



Wichita-Sedgwick County Metropolitan Area Planning Department

July 22, 2019

R & R Realty, LLC
Attn: Jay Russell
P.O. Box 75337
Wichita, KS 67275

Baughman Company, P.A.
315 South Ellis
Wichita, KS 67211

RE: CON2019-00019 - City request to approve a Conditional Use Permit to permit Mining and Quarrying (Soil Extraction) on property zoned SF-5, Single-Family Residential generally located ½ mile north of West 53rd Street North and west of North Meridian Avenue.

Dear Applicants:

At its regular meeting on June 20, 2019, 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. No protests were filed, so this matter is considered complete, subject to the conditions outlined in the 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: WCC VI, Cindy Claycomb, Mail Stop 1-13
Brandon Findley, CSR VI, Mail Stop 1-135
Paul Hays, OCI, Mailstop 1-72
Jeff Van Zandt, City Law, Mailstop 1-134
Julianne Kallman, Engineering, Mail Stop 1-71

CONDITIONAL USE RESOLUTION NO. CON2019-00019

WHEREAS, R & R Realty, LLC (Owner) (Applicant), 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 operate a mining and quarrying for soil extraction on property zone SF-5 Single-Family Residential and located on the west side of North Meridian Avenue and north of West 53rd Street North and legally described as:

All of Lots 40 through 62, inclusive, Block B, together with all of Lots 24 through 31, inclusive, and Lots 54 through 60, inclusive, Block C, together with all of Lots 27 through 40, inclusive, Block D, together with part of Lot 39 in said Block B, together with part of Lots 32 through 37, inclusive, in said Block C, together with part of Lot 26 in said Block D, and together with Part of Reserve "C", all as platted in Northgate Addition, Wichita, Sedgwick County, Kansas, all of the above lying generally north of and abutting the following described line: Commencing at the southwest corner of Lot 39 in said Block B; thence North 00° 10' 43" East along the west line of said Lot 39, 60.84 feet for a point of beginning; thence South 89° 09' 05" East, 920.69 feet; thence North 72° 54' 39" East, 102.98 feet; thence South 89° 09' 05" East, 453.10 feet; thence North 62° 30' 47" East, 234.86 feet to the intersection with the westerly prolongation of the lot line common to Lots 40 and 41 in said Block D; thence South 89° 57' 19" East along said common lot line and the westerly prolongation thereof, 300.20 feet to the northeast corner of said Lot 41, and for a point of termination, and lying generally south of and abutting the following described line: Beginning at the northwest corner of Lot 46 in said Block B; thence South 89° 59' 02" East along the north line of said Lot 46 and along the north line of Lots 47, 48, 60, 61, and 62 in said Block B, along the easterly prolongation of the north line of said Lot 62, and along the north line of Lots 24 and 25 in said Block C, 898.27 feet to the most northerly northeast corner of Lot 25 in said Block C; thence South 85° 36' 30" East, 377.86 feet to the northwest corner of Lot 60 in said Block C; thence South 89° 57' 19" East along the north line of Lot 60 in said Block C, 130.00 feet to the northeast corner of said Lot 60; thence North 87° 01' 41" East, 204.28 feet to the most easterly northeast corner of Lot 26 in said Block D, said most easterly northeast corner also being the northwest corner of Lot 33 in said Block D; thence South 89° 03' 57" East along the north line of Lots 33, 34, and 35 in said Block D, 370.04 feet to the northeast corner of Lot 35 in said Block D, and for a point of termination.

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 June 20, 2019, 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 operate a mining and quarrying for soil extraction on property zone SF-5 Single-Family Residential and located on the west side of North Meridian Avenue and north of West 53rd Street North and legally described as:

