



Wichita-Sedgwick County Metropolitan Area Planning Department

March 6, 2015

Baughman Company PA
Attn: Russ Ewy
315 Ellis
Wichita, KS 67211

RE: CON2015-00004 – City Conditional Use request for “mining and quarrying” (topsoil removal) on SF-5 Single-Family Residential zoned property generally located at the southwest corner of East 55th Street South and South Clifton Avenue

Dear Ladies and Gentlemen:

At its regular meeting on **February 19, 2015**, the Wichita - Sedgwick County Metropolitan Area Planning Commission (MAPC) considered the above captioned request. The action of the MAPC was to **APPROVE** the request subject to the following conditions:

1. The extraction operation on the site shall proceed in accordance with an operational plan 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. If the excavation creates areas with standing water, the excavation operation will abide by the rules and design requirements set forth in the Federal Aviation Administration Advisory Circular 150/5300-33B “Hazardous Wildlife Attractants On or Near Airports” to prevent the site from 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. The redevelopment plan submitted with conditional use application depicts a single-family residential subdivision. Said redevelopment plan fulfills this requirement and does not require additional planning commission review provided the final design is in substantial conformance with the MAPC approved redevelopment plan. The site shall be developed in conformance with the redevelopment plan unless specifically adjusted or amended.

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access to K-15/Southeast Boulevard. Sanitary sewer, running east to west across the entire length of the application area, is located approximately 204 feet south of the 55th Street. Sanitary sewer is also located along the site's South Clifton Street frontage. Public water service is located in 55th Street up to the point where Meadowview Street turns north and along the site's Clifton Street frontage.

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide" of the Comprehensive Plan identifies this property as "urban development mix," which is defined as land that is likely to be developed in the next 30-years with uses predominately found in the "urban residential use" category. However there is likelihood that concentrations or pockets of "major industrial uses," "local commercial uses" and "park and open space uses" may also be developed in this area. The urban development mix category is an area waiting for development trends. The proposed soil extraction operation (which the UZC classifies as an Industrial, Manufacturing, Extractive Use) and the proposed single-family residential development that is likely to follow after the conclusion of the extraction operation both fit into the "urban development mix."

The site is zoned SF-5. The UZC, allows consideration of mining or quarrying as a Conditional Use in the SF-5 zoning district; UZC, Sec-III-D.6.gg. Sec-III-D.6.gg. has 23 supplementary conditions for a mining and quarrying Conditional Use.

RECOMMENDATION: Based upon the information available at the time the staff report was prepared it is recommended that the request be approved subject to the following conditions:

1. The extraction operation on the site shall proceed in accordance with an operational plan 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. If the excavation creates areas with standing water, the excavation operation will abide by the rules and design requirements set forth in the Federal Aviation Administration Advisory Circular 150/5300-33B "Hazardous Wildlife Attractants On or Near Airports" to prevent the site from attracting any hazardous wildlife.
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5. Fencing of the site is not required provided excavation does not exceed five feet in depth, the slopes of excavation areas comply with specified slope requirements and the site is posted "no trespassing."

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. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no steeper than five horizontal feet to one vertical foot. 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. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to city legal counsel, 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.
10. 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.
11. 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. No commercial recreational activities, such as motor cross or other recreational activities shall be permitted unless authorized by applicable codes or permissions.
13. Excavation is permitted from the date of final approval for five years. At the end of the five year period, the conditional use may be extended by administrative adjustment. Hours of operation for extraction shall be limited to 6:00 a.m. to sunset.
14. Any on-site storage of fuels or chemicals must be approved by the Sedgwick County Environmental Resources.
15. A drainage plan shall be submitted to and approved by City 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, or if applicable, FAA design standards contained in "Hazardous Wildlife Attractants On or Near Airports" cited above. The extraction area shall be developed so as to not become a wetland area or to inhibit the flow of stormwater.
16. 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.
17. All applicable local, state, and federal permits necessary for the extraction operation and for flood plain development shall be obtained and maintained.

