CITY OF WICHITA

FILE COPY

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

March 25, 2004

Chuck Hill
R.R.M. Properties, L.L.C.
Cornejo and Sons Inc.
2060 E. Tulsa
Wichita, KS 67216

**RE: CON2003-00051 – Amendment to extend the deadline for landfill operations to cease per CON2002-37. Generally located south of 31st Street South and west of K-15. (District III)**

Dear Ladies and Gentlemen:

At its regular meeting on **March 2, 2004**, the Wichita City Council considered the above-captioned request. The action of the City Council 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
Chief Planner

DLM/rms

Cc: John H. Kemp, 3000 E. Dunham, Wichita, KS 67216
Jean E. Winkle, 3330 Crystal Drive, Wichita, KS 67216
Betty Hopkins, 1120 Woodrow, Wichita, KS 67203
Charles Benjamin, P. O. Box 1642, Lawrence, KS 66044-8642
Mark Ladd, 2818 E. 31st Street South, Wichita, KS 67216
Larry Ross, 346 N. Bluff, Wichita, KS 67208
Lois Kuhn, 6140 S. Tiger, Derby, KS 67037
Mobile Manor, Inc., %Rose Mary Lynch, Manager, 105 E. Rhondda, Andover, KS 67002

**SECTION 3.** That this Resolution shall take effect and be in force from and after its adoption by the Governing Body.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, this date March 2, 2004

Carlos Mayans, Mayor

**ATTEST:**

Karen Schofield, City Clerk

Approved as to form:

Gary E. Rebenstorf, City Attorney

Corrected
RESOLUTION No. 04-083

A RESOLUTION AUTHORIZING A CONDITIONAL USE TO AMEND CON2002-00037 TO EXTEND THE TIME DURING WHICH CONSTRUCTION AND DEMOLITION WASTE MAY BE DEPOSITED IN THE EXISTING C & D LANDFILL WITH A CONDITIONAL USE, CON2002-00037, ON 26.14 ACRES ZONED "LI" LIMITED INDUSTRIAL, LOCATED SOUTHWEST OF 31ST STREET SOUTH AND K-15 HIGHWAY, IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-D, AS ADOPTED BY ORDINANCE NO. 44-975, AS AMENDED.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

**SECTION 1.** 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-D of the Wichita-Sedgwick County Unified Zoning Code, a Conditional Use to amend CON2002-00037 to extend the time during which construction and demolition waste may be deposited in the existing C & D landfill on 26.14 acres zoned "LI" Limited Industrial legally described below:

**Case No. CON2003-00051**

A Conditional Use Permit to Amend CON2002-00037 to extend the time during which construction and demolition waste may be deposited in the existing C & D landfill, on 26.14 acres zoned "LI" Limited Industrial 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

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 southwest of 31st Street South and K-15 Highway.

**SUBJECT TO THE FOLLOWING CONDITIONS:**

The 18 conditions of CU-425, as listed 'A' through 'R', will remain in effect for CON2003-00051, with the exception of condition 'C'. Condition 'C' has been amended to "The deposit of material on the site shall cease by April 1, 2005."

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 April 1, 2005.

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

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.

**SECTION 2.** That upon the taking effect of this Resolution, the notation of such Conditional Use permit shall be shown on the "Official Zoning District Map" on file in the office of the Planning Director of the Wichita-Sedgwick County Metropolitan Area Planning Department.

If, however, the Planning Commission finds the request for the extension of time to operate the C&D landfill is appropriate, staff recommends the same conditions as contained in CU-425 (including the requirement that the applicant maintain an approved operating permit from KDHE), except for the time limit.

WICHITA–SEDGWICK COUNTY
W-SC
METROPOLITAN AREA PLANNING COMMISSION

AGENDA ITEM NO. 3

# STAFF REPORT

MAPC 1-22-04
DAB 2-4-04

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CASE NUMBER: CON2003-00051

APPLICANT/AGENT: The City of Wichita (owner); RRM Properties LLC (applicant); Chuck Hill (agent)

