CITY OF WICHITA

**Wichita-Sedgwick County Metropolitan Area Planning Department**

May 8, 2000

**REVISED LETTER**

FILE COPY

Derby Recycling & Transfer Station L.L.C.
%H. D. Mills
1401 S. Buckner
Derby, KS 67027

**RE: SCZ-0798 (Associated with CU-556) – Sedgwick County Zone Change from "RR" Rural Residential to "LI" Limited Industrial and Conditional Use to permit a transfer station. Generally located at 91st Street South and Buckner, Derby, Kansas.**

Dear Ladies and Gentlemen:

At its regular meeting on May 3, 2000, the Board of County Commissioners considered the above-captioned request. The action of the County Commissioners was to recommend that the request be APPROVED, subject to platting within 1 year and the following conditions:

A. The Conditional Use Permit for the transfer station shall apply only to the area identified on the approved site plan as "transfer station." The maximum area to be utilized for transfer station activities shall not exceed 12 acres, nor shall the transfer station accept in excess of 500 tones per day of solid waste.

B. The Conditional Use for the establishment of a solid waste transfer station shall be subject to all applicable local, state and federal regulations and laws, and prior to beginning operations, all applicable local, state and federal permits shall be acquired.

C. The use of the site as a solid waste transfer station shall proceed and be maintained in general conformance with the site plan required by this Conditional Use and made a part of this permit. The tipping floor area shall be completely enclosed except for openings with operable doors for loading / unloading and pedestrian / emergency doors.

D. At the time of platting, the applicant shall submit a drainage plan to the Health Department and to the Sedgwick County Department of Public Works (Derby) for approval. All runoff within the tipping facility shall drain to a holding facility. All outside runoff shall be properly confined, filtered, and/or treated to prevent contamination, as deemed appropriate by the County (Derby). The applicant shall guarantee improvements to 91st Street as recommended by the Derby Planning Commission.

E. A landscape plan shall be submitted to the Planning Director for approval prior to issuance of a building permit, indicating the number, location, size and type of plantings and method of watering. Landscaping shall be installed in conformance with this plan prior to operation of the facility and maintained in conformance with the plan.

F. Temporary outside waste storage of materials shall be stored or confined in a manner that prevents waste from being blown beyond the site.

G. Outside building walls and roof surfaces shall be predominantly muted in color intensity, with bright white colors limited to a maximum of 10 percent of the total surface area.

H. No off-site signs are permitted on the property. Building signs shall be limited to a maximum of 10 percent of any wall surface.

I. Violation of any of the conditions of approval shall render the Conditional Use null and void.

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

Sincerely,

Dale Miller
Chief Planner

DM/rs

Cc: Sanborn & Mills, Chartered, Russell Mills, 343 N. Market, Suite 200, Wichita, KS 67202-2009
Ken Mulanax, 100 Crooked Creek Ct., Derby, KS 67037
Dion Avello, 825 Honeybrook Lane, Derby, KS 67037
Lester D. and Norma Moore, 9339 South K-15, Derby, KS 67037
County Commissioner, Ben Sciortino, District V, Mail Stop Room #320 County
Salem Township, Joanie Storck, 401 W. 89th Street South, Haysville, KS 67060

# CONSENT AGENDA ITEM REQUEST

FILE COPY

☐ *Approved by County Manager for Consent Agenda*

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|---|---|
| **Proposed Agenda Item:** | **Correcting resolution of legal description set out in Resolution No. 81-00 associated with CU-556 Conditional Use to allow a transfer station on land zoned "RR" Rural Residential. Generally located at 91st Street South and Buckner. (Commission District #V)** |
| **Submitted by:** | **Marvin S. Krout, Director of Planning** |
| **Recommended Action:** | **Adopt the correcting resolution and authorize the Chairman to sign.** |
| **Proposed Agenda Date:** | **June 5, 2002** |
| **Donations:** | **Not Applicable** |

**Background:** The original resolution, 81-00, associated with Conditional Use case #556 contained typographical errors in the metes and bounds property description (i.e. a SW was inserted instead of a NW; a bearing was dropped and a space between a letter and a number was left out.). The attached correcting resolution is provided in order to clear up any question concerning which property is associated with CU-556.