18. If operations have not begun within one year of approval, the Conditional Use shall be null and void.
19. 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.
20. 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 2015-00004.

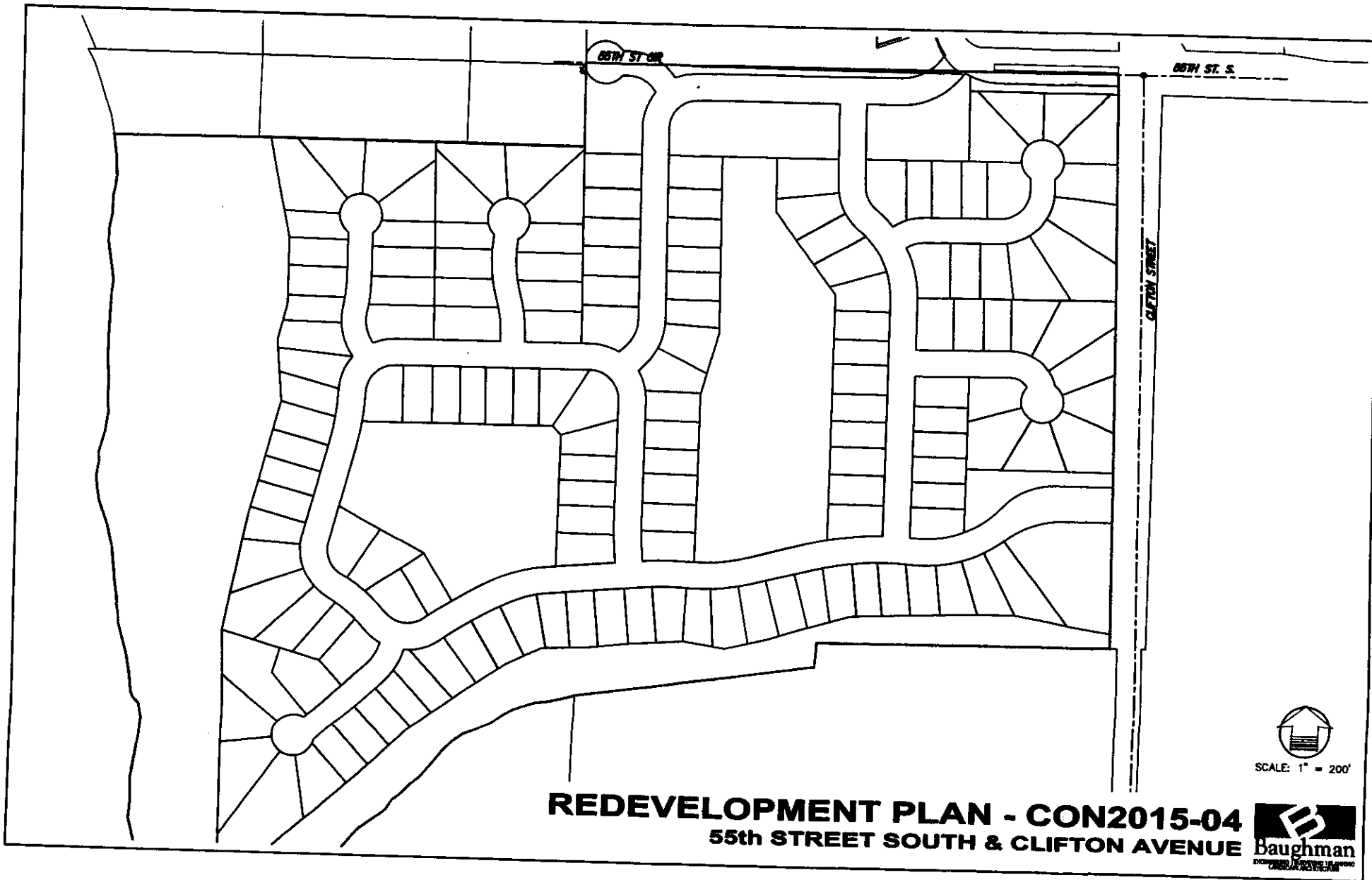
This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Land surrounding the application area is zoned SF-5 or SF-20 Single-Family Residential (SF-20) and is large-lot single-family residential, urban density single-family residential, cropland or vacant. The application is located approximately three-fourths of a mile west of the western boundary of McConnell Air Force Base Airport Overlay District (AOD) II South; however, the site is located well outside of McConnell Air Force Base's "area of critical interest" that requires the base to be notified of the request. The property is located at the edge of the City of Wichita's current development, and, based upon market demand, will transition from agricultural uses to more intense land uses.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned SF-5 which primarily permits single-family residential uses and a few institutional and civic uses, by right, such as, schools, churches and public parks. The site could reasonably be expected to provide economic return as currently zoned. However, to prepare the site for development for single-family residential will require site grading and stormwater control that can be facilitated by the topsoil removal proposed by the current application request.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The requested action permits a temporary use that will facilitate the development of the site at some future point. While excavation is underway the site will have earth moving equipment that may generate noise and dust. However, proposed conditions of approval, length of time operations may occur, such as hours of operations, setbacks and dust control, are designed to minimize impacts on nearby property.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial would presumably represent a loss of economic opportunity to the applicant. Approval would provide fill material for offsite construction projects while preparing the application area for further development which is expected to provide additional housing for the south Wichita-Derby-McConnell Air Force Base area.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "2030 Wichita Functional Land Use Guide" of the Comprehensive Plan identifies this property as "urban development mix," which is defined as land that is likely to be developed in the next 30-years with uses predominately found in the "urban residential use" category.

