



Wichita-Sedgwick County Metropolitan Area Planning Department

May 13, 2019

DSP Investments
% Dennis and Shannon Simmons
8403 West Meadow Pass Court
Wichita, KS 67205

RE: CON2019-00007 - County request to grant a Conditional Use Permit to allow a temporary rock crusher on property zoned LI Limited Industrial and RR Rural Residential on the west side of North Woodlawn Avenue and north of Kansas Highway K254 (6609 North Woodlawn Avenue).

Dear Applicants:

At its regular meeting on **April 18, 2019**, the Wichita - Sedgwick County Metropolitan Area Planning Commission considered the above captioned request. The action of the MAPC was to **APPROVE** the request in accordance with the attached resolution.

You will still need to work with the Sedgwick County Counselor's Office to finalize the modification to the Restrictive Covenant recorded against this property.

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 'David L. Yearout'.

David L. Yearout, AICP
Principal Planner

Copies to: Sedgwick County Commissioner Pete Meitzner, District I
Paul Hays, OCI, Mailstop 1-72
Justin Waggoner, Sedgwick County Assistant Counselor
Kelly Dixon, MABCD

CONDITIONAL USE RESOLUTION NO. CON2019-00007

WHEREAS, DSP Investments/Dennis and Shannon Simmons (Owners) (Applicant), pursuant to Section V-D of the Wichita-Sedgwick County Unified Zoning Code (herein referred to as Unified Zoning Code), requests a Conditional Use to permit the temporary placement of a rock crusher to clean-up the owner's property located on the west side of North Woodlawn Avenue and approximately ½ mile north of K-254 Highway (6609 North Woodlawn Avenue), and legally described as:

The South 988.9 feet pf the Northeast Quarter (NE ¼) of Section 12, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, lying East of the CRIP Railroad right-of-way.

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 April 18, 2019, 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 permit the temporary placement of a rock crusher to clean-up the owner's property located on the west side of North Woodlawn Avenue and approximately ½ mile north of K-254 Highway (6609 North Woodlawn Avenue), and legally described as:

The South 988.9 feet pf the Northeast Quarter (NE ¼) of Section 12, Township 26 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, lying East of the CRIP Railroad right-of-way.

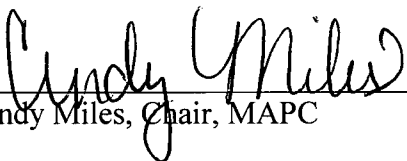
Subject to the following conditions:

1. This permit shall be approved for two years and may be extended by administrative adjustment for an additional one year provided all conditions outlined herein are met and the appropriate applications for administrative adjustment approval are timely submitted.
2. The operation shall be contained within the area depicted upon the site plan submitted with the application and shall be operated as specified herein. Crushing operations shall occur no longer that three weeks at a time and may be moved between crushing operations within the area depicted on the site plan as the area to be restored.
3. The temporary storage of equipment or stockpiling of crushed material or overburden is not permitted closer than 100 feet to any public right of way, or closer than 50 feet to any property line.
4. Hours of operation for crushing activity shall be limited to 7:00 a.m. to 5:00 p.m. Monday through Friday. Maintenance of equipment used for the crushing operations may be permitted on Saturdays from 7:00 a.m. to noon. No crushing-related activity is permitted on Sundays or holidays.

5. Any on-site storage of fuels or chemicals must be approved by the Sedgwick County Environmental Resources.
6. All operational roads, stockpiles, work areas or areas with disturbed soil shall be maintained in a sand or gravel condition and/or shall be treated with water or other acceptable dust retardant to minimize blowing dust when being actively used as authorized by this Conditional Use Permit. This condition shall not apply during any time in which there is no excavation or processing work associated with the purpose of this operation being done onsite.
7. All applicable local, state, and federal permits necessary for the excavation and crushing operation shall be obtained and maintained.
8. If operations have not begun within one year of approval, the Conditional Use shall be null and void.
9. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void. Upon the receipt of a complaint that is determined to be a violation of the conditions of approval, the applicant shall be notified of the complaint and have 72 hours to contact zoning enforcement to address the complaint. Failure to address the validated complaint may lead to additional enforcement efforts.
10. Within 60 days of final approval, the applicant shall file with the county register of deeds a document that provides notice that the property is subject to the development standards contained in Conditional Use 2019-00007.

