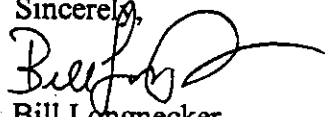


Property owners may also file written protest petitions on zoning-related items heard by the MAPC. In order to be considered a "valid" petition, the signatures must reflect the correct and entire ownership of the property, the property must be at least partially within 200 feet of the property for which the application was filed, and must be submitted to the City Clerk within 14 days of the conclusion of the MAPC hearing. Such petitions may cause the application to be disapproved, if the land area encompassed by the protesting owners exceeds 20% of the land area within 200 feet of the perimeter of the application area, unless the Council overrides such a protest and approves the application by a vote of 6 of its members.

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

Sincerely,



Bill Longnecker
Senior Planner

WL/rms

Cc: RRM Properties, LLC, %Ronald J. Cornejo, Box 16204, Wichita, KS 67202
Kaplan, McMillian, Harris, %Robert Kaplan, 430 N. Market, Wichita, KS 67202
Property Owners/Protestor's
Chris Cherches, City Manager, Mail Stop 1-135
John Philbrick, City of Wichita, Property Management, Mail Stop 1-134
KDHE, %Dennis A. Degner, 1000 SW Jackson, Suite 320, Topeka, KS 66612-1366
KDHE, %Mr. Clyde D. Graeber, 400 SW Eighth Ave., Suite 203,
Topeka, KS 66603-3930
Gary E. Rebenstorf, Director of Law Dept., Mail Stop 1-132
Jack Brown, Director Environmental Health, Mail Stop 7-12
Mark Bradshaw, Code Enforcement Health, Mail Stop 7-12
Joe Pajor, Director Natural Resources, Public Works, Mail Stop 1-82
Susan Erlenwein, Director Environmental Resources, 2625 S. Tyler, Wichita, KS 67215
Mobile Home Living, Inc., %Larry Womack, 2320 E. MacArthur, Wichita, KS 67216
Phil Lambke, City Council Member, District III, Mail Stop 1-13
Vicki Mork, N.A. III, Mail Stop 1-135
Kurt Schroeder, Office of Central Inspection, Mail Stop 1-72
Randy Sparkman, Office of Central Inspection, Mail Stop 1-72
Paul Hays, Office of Central Inspection, Mail Stop 1-72
J.R. Cox, Office of Central Inspection, Mail Stop 1-72



Wichita-Sedgwick County Metropolitan Area Planning Department

September 18, 2002

RRM Properties, LLC
%Ronald J. Cornejo
2060 Tulsa
Wichita, KS 67216

RE: CON2002-00037 – Amend CU-425 to extend the time during which construction and demolition waste may be deposited in the existing C & D landfill on property zoned “LI” Limited Industrial with a Conditional Use, CU-425. Generally located southwest of 31st Street South and K-15 Highway.

Dear Mr. Cornejo:

At its regular meeting on September 12, 2002, the Metropolitan Area Planning Commission considered the above-captioned request. The action of the MAPC was to APPROVE the request subject to the following conditions:

The 18 conditions of CU-425, as listed ‘A’ through ‘R’, will remain in effect for CON02-00037, with the exception of condition ‘C’. Condition ‘C’ has been amended to “The deposit of material on the site shall cease by April 1, 2009.” CON02-00037 was also subject to the applicant securing approval to continue to operate the C&D landfill at its current site from the Kansas Department of Health and Environment and leaving all trees along the perimeter and into the site to provide a landscape buffer between the C&D landfill and the abutting or adjacent properties.

Protest petitions have been filed by property owners within the legal notification area. Therefore, the case will be heard by the Wichita City Council for consideration at their regular meeting on Tuesday, October 15, 2002. This meeting will be held in the City Council Chambers, First Floor, City Hall, 455 N. Main, Wichita, Kansas, beginning at 9:00 a.m.

NOTICE: The public hearing on planning items is conducted by the MAPC under provisions of State Law. Adopted policy is that the City Council will not take additional testimony on zoning-related applications and other issues for which the MAPC has held a public hearing. However, interested parties may file a written statement with the City Clerk by 5:00 p.m. on the Wednesday preceding this meeting, providing new facts on the issue or alleging an unfair hearing. The Council will determine from such statements whether to return the issue to the MAPC for reconsideration or to reverse their recommendation.

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 CON2002-00037, with the exception of condition 'C'. Condition 'C' has been amended to "The deposit of material on the site shall cease by April 1, 2004." CON2002-00037 was also subject to the applicant securing approval to continue to operate the C&D landfill at its current site from the Kansas Department of Health and Environment and leaving all trees along the perimeter of the site to provide a landscape buffer between the C&D landfill and the abutting or adjacent properties.

