, five strand barbwire fences shall be constructed prior to the beginning of any extraction operation and shall be maintained at the locations depicted on the approved operational plan. The posts shall not be set more than 50 feet apart.

6. 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.

7. 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 excavation area being expanded, per the operational plan, 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.

8. 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.

9. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no steeper than four horizontal to one vertical.

10. 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 providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.

11. 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.

12. 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 excavation pit shall be properly graded and planted with a vegetative cover. Also, all stockpiled material and related excavation equipment shall be removed from the subject site.

13. The Conditional Use for the extraction operation shall be valid for a period of 10 years.

14. Hours of operation for extraction shall be limited to 6:00 a.m. to 6:00pm.

15. The applicant shall make the site available to the Sedgwick County Department of Environmental Resources for the installation and management of groundwater monitoring wells.

16. Any on-site storage of fuels or chemicals must be approved by the Sedgwick County Fire District #1.

17. A drainage plan shall be submitted to and approved by County Public Works prior to starting the extraction operation. All of the area included in the extraction operation shall be graded in accordance with the approved drainage plan. The extraction area shall be developed so as to not become a wetland area.

18. All operational roads shall be maintained in a sand or graveled condition and shall be treated with water or other acceptable dust retardant to minimize blowing dust.

19. All applicable local, state, and federal permits necessary for the extraction operation and for flood plain development shall be obtained and maintained.

20. 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.

Adopted this 20 Day of September, 2018

METROPOLITAN AREA PLANNING COMMISSION

Cindy Miles

Cindy Miles, Chair, MAPC

ATTEST:

Dale Miller

Dale Miller, Secretary

WICHITA–SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION

AGENDA ITEM NO. 4

STAFF REPORT

MAPC September 20, 2018

CASE NUMBER: CON2018-00034

OWNER/AGENT: Allen L. Thome Revocable Trust (owner) / Baughman Company, PA, c/o Russ Ewy (agent)

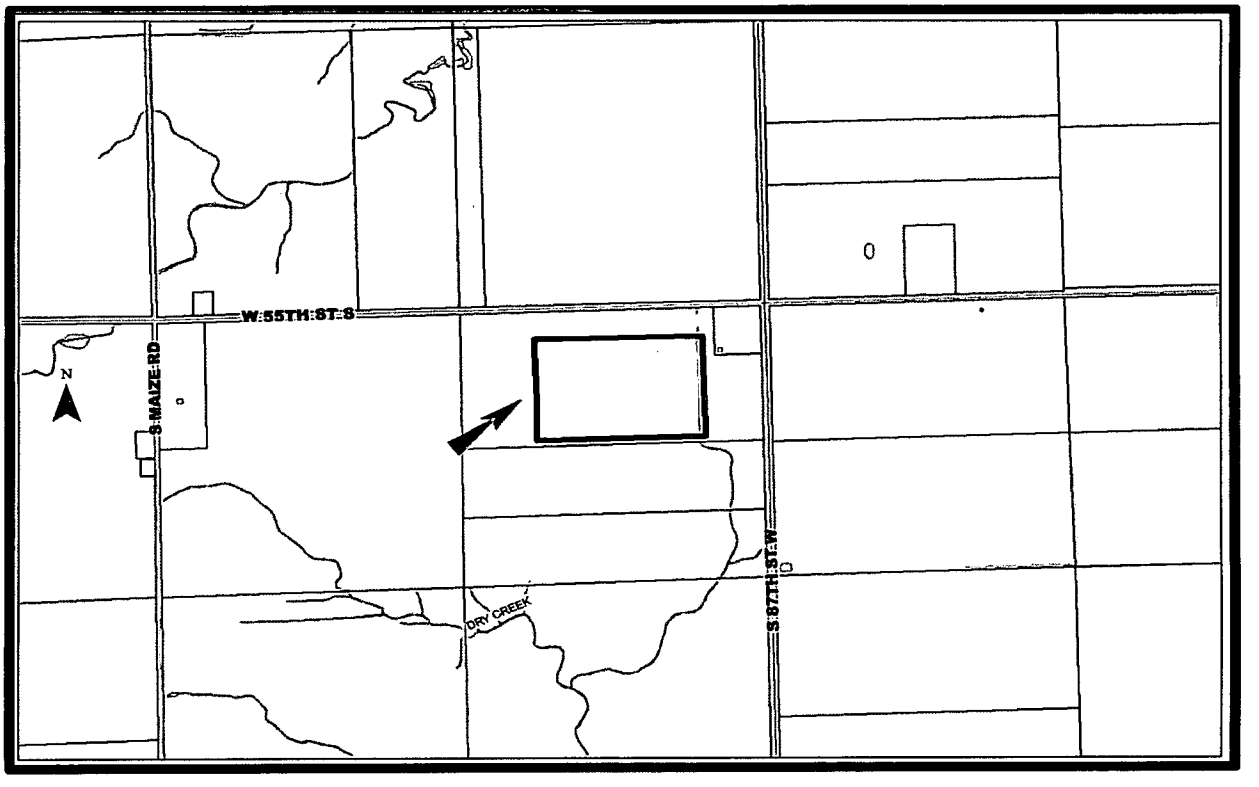
REQUEST: County Conditional Use to allow a mining and quarrying operation