**Analysis:** Approval of the revised resolution will prevent any future questions regarding what property is associated with Conditional Use 556.

**Alternatives:** Not applicable.

**Financial Considerations:** Not Applicable
**Policy Considerations:** Not applicable
**Legal Considerations:** ☑ *Approved as to form and signed by County Counselor's Office*

CORRECTING RESOLUTION NO. _____

A CORRECTING RESOLUTION AUTHORIZING A CONDITIONAL USE TO ALLOW A TRANSFER STATION ON LAND ZONED "RR" RURAL RESIDENTIAL AND "GI" GENERAL INDUSTRIAL ON CERTAIN LANDS LOCATED WITHIN THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C AS ADOPTED BY RESOLUTION NO. 178-1997, CORRECTING ORIGINAL RESOLUTION NO. 81-00.

BE IT RESOLVED BY THE GOVERNING BODY OF SEDGWICK COUNTY, KANSAS.

**SECTION I.** That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission, and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section V-C of the Wichita Sedgwick County Unified Zoning Code, AUTHORIZING A Conditional Use to allow a transfer station zoned "RR" Rural Residential and "GI" General Industrial, legally described hereby are changed as follows:

**Case No. CU-556**

A Conditional Use Permit to allow a transfer station/recycling and processing Center, located at 91st Street South and Buckner. Described as:

Part of the SW 1/4 of Section 13, T29S, R1E of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning at the SW corner of Lot 1, Block 1, Lusk Industrial Addition, an Addition to the City of Derby, Sedgwick County, Kansas; thence S0°00"E along the West line of said Lot 1, 490 feet to the NW corner of said Lot 1; thence N90°00'E along the South line of said Lot 1, 256.23 feet; thence S12°30'W, 389.23 feet; thence South 460 feet to a point 1330 feet South and 418 feet West of the NE corner of said SW 1/4; thence West 80 feet; thence S41°20'W, 260 feet; thence N48E40'00"W, 80 feet; thence Northwesterly 742 feet, more or less, to a point 750 feet South and 900 feet West of the NE corner of said SW 1/4; thence N10°23'20"E, 610 feet; thence S90°00'W, 150 feet; thence N0°00'E, 150 feet; thence N 90°00'E, along the North line of said SW 1/4, 350 feet to the point of beginning, containing 12 acres, more or less. Generally located at 91st Street South and Buckner.

SUBJECT TO THE FOLLOWING CONDITIONS:

A. The Conditional Use Permit for the transfer station shall apply only to the area identified on the approved site plan as "transfer station." The maximum area to be utilized for transfer station activities shall not exceed 12 acres, nor shall the transfer station accept in excess of 500 tons per day of solid waste.

B. The Conditional Use for the establishment of a solid waste transfer station shall be subject to all applicable local, state and federal regulations and laws, and prior to beginning operations, all applicable local, state and federal permits shall be acquired.

C. The use of the site as a solid waste transfer station shall proceed and be maintained in general conformance with the site plan required by this Conditional Use and made a part of this permit. The tipping floor area shall be completely enclosed except for openings with operable doors for loading / unloading and pedestrian / emergency doors.

D. At the time of platting, the applicant shall submit a drainage plan to the Health Department and to the Sedgwick County Department of Public Works (Derby) for approval. All runoff within the tipping facility shall drain to a holding facility. All outside runoff shall be properly confined, filtered, and/or treated to prevent contamination, as deemed appropriate by the County (Derby). The applicant shall guarantee improvements to 91st Street as recommended by the Derby Planning Commission.

E. A landscape plan shall be submitted to the Planning Director for approval prior to issuance of a building permit, indicating the number, location, size and type of plantings and method of watering. Landscaping shall be installed in conformance with this plan prior to operation of the facility and maintained in conformance with the plan.

F. Temporary outside waste storage of materials shall be stored or confined in a manner that prevents waste from being blown beyond the site.

G. Outside building walls and roof surfaces shall be predominantly muted in color intensity, with bright white colors limited to a maximum of 10 percent of the total surface area.

H. No off-site signs are permitted on the property. Building signs shall be limited to a maximum of 10 percent of any wall surface.