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.

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

December 10, 2002

ATTEST:

Pat Graves
Pat Graves, City Clerk



Bob Knight
Bob Knight, Mayor

Approved as to form:

Gary E. Rebenstorf
Gary E. Rebenstorf, City Attorney

A RESOLUTION AUTHORIZING A CONDITIONAL USE TO AMEND CU-425 TO EXTEND THE TIME DURING WHICH CONSTRUCTION AND DEMOLITION WASTE MAY BE DEPOSITED IN THE EXISTING C & D LANDFILL WITH A CONDITIONAL USE, CU-425, 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 CU-425 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. CON2002-00037

A Conditional Use Permit to Amend CU-425 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 859.38 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 36.93 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,

end April 1, 2003. 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 be extensions of existing industrial uses. The plan does not have location guidelines for C&D landfills. However, 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 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.
6. Impact of the proposed development on community facilities: If the request is denied, none identified.

If, however the Planning Commission finds the request for the extension of the C&D landfill an appropriate use, the Staff recommends the same conditions as for CU-425, except for the time limit.



STAFF REPORT

MAPC September 12, 2002
DAB 3 September 4, 2002

FILE COPY

CASE NUMBER: CON2002-37

APPLICANT/AGENT: RRM Properties, LLC, c/o Ronald J Cornejo
City of Wichita, c/o John Philbrick
Kaplin, McMillan & Harris, c/o Charles Hill

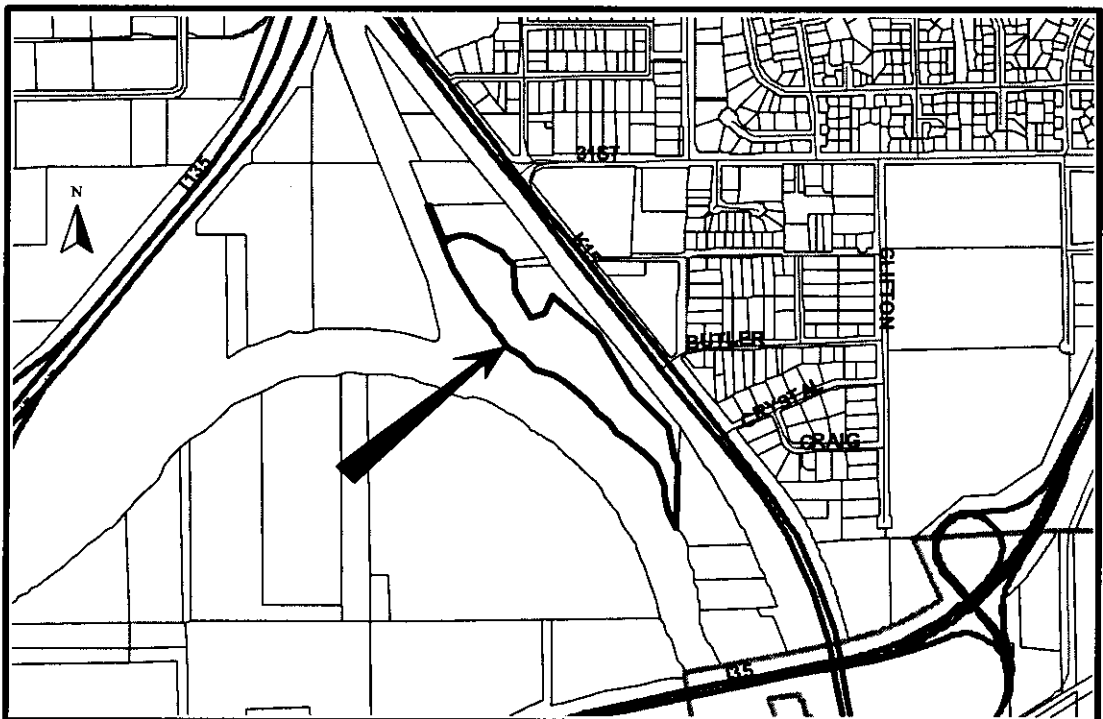
REQUEST: Amend CU-425 to extend the time during which construction and demolition waste may be deposited in the existing C&D landfill

CURRENT ZONING: "LI" Limited Industrial with a Conditional Use, CU-425

SITE SIZE: Zoning: 26.14 acres

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

PROPOSED USE: Construction and Demolition Landfill



BACKGROUND: The 26.14 acre site, located southwest of the K-15 Highway – 31st Street South intersection, is currently zoned “LI” Limited Industrial with Conditional Use CU-425. CU-425, as approved by the MAPC at their 02-27-97 meeting, established a construction and demolition waste landfill on the site, subject to 18 conditions. The applicant is requesting an amendment to CU-425. The proposed amendment would extend the time construction and demolition waste could be deposited at this existing and operating C&D landfill from it’s current shut down date of April 1, 2003 (Condition ‘C’ of CU-425) to December 31, 2010. (Approved Conditional Uses may be amended by following the same procedures as required for consideration and approval of the original conditional use application.)