CURRENT ZONING: SF-20 Single-Family Residential

SITE SIZE: 31 acres

LOCATION: Generally located South of West 55th Street South and approximately ¼ mile West of South Tyler Road

PROPOSED USE: Extraction of Fill Material



BACKGROUND: The applicant requests a Conditional Use to allow "Mining and Quarrying" for the excavation of fill material to be used on proposed construction projects within the city. The undeveloped property, located southwest of the 55th Street South and Tyler Road intersection, is currently zoned SF-20 Single-family Residential ("SF-20"); the excavation site is approximately 31 acres in size, and is designed to retain water. The site plan shows future creation of lots presumed for residential development surrounding the pond with no other specific uses identified. The applicant intends to excavate to a maximum depth of approximately 20 feet, excavating in two phases, from the east to the west (see the attached site plan). According to GIS, the average depth of the groundwater in this section varies between 25 feet to 40 feet from the surface. Proposed access to the site is off of 55th Street, approximately 1,000 feet west of Tyler Road. The proposed access is via a field entrance located at the north end of the tract. The site is not currently fenced, but fencing of the excavation area will be a condition of approval.

This location received approval for this use in 2008 (Case No. CON2008-00047) for a 10-year period. No extraction operations ever occurred and the owner and proposed operator (Mies Construction) desire to reestablish the approval.

The concerns and objections to this location are the same today as identified in 2008. The Sedgwick County Department of Public Works has concerns for the potential for erosion and sediment runoff from the excavation site due to storm water runoff. A drainage plan has been requested from Public Works, which needs to be addressed by Public Works. Additionally, the conditions of approval, if granted, will require site operation to minimize erosion of the area through operations approved by Sedgwick County, as well as the responsible entities (USDA, KDHE, KDWP, etc.) to mitigate any negative impacts and to acquire the proper permits for the excavation operation.

North of the application area is property zoned SF-20 that is developed as agricultural land. The property south of the application area is under the same ownership as the application area; it is zoned RR and is currently undeveloped agricultural land. East of the application area is property zoned SF-20 and is developed as a farmstead. West of the application area is property zoned RR and is developed with a farmstead.

The site is located approximately three miles south of Dwight D. Eisenhower National Airport. If the application is recommended for approval by the MAPC, conditions of approval will require compliance with applicable local, state and federal regulations. The applicant was supplied information from the Federal Aviation Administration Office (FAA) Advisory Circulars AC150/5200-33B titled *Hazardous Wildlife Attractants on or near Airports*. Staff has been in contact with Dwight D. Eisenhower National Airport staff regarding the application. In conversations with the Brad Christopher, Assistant Director of Airport Operations, the airport has concerns with the request, particularly with water attracting birds which can, and do strike airplanes in and around Eisenhower National.

Airport staff provided MAPD staff with a log of bird strikes specific to Dwight D. Eisenhower National Airport in 2008 and current data will be provided at the MAPC hearing. Because the airport receives money from the federal government, it is required to comply with FAA regulations. The concerns raised in 2008 are the same today and the airport staff is opposing the use at this location today for the same reasons as 2008. A copy of the email regarding this matter is attached.