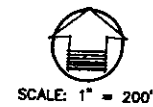
However there is likelihood that concentrations or pockets of “major industrial uses,” “local commercial uses” and “park and open space uses” may also be developed in this area. The urban development mix category is an area waiting for development trends. The proposed soil extraction operation (which the UZC classifies as an Industrial, Manufacturing, Extractive Use) and the proposed single-family residential development that is likely to follow after the conclusion of the extraction operation both fit into the “urban development mix.”

The site is zoned SF-5. The UZC, allows consideration of mining or quarrying as a Conditional Use in the SF-5 zoning district; UZC, Sec-III-D.6.gg. Sec-III-D.6.gg. has 23 supplementary conditions for a mining and quarrying Conditional Use.

6. Impact of the proposed development on community facilities: Existing or required facilities are in place to address anticipated demands on community facilities.

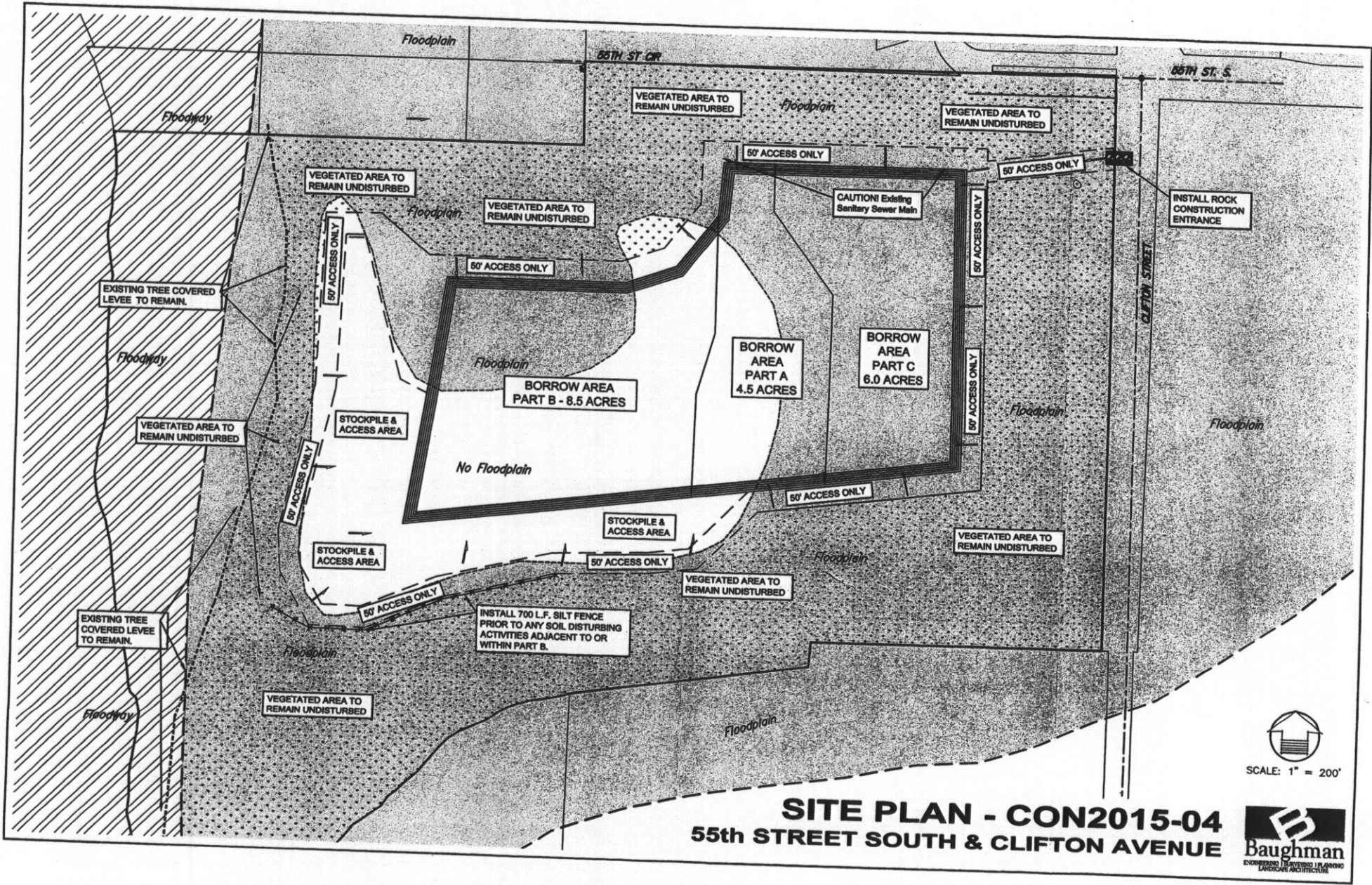


REDEVELOPMENT PLAN - CON2015-04
55th STREET SOUTH & CLIFTON AVENUE



SITE PLAN

APPROVED 3-6-15 BY DM



SITE PLAN - CON2015-04
55th STREET SOUTH & CLIFTON AVENUE

SCALE: 1" = 200'



SITE PLAN

APPROVED 3/6/15 BY DM

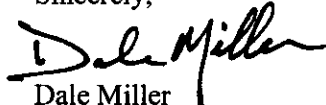
5. Fencing of the site is not required provided excavation does not exceed five feet in depth, the slopes of excavation areas comply with specified slope requirements and the site is posted “no trespassing.”
6. Sufficient overburden material shall be retained in the area of extraction to grade and construct 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. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no steeper than five horizontal feet to one vertical foot. 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. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to city legal counsel, 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.
10. 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.
11. 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. No commercial recreational activities, such as motor cross or other recreational activities shall be permitted unless authorized by applicable codes or permissions.
13. Excavation is permitted from the date of final approval for five years. At the end of the five year period, the conditional use may be extended by administrative adjustment. Hours of operation for extraction shall be limited to 6:00 a.m. to sunset.
14. Any on-site storage of fuels or chemicals must be approved by the Sedgwick County Environmental Resources.
15. A drainage plan shall be submitted to and approved by City 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, or if applicable, FAA design standards contained in “Hazardous Wildlife Attractants On or Near Airports” cited above. The extraction area shall be developed so as to not become a wetland area or to inhibit the flow of stormwater.
16. 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.