All of Lots 40 through 62, inclusive, Block B, together with all of Lots 24 through 31, inclusive, and Lots 54 through 60, inclusive, Block C, together with all of Lots 27 through 40, inclusive, Block D, together with part of Lot 39 in said Block B, together with part of Lots 32 through 37, inclusive, in said Block C, together with part of Lot 26 in said Block D, and together with Part of Reserve "C", all as platted in Northgate Addition, Wichita, Sedgwick County, Kansas, all of the above lying generally north of and abutting the following described line: Commencing at the southwest corner of Lot 39 in said Block B; thence North $00^{\circ} 10' 43''$ East along the west line of said Lot 39, 60.84 feet for a point of beginning; thence South $89^{\circ} 09' 05''$ East, 920.69 feet; thence North $72^{\circ} 54' 39''$ East, 102.98 feet; thence South $89^{\circ} 09' 05''$ East, 453.10 feet; thence North $62^{\circ} 30' 47''$ East, 234.86 feet to the intersection with the westerly prolongation of the lot line common to Lots 40 and 41 in said Block D; thence South $89^{\circ} 57' 19''$ East along said common lot line and the westerly prolongation thereof, 300.20 feet to the northeast corner of said Lot 41, and for a point of termination, and lying generally south of and abutting the following described line: Beginning at the northwest corner of Lot 46 in said Block B; thence South $89^{\circ} 59' 02''$ East along the north line of said Lot 46 and along the north line of Lots 47, 48, 60, 61, and 62 in said Block B, along the easterly prolongation of the north line of said Lot 62, and along the north line of Lots 24 and 25 in said Block C, 898.27 feet to the most northerly northeast corner of Lot 25 in said Block C; thence South $85^{\circ} 36' 30''$ East, 377.86 feet to the northwest corner of Lot 60 in said Block C; thence South $89^{\circ} 57' 19''$ East along the north line of Lot 60 in said Block C, 130.00 feet to the northeast corner of said Lot 60; thence North $87^{\circ} 01' 41''$ East, 204.28 feet to the most easterly northeast corner of Lot 26 in said Block D, said most easterly northeast corner also being the northwest corner of Lot 33 in said Block D; thence South $89^{\circ} 03' 57''$ East along the north line of Lots 33, 34, and 35 in said Block D, 370.04 feet to the northeast corner of Lot 35 in said Block D, and for a point of termination.

Subject to the following conditions:

1. The perimeter of the excavation shall conform to the approximate size and shape indicated on the approved site plan. To assist in the enforcement of the site plan, a copy of the approved site plan shall be posted on the site.
2. The excavation operation shall 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 proposed development as shown in the proposed Northgate 3rd Addition (SUB2019-00029) submitted by the applicant shall be followed. Any modification or proposed change in 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. 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.

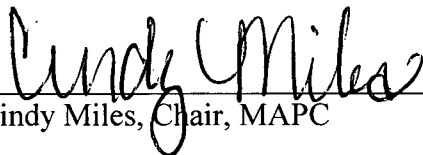
5. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
6. The owner of the property shall be responsible for minimizing blowing dust from the site. To minimize blowing soil, overburden shall not be removed more than six months in advance of the 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.
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 four horizontal to one vertical.
9. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the city legal counsel, 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.
10. 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 7:00 a.m. to 7:00 p.m. six days a week. Sunday operations are prohibited.
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 City of Wichita Fire Department.
16. A drainage plan shall be submitted to and approved by City of Wichita 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.
19. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void. Upon the receipt of a complaint that is determined to be a violation of the conditions of approval, the applicant shall be notified of the complaint and have 72 hours to contact zoning enforcement to address the complaint. Failure to address the validated complaint may lead to additional enforcement efforts.
20. Within 60 days of final approval, the applicant shall file with the county register of deeds a document that provides notice that the property is subject to the development standards contained in Conditional Use 2019-00019.

Adopted this 20th Day of JUNE, 2019

METROPOLITAN AREA PLANNING COMMISSION


Cindy Miles, Chair, MAPC

ATTEST:


