



Wichita-Sedgwick County Metropolitan Area Planning Department

March 6, 2020

JRD, LLC
Attn: Jay Russell
P.O. Box 75337
Wichita, KS 67275

Baughman Company, P.A.
Attn: Phil Meyer
315 South Ellis
Wichita, KS 67211

RE: CON2019-00048 - 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 on the west side of South Clifton Avenue and north of East 63rd Street South.

Dear Applicants:

At its regular meeting on **December 19, 2019**, the Wichita - Sedgwick County Metropolitan Area Planning Commission considered the above captioned request. The action of the MAPC was to **APPROVE** the request by a vote of 11 to 0 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 III, James Clendenin, Mail Stop 1-13
Maddy Campbell, CSR III, Mail Stop 1-135
Paul Hays, OCI, Mailstop 1-72
Jeff Van Zandt, City Law, Mailstop 1-134
Shawn Mellies, Engineering, Mail Stop 1-71
Seth Gotchey, Engineering, Mail Stop 1-71

CONDITIONAL USE RESOLUTION NO. CON2019-00048

WHEREAS, JRD, LLC – Jay Russell (Owner) (Applicant) and Baughman Company, P.A. – Russ Ewy (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 for soil extraction operation on property zone SF-5 Single-Family Residential and located on the west side of South Hydraulic Avenue and north of East 63rd Street South and legally described as:

That part of the Northwest Quarter of the Southwest Quarter of Section 26, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas described as follows: Commencing at the southwest corner of the Northwest Quarter of said Southwest Quarter, said southwest corner also being the northwest corner of Woodvale Addition, Sedgwick County, Kansas, (a portion of said Woodvale Addition now vacated by virtue of the instrument entitled Vacation Order, Case No. VAC2015-00023, recorded in DOC.#/FLM-PG: 29559186); thence easterly along the south line of the Northwest Quarter of said Southwest Quarter, and along the north line of that part of said Woodvale Addition now vacated, (DOC.#/FLM-PG: 29559186), 218.38 feet to the northeast corner of Lot 2, Block A, in that part of said Woodvale Addition now vacated, (DOC.#/FLM-PG: 29559186); thence northerly parallel with the west line of the Northwest Quarter of said Southwest Quarter, 414.89 feet for a point of beginning; thence continuing northerly parallel with the west line of the Northwest Quarter of said Southwest Quarter, 603.41 feet; thence easterly with a deflection angle to the right of 90°01'54", 29.40 feet; thence southeasterly with a deflection angle to the right of 14°53'14", 140.12 feet; thence easterly with a deflection angle to the left of 14°53'14", 317.16 feet; thence northeasterly with a deflection angle to the left of 14°52'20", 140.26 feet; thence easterly with a deflection angle to the right of 14°52'20", 482.18 feet to a point on the east line of the Northwest Quarter of said Southwest Quarter; thence northerly along the east line of the Northwest Quarter of said Southwest Quarter, 64.00 feet to a point 1082.30 feet normally distant north of the south line of the Northwest Quarter of said Southwest Quarter; thence westerly parallel with the south line of the Northwest Quarter of said Southwest Quarter, 1318.21 feet to a point on the west line of the Northwest Quarter of said Southwest Quarter; thence southerly along the west line of the Northwest Quarter of said Southwest Quarter, 667.41 feet to a point 414.89 feet normally distant north of the south line of the Northwest Quarter of said Southwest Quarter; thence easterly parallel with the south line of the Northwest Quarter of said Southwest Quarter, 218.38 feet to the point of beginning, subject to road rights-of-way of record, TOGETHER with the south 1082.30 feet of Government Lot 3 in Section 27, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas, except the south 414.89 feet thereof.