17. All applicable local, state, and federal permits necessary for the extraction operation and for flood plain development shall be obtained and maintained.
18. If operations have not begun within one year of approval, the Conditional Use shall be null and void.
19. 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.
20. 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 2015-00004.

No protests were received; therefore, the action of the MAPC is final.

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

Sincerely,



Dale Miller
Current Plans Manager
Current Plans Division

Copies to: WCC III, James Clendenin, Mail Stop 1-13
C.L., Case Bell, Mail Stop 1-135
JRD LLC, Jay Russell, P.O. Box 75337, Wichita, KS 67275
Paul Hays, OCI, Mailstop 1-72
J. R. Cox, OCI, Mailstop 1-72
Jeff Van Zandt, City Law, Mailstop 1-134
Julianne Kallman, Engineering, Mail Stop 1-71

CONDITIONAL USE RESOLUTION NO. CON2015-00004

WHEREAS, JRD, LLC (Jay Russell); 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 “mining and quarrying (topsoil removal) on approximately 83 acres zoned SF-5 Single-Family Residential (SF-5), described as:

That part of Government Lot 1 in the NE ¼ of Sec. 27, Twp. 28-S, R -1-E of the 6th P.M., Sedgwick County, Kansas lying east of the Big Arkansas River, except the north 200.00 feet thereof.

AND

The NW ¼ of the NW ¼ of Sec. 26, Twp. 28-S, R-1-E of the 6th P.M., Sedgwick County, Kansas, subject to road rights-of-way of record, TOGETHER with that part of the SW ¼ of the NW ¼ of said Sec. 26 described as follows: Beginning at the NW corner of the SW ¼ of said NW ¼; thence easterly along the north line of the SW ¼ of said NW ¼, 568.00 feet; thence southerly parallel with the west line of said NW ¼, 58.5 feet, more or less, to the centerline of a ditch; thence following the centerline of said ditch to a point on the west line of said NW ¼, 140.00 feet, more or less, south of the NW corner of the SW ¼ of said NW ¼; thence northerly along the west line of said NW ¼, 140.00 feet, more or less, to the point of beginning.

AND

A tract in Government Lot 2 in the NE ¼ of Sec. 27, Twp. 28-S, R-1-E of the 6th P.M., Sedgwick County Kansas described as beginning at the NE corner of said Government Lot 2; thence southerly, along the east line of said Government Lot 2, 140 feet to the centerline of a ditch; thence southwesterly, along the centerline of said ditch to the point of intersection of said centerline and the East bank of the Big Arkansas River, said point being 830 feet south of the north line of said Government Lot 2; thence northwesterly, along said east bank to a point on the north line of said Government Lot 2; thence east 1062 feet, more or less, to the point of beginning.

as shown by the last deed of record filed in the Office of the Register of Deeds, Sedgwick County, Kansas, on the 2nd day of January, 2015 at 7:00 A.M.

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 19, 2015, 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 “mining and quarrying” (topsoil) on property zoned, SF-5 described as:

That part of Government Lot 1 in the NE ¼ of Sec. 27, Twp. 28-S, R -1-E of the 6th P.M., Sedgwick County, Kansas lying east of the Big Arkansas River, except the north 200.00 feet thereof.

AND

The NW ¼ of the NW ¼ of Sec. 26, Twp. 28-S, R-1-E of the 6th P.M., Sedgwick County, Kansas, subject to road rights-of-way of record, TOGETHER with that part of the SW ¼ of the NW ¼ of said Sec. 26 described as follows: Beginning at the NW corner of the SW ¼ of said NW ¼; thence easterly along the north line of the SW ¼ of said NW ¼, 568.00 feet; thence southerly parallel with the west line of said NW ¼, 58.5 feet, more or less, to the centerline of a ditch; thence following the centerline of said ditch to a point on the west line of said NW ¼,

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Approved subject to the following conditions:

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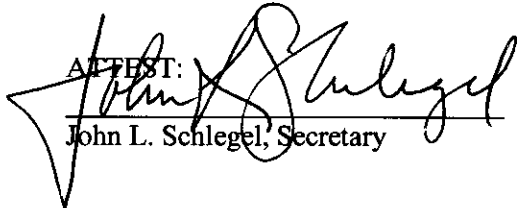
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20. Within 60 days of final approval, the applicant shall file with the county register of deeds a document that provides notice that the property is subject to the development standards contained in Conditional Use 2015-00004.