I. Violation of any of the conditions of approval shall render the Conditional Use null and void.

**SECTION II.** That the original resolution contained a metes and bounds legal description which contained several typographical errors, and that this

correcting resolution is intended to solely correct the legal description and no other changes are intended by the adoption of this correcting resolution.

**SECTION III.** That upon the taking effect of this Resolution, the notation of such zone change shall be entered in the official zoning atlas on file in the Office of the County Zoning Administrator and in the Office of the Wichita-Sedgwick County Metropolitan Area Planning Department.

**SECTION IV.** That this Resolution shall take effect and be in force from and after its adoption.

Commissioners present and voting were:

BETSY GWIN _____
TIM R. NORTON _____
THOMAS G. WINTERS _____
CAROLYN McGINN _____
BEN SCIORTINO _____

DATED this _____ day of _____, 2002.

BOARD OF COUNTY COMMISSIONERS OF
SEDGWICK COUNTY, KANSAS

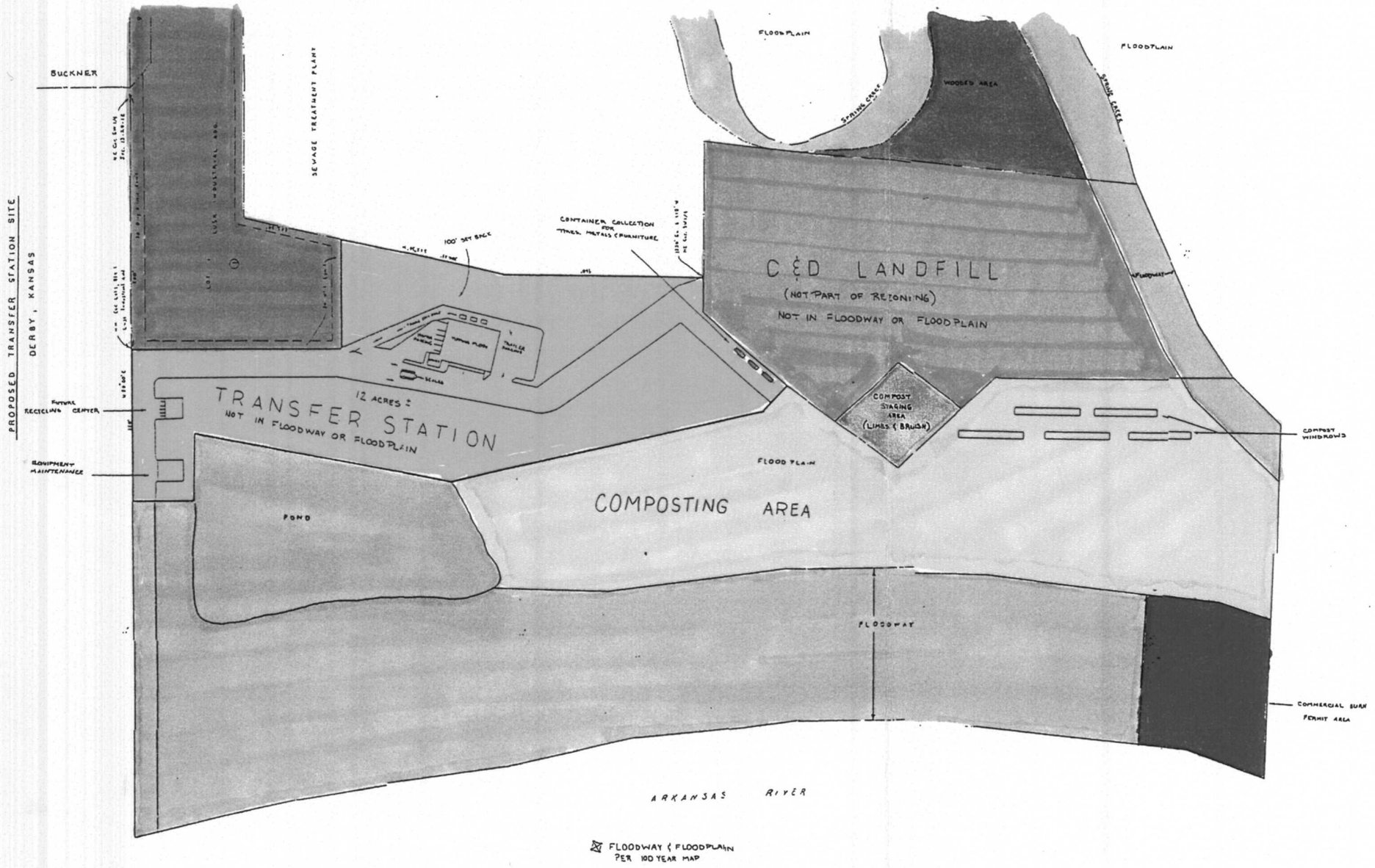
_____
Ben Sciortino, Chairman
Fifth District

