

RECOMMENDATION FROM METROPOLITAN AREA PLANNING COMMISSION
TO BOARD OF COUNTY COMMISSIONERS

PROPOSED AGENDA ITEM:

SCZ-0798 – Zone Change from "RR" Rural Residential to "LI" Limited Industrial; and

CU-556 – Request for a Conditional Use permit to allow a Transfer Station, located at 91st Street South and Buckner.

PRESENTED BY:

Marvin S. Krout, Director of Planning



PROPOSED AGENDA DATE:

February 2, 2000

COMMISSION DISTRICT #5

MAPC Recommendation:

Approve, subject to conditions (9-1).

Staff Recommendation:

Approve, subject to platting within 1 year and conditions.

Background/Discussion The applicant is seeking to rezone 56 acres from the "RR", Rural Residential district to the "LI", Limited Industrial district to permit a "Recycling Processing Center" and obtain a Conditional Use permit to operate a solid waste "transfer station" on 70 acres (including the previously mentioned 56 acres) located at 91st Street South and Buckner (1401 south Buckner). Currently, 14 acres of the 70 acres for which the Conditional Use is being sought are already zoned "GI" General Industrial and is being used for landfill, compost or recycling activities. A portion of the site has a permit from KDHE for construction-demolition debris disposal and composting operations, and is being used for those purposes today. Other portions of the site are currently unused.

Access to the site is provided by both 91st and Buckner Streets, which are unpaved near the application area. The applicant's site plan depicts two possible sites for the location of the transfer station. The northern site is the applicant's preferred site. A more detailed site plan for the northern site depicts a 12,500 square foot building which would house the tipping floor and office. The scales would be located nearby to the northwest. This building is oriented with its longest axis north to south. Ten visitor-parking spaces are shown on the north side of the building. (County Code Enforcement indicates that approximately 13 spaces will be required for a building the size shown on the detailed site plan.) The remainder of the tract would be used for landfilling, recycling and processing operations.

The applicant indicates that the maximum volume he could hope for is 500 tons per day.

He does not expect to receive that volume due to competition and the scale of his operation. If the site did receive 500 tons per day, The applicant anticipates that volume would result in an increase in an average daily volume of 35 to 40 vehicles. (It should be noted that the eastern most portion of the applicant's ownership is not included within the area covered by the applicant's site plan.) Hours of operation are 8:00 a.m. to 5:00 p.m. Monday through Friday, 8:00 a.m. to 3:00 p.m. on Saturday.

Derby's wastewater treatment plant is located to the east, within the city limits of Derby, on residentially zoned land with a special permit for the treatment plant. There is an industrial use to the north, within Derby, which includes scales and office buildings for the landfill and transfer station that the applicant currently operates. The applicant has lost the lease for that property so those improvements will be moved south onto the applicant's new site.

Derby's Planning Commission heard this case on December 2nd and 16th, 1999. They recommended unanimous approval for both requests. The "LI" request was approved subject to conditions contained in the MAPD staff report and the following protective overlay restrictions: no trees providing screening for nearby or adjacent properties can be removed; no composting is permitted within the 100 year floodplain; no correctional placement facilities are permitted; and testing of groundwater and soil shall be conducted by the appropriate agency.

The Conditional Use request for the transfer station is subject to conditions contained in the MAPD report and the following conditions: the size of the property authorized for the transfer station is 12 acres (maximum volume of 500 tons per day) and an enclosed storage tank is to be used to contain runoff from the tipping floor and monitored by the appropriate agency.

At the Derby Planning Commission, there were 10-15 property owners in attendance. All were opposed to the request on the basis that the requests would devalue their residential properties, provide increased opportunity for pollutants to enter the groundwater or waterways and create additional noise, traffic and litter in the area.

The MAPC heard these requests on December 16, 1999 and approved the requests, subject to amended conditions 9-1. The Conditional Use for the transfer station was approved subject to conditions recommended by staff and Derby's Planning Commission – the site is to be limited to a 12 acre site that is limited to 500 tons per day. The "LI" zoning to allow the composting was approved only for the area outside the regulatory floodway; the dumping of brush was restricted to an area that is to be identified and marked off outside of the regulatory 100 year floodplain, the regulatory floodway is to be marked as directed by County Public Works, and subject to other staff comments and Derby's recommendations, except for Derby's recommendation that composting not occur in the 100 year floodplain. There were citizens who spoke in opposition citing the same concerns expressed at the Derby Planning Commission. There were also two Derby Council members present who encouraged the MAPC to adopt the conditions recommended by Derby.

