FILE COPY

CITY OF WICHITA

Wichita-Sedgwick County Metropolitan Area Planning Department

March 11, 2005

Chuck Hill
R.R.M. Properties, L.L.C.
Cornejo and Sons Inc.
P O Box 16204
Wichita, KS 67216

RE: CON2005-00001 – Amendment to extend the April 1, 2005 deadline for C & D landfill operations to cease to December 31, 2010. Generally located south of 31st Street South and west of K-15. (District III)

Dear Ladies and Gentlemen:

At its regular meeting on February 10, 2005, the 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 case please contact our office at 268-4421.

Sincerely,

Dale Miller
Current Plans Manager

DLM/rms

Cc: Charles Benjamin, PH.D., J.D., P. O. Box 1642, Lawrence, KS 66044-8642
John Philbrick, Property Management, Mail Stop 1-134
Kay Johnson, Director of Health, Mail Stop 7-12
Gary Rebenstorf, Director of Law, Mail Stop 1-132
Mark Bradshaw, Code Enforcement, Health Dept., Mail Stop 7-12

Adopted this 10th DAY of FEBRUARY, 2005. This resolution shall become effective on the fifteenth day after the date last noted above unless the matter is forwarded to the Governing Body for final action under the provisions of Section V-D.6. When any one or more of the exceptions listed in Section V-D.6 exist, this resolution with its conditions of approval shall be considered a recommendation of the MAPC to the Governing Body which shall then have final authority to approve, approve with conditions or modifications, or deny the Conditional Use application.

METROPOLITAN AREA PLANNING COMMISSION

Morris K. Dunlap, Chair MAPC

ATTEST:

John L. Schlegel, Secretary

CONDITIONAL USE RESOLUTION NO. CON2005-00001

WHEREAS, R.R.M. Properties, L.L.C. (contract operator) c/o Chuck Hill (agent)/City of Wichita (Property Owner, c/o John Philbrick) pursuant to Section V-D of the Wichita-Sedgwick County Unified Zoning Code (herein referred to as Unified Zoning Code), request a Conditional Use Amendment to extend the April 1, 2005 deadline for C & D landfill operations to cease to December 31, 2010 on 26.14 acres zoned "LI" Limited Industrial and Conditional Use 2003-51 (CU-425 and CON2002-37) described as:

That part of Government Lot 1, in Section 10, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas lying east of the Wichita Chisholm Creek Diversion Canal, EXCEPT that part lying northeasterly of the A.T.& S.F. Railroad Right-of-Way, and EXCEPT that part described as beginning at the point of intersection of the north line of the NE 1/4 of said Section 10, with the west right-of-way line of said A.T.& S.F. Railroad; thence west along the north line of said NE 1/4, 431.6 feet more or less to the east line of the Wichita Chisholm Creek Diversion Canal Right-of-Way; thence southeasterly along the east line of said Drainage Canal Right-of-Way a distance of 646.5 feet more or less to the center line of the abandoned bed of the Chisholm Creek; thence northeasterly, easterly, and southeasterly, along the meanderings of the center line of said abandoned Chisholm Creek to a point 680 feet south of the north line of said NE 1/4; thence east parallel with the north line of said NE 1/4, 248.34 feet more or less to a point on the westerly Right-of-Way line of said A.T & S.F. Railroad; thence northwesterly along the westerly Right-of-Way line of said railroad to the point of beginning, and EXCEPT a tract of land in the NE 1/4 of Section 10, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, further described as follows: Beginning at a point on the westerly Right-of-Way line of the A.T. & S.F. Railroad N 89 degrees 47' W 1526.15 feet and S 37 degrees 31' East 859.98 feet from the Northeast corner of the said NE 1/4 of said Section 10; thence along said westerly Right-of-Way line S 37 degrees 31' East 1499.21 feet to the east line of said NE 1/4; thence along said east line S 02 degrees 46' West 242.34 feet to the centerline of Chisholm Creek; thence along said centerline the following bearings and distances North 26 degrees 46' West 46.59 feet, North 13 degrees 15' West 213.50 feet, North 43 degrees 01' West 349.10 feet, North 28 degrees 53' West 472.42 feet, North 49 degrees 23' West 417.83 feet, South 25 degrees 00' West 138.42 feet, South 76 degrees 24' West 96.58 feet, North 31 degrees 05' West 209.45 feet, North 05 degrees 10' West 194.00 feet, North 47 degrees 00' West 25.48 feet; thence South 89 degrees 47' East 248.34 feet to the point of beginning. TOGETHER WITH those portions of Government Lots 1 and 2 of Section 11, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, lying westerly of a line drawn parallel and concentric with and distant 50.0 feet westerly, as measured at right angles and radially from The Burlington Northern and Santa Fe Railway Company's (formerly The Atchinson, Topeka and Santa Fe Railway Company) Main Track centerline, as now located and constructed and lying north of the following described line: Commencing at the intersection of the north line of said Lot 2 with a line which lies 50 feet westerly of, measured normally distant from the center line of the present main track of the Railway Company; thence in a southerly direction along said line which lies 50 feet westerly of, normally distant from and parallel to said center line of the present main track of the Railway Company, a distance of 550.8 feet to the true point of beginning; thence North 80 degrees 00' West, 137.6 feet; thence North 05 degrees 15' West, 60.25 feet; thence West to the left bank of the Arkansas River. Generally located south of 31st Street South and west of K-15.

