

SEDGWICK COUNTY



METROPOLITAN AREA PLANNING DEPARTMENT

CITY HALL — TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202-1688
(316) 268-4421

September 1, 1993

Wayne Largent
Kirk Excavating Service, Inc
1903 N. Maize Road
Wichita, KS 67212

RE: CU-361 - A request for a conditional use permit for the stockpiling of dirt.
Generally located 1500 feet east of Woodlawn on the south side of 49th
Street South.

On September 1, 1993, the Board of County Commissioners considered the above
referenced request. The Commissioners action was to deny the conditional use
permit. Sedgwick County Code Enforcement has advised the Planning Department
that all dirt is to be removed from the property by October 1, 1993.

If you have any questions, please call our office at 268-4421.

Leslie G. Karr
Senior Planner

cc: Morley Fackler, 1729 S. Red Oaks, 67207
Willy Goevert, Gypsum Township, 11229 Creed Street, 67210
Don & Anna Fowler, RR 1 Box 260-1, Derby, KS 67037
Jim & Donna Inkelaar, 7300 S 103rd St. S., Derby, KS 67037
Doris Newman, 6730 Edyth, Derby, KS 67037
Bill Bloedel, RR 2, Derby, KS 67037
John & LaDonna Poulas, 6600 Edyth, Derby, KS 67037
Peter Everhart, RR 2 Box 260, Derby, KS 67037
Sedgwick County Code Enforcement

49 TH STREET

165'



528'



165'



1320'

792'

330'

**WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION**

AGENDA ITEM NO. 6
DPC 8-5-93
MAPC 8-12-93

STAFF REPORT

CASE NUMBER: CU-361

APPLICANT/AGENT: Morley Fackler
Kirk Excavating Service, Inc.

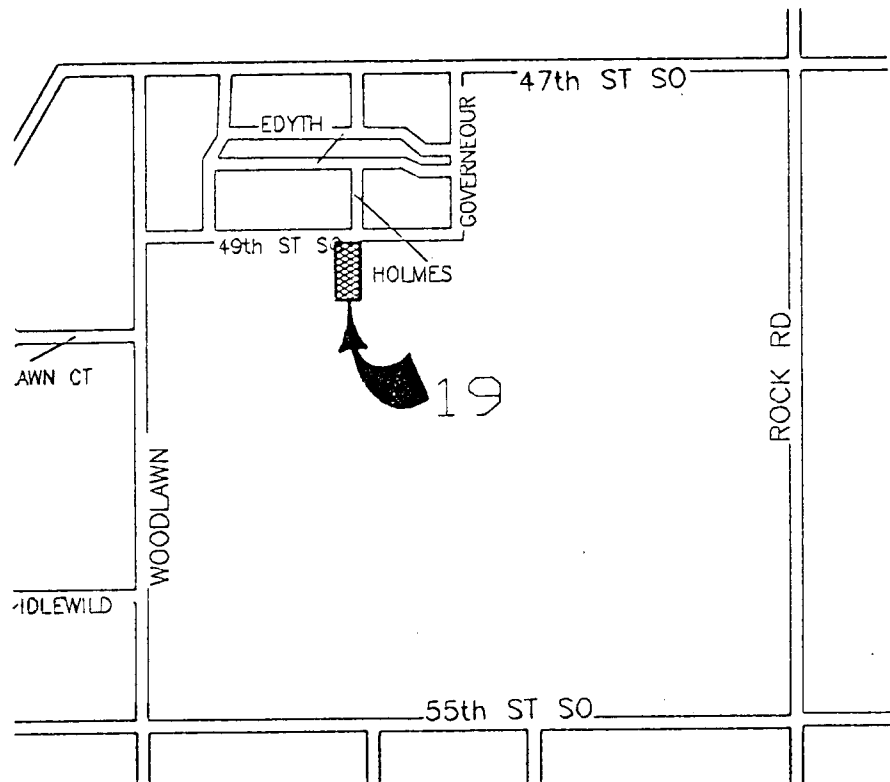
REQUEST: Conditional use permit for the temporary stockpiling of dirt.