ATTEST:

_____
DON BRACE
County Clerk

APPROVED AS TO FORM ONLY:

_____
ROBERT W. PARNACOTT
Assistant County Counselor




**LEGEND**

- Lusk Industrial Addn.
  Not part of zoning.
- Transfer Station Area (12A±)
  Part of zoning.
  Not in Floodway or
  Flood Plain
- Recycle Containers
  Part of zoning
  Not in Floodway or
  Flood Plain.
  Containers for tires, metals, and furniture.
- Composting Area
  Part of zoning.
  In 100 Year Flood Plain
  Not in Floodway
- Compost Staging Area
  Part of zoning.
  Not in Floodway or
  Flood Plain.
  Area where limbs and brush are unloaded for grinding.
- C&D Landfill
  NOT part of zoning.
  Not in Floodway or
  Flood Plain.
- Commercial Burn Permit Area
  Part of zoning.
  In Floodway.
- Wooded Area
  Part of zoning.
  In 100 Year Flood Plain.
  To remain wooded and undisturbed as part of the landscape buffer.
- FLOODWAY

original site plan dm

CU556/SC20798

AGENDA ITEM NO. _____

# STAFF REPORT

Derby P.C, 12/2/99
MAPC, 12/16/99
Derby P. C. 12/16/99
MAPC, 1/13/99
Derby P.C. 3/9/00
Derby P.C. 3/14/2000
Derby P. C. 4/6/00

| | |
|---|---|
| CASE NUMBER: | SCZ-0798 and CU-556 |
| APPLICANT/AGENT: | Derby Recycling and Transfer Station, LLC, applicant (H. D. Mills) / H. D. Mills, agent |
| REQUEST: | LI, Limited Industrial and Conditional Use to permit a transfer station |
| CURRENT ZONING: | RR, Rural Residential and GI, General Industrial with a Conditional Use Permit for a landfill |
| SITE SIZE: | 70 acres for the Conditional Use<br>56 acres for "LI", Limited Industrial Zoning |
| LOCATION: | 91st Street South and Buckner |
| PROPOSED USE: | Transfer Station / Recycling and Processing Center |

**BACKGROUND**: The applicant is seeking to rezone 56 acres from the "RR", Rural Residential district to the "LI", Limited Industrial district to permit a "Recycling Processing Center" and obtain a Conditional Use permit to operate a solid waste "transfer station" on 70 acres (including the previously mentioned 56 acres) located at 91st Street South and Buckner (1401 south Buckner). Currently, 14 acres of the 70 acres for which the Conditional Use is being sought are already zoned "GI" General Industrial and is being used for landfill, compost or recycling activities. A portion of the site has a permit from KDHE for construction-demolition debris disposal and composting operations, and is being used for those purposes today. Other portions of the site are currently unused.

Access to the site is provided by both 91st and Buckner Streets which are unpaved near the application area. The applicant's site plan depicts two possible sites for the location of the transfer station. The northern site is the applicant's preferred site. A more detailed site plan for the northern site depicts a 12,500 square foot building which would house the tipping floor and office. The scales would be located nearby to the northwest. This building is oriented with its longest axis north to south. Ten visitor-parking spaces are shown on the north side of the building. (County Code Enforcement indicates that approximately 13 spaces will be required for a building the size shown on the detailed site plan.) The remainder of the tract would be used for landfilling, recycling and processing operations.

