



Wichita-Sedgwick County Metropolitan Area Planning Department

December 11, 2008

Andrew Lauer
4250 S Tyler Rd
Wichita, KS 67215

Bergkamp Construction Co., Inc.
Attn: Chris Snook
3709 S. West St
Wichita, KS 67217

RE: CON2008-00038 - County Conditional Use for mining/quarrying (soil extraction) on property zoned SF-20 Single-Family Residential, generally located west of Ridge Road approximately 1/4 mile north of MacArthur Road.

Dear Ladies and Gentlemen:

At its regular meeting on **October 9, 2008**, the Wichita - Sedgwick County Metropolitan Area Planning Commission considered the above captioned request. The action of the MAPC was to **APPROVE** the request subject to the conditions stated in the enclosed resolution

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Derrick K. Slocum'.

Derrick K. Slocum
Associate Planner
Current Plans Division

DKS:mc
Enclosure

Copies to: Baughman Company, PA, Attn: Russ Ewy, 315 Ellis, Wichita, KS 67211
D. Hauserman, Box 161015, Wichita, KS 67216

SF-20 and RR and is also undeveloped agricultural land. West of the application area is property zoned RR and SF-5 and is developed with a farmstead and use for the airport and flying fields.

2. **The suitability of the subject property for the uses to which it has been restricted:** The application area could be developed for single-family residential use, but its location in a floodplain would make development of those residences difficult.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The conditions provided in the Unified Zoning Code for this Conditional Use should prevent any detrimental effect on nearby property. These conditions work to mitigate any negative dust, noise, or environmental effects. The fencing requirement should prevent trespassing and accidents on this property. The Creek buffer and drainage plan requirements should prevent pollutants and sediment from affecting downstream properties. Prevention of the extraction area from becoming a wetland area will prevent the attraction of waterfowl and other birds to the application area, as the application area is within approximately 6,000 feet of an airport facility.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The *Comprehensive Plan* does not specifically address “borrow pits”; however, the plan does recognize the uniqueness of mining and extractive resources (e.g. sand, gravel, clay soils, etc.). The Plan recommends that the extraction use location be compatible with the built and natural environment. However, the Comprehensive Plan does identify this property as Employment/Industry Center within the Wichita 2030 Urban Growth Area. Employment/Industry Center includes uses that constitute centers or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The Wichita 2030 Urban Growth Area is a category that identifies Wichita’s urban fringe areas that are presently undeveloped but have the potential to be developed by 2030, based upon Wichita population growth projections and current market trends. This is the area in which City limits expansion and extension of municipal services and infrastructure should be focused during the period from 2005 to 2030. Determination of growth direction and amount is based upon municipal political considerations, anticipated municipal population growth, efficient patterns of municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors.
5. **Impact of the proposed development on community facilities:** Traffic to and from the requested Conditional Use at this location will increase the daily trips on this section of Ridge; this increase should not exceed the safe capacity of this road.

CONDITIONAL USE RESOLUTION NO. CON2008-00038

WHEREAS, Bergkamp Construction, Attn: Chris Snook (Applicant); pursuant to Section V-D of the Wichita-Sedgwick County Unified Zoning Code (herein referred to as Unified Zoning Code), request a Conditional Use for a mining/quarrying (soil extraction) use on 59.70 acres zoned "RR" Rural Residential described as:

The North 100 feet of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ Sec.9, Twp. 28S, R-1-W of the 6th P.M., Sedgwick County, Kansas; TOGETHER WITH the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ Sec.9, Twp. 28S, R-1-W of the 6th P.M., Sedgwick County, Kansas; TOGETHER WITH the N $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ Sec.9, Twp. 28S, R-1-W of the 6th P.M., Sedgwick County, Kansas; EXCEPT that part of said SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ described as beginning at the NW corner of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$; thence south, 160 feet; thence east, 108 feet; thence northwesterly to a point 65 feet east of point of beginning; thence west to beginning; and EXCEPT that part taken for road. Generally located west of Ridge Road, approximately $\frac{1}{4}$ mile north of MacArthur Road

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 October 9, 2008, 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 allow a Conditional Use for a mining/quarrying (soil extraction) use on 59.70 acres zoned "RR" Rural Residential described as:

The North 100 feet of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ Sec.9, Twp. 28S, R-1-W of the 6th P.M., Sedgwick County, Kansas; TOGETHER WITH the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ Sec.9, Twp. 28S, R-1-W of the 6th P.M., Sedgwick County, Kansas; TOGETHER WITH the N $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ Sec.9, Twp. 28S, R-1-W of the 6th P.M., Sedgwick County, Kansas; EXCEPT that part of said SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ described as beginning at the NW corner of the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$; thence south, 160 feet; thence east, 108 feet; thence northwesterly to a point 65 feet east of point of beginning; thence west to beginning; and EXCEPT that part taken for road. Generally located west of Ridge Road, approximately $\frac{1}{4}$ mile north of MacArthur Road

Approved subject to the following conditions:

1. The extraction operation on the site shall proceed in accordance with an operational plan to be approved by the Planning Commission. The perimeter of the excavation shall conform to the approximate size and shape indicated on the approved operational plan. To assist in the enforcement of the operational plan, a copy of the approved operational plan shall be posted on the site.
2. The excavation operation will have to abide by the rules set forth in the Federal Aviation Administration Advisory Circular 150/5200-33B "Hazardous Wildlife Attractants On or Near Airports" to prevent attracting any hazardous wildlife.