Adopted this 6TH day of MARCH, 2015.

METROPOLITAN AREA PLANNING COMMISSION



Matthew J. Goolsby, Chair MAPC

ATTEST:

John L. Schlegel, Secretary

CASE NUMBER: CON2015-00004

APPLICANT/AGENT: JRD, LLC (Jay Russell) / Baughman Company, P.A. (Russ Ewy)

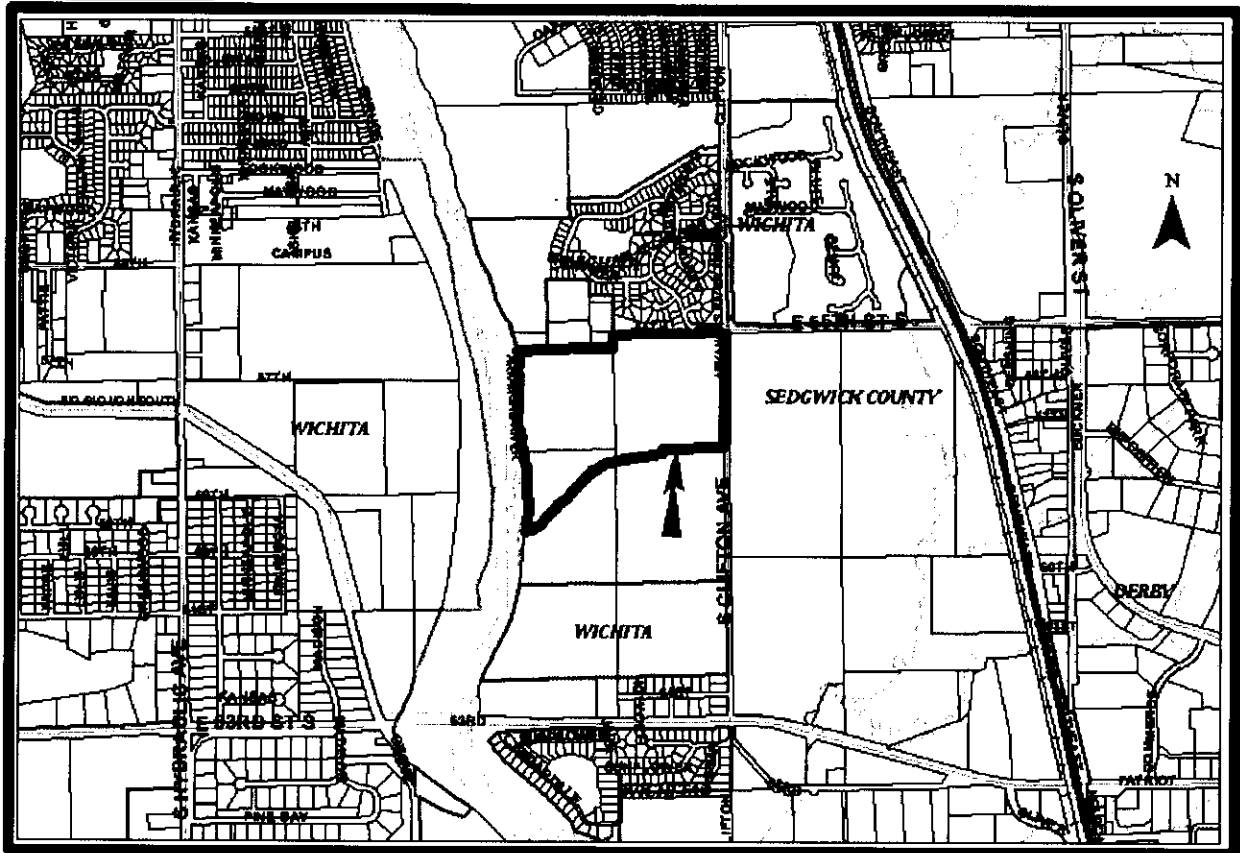
REQUEST: Conditional Use to permit mining and quarrying