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 November 7, 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 a mining and quarrying for soil extraction operation on property zone SF-5 Single-Family Residential and located on the west side of South Hydraulic Avenue and north of East 63rd Street South and legally described as:

That part of the Northwest Quarter of the Southwest Quarter of Section 26, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas described as follows: Commencing at the southwest corner of the Northwest Quarter of said Southwest Quarter, said southwest corner also being the northwest corner of Woodvale Addition, Sedgwick County, Kansas, (a portion of said Woodvale Addition now vacated by virtue of the instrument entitled Vacation Order, Case No. VAC2015-00023, recorded in DOC.#/FLM-PG: 29559186); thence easterly along the south line of the Northwest Quarter of said Southwest Quarter, and along the north line of that part of said Woodvale Addition now vacated, (DOC.#/FLM-PG: 29559186), 218.38 feet to the northeast corner of Lot 2, Block A, in that part of said Woodvale Addition now vacated, (DOC.#/FLM-PG: 29559186); thence northerly parallel with the west line of the Northwest Quarter of said Southwest Quarter, 414.89 feet for a point of beginning; thence continuing northerly parallel with the west line of the Northwest Quarter of said Southwest Quarter, 603.41 feet; thence easterly with a deflection angle to the right of 90°01'54", 29.40 feet; thence southeasterly with a deflection angle to the right of 14°53'14", 140.12 feet; thence easterly with a deflection angle to the left of 14°53'14", 317.16 feet; thence northeasterly with a deflection angle to the left of 14°52'20", 140.26 feet; thence easterly with a deflection angle to the right of 14°52'20", 482.18 feet to a point on the east line of the Northwest Quarter of said Southwest Quarter; thence northerly along the east line of the Northwest Quarter of said Southwest Quarter, 64.00 feet to a point 1082.30 feet normally distant north of the south line of the Northwest Quarter of said Southwest Quarter; thence westerly parallel with the south line of the Northwest Quarter of said Southwest Quarter, 1318.21 feet to a point on the west line of the Northwest Quarter of said Southwest Quarter; thence southerly along the west line of the Northwest Quarter of said Southwest Quarter, 667.41 feet to a point 414.89 feet normally distant north of the south line of the Northwest Quarter of said Southwest Quarter; thence easterly parallel with the south line of the Northwest Quarter of said Southwest Quarter, 218.38 feet to the point of beginning, subject to road rights-of-way of record, TOGETHER with the south 1082.30 feet of Government Lot 3 in Section 27, Township 28 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas, except the south 414.89 feet thereof.

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 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 be revised to establish a 20-foot setback from the high bank of the Arkansas River for the 50-foot access road on the west side of the subject property. A revised operational plan shall be filed

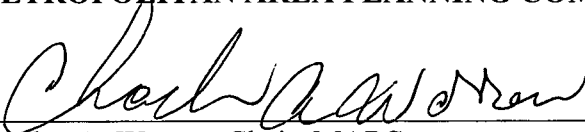
with the Planning Department, subject to approval by the Director of Planning prior to commencement of extraction operations.

4. Uses after the conclusion of the extraction operation, shall be submitted to the Planning Director for review and approval of 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.
5. Fencing of the site is not required provided excavation does not exceed five feet in depth, the slopes of excavation areas comply with specified slope requirements and the site is posted "no trespassing."
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. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no steeper than five horizontal feet to one vertical foot. 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. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to 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. No commercial recreational activities, such as motor cross or other recreational activities shall be permitted unless authorized by applicable codes or permissions.
13. Excavation is permitted from the date of final approval for five years. At the end of the five year period, the conditional use may be extended by administrative adjustment. Hours of operation for extraction shall be limited to 6:00 a.m. to sunset.
14. Any on-site storage of fuels or chemicals must be approved by the Sedgwick County Environmental Resources.
15. A drainage plan shall be submitted to and approved by City 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, or if applicable, FAA design standards contained in "Hazardous Wildlife Attractants On or Near Airports" cited above. The extraction area shall be developed so as to not become a wetland area or to inhibit the flow of stormwater.