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 February 10, 2005, 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 extend the April 1, 2005 deadline for C & D landfill operations to cease to December 31, 2010 on 26.14 acres zoned "LI" Limited Industrial and Conditional Use 2003-51 (CU-425 and CON2002-37) described as:

That part of Government Lot 1, in Section 10, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas lying east of the Wichita Chisholm Creek Diversion Canal, EXCEPT that part lying northeasterly of the A.T.& S.F. Railroad Right-of-Way, and EXCEPT that part described as beginning at the point of intersection of the north line of the NE 1/4 of said Section 10, with the west right-of-way line of said A.T.& S.F. Railroad; thence west along the north line of said NE 1/4, 431.6 feet more or less to the east line of the Wichita Chisholm Creek Diversion Canal Right-of-Way; thence southeasterly along the east line of said Drainage Canal Right-of-Way a distance of 646.5 feet more or less to the center line of the abandoned bed of the Chisholm Creek; thence northeasterly, easterly, and southeasterly, along the meanderings of the center line of said abandoned Chisholm Creek to a point 680 feet south of the north line of said NE 1/4; thence east parallel with the north line of said NE 1/4, 248.34 feet more or less to a point on the westerly Right-of-Way line of said A.T & S.F. Railroad; thence northwesterly along the westerly Right-of-Way line of said railroad to the point of beginning, and EXCEPT a tract of land in the NE 1/4 of Section 10, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, further described as follows: Beginning at a point on the westerly Right-of-Way line of the A.T. & S.F. Railroad N 89 degrees 47' W 1526.15 feet and S 37 degrees 31' East 859.98 feet from the Northeast corner of the said NE 1/4 of said Section 10; thence along said westerly Right-of-Way line S 37 degrees 31' East 1499.21 feet to the east line of said NE 1/4; thence along said east line S 02 degrees 46' West 242.34 feet to the centerline of Chisholm Creek; thence along said centerline the following bearings and distances North 26 degrees 46' West 46.59 feet, North 13 degrees 15' West 213.50 feet, North 43 degrees 01' West 349.10 feet, North 28 degrees 53' West 472.42 feet, North 49 degrees 23' West 417.83 feet, South 25 degrees 00' West 138.42 feet, South 76 degrees 24' West 96.58 feet, North 31 degrees 05' West 209.45 feet, North 05 degrees 10' West 194.00 feet, North 47 degrees 00' West 25.48 feet; thence South 89 degrees 47' East 248.34 feet to the point of beginning. TOGETHER WITH those portions of Government Lots 1 and 2 of Section 11, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, lying westerly of a line drawn parallel and concentric with and distant 50.0 feet westerly, as measured at right angles and radially from The Burlington Northern and Santa Fe Railway Company's (formerly The Atchinson, Topeka and Santa Fe Railway Company) Main Track centerline, as now located and constructed and lying north of the following described line: Commencing at the intersection of the north line of said Lot 2 with a line which lies 50 feet westerly of, measured normally distant from the center line of the present main track of the Railway Company; thence in a southerly direction along said line which lies 50 feet westerly of,

normally distant from and parallel to said center line of the present main track of the Railway Company, a distance of 550.8 feet to the true point of beginning; thence North 80 degrees 00' West, 137.6 feet; thence North 05 degrees 15' West, 60.25 feet; thence West to the left bank of the Arkansas River. Generally located south of 31st Street South and west of K-15.