Recommended Action:

1. Adopt the findings of fact of the Metropolitan Area Planning Commission and approve the zone change, subject to platting within one year, and subject to the Protective Overlay; adopt the resolution and authorize the Chairman to sign; and instruct the Planning Department to withhold publication of the resolution until the plat has been recorded with the Register of Deeds; or
2. Adopt the findings of fact of the Metropolitan Area Planning Commission and approve the "Conditional Use"; adopt the resolution; and authorize the Chairman to sign; and instruct the Planning Department to withhold publication of the resolution until the plat has been recorded with the Register of Deeds; or
3. Return to the Planning Commission for reconsideration.

(An override of the Planning Commission's recommendation requires a 2/3rd majority vote of the membership of the governing body on first hearing).

Applicants:

Derby Recycling & Transfer Station LLC % DD Mills 1401 S Buckner Derby KS 67037
Russell Mills 343 N Market Suite 200 Wichita KS 67202

Protestors:

Norma Moore 9339 S K-15 Derby KS 67037

NEW (8/21/00)
S/R
FROM DALE

AGENDA ITEM

STAFF REPORT

Derby P.C, 12/2/99
MAPC, 12/16/99
Derby P. C. 12/16/99
MAPC, 1/13/99
Derby P.C. 3/9/00
Derby P.C. 3/14/2000
Derby P. C. 4/6/00

CASE NUMBER: SCZ-0798 and CON 2000-00037

APPLICANT/AGENT: Derby Recycling and Transfer Station, LLC, applicant (H. D. Mills) / H. D. Mills, agent

REQUEST: LI, Limited Industrial and Conditional Use to permit a transfer station

CURRENT ZONING: RR, Rural Residential with a Conditional Use Permit to allow a Recycling Processing Center with outdoor activities

SITE SIZE: 56 acres

LOCATION: 91st Street South and Buckner

PROPOSED USE: Recycling and Processing Center

BACKGROUND: The applicant is seeking to rezone 56 acres from the "RR", Rural Residential district to the "LI", Limited Industrial district and Conditional Use to permit a "Recycling Processing Center" with outdoor activities located at 91st Street South and Buckner (1401 south Buckner). Non-hazardous recyclable material (leaves, brush, grass, tree stumps etc.) would be accepted and processed on the site by grinding the material into smaller pieces. The ground-up material is then placed in windrows to be composted. The completed compost is then used in a variety of applications.

The applicant's site plan indicates that the composting and recycling and processing activities would occur in the area west of the recently approved transfer station and the existing construction and demolition landfill. Much of this area under consideration is located within the 100-year flood fringe or floodway. The material to be composted would first be unloaded in an area outside of the floodplain (compost staging area identified on site plan). The material would be ground with a tub grinder before being placed in windrows to compost. These windrows would not be placed within the floodway. Material that cannot be ground to a size that is capable of being composted, such as large stumps, is currently burned near the river's edge. The applicant indicates he has plans for a warehouse type building in which to store equipment and to assist with recycling operations. This building will be located either north of the transfer station in the city limits of Derby or south of transfer station location, near the applicant's east property line. A second building is also proposed which would provide mechanical support (a shop building for equipment maintenance) for the transfer station and recycling processing.

Access to the site is provided by both 91st and Buckner Streets. Both streets are unpaved near the application area.

Currently, 14 acres adjoining the application area are already zoned "GI" General Industrial, and are being used for construction and demolition landfill activities. Recently, 12 adjacent acres were approved for a "solid waste transfer station" (CU-556). Hours of operation are 8:00 a.m. to 5:00 p.m. Monday through Friday, 8:00 a.m. to 3:00 p.m. on Saturday.