16. All operational roads, stockpiles, work areas or areas with disturbed soil shall be maintained in a sand or gravel condition and/or shall be treated with water or other acceptable dust retardant to effectively minimize blowing dust.
17. All applicable local, state, and federal permits necessary for the extraction operation and for flood plain development shall be obtained and maintained.
18. If operations have not begun within one year of approval, the Conditional Use shall be null and void.
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 Sedgwick County Register of Deeds a document that provides notice that the property is subject to the development standards contained in Conditional Use 2019-00048.

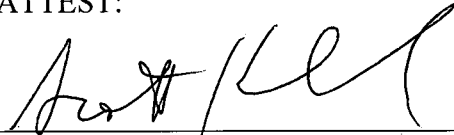
Adopted this 19th Day of December, 2019

METROPOLITAN AREA PLANNING COMMISSION :



Charles A. Warren, Chair, MAPC

ATTEST:



Scott Knebel, Secretary



BACKGROUND: The applicant is requesting “conditional use” approval for the “mining and quarrying” of topsoil from approximately 24 unplatted acres located on the west side of South Clifton Avenue approximately a quarter mile north of East 63rd Street South. The property is zoned SF-5 Single-Family Residential (SF-5).

Access to the site is proposed to be a 50-foot wide access road from South Clifton Street. The active excavation area shown on the proposed operational plan is surrounded by a 50-foot access area. City Public Works will require an additional 20-foot setback along the high bank of the Arkansas River for the access roadway. The excavation area is identified in the center of the subject property with a staging area noted at the northeast corner of the excavation area. The site is located in the flood fringe of the Arkansas River floodplain. There is no proposed redevelopment plan submitted. The agent indicates the intent will be to provide some building sites when excavation is completed. It is anticipated that excavation activities will occur in sporadic fashion. Excavation will occur when material is needed and will stop when a project is completed until such time as the site reaches the limits of excavation.

Land surrounding the application area is zoned SF-5 or SF-20 Single-Family Residential (SF-20) and is cropland or vacant. The application is located approximately three-fourths of a mile west of the western boundary of McConnell Air Force Base Airport Overlay District (AOD) II South; however, the site is located well outside of McConnell Air Force Base’s “area of critical interest” that requires the base to be notified of the request. As noted above, the subject property is located in some flood plain area, which will require coordination with the appropriate flood management officials from the City.

The Wichita-Sedgwick County Unified Zoning Code (UZO) permits “mining and quarrying” of topsoil in the SF-5 zoning district with “conditional use” approval and subject to the supplementary use regulations contained in Article III, Section III-D.6.gg, which lists 23 operational standards, such as a requirement for a site plan, a post excavation redevelopment plan, fencing, dust control, length of time for extraction and hours of operations. The supplementary use standards may be modified as part of the conditional use hearing; however modifications will require approval of the City Council upon a recommendation by the Planning Commission.

CASE HISTORY: SUB2007-00016, the River Wood Addition preliminary plat was approved in March of 2007 and included the subject site as well as property to the south and east and proposed 129 single-family residential lots. The final plat was never submitted for consideration and, at the request of the owner, the preliminary plat has been officially voided and the case closed. In 2017, a portion of the land area included in the proposed River Wood Addition (SUB2017-0035) was platted as the Well Addition (recorded on June 27, 2018). The area of the Well Addition is not a part of the subject property.

ADJACENT ZONING AND LAND USE:

North: SF-20; cropland; vacant
South: SF-5 and SF-20; cropland, vacant
East: SF-20; cropland, vacant
West: SF-5 west of the Arkansas River; Arkansas River

PUBLIC SERVICES: South Clifton Street is a two-lane paved arterial street. 63rd Street east of South Clifton is a four-lane, paved arterial street, and provides direct access to K-15/Southeast Boulevard. Neither public water nor sanitary sewer service has been extended to the subject property.