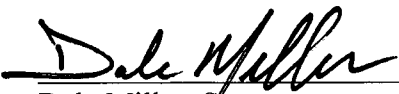
Adopted this 18th Day of April, 2019

METROPOLITAN AREA PLANNING COMMISSION



Cindy Miles, Chair, MAPC

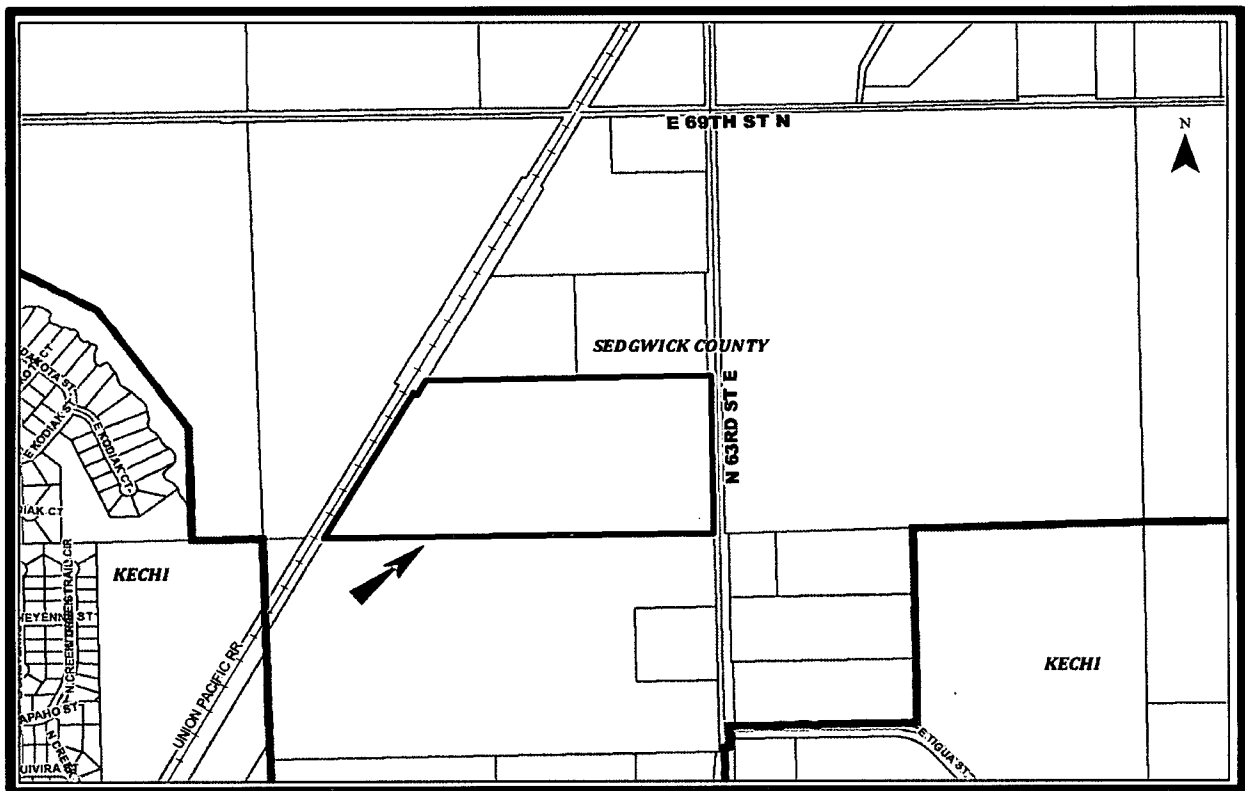
ATTEST:



Dale Miller, Secretary

STAFF REPORT
MAPC April 18, 2019
Kechi Planning Commission April 9, 2019

- CASE NUMBER:** CON2019-00007
- APPLICANT/AGENT:** DPS Investments – Dennis and Shannon Simmons (owner)
- REQUEST:** Conditional Use for a Rock Crusher
- CURRENT ZONING:** LI Limited Industrial and RR Rural Residential
- SITE SIZE:** Approximately 45-acres
- LOCATION:** Generally located on the west side of Woodlawn Boulevard/63rd Street East and 1/2 mile north of K-254 (BoCC #1)
- PROPOSED USE:** Rock Crusher – Temporary to clean up debris onsite



BACKGROUND: The applicant is requesting a conditional use for placement of a rock crusher on the property to remove concrete and rock debris that was placed on the west end of the property over the years. The subject property is a 45-acre unplatted site located approximately ½-mile north of K-254 on the west side of Woodlawn Boulevard (6609 North Woodlawn Boulevard). The subject property is zoned by LI Limited Industrial (LI) (approximately the east 18.5 acres) and RR Rural Residential (RR). Woodlawn Boulevard is also identified as 63rd Street East in rural Sedgwick County.