3. The operational plan shall illustrate which area is to be excavated and in what phase.
4. Uses after the conclusion of the extraction operation, shall be submitted to the Planning Director for review and a recommendation to the Planning Commission as to whether or not the development plan is compatible with surrounding land uses, the Comprehensive Plan or other plans or policies being utilized by the City or County.
5. Adjacent to the perimeter of the excavation area, a minimum 48-inch high, five strand barbwire fence shall be constructed prior to the beginning of any extraction operation and shall be maintained at the locations depicted on the approved operational plan. The posts shall not be set more than 50 feet apart.
6. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
7. The owner of the property shall be responsible for minimizing blowing dust from the site. To minimize blowing soil, overburden shall not be removed more than six months in advance of the excavation area being expanded, per the operational plan, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion. As part of the required operational plan, the site shall be divided into at least two distinct areas for the purpose of showing phased excavation over time.
8. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses that will permit the establishment of sod cover to help prevent erosion.
9. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no steeper than four horizontal to one vertical.
10. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the city or county legal counsel (as applicable), prior to the commencement of any extraction providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
11. The storage of equipment or stockpiling of sand or overburden is not permitted closer than 100 feet to any public right of way, or closer than 50 feet to any property line.
12. Nothing in the approval of a Conditional Use shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the extraction operation, the land surrounding the excavation pit shall be properly graded and planted with a vegetative cover. Also, all stockpiled material and related excavation equipment shall be removed from the subject site.
13. The Conditional Use for the extraction operation shall be valid for a period of 10 years.
14. Hours of operation for extraction shall be limited to 6:00 a.m. to sunset.

15. The applicant shall make the site available to the Sedgwick County Department of Environmental Resources for the installation and management of groundwater monitoring wells.
16. Any on-site storage of fuels or chemicals must be approved by the Sedgwick County Fire District #1.
17. A drainage plan shall be submitted to and approved by County Public Works prior to starting the extraction operation. All of the area included in the extraction operation shall be graded in accordance with the approved drainage plan. Said plan shall be designed to minimize the discharge of potential contaminants into the Cowskin Creek. The extraction area shall be developed so as to not become a wetland area.
18. All operational roads shall be maintained in a sand or graveled condition and shall be treated with water or other acceptable dust retardant to minimize blowing dust.
19. All applicable local, state, and federal permits necessary for the extraction operation and for flood plain development shall be obtained and maintained.

Adopted this 9th Day of October 2008

METROPOLITAN AREA PLANNING COMMISSION

Darrell Downing
Darrell Downing, Chair MAPC

ATTEST:

John L. Schlegel
John L. Schlegel, Secretary

STAFF REPORT

MAPC September 11, 2008 (Deferred)

MAPC October 9, 2008

CASE NUMBER:

CON2008-00038

APPLICANT/AGENT:

Andrew & Kathleen Lauer (Owner(s))
Bergkamp Construction, Attn: Chris Snook (Applicant)
Baughman Company, Attn: Russ Ewy (Agent)

REQUEST:

Conditional Use for mining/quarrying (soil extraction)

CURRENT ZONING:

RR Rural Residential ("RR")

SITE SIZE:

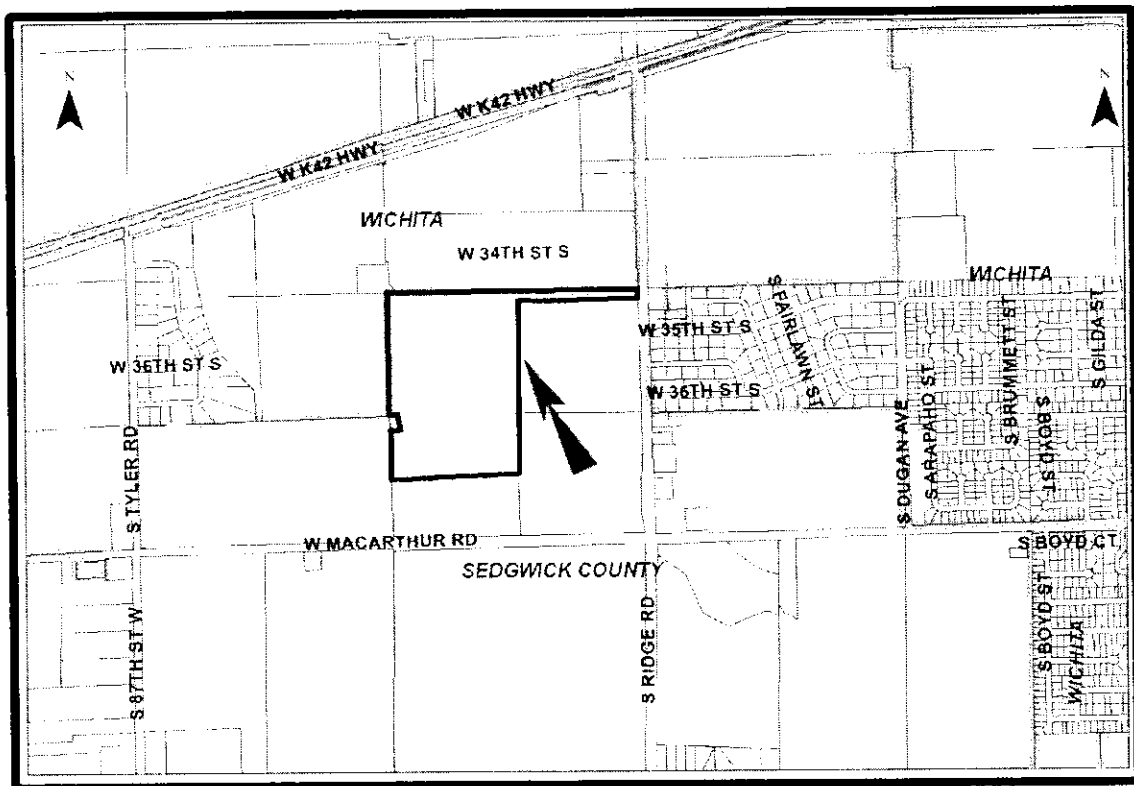
Total Area = 59.7 Acres

LOCATION:

Generally located west of Ridge Road, approximately
¼ mile north of MacArthur Road.

PROPOSED USE:

Extraction of fill material



BACKGROUND: The applicant requests a Conditional Use to allow "Mining and Quarrying" for the excavation of fill material to be used on proposed construction projects within the city. The undeveloped property, located northwest of the MacArthur and Ridge Road intersection, is currently zoned RR Rural Residential ("RR"); the site is 59.7 acres in size, while approximately half of the 59.7 acres is to be excavated. The applicant intends to excavate to a maximum depth of approximately 20 feet, excavating from the south to the north, with a ½ percent slope from north to south, see the attached site plan. The excavation area will gather water when the creek floods, but the ½ percent slope will prevent the excavated area from retaining water, thus keeping the site a dry basin. The applicant has been working with the Army Corps of Engineers, Department of Water Resources and the Department of Parks and Wildlife to ensure they abide by any regulations and to provide any studies that those entities may require to permit the excavation. According to GIS, the average depth of the groundwater in this section is around 26 to 27 feet from the surface, although that depth varies depending on location. Proposed access to the site is off of Ridge Road, approximately a half mile north of MacArthur Road. The proposed access is via a field entrance located at the northeast end of the tract. The Cowskin Creek runs through the southern part of the site, and the property lies within the 100-year flood plain. The site is not currently fenced, but fencing of the excavation area will be a condition of approval.

Of some concern in this request is the potential for pollutants, sediment and erosion from the excavation site to enter the Cowskin Creek through possible storm water runoff. The area will be re-vegetated with native grass throughout the excavation process which will help remove any possible pollutants from storm water runoff before entering the Creek. Also, the applicant has been working with the responsible entities to mitigate any negative impacts and to acquire the proper permits for the excavation operation.

North of the application area is property zoned LI Limited Industrial ("LI") and is developed as agricultural land with outbuildings. The property south of the application area is under the same ownership as the application area; it is zoned RR and is currently undeveloped agricultural land. East of the application area is property zoned SF-20 Single-family Residential ("SF-20") and RR and is also undeveloped agricultural land. West of the application area is property zoned RR and SF-5 Single-family Residential ("SF-5") and is developed with a farmstead and use for the airport and flying fields.

Similar extraction Conditional Uses were approved in 1973 for a site approximately one mile south of the application area and in 2001 for another site approximately 1,500 feet southeast of the application area.