CONFORMANCE TO PLANS/POLICIES: The "2035 Wichita Future Growth Concept Map" of the Comprehensive Plan identifies this property as "parks and open space." The proposed soil extraction operation (which the UZC classifies as an Industrial, Manufacturing, Extractive Use) will result in significant open space with residential development similar in character to that existing in the immediate area. The site is zoned SF-5. The UZC, allows consideration of mining or quarrying as a Conditional Use in the SF-5 zoning district, subject to the 23 supplementary conditions for a mining and quarrying. As such, staff believes the request is consistent with the Comprehensive Plan.

RECOMMENDATION: Based upon the information available at the time the staff report was prepared it is recommended that the request be approved 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 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 be revised to establish a 20-foot setback from the high bank of the Arkansas River for the 50-foot access road on the west side of the subject property. A revised operational plan shall be filed with the Planning Department, subject to approval by the Director of Planning prior to commencement of extraction operations.
4. Uses after the conclusion of the extraction operation, shall be submitted to the Planning Director for review and approval of 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.
5. Fencing of the site is not required provided excavation does not exceed five feet in depth, the slopes of excavation areas comply with specified slope requirements and the site is posted "no trespassing."
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. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no steeper than five horizontal feet to one vertical foot. 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. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to 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. No commercial recreational activities, such as motor cross or other recreational activities shall be permitted unless authorized by applicable codes or permissions.
13. Excavation is permitted from the date of final approval for five years. At the end of the five year period, the conditional use may be extended by administrative adjustment. Hours of operation for extraction shall be limited to 6:00 a.m. to sunset.
14. Any on-site storage of fuels or chemicals must be approved by the Sedgwick County Environmental Resources.
15. A drainage plan shall be submitted to and approved by City 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, or if applicable, FAA design standards contained in "Hazardous Wildlife Attractants On or Near Airports" cited above. The extraction area shall be developed so as to not become a wetland area or to inhibit the flow of stormwater.
16. All operational roads, stockpiles, work areas or areas with disturbed soil shall be maintained in a sand or gravel condition and/or shall be treated with water or other acceptable dust retardant to effectively minimize blowing dust.
17. All applicable local, state, and federal permits necessary for the extraction operation and for flood plain development shall be obtained and maintained.
18. If operations have not begun within one year of approval, the Conditional Use shall be null and void.
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 Sedgwick County Register of Deeds a document that provides notice that the property is subject to the development standards contained in Conditional Use 2019-00048.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** Land surrounding the application area is zoned SF-5 or SF-20 Single-Family Residential (SF-20) and is cropland or vacant. The application is located approximately three-fourths of a mile west of the western boundary of McConnell Air Force Base Airport Overlay District (AOD) II South; however, the site is located well outside of McConnell Air Force Base's "area of critical interest" that requires the base to be notified of the request. As noted above, the subject property is located in some flood plain area, which will require coordination with the appropriate flood management officials from the City.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned SF-5 which primarily permits single-family residential uses and a few institutional and civic uses, by right, such as, schools, churches and public parks. The site could reasonably be expected to provide economic return as currently zoned.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The requested action permits a temporary use that will provide an economic use to the landowner. While excavation is underway the site will have earth moving equipment that may generate noise and dust. However, proposed conditions of approval, length of time operations may occur, such as hours of operations, setbacks and dust control, are designed to minimize impacts on nearby property.
4. **Length of time the property has been vacant as currently zoned:** The property has been used agriculturally for years.
5. **Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant:** Denial would presumably represent a loss of economic opportunity to the applicant. Approval would provide fill material for offsite construction projects while preparing the application area for further development.
6. **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 as "parks and open space." The proposed soil extraction operation (which the UZC classifies as an Industrial, Manufacturing, Extractive Use) will result in significant open space with residential development similar in character to that existing in the immediate area. The site is zoned SF-5. The UZC, allows consideration of mining or quarrying as a Conditional Use in the SF-5 zoning district, subject to the 23 supplementary conditions for a mining and quarrying.
7. **Impact of the proposed development on community facilities:** Existing or required facilities are in place to address anticipated demands on community facilities.

Attachments:

Proposed Site Plan