CURRENT ZONING: "R-1" Suburban Residential

SITE SIZE: 2 acres

LOCATION: 1500 feet east of Woodlawn on the south side of 49th Street South

PROPOSED USE: temporary stockpiling of dirt



BACKGROUND: The applicant is requesting a conditional use permit for the temporary stockpiling of dirt on a two acre site generally located 1500 feet east of Woodlawn on the south side of 49th Street South. The application area is currently zoned "R-1" Suburban Residential. Section 5(A)(10) of the Sedgwick County Zoning Regulations allows the development of natural resources in the "R-1" District as a conditional use permit.

Kirk Excavating is currently under contract with McConnell Air Force Base for a housing project. Because of difficulties securing a site at McConnell for the stockpiling of dirt at the beginning of the project, an off-site location was selected. Five thousand yards of excess dirt from the project is currently being stored on approximately 1/3 of the 2 acre application area. The dirt currently located on the site will be used for backfill and completion of the project, building berms around a lake on the application area and/or moved off-site. The McConnell housing project is anticipated to be complete by the end of 1993. One year is being requested to remove the dirt from the application area. The applicant has indicated that they now have permission to use a location at McConnell for stockpiling of dirt and will not be bringing additional dirt to the application area.

Access to the site is provided by 49th Street South and Woodlawn, both are unimproved, two lane, township roads. Gypsum Township has indicated that damage has occurred to 49th Street South and to Woodlawn, allegedly from traffic associated with the stockpiling of dirt on the application area (see attached letter). Although the applicant may be legally responsible for the damage that has been done, the County Counselor's office has advised Planning Department staff that zoning is not the appropriate method for determining liability or for receiving financial compensation.

The Derby Planning Commission met to consider this item on August 5, 1993. Eight persons spoke in opposition to the request and expressed concerns about heavy truck traffic and damage to township roads. Morley Fackler was present at the meeting; however, Kirk Excavating was not. The action of the Derby Planning Commission was to recommend that the request be denied (8-0-1), subject to staff comments.

CASE HISTORY: On June 18, 1993, Kirk Excavating was notified by Sedgwick County Code Enforcement that they were operating in violation of the Sedgwick County Zoning Regulations.

ADJACENT ZONING AND LAND USE:

NORTH:	"R-1"	undeveloped
SOUTH:	"R-1"	undeveloped
EAST:	"R-1"	undeveloped
WEST:	"R-1"	single family residences

PUBLIC SERVICES: Access to the site is provided by 49th Street South and Woodlawn, both are unimproved, two lane, township roads. 49th Street South has 60 feet of existing right-of-way. The proposed use will not require water or sewer facilities.

CONFORMANCE TO PLANS/POLICIES: The land use map of the Comprehensive Plan shows this area for agricultural uses. The application area is located outside of the City of Wichita's Growth Area and outside the area identified for suburban growth. The area treatment classification map also identifies this area as agricultural. The plan indicates that resource-based development (eg. sand extraction) is appropriate in these areas; however, this site is simply being used as a storage and transfer point.

RECOMMENDATION: Staff recommends that the request be denied. This recommendation is based on the following findings:

1. The proposed use does not conform to the uses and character of nearby property, which is agricultural and rural residential. There are no other construction sites in this vicinity. (a)
2. Negative impacts from the proposed use to surrounding property owners include damaged roads and blowing dirt. (c)
3. There is no benefit to public health, safety and welfare from the continuation of dirt stockpiling on the application area. Denial of the request does not affect the property owners ability to use the property for the residential and agricultural uses for which it is currently zoned. In addition, the applicant has indicated that a site on McConnell Air Force Base has been secured for the stockpiling of dirt and no additional dirt is proposed to be moved to this location. Denial of the request merely speeds up the process of removing the dirt from the site. (e)
4. The site has access from unimproved township roads which are not designed to handle the impact of trucks associated with the proposed use. The township has reported damage to their roads, allegedly from the applicant's illegal use of the property. (g)

However, should the Planning Commission recommend approval of the request staff recommends the following conditions:

1. The permit shall be valid until December 31, 1993. The applicant shall be responsible for removing all dirt from the site by December 31, 1993.
2. The applicant shall apply water or other acceptable dust retardant to the stockpile so as to minimize blowing dust.

3. No stockpiling of dirt shall occur within 100 feet of any public right-of-way or within 50 feet of all remaining property lines. Storage of vehicles and equipment on-site shall not be permitted.
4. No additional dirt may be deposited on-site after adoption of the Resolution by the Board of County Commissioners (tentatively September 8, 1993).
5. Any violations of the foregoing conditions shall render the conditional use permit null and void.