The applicant indicates that the maximum volume he could hope for is 500 tons per day. He does not expect to receive that volume due to competition and the scale of his operation. If the site did receive 500 tons per day, The applicant anticipates that volume would result in an increase in an average daily volume of 35 to 40 vehicles. (It should be noted that the eastern most portion of the applicant's ownership is not included within the area covered by the applicant's site plan.) Hours of operation are 8:00 a.m. to 5:00 p.m. Monday through Friday, 8:00 a.m. to 3:00 p.m. on Saturday.

Derby's wastewater treatment plant is located to the east, within the city limits of Derby, on residentially zoned land with a special permit for the treatment plant. There is an industrial use to the north, within Derby, which includes scales and office buildings for the landfill and transfer station that the applicant currently operates. The applicant has lost the lease for that property so those improvements will be moved south onto the applicant's new site.

**CASE HISTORY**: In 1985 a request for a Special Use Permit to establish a demolition construction landfill (DR 86-4), and a request to rezone land from "RR", Rural Residential to "GI", General Industrial (SCZ-0542) were withdrawn. In 1986 a Special Use Permit to establish a demolition construction landfill (DR

86-4), and a request to rezone 14 acres from "RR", Rural Residential to "GI", General Industrial were approved by MAPC, denied by the County Commission and then approved by District Court.

This case was originally scheduled to be heard by the MAPC on December 16th. However, the Derby Planning Commission was unable to make a recommendation at their December 2nd meeting, and requested the MAPC to defer the case until they had a chance to obtain additional information. At the December 16th meeting, the MAPC deferred the case to their January 13, 2000 meeting. At the Derby hearing on December 16th, they recommended:

> Approval of the request for "LI" zoning subject to the conditions referenced in the MAPD staff report and the following conditions: no trees providing screening for nearby or adjacent properties can be removed; no composting is permitted in the 100 year floodplain; no correctional facilities are permitted on the property; testing of groundwater and soil shall be conducted by the appropriate agency.
>
> Approval of the "Conditional Use" request for the transfer station subject to the conditions referenced in the MAPD report and the following conditions: the size of the property authorized for the transfer station is limited to 12 acres; an enclosed storage tank is to be used to contain runoff and monitored by the appropriate agency.

MAPC heard the case on January 13, 2000, and recommended approval of both cases subject to the following Protective Overlay and Conditional Use conditions:

> Approval of "LI" zoning provided no trees providing screening for nearby or adjacent properties can be removed; no composting is permitted in the 100 year floodway, but would be permitted in the flood fringe; no correctional placement facilities are permitted on the property; testing of groundwater and soil shall be conducted by the appropriate agency; the area to be used for the dumping of brush awaiting shredding and composting is to be marked off and is to be located out of the floodplain; and the 100 year floodway is to marked as directed by Sedgwick County Public Works and may not be used for shredding or composting.
>
> Approval of the Conditional Use request for the transfer station subject to the conditions referenced in the MAPD report and the following conditions: the size of the property authorized for the transfer station is limited to 12 acres; the maximum tonnage

that may be accepted by the transfer station is 500 tons per day; an enclosed storage tank is to be used to contain runoff and monitored by the appropriate agency.

When the Sedgwick County Commissioners heard the case on February 9, 2000, they sent the case back to Derby for additional discussion. The County Commissioners were interested in having the Derby commissioners clarify if Derby's recommendation to not permit composting or recycling in the "floodplain" included the "flood fringe" as well as the "flood way." The Derby Planning Commission heard the case on referral on March 9, 2000 and determined to consider the case as if it were a re-hearing of the original case. Additional public testimony was heard, but the commissioners were unable to reach a decision. Derby continued the hearing to March 14, 2000, and toured the application site. No action was taken on the March 14th tour, so the case was continued to April 6, 2000. After additional discussion, the Derby Planning Commission voted to:

> Rescind their December 16th action to recommend approval of "LI", Limited Industrial zoning (SCZ-0798), and to recommend denial of same.

The denial appeared to be based upon neighborhood opposition, drainage concerns and pollution concerns.