CURRENT ZONING: SF-5 Single-family Residential

SITE SIZE: 83 acres

LOCATION: Southwest corner of East 55th Street South and South Clifton Street

PROPOSED USE: Soil extraction



BACKGROUND: The applicant is requesting “conditional use” approval for the “mining and quarrying” of topsoil from approximately 83 unplatted acres located at the southwest corner of South Clifton Avenue and East 55th Street South. The property is zoned SF-5 Single-Family Residential (SF-5). Access to the site is proposed to be a 50-foot wide road from South Clifton Street. The active excavation area is to be buffered by existing vegetation that is to remain. Inside the buffer strip is an access road that is to ring the work area. The excavation area is to be divided into three parts. The borrow area for Part A is four and one-half acres and is located in the center of the active borrow area. Borrow area Part B is located west of Part A and contains eight and one-half acres. Borrow area Part C is located east of borrow area Part A and contains six acres. None of the borrow areas are to hold standing water and will not exceed five feet in depth. Stockpiled soil is to be located along the western and southern border of the application area. A silt fence is to be installed along the southern border of borrow area Part B. The site is located in the flood fringe of the Arkansas River floodplain. Significant tree rows exist along the east, south and west property lines. There is not a significant tree row along the northern property line. The proposed excavation prepares the site for future single-family residential development and addresses a need for fill dirt at an offsite construction location. The applicant estimates the site will generate approximately 15 truck trips per day when in operation. The applicant is requesting a ten-year time frame to complete excavation. It is anticipated that excavation activities will occur in sporadic fashion. Excavation will occur when material is needed and will stop when a project is completed until such time as the site reaches the limits of excavation and/or market demand dictates that the site should transition from a soil removal operation to a subdivision.

Land surrounding the application area is zoned SF-5 or SF-20 Single-Family Residential (SF-20) and is large-lot single-family residential, urban density single-family residential, cropland or vacant. The application is located approximately three-fourths of a mile west of the western boundary of McConnell Air Force Base Airport Overlay District (AOD) II South; however, the site is located well outside of McConnell Air Force Base’s “area of critical interest” that requires the base to be notified of the request.

The Wichita-Sedgwick County Unified Zoning Code (UZC) permits “mining and quarrying” of topsoil in the SF-5 zoning district with “conditional use” approval and subject to the supplementary use regulations contained in Article III, Section III-D.6.gg, which lists 23 operational standards, such as a requirement for a site plan, a post excavation redevelopment plan, fencing, dust control, length of time for extraction and hours of operations. The supplementary use standards may be modified as part of the conditional use hearing.

CASE HISTORY: SUB2006-00087, the Meadowlake Beach Addition included the subject site as well as property located north of 55th Street; however, a final plat covering the application area has not been submitted for approval.

ADJACENT ZONING AND LAND USE:

North: SF-5 and SF-20; urban density and large-lot single-family residences
South: SF-20; cropland
East: SF-20 and IP-A; cropland, vacant
West: SF-5 west of the Arkansas River; Arkansas River,

PUBLIC SERVICES: 55th Street west of South Clifton Street to Meadowview Street is a paved divided two-lane local street that provides access to a single-family residential subdivision. West of Meadowview Street 55th Street is an unpaved half- street that looks more like a private drive than a public street that provides access to four large-lot single-family residences. South Clifton Street is a two-lane paved arterial street as is 55th Street east of South Clifton. 55th Street east of South Clifton Street provides direct