Dale Miller, Secretary

STAFF REPORT
 MAPC June 20, 2019
 DAB VI June 19, 2019

CASE NUMBER: CON2019-00019

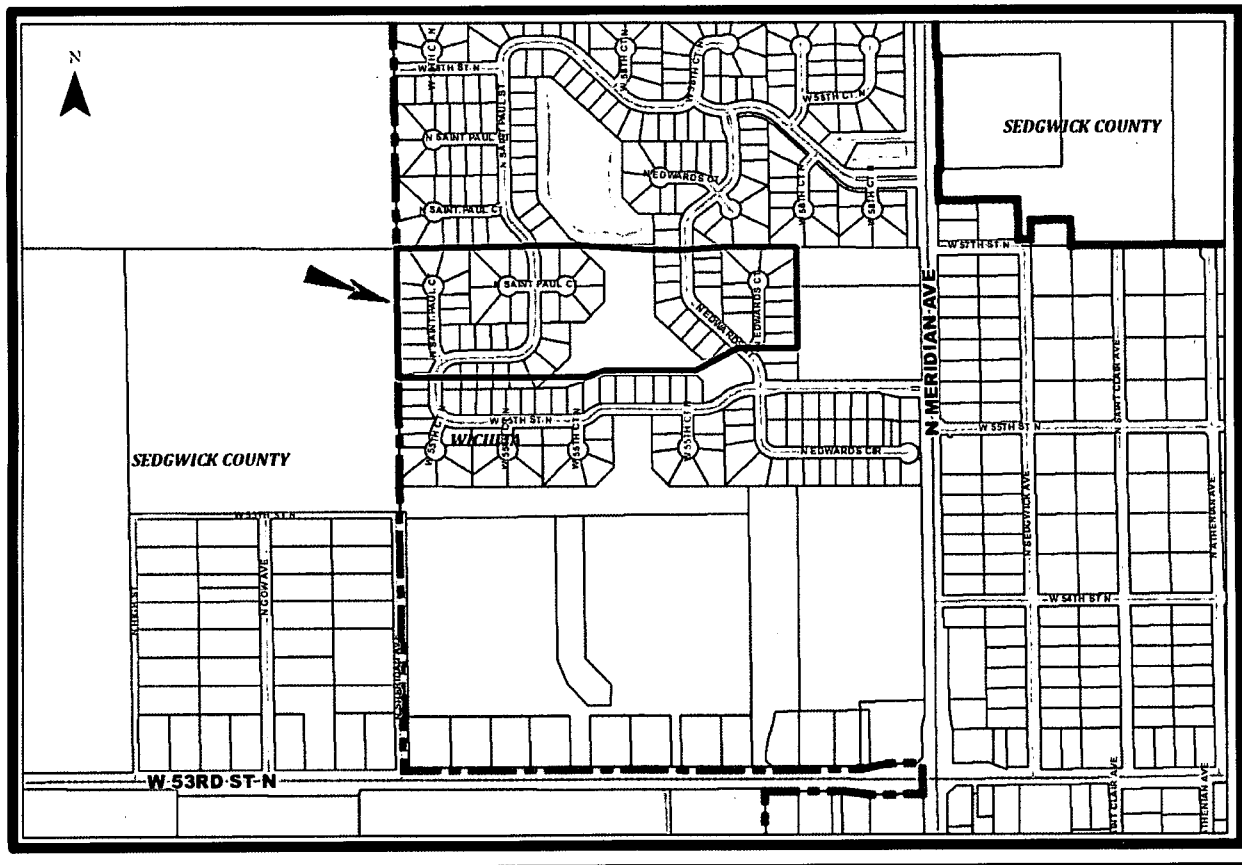
APPLICANT/AGENT: R & R Realty, LLC – Jay Russell (Owner/Applicant); Baughman Company, P.A. – Russ Ewy (Agent)

REQUEST: Conditional Use Permit for Soil Extraction

CURRENT ZONING: SF- 5 Single-Family Residential District

SITE SIZE: 27.572 acres

LOCATION: Generally located on the west side of North Meridian Avenue and approximately ½ mile north of West 53rd Street North



BACKGROUND: The applicant is requesting a conditional use permit to allow “mining and quarrying” for soil extraction as part of the development of the redesigned Northgate Addition presently being replatted (SUB2019-00029). The site plan shows the portion of the subject property to be excavated for a water feature and/or drainage retention area. The overall area will be developed for single-family homes based on the proposed replatting. The site plan does not conform to the preliminary plat submitted for the replat. Staff believes the site plan for the excavation should follow the preliminary plat design.

The Unified Zoning Code lists “Mining or Quarrying” as a Conditional Use in the SF-5 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. 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.

The area surrounding this property is mostly undeveloped, but transitioning into urban uses. The property immediately to the east is unplatted and is occupied by a single residence on approximately 10 acres. To the southeast is Northgate 2nd Addition being developed with two-family residences. To the southwest is a residential development on property zoned SF-20 Single-Family Residential consisting of 1-acre lots in the Denton McWorter Addition, which was recorded with the Register of Deeds on April 24, 1951. The property to the south is included in the replatting noted above and included in the rezoning to TF-3 (ZON2019-00018). The land to the north is part of the Northgate Addition and is zoned SF-5 Single-Family Residential.

CASE HISTORY: The property is included in the Northgate Addition, which was recorded with the Sedgwick County Register of Deeds on November 1, 2006. As noted above, there is an attendant request to rezone the land to the south to TF-3 Two-Family Residential (ZON2019-00018) and a replatting of that land and the subject property is being reviewed at this time (SUB2019-00029).

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Vacant
SOUTH:	SF-5	Vacant
EAST:	SF-5	Single-Family Residential
WEST:	SF-20	Agricultural

PUBLIC SERVICES: West 53rd Street North and North Meridian Avenue are fully improved arterial streets. Sanitary sewer mains have already been installed to the subject property and public water service will be extended as part of the improvements following replatting. Primary access to the subject property will be by West 55th Street North, which will be extended from its intersection with North Meridian Avenue; as well as other internal roads within the Northgate Addition to the north and south. All other utilities are available and will be extended to the property.