The Derby Commission then voted to:

> Recommend approval of the Conditional Use request for the transfer station subject to the conditions referenced in the MAPD staff report with the exceptions that: 1) the size of the property authorized for the transfer station be only 12 acres in size, 2) an enclosed storage tank be used to accept runoff from the tipping floor instead of an open detention pond, and that the runoff directed into this tank be monitored by the appropriate agency, 3) the maximum amount of trash that may be received by the transfer station on a daily basis is 500 tons and 4) the applicant is responsible for paving 91st Street South from K-15 Highway to the application area, including a circular turnaround (60-foot radius to face of curb) to terminate the street. The required street pavement shall include storm sewers, curb and gutter and shall be provided a 41-foot wide pavement (from back of curb to back of curb). Pavement thickness shall be 8 inches, if asphalt pavement is provided, or 7 inches if concrete pavement is used, over stabilized subgrade.

**ADJACENT ZONING AND LAND USE:**

NORTH: "RR", Rural Residential and "M-1", Industrial (Derby); vacant and

solid waste landfill / transfer and composting activities, agricultural

SOUTH: "RR", Rural Residential; vacant and residential

EAST: "Derby residential zoning with a special permit; waste water treatment plant

WEST: "RR", Rural Residential; Arkansas River

**PUBLIC SERVICES**: 91st Street and Buckner Street are two-lane unpaved roads near the application site. K-15, a divided four-lane facility, is less than one-quarter mile to the east, via 91st Street. Traffic volumes are not available. City of Derby sewer and water lines exist in Buckner. Staff is contacting appropriate officials regarding any concerns they may have with north bound left turns on K-15 from 91st Street.

**CONFORMANCE TO PLANS/POLICIES**: The Wichita/Sedgwick County Development Guide identifies this area as appropriate for agricultural and related uses. The Derby Comprehensive Plan also depicts this area as appropriate for agricultural uses. In 1996, the Unified Zoning Code established solid waste transfer stations as uses conditionally permitted in the Rural Residential and the two industrial districts. Recycling processing centers are permitted in the General Commercial, Central Business, Office Warehouse, Industrial Park, Limited Industrial and General Industrial districts. Facilities built in the Limited Commercial district have 10 conditions to comply with. When recycling facilities are located in the other zoning districts, they have only one condition to comply with: Prior to establishing a public recycling collection station, the operator shall obtain a location or building permit, as applicable, from the Zoning Administrator. Operation of the station shall be subject to approval of the health officer.

Sedgwick County has specific regulations regarding the site design for facilities of this type: access roads are to be paved; on-site roads shall be maintained in good condition; a minimum size of 15 acres is required for a facility designed to receive more than 500 tons per day; transfer stations are to be located 100 feet away from public roads and other property boundaries; 500 feet between transfer station and any building not on-site unless written permission is granted by the nearest property owner, but no less than 300 feet between the transfer station and waste storage areas and the nearest residence or school; the site is to be reasonably screened from adjacent roadways; 80 percent of the surface area not used for parking, ingress/egress or transfer station shall be covered by vegetation or organic groundcover; transfer operations are to occur in an enclosed building (excluding white goods and yard waste); yard waste is not to be accepted at the transfer station; each facility shall have one common gate for all customers; the facility shall be open to all customers for the same hours of operation; an enclosed area available for public education and capable of seating 40 people is required; and provisions for handling banned waste must

be made.

Attached is a letter from the Director of Sedgwick County Resources outlining the county's policy towards transfer stations. It indicates that the Board of County Commissioners supports the private ownership of transfer stations, that the number of stations that can be built will be determined by market demand and that there is a need for facilities of this kind throughout the county.

Finally, the Comprehensive Plan suggests that industrial development may be appropriate in rural areas if it is an expansion of an existing industrial area, and should be located where there is good access and away from existing or planned residential areas.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the requests be APPROVED, subject to platting within 1 year and the following conditions:

A. The Conditional Use Permit for the transfer station shall apply only to the area identified on the approved site plan as "transfer station." The maximum area to be utilized for transfer station activities shall not exceed 12 acres, nor shall the transfer station accept in excess of 500 tons per day of solid waste.

B. The Conditional Use for the establishment of a solid waste transfer station shall be subject to all applicable local, state and federal regulations and laws, and prior to beginning operations, all applicable local, state and federal permits shall be acquired.

C. The use of the site as a solid waste transfer station shall proceed and be maintained in general conformance with the site plan required by this Conditional Use and made a part of this permit. The tipping floor area shall be completely enclosed except for openings with operable doors for loading / unloading and pedestrian / emergency doors.