The Unified Zoning Code lists "Mining or Quarrying" as a Conditional Use in the SF-20 zoning district. The Unified Zoning Code lists 23 conditions with which "Mining or Quarrying" should comply; these conditions exist for public safety, and to mitigate any negative effects the extraction may have on surrounding properties. Not all of these conditions are applicable to the proposed fill material excavation. If the Planning Commission recommends modifications to one or more of the Unified Zoning Code conditions for the requested Conditional Use, the request will then be forwarded to the Governing Body for final action.

CASE HISTORY: The property is zoned SF-20 Single-Family Residential. The site is unplatted. As noted above, a conditional use permit was granted in 2008 for the extraction operation but no operations were ever established.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-20	cropland
SOUTH:	RR	cropland
EAST:	SF-20	cropland
WEST:	RR	cropland

PUBLIC SERVICES: 55th Street South is a sand road from the subject property and no paved roadway exists until one reaches Ridge Road a mile and ¼ to the east. 55th Street South is the responsibility of Waco Township, along with South Tyler Road in this immediate area. Waco Township officials have been contacted, but as of the date of the Staff Report, no comments have been received.

CONFORMANCE TO PLANS/POLICIES: The "2035 Wichita Future Growth Concept Map" of the Comprehensive Plan identifies this property within the Wichita Future Growth Area, but as and "agricultural or vacant area." The proposed soil extraction operation (which the UZC classifies as an Industrial, Manufacturing, Extractive Use) is most appropriate in a more agricultural area similar in character to that existing in the immediate area. As such, the use is not considered having a negative impact to the existing uses provided appropriate measure are taken to mitigate the impacts from the activity on existing infrastructure.

RECOMMENDATION: With the proper conditions in place, this proposal should not have a detrimental effect on the surrounding properties, as they are developed with agriculture. However, with the possible public safety issues involved with the possible attraction of migrating birds and its vicinity near the airport and the consequences the airport and the City of Wichita may face if federal funding is affected by the proposal, staff recommends that the Conditional Use request be **DENIED**.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** North of the application area is property zoned SF-20 and is developed as agricultural land. The property south of the application area is under the same ownership as the application area; it is zoned RR and is currently undeveloped agricultural land. East of the application area is property zoned SF-20 and is developed as a farmstead. West of the application area is property zoned RR and is developed with a farmstead.

2. **The suitability of the subject property for the uses to which it has been restricted:** The site could be used for the uses permitted by its current zoning.

3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Approval presents the possibility that public safety could be compromised due to the likelihood that the proposed excavation will attract birds. The site is located within three miles of the airport, and is located between Dwight D. Eisenhower National's two main north-south runways. There is the potential that federal funding for the airport could be affected by this request as the city is responsible for operating the runway in compliance with FAA regulations. The airport has stated that there are ways to design the excavation area that would help in mitigate the potential hazard, but at this time, there is no indication the mitigation design features are being addressed.

4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The "2035 Wichita Future Growth Concept Map" of the Comprehensive Plan identifies this

property within the Wichita Future Growth Area, but as and "agricultural or vacant area." The proposed soil extraction operation (which the UZC classifies as an Industrial, Manufacturing, Extractive Use) is most appropriate in a more agricultural area similar in character to that existing in the immediate area.

5. **Impact of the proposed development on community facilities:** Traffic to and from the requested Conditional Use at this location will increase the daily trips on this section of 55th Street South and Tyler Road. No specific offers of improvement or discussion of traffic impacts have been provided from either the County or Township officials, or from the applicant.

However if the MAPC finds the proposed soil excavation an appropriate use for this site, Staff recommends approval with the following conditions:

1. The extraction operation on the site shall proceed in accordance with an operational plan to be approved by the Planning Commission. The perimeter of the 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 on the site.

2. The excavation operation will have to abide by the rules and design set forth in the Federal Aviation Administration Advisory Circular FAA AC150/5200-33 "Hazardous Wildlife Attractants On or Near Airports" to prevent attracting any hazardous wildlife.

3. The operational plan shall illustrate which area is to be excavated and in what phase.

4. 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.

5. Adjacent to the perimeter of the excavation area, a minimum 48-inch high, five strand barbwire fences shall be constructed prior to the beginning of any extraction operation and shall be maintained at the locations depicted on the approved operational plan. The posts shall not be set more than 50 feet apart.

6. 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.

7. 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 excavation area being expanded, per the operational plan, 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.