The applicants acquired this property in November of 2018. The portion of the site zoned LI Limited Industrial is currently developed and used an office, parking, two large accessory buildings and multiple smaller accessory buildings used for warehousing. These facilities were formerly occupied by a stone masonry contractor. The applicants have established their trucking company (Simmons Transport, LLC) in these facilities.

The applicants indicate the desire is to “clean up” the portion of the subject property, as shown by the site plan submitted, by removing the concrete and rock debris over time by contracting with a rock crushing company (Stan Martin) to do that work. The request is to be permitted up to 5 years to complete this operation. As noted on the written information provided, the crushing operation will be established adjacent to the debris and accessed from the existing internal drive. The intent is to excavate and crush approximately 10,000 to 15,000 tons of rock and concrete at each time the crusher is onsite. There is an estimated 30,000 to 50,000 tons buried on the property.

According to the rock crushing contractor, and confirmed by the applicants, the crushing will only occur when a contract has been obtained to sell the crushed material and then only enough for that contract and a limited amount extra will be processed and stockpiled onsite. The expected duration of the crushing operation will be 10 to 12 days at a time.

The applicants and contractor have indicated the reason for the requested 5-year permit is to allow time to complete the clean-up given that the crushing operation only occurs when contracts for the crushed material are obtained and there is no way to predict the economic demand over time. The crushing operation will consist of the crusher, a track conveyor, and the use of skid loaders as needed. Once processed, the material being sold will be trucked from the site, with the remaining to be stockpiled. The system includes the use of water to spray all material to remove dust and the stockpiled material will be monitored to keep dust reduced. The proposed hours of operation during the crushing periods are from 7:00 a.m. to 5:00 p.m. from Monday through Friday. Crushing of material is not proposed for Saturdays or Sundays. Maintenance of equipment will be done as needed on Saturday mornings from 7:00 a.m. until noon.

The surrounding area is a mix of existing industrial zoning and some industrial development abutting RR zoned agricultural fields and large (two-acres or more) tract single-family residential development. The LI zoned county site is located less than 1,200 feet north and west from industrial zoned land located in in Kechi and along the 63rd Street East – K-254 interchange. The site’s LI zoning is not out of character for the area. But neither is the abutting and adjacent RR zoned lands, which are more characteristic of the “rural” category found in the county.

RR zoned agricultural fields and two large tract single-family residences (built 1989) are located approximately 565 feet and 1,880 feet further north of the site. An active railroad tract and RR zoned agricultural fields are located further west of the subject site. Urban scale single-family residential development in Kechi is located less than a half-mile west of the site. RR zoned large tract single-family residences (built 1978 and 1996) are located approximately 330 and 620 feet east-southeast of the site, across 63rd Street East. Industrial zoned land located in Kechi is located approximately 1,200 feet southeast of the site, across 63rd Street East, along the K-254 interchange. This is the largest group of industrial zoned land located in Kechi and the area. RR zoned agricultural fields and large tract single-family residences (built 1974, 1977 and 1997) are located approximately 730, 1,550 and 1,850 feet south of the site.

The subject site also contains a wireless communication facility with a guy-lined lattice tower. Planning has found no case history on the tower, which may indicate that it was in place prior to the adoption of County wide zoning in 1985 and the 1996 adoption of the UZC.

CASE HISTORY: On September 25, 1980, Sedgwick County zoning case SCZ-0442, approved E Light Industrial (E zoning is now LI zoning) zoning for an existing contractor's storage yard, Caster's Excavation, on the subject site. The rezoning was the result of the extension of the three-mile ring around the City of Wichita. On May 31, 1982, another expansion of the three-mile ring around the City of Wichita rezoned the rest of the Caster's property E Light Industrial; SCZ-0499. In both county zoning cases, the remaining Caster properties were zoned R Rural Residential; R zoning is now RR zoning. Today those properties are the LI zoned approximately 18.5-acres and the owner's west RR zoned properties.

In November of 2015, an application was presented requesting the placement of a permanent asphalt plant on the portion of the subject property zoned LI Limited Industrial. Following a review by the City of Kechi, which recommended denial of the request, and the receipt of numerous complaints, the application was withdrawn before the public hearing by the MAPC.