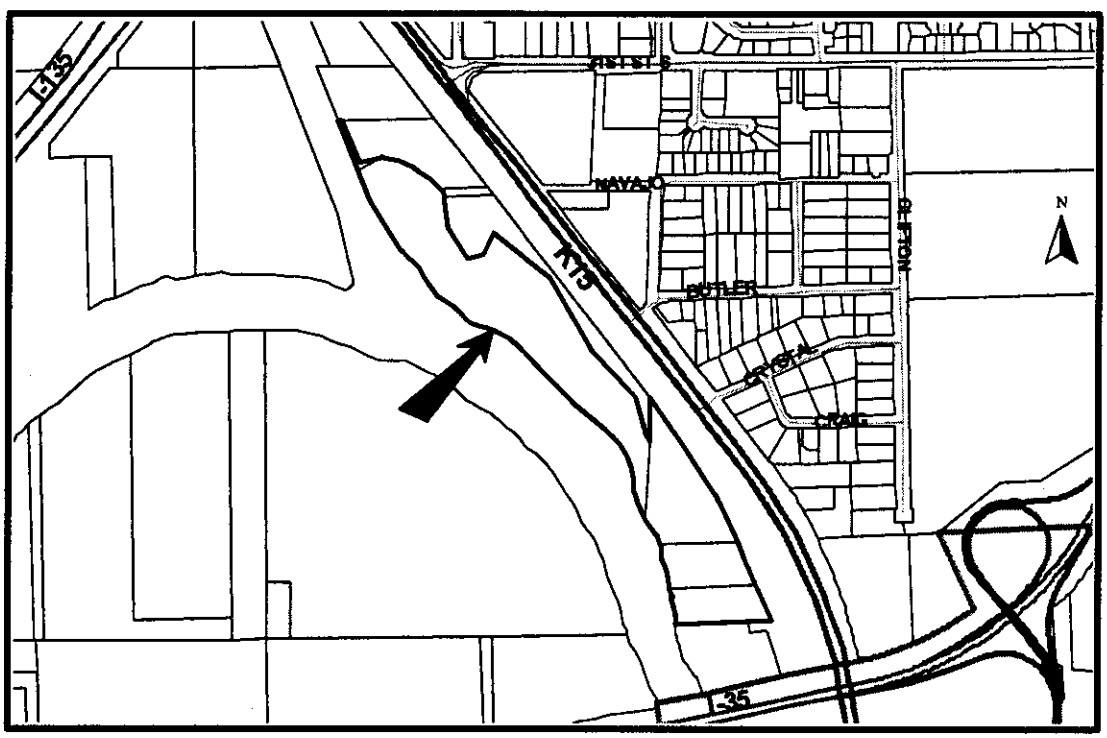
REQUEST: Extension of the deadline to complete landfill operations as established by CON2002-00037

CURRENT ZONING: "LI" Limited Industrial

SITE SIZE: 26.14 acres

LOCATION: West of Highway K-15 and south of 31st Street South

PROPOSED USE: Construction / Demolition Landfill



**BACKGROUND:** The applicant is seeking a six-year, nine-month extension to the current April 1, 2004 deadline established by the City Council on December 10, 2002 (case number CON2002-37) requiring the applicant to complete and halt construction and demolition (C&D) landfill operations by April 1, 2004. The proposed extension would allow C&D landfill activities to continue until December 31, 2010.

The application area is located west of Highway K-15 and south of 31st Street South, and is zoned "LI" Limited Industrial, subject to the conditions contained in Conditional Use 425, and subsequent amendments contained in CON 2003-37. The site is 26.14 acres in size. Access to the site is via a driveway connecting to Highway K-15, and generates approximately 25 to 30 trips per day. The property is owned by the City of Wichita. The applicant leases the site from the City. When landfill operations cease, the site is expected to be re-developed into a park.

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 Sanitary 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" and "SF-5".

The Kansas Department of Health and Environment (KDHE) has a prohibition on issuing permits for landfills located within a ½ mile of a navigable river (KSA 65-3407 (k)(1). The site is adjacent to the Arkansas River. A year ago, KDHE advised the applicant they would not renew their permit to continue operations. The lessee has continued to request an extension of its KDHE permit, and that determination is not final.

**CASE HISTORY:** Conditional Use 425 was approved by the MAPC in February 1997. CU-425 contained a condition requiring that the deposit of material on the site cease by April 1, 2003. CON2002-00037, an amendment to CU-245 was approved by the Council in 2002. This amendment extended the deadline to cease deposit of material to April 1, 2004. The applicant had requested that the deadline be extended to 2010.