The site is located approximately one mile south of Mid-Continent Airport. The recommended conditions of approval require compliance with applicable local, state and federal regulations. The applicant was supplied information from the Federal Aviation Administration Office ("FAA") Advisory Circulars ("AC") AC150/5200-33B titled *Hazardous Wildlife Attractants on or near Airports*. Staff has been in contact with Mid-Continent staff regarding the application, and has contacted the FAA Program Manager. According to a letter received by staff on September 9, E. Bradley Christopher, Assistant Director of Airports-Operations, "the official position of the Wichita Airport Authority is that all development within the range/radius from the Airport specified in AC 1850/5200-33B, must meet the requirements of this AC. Anything less than full compliance with this AC would be opposed by the Airport Authority on the grounds of

creating an undue risk to aircraft, passengers and persons on the ground, and exposing a potential hazard to air navigation in the proximity of Mid-Continent Airport.”

CASE HISTORY: Property to the south and east of the subject site (at the southeast corner of MacArthur and Ridge) was approved for a Conditional Use for the excavation of fill material on January 10, 2002 (CON2001-00061.) The property is currently unplatted.

ADJACENT ZONING AND LAND USE:

NORTH:	LI	Agricultural Land with outbuildings
SOUTH:	RR	Agricultural Land
EAST:	RR, SF-20	Agricultural Land
WEST:	RR, SF-5	Farmstead / Airport and Flying Fields

PUBLIC SERVICES: The access drive to the subject site is located along Ridge Road, a paved two-lane, rural minor collector, section line road. The existing half-width right of way on this section of Ridge Road is 60 feet. The traffic count as of May 2007 was 1,905 cars per day (ADTs) on this section of Ridge. No street projects are included in the C.I.P, and the 2030 *Transportation Plan* shows this section of Ridge remaining a two-lane arterial. The applicant is proposing one drive entrance off of Ridge Road.

CONFORMANCE TO PLANS/POLICIES: The Comprehensive Plan identifies this property as Employment/Industry Center within the Wichita 2030 Urban Growth Area. Employment/Industry Center includes uses that constitute centers or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The Wichita 2030 Urban Growth Area is a category that identifies Wichita's urban fringe areas that are presently undeveloped but have the potential to be developed by 2030, based upon Wichita population growth projections and current market trends. This is the area in which City limits expansion and extension of municipal services and infrastructure should be focused during the period from 2005 to 2030. Determination of growth direction and amount is based upon municipal political considerations, anticipated municipal population growth, efficient patterns of municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors.

The majority of application area and the excavation site are within the FEMA 100 year flood plain and floodway. The Wichita Sedgwick County Subdivision Regulations allow for development within floodplains provided that buildings and public service facilities are elevated or flood proofed above the Base Flood Elevation.

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

RECOMMENDATION: With the proper conditions in place, this proposal should not have a detrimental affect on the surrounding properties, as they are developed with agriculture, or well screened by existing natural vegetation. The conditions suggested below should mitigate potential negative impacts caused by this Conditional Use. Required permits and drainage plans should further ensure the safe operation of the Conditional Use. Existing services are adequate for the proposed Conditional Use. Because of its location in a flood plain, development of the application area for commercial or residential uses would be difficult.

For these reasons and based on information available prior to the public hearings, Staff recommends that the Conditional Use request be **APPROVED**, subject to the following conditions:

1. The extraction operation on the site shall proceed in accordance with an operational plan to be approved by the Planning Commission. The perimeter of the excavation shall conform to the approximate size and shape indicated on the approved operational plan. To assist in the enforcement of the operational plan, a copy of the approved operational plan shall be posted on the site.
2. The excavation operation will have to abide by the rules set forth in the Federal Aviation Administration Advisory Circular 150/5200-33B "Hazardous Wildlife Attractants On or Near Airports" to prevent attracting any hazardous wildlife.
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6. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
7. The owner of the property shall be responsible for minimizing blowing dust from the site. To minimize blowing soil, overburden shall not be removed more than six months in advance of the excavation area being expanded, per the operational plan, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion. As part of the required operational plan, the site shall be divided into at least two distinct areas for the purpose of showing phased excavation over time.
8. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses that will permit the establishment of sod cover to help prevent erosion.

9. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no steeper than four horizontal to one vertical.
10. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the city or county legal counsel (as applicable), prior to the commencement of any extraction providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
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12. The Conditional Use for the extraction operation shall be valid for a period of 10 years.
13. Hours of operation for extraction shall be limited to 6:00 a.m. to sunset.
14. The applicant shall make the site available to the Sedgwick County Department of Environmental Resources for the installation and management of groundwater monitoring wells.
15. Any on-site storage of fuels or chemicals must be approved by the Sedgwick County Fire District #1.
16. A drainage plan shall be submitted to and approved by County Public Works prior to starting the extraction operation. All of the area included in the extraction operation shall be graded in accordance with the approved drainage plan. Said plan shall be designed to minimize the discharge of potential contaminants into the Cowskin Creek. 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.

This recommendation is based on the following findings:

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