8. 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.

9. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no steeper than four horizontal to one vertical.

10. 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 providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.

11. 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.

11. 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 excavation pit shall be properly graded and planted with a vegetative cover. Also, all stockpiled material and related excavation equipment shall be removed from the subject site.

12. The Conditional Use for the extraction operation shall be valid for a period of 10 years.

13. Hours of operation for extraction shall be limited to 6:00 a.m. to 6:00pm.

14. The applicant shall make the site available to the Sedgwick County Department of Environmental Resources for the installation and management of groundwater monitoring wells.

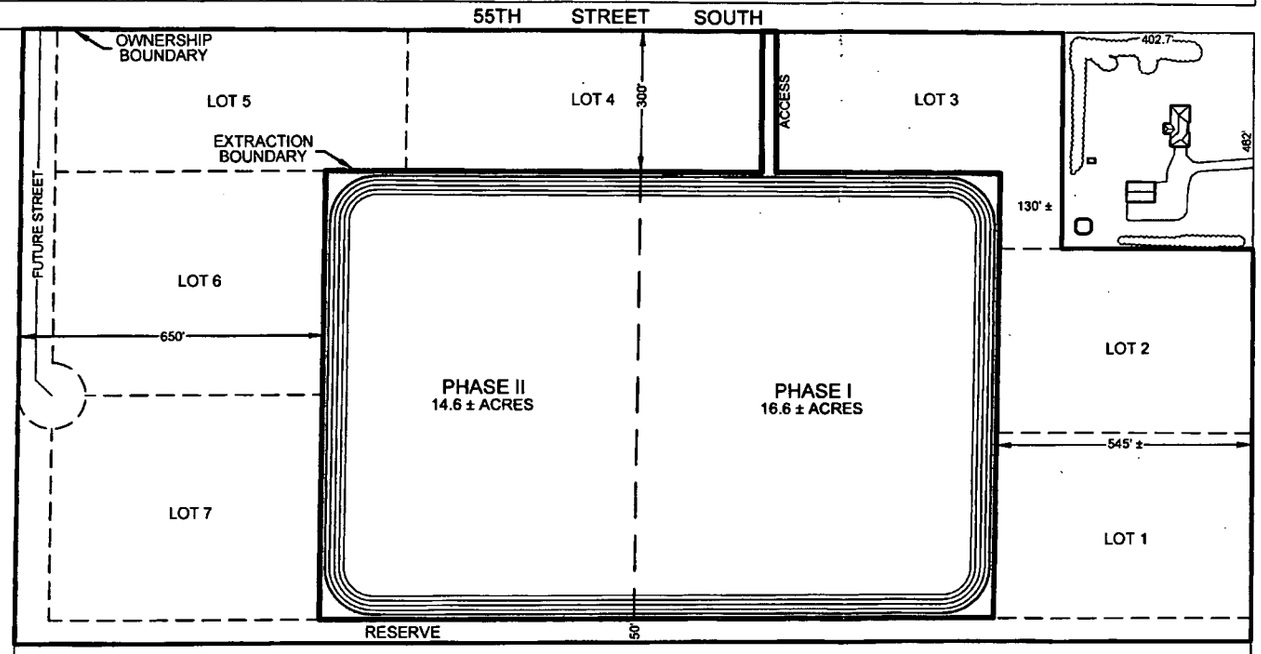
15. Any on-site storage of fuels or chemicals must be approved by the Sedgwick County Fire District #1.

16. A drainage plan shall be submitted to and approved by County Public Works prior to starting the extraction operation. All of the area included in the extraction operation shall be graded in accordance with the approved drainage plan. The extraction area shall be developed so as to not become a wetland area.

17. All operational roads shall be maintained in a sand or graveled condition and shall be treated with water or other acceptable dust retardant to minimize blowing dust.

18. All applicable local, state, and federal permits necessary for the extraction operation and for flood plain development shall be obtained and maintained.

Staff Report Attachments:
Site Plan
Correspondence from Sedgwick County Public Works
Correspondence from Wichita Airport Authority



SITE PLAN

APPROVED 9/20/18 BY MAPC

CON2018-00034

SCALE: 1" = 300'

CON2018-??

SITE PLAN

SOIL EXTRACTION

BAUGHMAN