D. At the time of platting, the applicant shall submit a drainage plan to the Health Department and to the Sedgwick County Department of Public Works (Derby) for approval. All runoff within the tipping facility shall drain to a holding facility. All outside runoff shall be properly confined, filtered, and/or treated to prevent contamination, as deemed appropriate by the County (Derby). the applicat shall guarantee improvements to 91st Street as required by Derby P-C.

E. A landscape plan shall be submitted to the Planning Director for approval prior to issuance of a building permit, indicating the number, location, size and type of plantings and method of watering. Landscaping shall be

installed in conformance with this plan prior to operation of the facility and maintained in conformance with the plan.

F. Temporary outside waste storage of materials shall be stored or confined in a manner that prevents waste from being blown beyond the site.

G. Outside building walls and roof surfaces shall be predominantly muted in color intensity, with bright white colors limited to a maximum of 10 percent of the total surface area.

H. No off-site signs are permitted on the property. Building signs shall be limited to a maximum of 10 percent of any wall surface.

I. Violation of any of the conditions of approval shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Land on all sides is zoned Rural Residential, residential (Derby) with a special use permit for a waste water treatment plant, or industrial (Derby). There are agricultural, landscape nursery, wastewater treatment plant, the Arkansas River and vacant land uses surrounding the site. The character of the area is a combination of undeveloped, agricultural and industrial uses.

2. The suitability of the subject property for the uses to which it has been restricted. The property is zoned "RR", Rural Residential, and "GI", General Industrial with a Conditional Use permit for a landfill. The site is not suitable for residential for residential use given the fact that landfill operations have occurred on the site and due to it proximity to the wastewater treatment plant.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is buffered by the river, creeks and other industrial or agricultural operations. The conditions attached to the approval of this request and the licensing minimize any detrimental effects.

4. Length of time the property has remained vacant as zoned. The Rural Residential zoned property is currently vacant. The General Industrial zoned property has been used for landfill since 1986.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Comprehensive Plan identifies this area as

appropriate for agricultural and related uses. However the Comprehensive Plan suggests that industrial development may be appropriate in rural areas if it is an expansion of an existing industrial area, and should be located where there is good access and away from existing or planned residential areas. This site meets these requirements.

6. Impact of the proposed development on community facilities: The site will generate little if any increased traffic over current operations and the demand for municipal services (sewer / water) should be minimal if those services are required.

approved 4/0

Date: April 19, 2000

TO: Board of County Commissioners

FROM: Marvin Krout, Director of Planning MKrout

SUBJECT: SCZ-0798 and CU-566

These two cases deal with a request by the same applicant, for a Conditional Use permit to allow a "solid waste transfer station" and a request for "LI", Limited Industrial zoning to permit "recycling and reprocessing" activities on property located south of 91st Street and west of Buckner. The 70 acre site is adjacent to the City of Derby, and in the past, under other ownership than the current applicant, part of the site was used as a municipal landfill. Per the "zoning area of influence" regulations, the Derby Planning Commission was provided an opportunity to consider the case and make a recommendation to the Metropolitan Area Planning Commission and to the County Commissioners. Derby's Planning Commissioners held a total of five different meetings to consider this case. The history of this case is as follows: 12 acres

At Derby's first meeting, December 2, 1999, they were unable to make a recommendation. Questions were asked regarding: a) where drainage from the facility would go; b) traffic volumes to the site; c) how often the current site had been inspected; d) how hazardous waste would be sorted e) had there been any testing of the river for pollutants; f) to which landfill would the waste be hauled; and g) road maintenance. Six citizens spoke citing concerns regarding: traffic, water contamination, decrease in property values, increase in noise and odors and burning that results in smoke coming from the site.

At Derby's second meeting, December 16, 2000, they voted unanimously to approve both requests, subject to MAPD recommendations plus the following conditions. On the "LI" request, the additional conditions were: existing trees on the property which act as a screen for nearby properties shall not be remove; no composting shall be conducted within the 100 year floodplain; no correctional facilities shall be permitted; and testing of groundwater and soil shall be conducted by the appropriate agency. On the Conditional Use request, the additional conditions were: the size of the property authorized for the transfer station shall be 12 acres; an enclosed storage tank is to be used to accept runoff from the tipping floor and that the runoff be monitored by the appropriate agency. Questions asked by Derby Commissioners were: how did the applicant's site plan and description of operations compare to transfer stations in other stations; how would medical wastes be handled; how Sedgwick County's Solid Waste Regulations apply to this application; is the current tire recycling process operating with current permits; has there been any water testing on the site; and should they approve a site that could process the entire county's solid waste. Seven citizens spoke in opposition, citing reasons similar to those outlined above.