CONFORMANCE TO PLANS/POLICIES: The Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the area in which the subject property is located as appropriate for New Residential uses. The Plan defines “residential” to: Encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing densities and types includes, but is not limited to, single-family detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks, and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle schools, churches, playgrounds, small parks and other similar residential- serving uses are located in these areas.

The subject property is described within the Plan as: “**New Residential:** Encompasses areas of land that likely will be developed or redeveloped by 2035 with uses predominately found in the Residential category. Pockets of Major Institutional and Commercial uses likely will be developed within this area as well, based upon market-driven location factors. In certain areas, especially those in proximity to existing industrial uses, highways, rail lines, and airports, pockets of Industrial Uses likely will be developed.”

The site is outside of the Established Central Area (ECA), however, the uses envisioned for development in this area include duplexes. The established land uses in the neighborhood are a mixture of residential and commercial and, consistent with the Comprehensive Plan, this type of ultimate residential use is considered acceptable for this neighborhood. The “soil extraction” operation to create the drainage/water feature is common and acceptable within developing areas like the subject property.

RECOMMENDATION: Based upon the information available at the time the staff report was completed, staff recommends the requested conditional use for “mining and quarrying for soil extraction” be **APPROVED**, subject to the following:

1. The site plan shall be modified to conform to the design in the proposed Northgate 3rd Addition for the subject property and the extraction operation shall proceed in accordance with the revised site 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 site plan. To assist in the enforcement of the site plan, a copy of the approved site plan shall be posted on the site.
2. The excavation operation shall 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 proposed development as shown in the proposed Northgate 3rd Addition (SUB2019-00029) submitted by the applicant shall be followed. Any modification or proposed change in 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. 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.
5. 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.
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 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.
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 four horizontal to one vertical.
9. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the city legal counsel, 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.
10. 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 7:00 a.m. to 7:00 p.m. six days a week. Sunday operations are prohibited.
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 City of Wichita Fire Department.
17. A drainage plan shall be submitted to and approved by City of Wichita 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.
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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 that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void. Upon the receipt of a complaint that is determined to be a violation of the conditions of approval, the applicant shall be notified of the complaint and have 72 hours to contact zoning enforcement to address the complaint. Failure to address the validated complaint may lead to additional enforcement efforts.
21. Within 60 days of final approval, the applicant shall file with the county register of deeds a document that provides notice that the property is subject to the development standards contained in Conditional Use 2019-00019.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area surrounding this property is mostly undeveloped, but transitioning into urban uses. The property immediately to the east is unplatted

and is occupied by a single residence on approximately 10 acres. To the southeast is Northgate 2nd Addition being developed with two-family residences. To the southwest is a residential development on property zoned SF-20 Single-Family Residential consisting of 1-acre lots in the Denton McWorter Addition, which was recorded with the Register of Deeds on April 24, 1951. The property to the south is included in the replatting noted above and included in the rezoning to TF-3 (ZON2019-00018). The land to the north is part of the Northgate Addition and is zoned SF-5 Single-Family Residential.

2. The suitability of the subject property for the uses to which it has been restricted: The property is presently zoned SF-5 Single-Family Residential and could be developed for single-family uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed use is consistent with uses being developed to the area. This activity should have no detrimental affect on any nearby property.
4. Length of time the property has been vacant as currently zoned: The property has been available for development for some time.
6. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Wichita-Sedgwick County Comprehensive Plan, the *Community Investments Plan*, identifies the area in which the subject property is located as appropriate for New Residential uses. The Plan defines “residential” to: Encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing densities and types includes, but is not limited to, single-family detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks, and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle schools, churches, playgrounds, small parks and other similar residential- serving uses are located in these areas.

The subject property is described within the Plan as: “**New Residential:** Encompasses areas of land that likely will be developed or redeveloped by 2035 with uses predominately found in the Residential category. Pockets of Major Institutional and Commercial uses likely will be developed within this area as well, based upon market-driven location factors. In certain areas, especially those in proximity to existing industrial uses, highways, rail lines, and airports, pockets of Industrial Uses likely will be developed.”