Derby's wastewater treatment plant is located to the east, within the city limits of Derby, on residentially zoned land with a special permit for the treatment plant. There is an industrial use to the northeast, within Derby, which includes scales and office buildings for the landfill and transfer station that the applicant currently operates. A landscape nursery is located to the north of the applicant's ownership, however the compost area is separated from the nursery by property owned by the applicant. Spring Creek located to the south, with large lot residential uses located further south. The Arkansas River is located to the west, with large lot residential uses located beyond.

At the public hearings, the smoke from the burning of material not able to be composted was a significant issue with nearby property owners. Neighbors indicated that it may take several days for the material to burn, leaving a constant plume of smoke that lingers over their property. Planning staff is advised by City-County Health Department staff that this particular permit was originally issued by the Bureau of Waste Management (KDHE) and does not carry an expiration date. Responsibility for the issuance of burn permits was then transferred to the Bureau of Air Quality (KDHE) which uses the City-County Health Department's Air Quality Division to provide local permitting and enforcement activities. City-County Health is reviewing the permit with KDHE officials to determine if the permit can be modified. Other concerns expressed by citizens centered on whether the composting material presented a potential pollution problem for the river or groundwater, impact the material may have on flooding and drainage and if the facilities operations would negatively impact property values.

CASE HISTORY: In 1985 a request for a Special Use Permit to establish a demolition construction landfill (DR 86-4), and a request to rezone land from "RR", Rural Residential to "GI", General Industrial (SCZ-0542) were withdrawn. In 1986 a Special Use Permit to establish a demolition construction landfill (DR 86-4), and a request to rezone 14 acres from "RR", Rural Residential to "GI", General Industrial were approved by MAPC, denied by the County Commission and then approved by District Court.

This case was originally scheduled for a MAPC hearing on December 16th. However, the Derby Planning Commission was unable to make a recommendation at their December 2nd meeting, and requested the MAPC to defer the case until they had a chance to obtain additional information. At the December 16th meeting, the MAPC deferred the case to their January 13, 2000 meeting. At the Derby hearing on December 16th, they recommended:

Approval of the request for "LI" zoning, subject to the conditions cited in the MAPD staff report as well as the following conditions: no trees providing screening for nearby or adjacent properties can be removed; no composting is permitted in the 100 year floodplain; no correctional facilities are permitted on the property; testing of groundwater and soil shall be conducted by the appropriate agency.

MAPC heard the case on January 13, 2000, and recommended approval of the case subject to the following conditions:

Approval of "LI" zoning provided no trees providing screening for nearby or adjacent properties can be removed; no composting is

permitted in the 100 year floodway, but would be permitted in the flood fringe; no correctional placement facilities are permitted on the property; testing of groundwater and soil shall be conducted by the appropriate agency; the area to be used for the dumping of brush waiting shredding and composting is to be marked off and is to be located out of the floodplain; and the 100 year flood-way is to be marked as directed by Sedgwick County Public Works and may not be used for shredding or composting.

When the Sedgwick County Commissioners heard the case on February 9, 2000, they sent the case back to Derby for additional discussion. The County Commissioners were interested in having the Derby commissioners clarify if Derby's recommendation to not permit composting or recycling in the "floodplain" included the "flood fringe" as well as the "flood way."

The Derby Planning Commission heard the case on referral on March 9, 2000 and determined to consider the case as if it were a re-hearing of the original case. Additional public testimony was heard, but the Commissioners were unable to reach a decision. Derby continued the hearing to March 14, 2000, and toured the application site. No action was taken on the March 14th tour, so the case was continued to April 6, 2000. After additional discussion, the Derby Planning Commission voted to:

Rescind their December 16th action to recommend approval of "LI", Limited Industrial zoning (SCZ-0798), and recommend denial of same.

The denial appeared to be based upon neighborhood opposition, drainage concerns and pollution concerns.

On May 3, 2000, the Board of County Commissioners approved CU-556, which permits the operation of a solid waste transfer station.

On July 11 and 20, 2000, the Sedgwick County Board of Zoning Appeals upheld the County Zoning Administrator's opinion that composting in the manner proposed by the applicant is not an agricultural activity (BZA 2000-00015) and requires appropriate zoning and conditional use permits.