Originally were to be 2 requests to be heard today, however the request for "LI" has been deferred by the applicant pending a response to our request for an interpretation regarding the necessity of the LI zone. After 7 meetings the recommendation of the request for a Conditional Use Permit to operate a solid waste transfer station has received a recommendation of approval, subject to conditions listed on p. 6 of staff report including requirement to guarantee improvements to 91st St.

MAPC heard the case on January 13, 2000 and recommended approval of both cases subject to staff comments and a Protective Overlay and conditions. The "LI" was approved for the area outside the floodway provided: no trees providing screening for nearby or adjacent properties can be removed; no composting within the 100 year floodway, but not in the flood fringe; no correctional placement facilities are permitted; testing of ground water and soil shall be conducted by the appropriate agency; the area to be used for the dumping of brush awaiting shredding and composting is to be marked off and is to be located outside the floodplain; and the 100 year floodway is to be marked as directed by County Public Works and may not be used for shredding or composting. The "CU" conditions were: the acreage on which transfer station activities could occur is limited to 12; the maximum tonnage that may be accepted by the transfer station is 500 tons per day; an enclosed storage tank is to be used to contain runoff and monitored by the appropriate agency.

The Board of County Commissioners heard the case on February 9, 2000. After hearing testimony, the Board voted to send the case back to Derby for additional clarification.

Derby heard the case again on March 9, 2000. They could not reach a decision, so they tabled the case to March 14, 2000 in order to allow for an on-site visit to the applicant's property. The Commission continued to ask about water testing, monitoring of the old municipal landfill and the construction and demolition landfill; rate of inspections; was composting occurring in the floodway; could composting allow pollutants to enter the waterway; status of the applicant's burn permit; is the transfer station located on old land fill and could there be methane that could cause a problem for the transfer station; Six citizens spoke in opposition citing concerns mentioned above, plus drainage.

No action was taken at the March 14, 2000 meeting. The meeting was actually a tour of the site attended by most of the Derby Planning Commission and interested neighbors.

At the April 6, 2000, meeting, the Derby Planning Commission voted to rescind their original December 16 vote of approval for the "LI", Limited Industrial zoning request, and voted to recommend denial of the request. The denial was based on neighborhood opposition, potential pollution and flooding concerns. The Commission voted to recommend approval of the Conditional Use request for the transfer station, subject to conditions recommended by the MAPC, and the applicant is responsible for paving 91st Street South from K-15 Highway to the application area, including a circular turnaround (60 foot radius to face of curb) to terminate the street. The required street pavement shall include storm sewers, curb and gutter and shall be provided a 41 foot wide pavement (from back of curb to back of curb). Pavement thickness shall be 8 inches, if asphalt pavement is provided, or 7 inches if concrete pavement is used, over stabilized subgrade.

BFE plans to enter off of West St.

Planning staff is supportive of both requests, subject to the conditions recommended by MAPC. County legal staff has advised Planning staff that even though the Derby Planning Commission has rescinded its original recommendation of approval for the "LI" request, a unanimous vote is not necessary to override their negative recommendation.

Section V-C.9 (page 174) of the zoning code has the statement about the unanimous vote requirement of the County Commission when the small city planning commission has recommended denial. The language in that paragraph states: "if the planning commission...has recommended against the zoning change on or before the scheduled date of the hearing before the MAPC, approval...[it] shall require a unanimous vote of all members." In this case, Derby's planning commission has already acted, to approve, before the MAPC hearing. Therefore, reading this paragraph, it does NOT require a unanimous vote of the County Commission to approve the request. Due to protest petitions (63%), it will still take 4 votes to approve either request.

- The applicant has requested an official interpretation on whether "composting" is an "agricultural" use that does not require zoning.
- Is burning gas actually that is regulated by the zoning code.