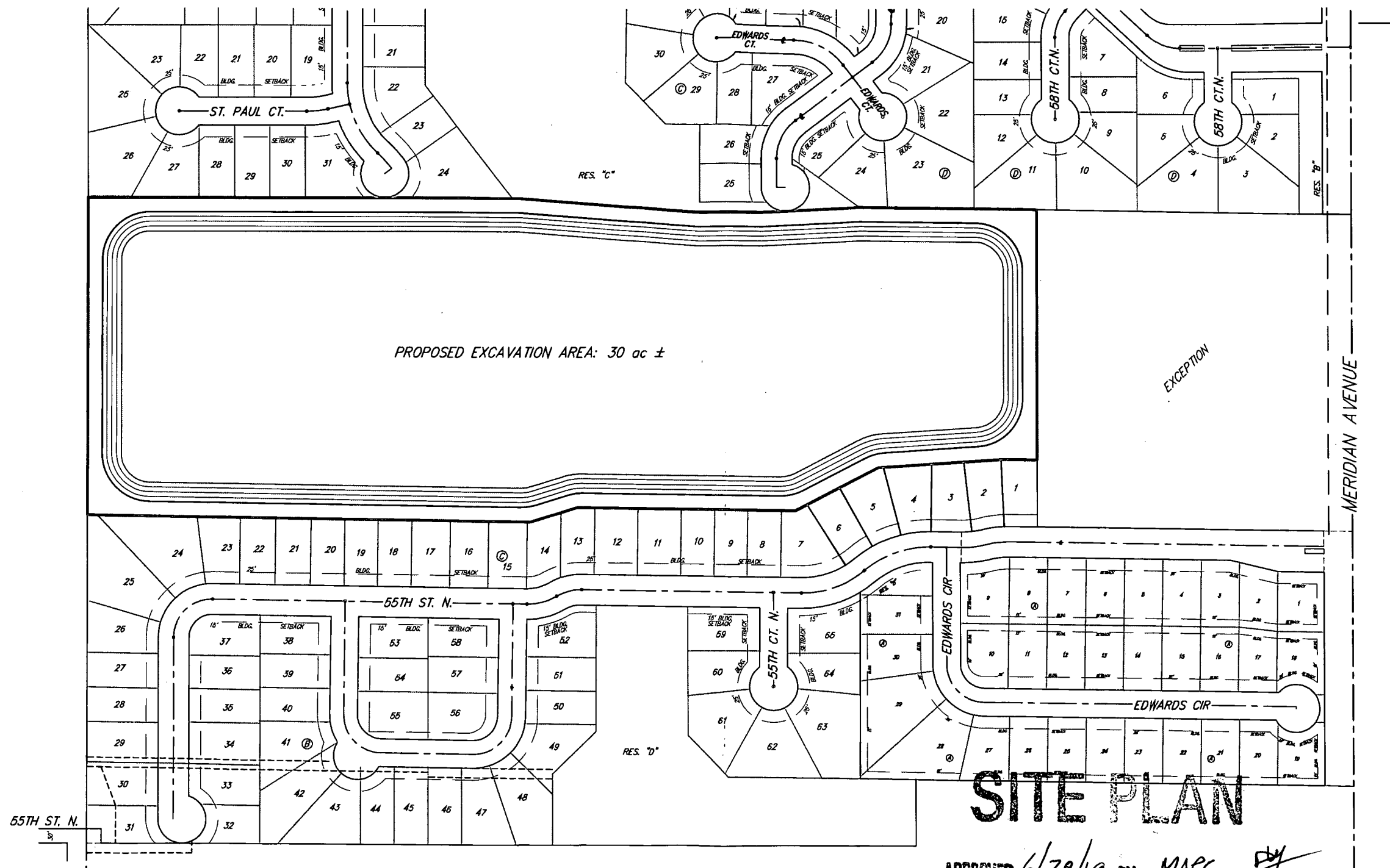
The site is outside of the Established Central Area (ECA), however, the uses envisioned for development in this area include duplexes. The established land uses in the neighborhood are a mixture of residential and commercial and, consistent with the Comprehensive Plan, this type of ultimate residential use is considered acceptable for this neighborhood. The “soil extraction” operation to create the drainage/water feature is common and acceptable within developing areas like the subject property.

7. Impact of the proposed development on community facilities: Approval of this conditional use for this property would not have any impact on community facilities or resources. All public improvements are available to serve the property or will be extended upon replatting.

Attachments:

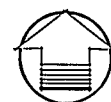
Site Plan

Proposed Northgate Addition Replat



SITE PLAN

APPROVED 6/20/19 BY MAPC *[Signature]*



SCALE: 1" = 200'

CONDITIONAL USE SITE PLAN - CON2019-19 NORTHGATE ADDITION - 55TH STREET N & MERIDIAN AVENUE