APPROVED, subject to the following conditions:

The 18 conditions of CU-425, as listed 'A' through 'R', will remain in effect for CON2005-00001, with the exception of condition 'C'. Condition 'C' has been amended to "The deposit of material on the site shall cease by December 31, 2010."

A. Demolition and construction wastes as defined by KAR 28-29-3(G) and City Code 7.08.020(8), shall be the only landfill material permitted. Hazardous or toxic wastes, as defined by K.S.A. 65-3430 et. seq. shall not be permitted for disposal at the site.

B. The landfill operation shall obtain all applicable permits and proceed in accordance with all conditions established by the Kansas Department of Health and Environment (KDHE), Wichita-Sedgwick County Health Department, FEMA, the Corps of Engineers, the Department Wildlife and Parks.

C. The deposit of material on site shall cease by December 31, 2010.

D. The landfill shall not be open to the general public. The landfill shall only be open to solid waste collection vehicles licensed under Chapter 7.08 of the Code of the City of Wichita. A landfill operator shall be on the site during all hours of operation for the purpose of screening incoming trucks for authorization, inventory of the type, size and quantity loads, and direction of loads to the appropriate cells. Hours of operation shall not exceed 7:00 AM to 6:00 PM Monday through Saturday. Access to the subject property shall be prohibited except during the hours of operation.

E. The delivery of construction and demolition waste to the site shall be only by way of the K-15 entrance.

F. A minimum 6 foot high fence shall be installed on the earthen screening berms along the northeastern property line, if determined to be needed by the Zoning Administrator, to minimize the blowing of any materials onto adjacent properties. The fence shall be either chainlink or welded or woven wire with openings no larger than two inches.

G. Upon written notice of any violation by the City Zoning Administrator or the Wichita-Sedgwick County Health Department, the operation shall cease and the violation shall be corrected with 48 hours.

H. A detailed grading/drainage plan shall be submitted to the Department of Public Works for review and approval prior to commencement of operations. A copy of the approved grading and drainage plan shall be submitted to the Planning Department for filing with other case materials. The operation of the landfill shall be in conformance with the approved grading and drainage plan, and with the "Site Plan" and "Sections on Construction and Demolition Area" attached as exhibits to these conditions, except that the maximum height of the fill (exclusive of the screening berm) shall be no more than 5 feet higher than the elevation of the Santa Fe railroad track in any cross-section. Landfill operations shall be staged, with berms to be constructed and seeded along the east face of the fill to screen the operations for view in that direction. No more than 6 acres shall be in operation at any one time. Prior to the opening of any new area the previous area shall be graded and seeded in accordance with the approved plan.

I. Prior to commencement of the landfill operation the applicant/owner shall obtain a guarantee acceptable to the City Attorney and payable to the City of Wichita guaranteeing that cover material, final grading, and seeding are performed, as detailed in the approved grading plan. This guarantee shall be in the amount of $100,000.00

J. The applicant/owner shall pay a yearly fee to the City of Wichita to offset the cost of landfill inspection by the Wichita-Sedgwick County Health Department. The fee shall be paid prior to the operation of the landfill and shall be $1,000.00 for the first 12 months of operation. The fee for subsequent periods shall be established after review and recommendation by the Wichita-Sedgwick County Health Department to the City Council. The maximum increase in the fee shall be limited to 100% for any 12 month period. In no event shall said fee exceed the actual direct and indirect cost of such inspection.

K. Prior to commencement of the landfill operation the applicant/owner shall file a restrictive covenant for the application area which shall remain in perpetuity with the property. This covenant shall prohibit the use of the land for human habitation, prohibit the construction of structures which penetrate the final cap or cover, unless authorized by the Health Department; and require approval of the Wichita-Sedgwick County Health Department for use of the land for the production of food crops. The covenant shall be in such form as may be approved by the City Attorney.

L. The applicant/owner shall erect a sign prior to landfill operation. This sign shall be a minimum 8 foot wide by 4 foot high and be prominently displayed at the site entrance. The sign shall display the following message in 4 inch or larger letters that contrast with the background:

NO TRESPASSING – NOT A PUBLIC FACILITY
THIS LANDFILL MAY ONLY ACCEPT DEMOLITION WASTE TRANSPORTED BY LICENSED SOLID WASTE TRANSPORT VEHICLES. GARBAGE, HAZARDOUS WASTE, AND MATERIAL TRANSPORTED BY PRIVATE OR UNLICENSED VEHICLES IS NOT ALLOWED. LANDFILL OPERATES 7:00 AM TO 6:00 PM MONDAY THROUGH SATURDAY.