This land is owned by the City, which has leased the property to the applicant for use as a C&D landfill. The lease of the land can be extended to match the terms of the CU. Access to the site is off the 31st Street South - K-15 intersection. The site generates 25-30 trips per day. Once the fill operations are complete, it is anticipated this area will be developed as a linear park.

The applicant has received a letter from the Kansas Department of Health and Environment (KDHE) informing the applicant that the KDHE permit will expire April 1, 2003. There is a prohibition on locating landfills within a ½ mile of a navigable river and this makes this permit not eligible for renewal under KSA 65-3407 (k)(1).

The Wichita Drainage Canal and the Arkansas River separate the site from the properties on its west side. These properties are zoned “LI” and are developed as the Wichita Waste Water Treatment Facility. Across K-15 Highway, east of the site, the properties are zoned “LC” Limited Commercial and “SF-5” Single family residential. Development ranges from commercial uses on the northeast side of the K-15 – 31st Street South intersection to a manufactured home park on the southeast side of this intersection and single-family residences north and south of them. Properties south of the site are zoned “LI” and are undeveloped. Properties immediately north of the site are zoned “LI” and are undeveloped.

CASE HISTORY: CU-425, approved in 1997, established a construction and demolition waste landfill. CU-425 was recommended for denial by CPO #3, 6-2, recommended for approval by the MAPC 10-2, and approved by the WCC. In the past, and as recently as 2 months ago, this operation has generated numerous complaints from area residents regarding pollution, trash, traffic and dust. According to OCI the site is currently in compliance with the conditions of CU-425 and the applicant has been prompt in addressing any compliance issues noted by OCI. DAB 3 heard and

considered this request at their 09-04-02 meeting. There was a motion made to deny the request to amend the conditional use and this motion was seconded, however the Councilman declined to take a vote on the motion to deny or take action on the request.

ADJACENT ZONING AND LAND USE:

NORTH: "LI" Limited Industrial	Undeveloped
SOUTH: "LI" Limited Industrial	Undeveloped
EAST: "SF-5" Single-family Residential	Single-family residential
"LC" Limited Commercial	Commercial & Manufactured housing
WEST: "LI" Limited industrial	Wichita Waste Water Treatment Facility

PUBLIC SERVICES: The site has access to K-15 Highway, a four-lane expressway. Average daily trips south of the 31st Street South – K-15 Highway intersection are approximately 22,543. The 2020 Transportation Plan projects traffic along K-15 to increase to approximately 32,627 ADTs for this segment. The 2001 CIP included a project to improve Southeast Boulevard (K-15 Highway) from 31st Street South to I-135. The project would provide a northbound lane along Southeast Boulevard from 31st Street South to I-135. 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. However, 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 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 the concern for the environment for example, has been applied by the City and the State in opposing the establishment of a C&D landfill (ZON2000-51 & CON2000-52) at 3500 N West Street, because of its proximity (1/2 mile) to the Arkansas River. The applicant has received a letter from the Kansas Department of Health and Environment notifying them of the expiration of their C&D permit

and informing them that their permit is not eligible for renewal because it is within ½ mile of the Arkansas River. There are plans to use this site for linear park when the C&D use has expired.

RECOMMENDATION: Based on the recent action by the City and the State to oppose a C&D landfill within a ½ mile of the Arkansas River at 3500 N West Street and the State's notification to the applicant that their permit for the C&D landfill at 31st Street South & K-15 is not eligible to be renewed, Staff recommends that the request for an extension of CU-425 for the operation of a C&D landfill at the site until 2010 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", which allows a wide variety of industrial uses. Property east of K-15 is zoned "SF-5" and "LC" 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 conditions in CU-425. One of those conditions was that the C&D operations cease by April 1, 2003. Since that time the City Council has opposed a similar operation with a similar proximity to the river. It is the City's intention to utilize the land for a use that would have less environmental impact on the river than the current conditional use allows.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Denial of the request would return the property to its base "LI" zoning and the property would be available for other appropriate uses. Therefore denial of the request would not impose any determinate affect on nearby properties. The State has determined that continuation of a C&D landfill at this site is an inappropriate use in regards to potential pollution of the Arkansas River. The City has raised concerns about the location of the C&D in proximity to the 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, as specified in Condition 'C', which states that the Conditional Use will