Litigation History: In May 1998, County Code Enforcement notified a prior landowner that certain activities onsite violated county zoning regulations. The owner appealed that determination to the County BZA, CoBZA-98, which upheld the Code Enforcement decision. The owner filed a lawsuit in November 1998, challenging the enforcement of that decision in the Sedgwick County District Court. The Court, in April 2000, awarded judgment in favor of the County, and enjoined the landowner from conducting metal recycling on the property; from dumping construction debris on the property; and then ordered the activities on the property to be limited to matters generally related to the owner's excavating, demolition and construction business. In addition to the court order, in August 1999, the landowner filed a restrictive covenant as part of the settlement of the litigation, in which the owner agreed to certain restrictions on activities on part of the property. Questions regarding the interpretation and application of these documents can be addressed by the County Counselor's office but should be considered as separate from the issue of the reasonableness of the conditional use application.

The Kechi Planning Commission considered CON2019-00007 at their April 9, 2019, meeting. Five area residents spoke at the meeting expressing concerns that the operation would take too long and could expand into other operations similar to activities previously occurring onsite. The applicant and crushing contractor were both present and provided information regarding the limitations desired on the operation. The Kechi Planning Commission voted 3 to 1 to approve the application, subject to a limitation of no more than 2 years and the hours of operation be restricted to what is proposed by the applicant.

ADJACENT ZONING AND LAND USE:

NORTH:	RR	Agricultural fields, large tract single-family residence
SOUTH:	RR	Large tract single-family residences
EAST:	RR	Agricultural fields, large tract single-family residences
WEST:	RR	Active railroad tracks, agricultural lands

PUBLIC SERVICES: Water to the site is supplied by Rural Water District #1. Westar provides electricity to the site. The site has direct access onto Woodlawn Boulevard/63rd Street East, a sand and gravel county arterial road at his location. Approximately ¼-mile south of the site, Woodlawn Boulevard is paved to its interchange with Kansas State Highway K-254.

CONFORMANCE TO PLANS/POLICIES: The “Community Investments Plan 2015-2035” depicts this location as being within the Kechi “small city 2030 urban growth area.” The small city urban growth area category encompasses areas of land that are generally located adjacent to a small city’s municipal boundaries and indicates the reasonable direction and magnitude of growth the small city can expect out to the year 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 of effective delivery of future municipal services and environmental factors.

Sec.V-D.9. of the UZC states notes that if a proposed conditional use involves property within the Urban Area of Influence of a small city in Sedgwick County, the small city’s planning commission shall have an opportunity to make a recommendation on the case and if the planning commission of that city has recommended against the conditional use, but the Metropolitan Area Planning Commission (MAPC) approved the conditional use the Governing Body shall have final action, which may include returning the case to the MAPC for further consideration. The Kechi Planning Commission considered this case at their April 9, 2019, meeting as noted above.

The City of Kechi’s “2040 comprehensive plan” shows the site located in a “mixed/transitional” area; adopted February 12, 2015. The mixed/transitional area is a mix of compatible housing and small businesses at suburban densities. The area functions as a buffer between residential and commercial development. The subject site’s use as a small business (trucking operation) and the intended future construction of a new single-family residence is compatible with the city of Kechi’s mixed/transitional area. The Kechi comprehensive plan also shows the site located within the Kechi primary growth area.

The Kechi comprehensive plan also projects the land located east, southeast and northeast of the subject site, across 63rd Street East, to be appropriate for industrial uses. These properties are currently RR zoned land located in the county.

Because the proposed rock crushing operation is temporary and intended to restore the subject property to a more productive use, it is staff's opinion the request is in conformance to all applicable Comprehensive Plans.

RECOMMENDATION:

Based upon information available prior to the public hearing, planning staff recommends that the proposed conditional use for the rock crusher be **APPROVED**, subject to the following conditions:

1. This permit shall be approved for two years and may be extended by administrative adjustment for an additional one year provided all conditions outlined herein are met and the appropriate applications for administrative adjustment approval are timely submitted.
2. The operation shall be contained within the area depicted upon the site plan submitted with the application and shall be operated as specified herein. Crushing operations shall occur no longer than three weeks at a time and may be moved between crushing operations within the area depicted on the site plan as the area to be restored.
3. The temporary storage of equipment or stockpiling of crushed material or overburden is not permitted closer than 100 feet to any public right of way, or closer than 50 feet to any property line.
4. Hours of operation for crushing activity shall be limited to 7:00 a.m. to 5:00 p.m. Monday through Friday. Maintenance of equipment used for the crushing operations may be permitted on Saturdays from 7:00 a.m. to noon. No crushing-related activity is permitted on Sundays or holidays.
5. Any on-site storage of fuels or chemicals must be approved by the Sedgwick County Environmental Resources.
6. All operational roads, stockpiles, work areas or areas with disturbed soil shall be maintained in a sand or gravel condition and/or shall be treated with water or other acceptable dust retardant to effectively minimize blowing dust.
7. All applicable local, state, and federal permits necessary for the excavation and crushing operation shall be obtained and maintained.
8. If operations have not begun within one year of approval, the Conditional Use shall be null and void.

9. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void. Upon the receipt of a complaint that is determined to be a violation of the conditions of approval, the applicant shall be notified of the complaint and have 72 hours to contact zoning enforcement to address the complaint. Failure to address the validated complaint may lead to additional enforcement efforts.
10. Within 60 days of final approval, the applicant shall file with the county register of deeds a document that provides notice that the property is subject to the development standards contained in Conditional Use 2019-00007.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The surrounding area is a mix of existing industrial zoning and some industrial development abutting RR zoned agricultural fields and large (two-acres or more) tract single-family residential development. The LI zoned county site is located less than 1,200 feet north and west from industrial zoned land located in Kechi and along the 63rd Street East – K-254 interchange. The site’s LI zoning is not out of character for the area. But neither is the abutting and adjacent RR zoned lands, which are more characteristic of the “rural” category found in the county.

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The subject site also contains a wireless communication facility with a guy-lined lattice tower. Planning has found no case history on the tower, which may indicate that it was in place prior to the adoption of County wide zoning in 1985 and the 1996 adoption of the UZC.

2. **The suitability of the subject property for the uses to which it has been restricted:** The subject property is currently used for the trucking company operation in the LI Limited Industrial portion of the property. All other existing activities are in conformance to the existing zoning classification.

3. **Extent to which removal of the restrictions will detrimentally affect nearby property:**
The approval of this request will not detrimentally affect nearby properties by the compliance with the recommended conditions, which will mitigate any issues.
4. **Length of time the property has been vacant as currently zoned:** The subject property has been actively used for many years as noted above.
5. **Conformance of the requested change to the adopted or recognized Comprehensive Plan:** The “Community Investments Plan 2015-2035” depicts this location as being within the Kechi “small city 2030 urban growth area.” The small city urban growth area category encompasses areas of land that are generally located adjacent to a small city’s municipal boundaries and indicates the reasonable direction and magnitude of growth the small city can expect out to the year 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 of effective delivery of future municipal services and environmental factors.

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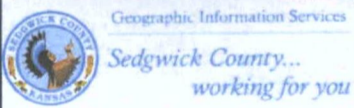
6. **Relative gain to the public health, safety, and welfare by the destruction of the value of plaintiff's property as compared to the hardship imposed upon the individual landowner:** It is staff's opinion, based upon all the information provided by all parties, the removal of the concrete and rock debris from this site will be a gain to the public. It is further staff's opinion, after full review of all materials submitted by both sides in this case, that the hardship imposed upon the applicant by the denial of this application is greater than any perceived impacts to surrounding properties.

7. **Impact of the proposed development on community facilities:** As noted above, the rocking crushing operation will make no demands on public utilities or services. The site is served by Rural Water District # 1, has approved onsite wastewater treatment for the existing business, and is adequately served by all other public and private services.

Attachments:

Site Plan
Supporting Documents from Applicant

6609 N Woodlawn



Geographic Information Services
Division of Information & Operations
www.sedgwickcounty.org/gis
525 N. Main, Suite 212, Wichita, KS 67203
Tel: 316.660.9290 Fax: 316.262.1174
Tue Aug 21 19:46:11 GMT-0500 2018

DISCLAIMER: It is understood that, while Sedgwick County Geographic Information Services (SCGIS), City of Wichita GIS, (for purposes of the road centerline file), participating agencies, and information suppliers, have no indication or reason to believe that there are inaccuracies in information provided, SCGIS, its suppliers make no representations of any kind, including but not limited to, warranties of merchantability or fitness for a particular use, nor are any such warranties to be implied with respect to the information, data or service furnished herein. In no event shall the Data Providers become liable to users of these data, or any other party, for any loss or damages, consequential or otherwise, including but not limited to time, money, or goodwill, arising from the use, operation or modification of the data. In using these data, users further agree to indemnify, defend, and hold harmless the Data Providers for any and all liability of any nature arising out of or resulting from the lack of accuracy or correctness of the data, or the use of the data. No person shall sell, give or receive for the purpose of selling or offering for sale, any portion of the information provided herein.

SITE PLAN

APPROVED MAPC BY 4-18-19 *DJ*