In addition to above information, the sign shall contain all information required by state agencies. The sign shall be maintained in good repair and be clearly visible.

M. Prior to the commencement of the landfill operation, the applicant shall remove from the site all surface material which is not defined as demolition or construction waste by KAR 28-29-3(G) and City Code 7.08.020(8).

N. Prior to the commencement of the landfill operation, the applicant shall provide for installation and monitoring of a network of at least four wells which draw water from the uppermost permanent aquifer. These wells will be installed, constructed, operated and sampled to comply with the requirements of the Wichita-Sedgwick County, and shall remain in operation for 10 years from the date landfill closure. Collection and analysis of samples from the wells will be accomplished on a quarterly basis by the Health Department on a quarterly basis, and the actual costs of the monitoring shall be reimbursed by the applicant/owner. Monitoring of runoff and methane shall also be provided for 10 years after closure of the landfill.

O. The applicant shall pave the 31st Street entrance, as well as water all unpaved roadways, as needed, in order to minimize dust. Cover material shall be applied daily to the area being filled. The operator shall be responsible for street sweeping as necessary on K-15 to minimize the accumulation of mud or debris.

P. The applicant shall install traffic detectors at the time the entrance drive is paved, in accordance with City Engineering specifications.

Q. The applicant shall install a deceleration lane to City Engineering specifications on southbound K-15 at the entrance to the landfill, prior to commencement of the landfill operation.

R. This proposed construction and demolition waste landfill shall be in compliance with all conditions approval by the MAPC, and/or the Governing Body, as specified above, or this conditional use shall be considered null and void.

Analysis: District Advisory Board III reviewed this request on February 2, 2005, and recommended denial of the request (8-0). The recommendation was based upon concerns expressed by neighbors citing concerns with: truck traffic, noise, trash, dust, health related issues, pollution potential and litigation over status of KDHE permits.

The Metropolitan Area Planning Commission (MAPC) reviewed this request on February 10, 2005, and recommended approval (7-2). Representatives from the nearby neighborhood spoke in opposition, citing similar concerns as were expressed at the DAB III meeting. Six letters of opposition were submitted to the MAPC, and are included in your packet. Planning commissioners Bishop and Barfield voted in opposition citing neighborhood concerns.

Financial Considerations: None

Legal Considerations: The resolution has been reviewed and approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council:

1. Concur with the findings of the MAPC and approve the Conditional Use amendment to extend closure deadline to December 31, 2010, subject to the recommended conditions; authorize the Mayor to sign the resolution; or
2. Return the application to the MAPC for reconsideration.

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

Agenda Item No. _____

City of Wichita
City Council Meeting
March 8, 2005

Agenda Report No. _____

TO: Mayor and City Council

SUBJECT: CON2005-00001 – Amendment to extend the April 1, 2005 deadline for C & D landfill operations to cease to December 31, 2010. Generally located south of 31st Street South and west of K-15. (District III)

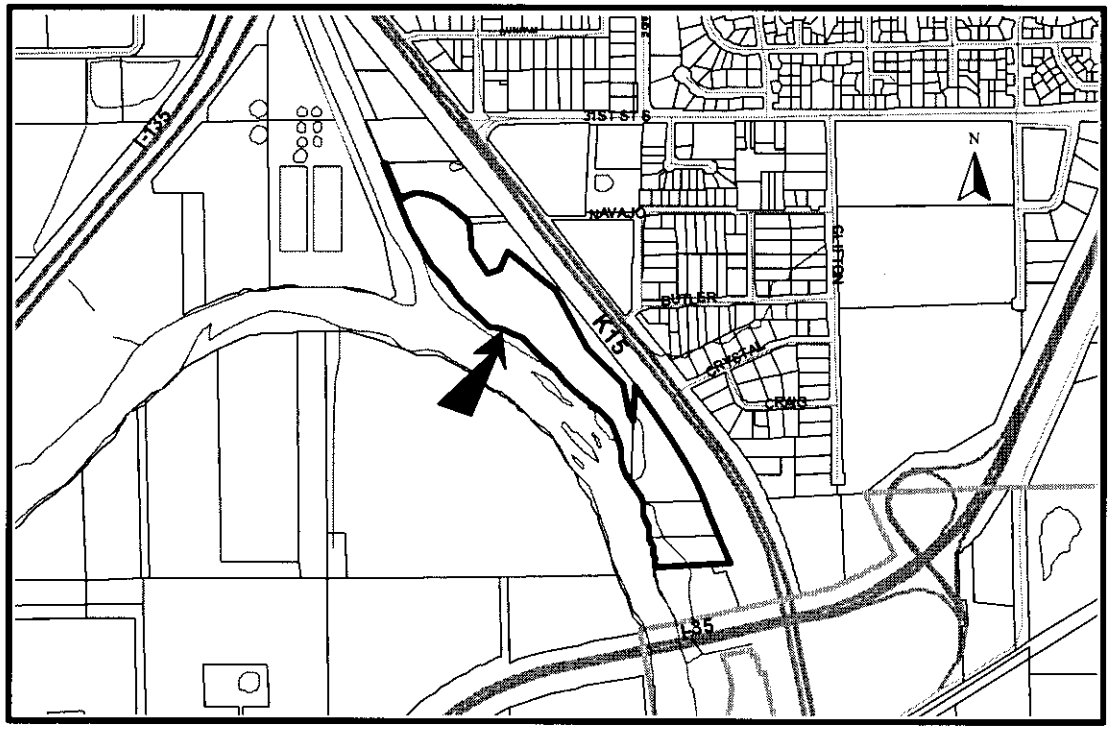
INITIATED BY: Metropolitan Area Planning Department JLS