**ADJACENT ZONING AND LAND USE:**

| | |
|---|---|
| NORTH: | "LI" Limited Industrial; undeveloped |
| SOUTH: | "LI" Limited Industrial; undeveloped |
| EAST: | "SF-5" Singe-family Residential, "LC" Limited Commercial; residential and commercial |
| WEST: | "LI" Limited Industrial: Arkansas River, Wastewater Treatment Facility |

**PUBLIC SERVICES**: The site has access to K-15 Highway, a four-lane expressway. Municipal sewer or water services are not necessary for this use.

**CONFORMANCE TO PLANS/POLICIES**: The "Wichita Land Use Guide" depicts this site as appropriate for industrial uses. Location guidelines contained in the Comprehensive Plan indicate that industrial uses should be located near support services and be provided with good access to major arterials and should be extensions of existing industrial uses. The plan does not have location guidelines for C&D landfills. Plan objectives also recognize the need to minimize the potential for environmental contamination which maintaining cost efficiency by proper management of construction debris generated throughout the County. The City and State have recognized the impact of pollution on the Arkansas River and its subsequent spread through the river's area as potentially detrimental to the public health and the environment. The Arkansas River has status as a "navigable stream used for interstate commerce", under KSA 65-3407 (k) (1) and other statutory and judicial interpretations. This recognition, and concern for the environment, has been applied by the City and the State in opposing the establishment of a C & D landfill (ZON2000-51 and CON2000-52) at 3500 North West Street, because of its proximity (1/2 mile) to the Arkansas River.

**RECOMMENDATION**: Based on the earlier action taken by the City to oppose a C&D landfill within a ½ mile of the Arkansas River at 3500 North West Street, and information available prior to the public hearings, planning staff recommends that the request be DENIED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The majority of the land west of K-15 Highway is zoned "LI" Limited Industrial, which allows a wide variety of uses. Property east of K-15 is zoned "SF-5" Single-family Residential and "LC" Limited Commercial, and developed with residential and commercial uses. Land use in the area ranges from residential to industrial.

2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned for "LI" subject to the conditions in CU-425 and CON 2002-37. One of those conditions requires that the C&D operations cease by April 1, 2004. The base "LI" zoning district allows an extensive list of uses. Since the original conditions were established, the City has opposed a request to approve a similar operation with a similar proximity to the river, and the City Council denied a request to extend the deadline to 2010 by the same applicant on this same site.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Denial of this request would return the property to its base "LI" zoning, and the property would be available for other appropriate uses, including a park. Therefore, denial of the request would not impose any detrimental affect on nearby properties. Both the State and the City have raised concerns about the location of a C&D landfill in such close proximity to a river and potential environmental impact.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: The hardship imposed on the applicant is primarily economic. However the applicant was aware that the lease ran with the Conditional Use that contained the original deadline and then the later deadline established approximately one year ago with CON 2002-37. Closure of the site should enhance public health and welfare, given the site's proximity to the river and past concerns expressed by area residents' dealing with traffic, dust noise and potential pollution.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Wichita Land Use Guide depicts this site as appropriate for industrial uses. Location guidelines contained in the Comprehensive Plan indicate that industrial uses should be located near support services and be provided with good access to major arterials and should b extensions of existing industrial uses. The plan does not have location guidelines for C&D landfills. However, the plan objectives recognize the need to minimize the potential for environmental contamination while maintaining cost efficiency by proper management of construction debris generated within the county. The City and the State have recognized the impact any pollution in the Arkansas River and its subsequent spread through the river's area as potentially detrimental to the public health and the environment.

6. Impact of the proposed development on community facilities: If the request is denied, none identified.

7. Neighborhood support or opposition. There has been significant neighborhood opposition to earlier requests to extend landfill operations at this location. Over 47 protest petitions were filed objecting to CU-425. All of the protesting properties were located beyond 200 feet of the application area. (Protest petitions for properties located beyond 200 feet of the application area are not counted towards the 20% area needed to trigger a ¾ majority vote to override the neighbors' objections, they are treated as appeals.) For the most recent request to extend the lifespan of the facility (CON2002-00037), 26 property owners filed protest petitions. All of these properties were also located beyond 200 feet of the application area.