AGENDA: Planning (Non-Consent)

MAPC Recommendations: Approved subject to conditions, including all applicable KDHE permits, vote 7-2.

MAPD Staff Recommendations: Approved subject to conditions, including all applicable KDHE permits.

DAB Recommendations: Denial, vote 8-0.



BACKGROUND: The applicant is seeking an extension from the current deadline of April 1, 2005 to complete and halt construction and demolition (C&D) landfill operations to December 31, 2010. On March 2, 2004, the Wichita City Council established the April 1, 2005 deadline with case number CON2003-51. The application area is located south of 31st Street South and west of Highway K-15, and encompasses 26.14 acres. The property is zoned "LI" Limited Industrial, subject to conditions contained in CON2003-00051. Access to the site is a driveway to Highway K-15. The site generates approximately 25 to 30 vehicle trips per day. The property is owned by the City of Wichita and leased to the applicant. When landfill operations cease it is expected the site will be redeveloped into a park. By a separate lease agreement, the applicant is required to fill and level the site consistent with a site plan contained in the lease agreement whenever landfill operations cease. The lease agreement expires on April 1, 2005. However, the lease is automatically extended with any time extensions to the conditional use permit.

The applicant is required to have a C&D permit issued by the Kansas Department of Health and Environment (KDHE). Cornejo & Sons, Inc. was granted a solid waste disposal permit by KDHE on January 26, 1999, conditioned upon the grant of a conditional use by the City of Wichita (which was approved in February 1997 as CU-425). The City of Wichita conditional use permit (CU-425) expired initially on April 1, 2003, but was extended by the City Council to April 1, 2004 (CON2002-37). KDHE denied a renewal of the 1999 C&D permit on January 9, 2004, on the basis that KSA 65-3407(l)(1) prohibited the location of a landfill within ½ mile of a navigable stream. KDHE also ruled that the initial (1999) C&D permit had been issued in error because of its proximity to a stream designated as navigable, the Arkansas River. Cornejo & Sons appealed the permit denial to District Court. In November 2004, a District Court opinion was filed, finding that the "navigable stream" prohibition did not apply, and remanded the matter back to KDHE. KDHE has asked for reconsideration of the Court's opinion, and the status of the KDHE permit has not been finalized. The applicant estimates filling is approximately 60% complete after five plus years of operation. The site is open and operational today based upon court actions sought by the applicant.

Each conditional use application has been accompanied by expressions of concern by interested parties citing concerns with potential pollution from the landfill to the river, increased truck traffic, noise and dust. The applicant has attempted to address these concerns by inspecting the debris brought to the site, planting landscaping and watering roadways.

The majority of the land west of K-15 Highway, and north of the landfill site is zoned "LI" Limited Industrial, and is currently used for construction activities. The Wichita Wastewater Treatment facility, the closed Chapin landfill, the Wichita drainage canal and the Arkansas River are located west of the application area. East of the site are: railroad tracks, K-15 Highway, several single-family residences on property zoned "SF-5" Single-family Residential, and a mobile home park (at the southeast corner of 31st street and K-15) located on property zoned "LC" Limited Commercial. Several commercial uses are located at the northeast corner of 31st Street and K-15 on property zoned "LC." Areas south of the landfill are undeveloped and zoned "LI."