ADJACENT ZONING AND LAND USE:

NORTH: "RR", Rural Residential and "M-1", Industrial (Derby); vacant and solid waste landfill / transfer and composting activities, agricultural
SOUTH: "RR", Rural Residential; vacant and residential
EAST: "Derby residential zoning with a special permit; waste water

treatment plant
WEST: "RR", Rural Residential; Arkansas River

PUBLIC SERVICES: 91st Street and Buckner Street are two-lane unpaved roads near the application site. K-15, a divided four-lane facility, is less than one-quarter mile to the east, via 91st Street. Traffic volumes are not available. City of Derby sewer and water lines exist in Buckner.

CONFORMANCE TO PLANS/POLICIES: The Wichita/Sedgwick County Development Guide identifies this area as appropriate for agricultural and related uses. The Derby Comprehensive Plan also depicts this area as appropriate for agricultural uses. Recycling processing centers are permitted in the "General Commercial", "Central Business", "Office Warehouse", "Industrial Park", "Limited Industrial" districts with a Conditional Use. In the "GI" district, such uses are permitted without a Conditional Use. Prior to establishing a public recycling collection station, the operator shall obtain a location or building permit, as applicable, from the Zoning Administrator. Operation of the station shall be subject to approval of the health officer.

Finally, the Comprehensive Plan suggests that industrial development may be appropriate in rural areas if it is an expansion of an existing industrial area, and should be located where there is good access and away from existing or planned residential areas.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the requests be APPROVED, subject to platting within 1 year and the following conditions and protective overlay:

Conditional Use to permit a recycling and processing center.

- A. The Conditional Use Permit for the recycling processing station and outdoor composting shall apply only to the area identified on an approved site plan. A revised site plan and legal description shall be submitted before this Conditional Use permit shall be effective.
- B. The Conditional Use for the establishment of a recycling processing station and outdoor composting shall be subject to all applicable local, state and federal regulations and laws, and prior to beginning operations, all applicable local, state and federal permits shall be acquired.
- C. The use of the site as a recycling processing station and composting shall proceed and be maintained in general conformance with the site plan required by this Conditional Use (no composting is permitted in the 100 year floodway, but is permitted in the flood fringe and the area to be used for the

dumping of brush waiting shredding is to be marked off and is to be located outside of the floodway and flood fringe) and made a part of this permit.

- D. At the time of platting, the applicant shall submit a drainage plan to the Health Department and to the Sedgwick County Department of Public Works (Derby) for approval. All outside runoff shall be properly confined, filtered, and/or treated to prevent contamination, as deemed appropriate by the County (Derby).
- E. Temporary outside waste storage of materials shall be stored or confined in a manner that prevents waste from being blown beyond the site.
- F. Outdoor burning on this site is prohibited unless a separate Conditional Use permit for "solid waste incineration" has been obtained.
- G. Testing of groundwater and soil shall be conducted by the appropriate agencies.
- H. The 100-year floodway is to be marked as directed by Sedgwick County Public Works and may not be used for shredding or composting.
- I. Violation of any of the conditions of approval shall render the Conditional Use null and void.

"LI" Limited Industrial Protective Overlay

- A. No trees providing screening for nearby or adjacent properties can be removed.
- B. No correctional placement facilities shall be permitted.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: Adjacent land is zoned "GI" General Industrial, or Rural Residential. There are agricultural, landscape nursery, large lot residential, the Arkansas River and vacant land uses surrounding the site. The character of the area is a combination of undeveloped, agricultural and industrial uses.
- 2. The suitability of the subject property for the uses to which it has been restricted. The property is zoned "RR", Rural Residential. The site is not suitable for residential use given the fact that landfill operations have occurred on the site and due to its proximity to the wastewater treatment

plant. Drainage is also an issue that would need to be addressed if the site were developed with structures.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is buffered by the river, creeks and other industrial or agricultural operations. The conditions attached to the approval of this request and the licensing minimize any detrimental effects.
4. Length of time the property has remained vacant as zoned. The Rural Residential zoned property is currently vacant.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Comprehensive Plan identifies this area as appropriate for agricultural and related uses. However the Comprehensive Plan suggests that industrial development may be appropriate in rural areas if it is an expansion of an existing industrial area, and should be located where there is good access and away from existing or planned residential areas. This site meets these requirements.
6. Impact of the proposed development on community facilities: The site will generate little if any increased traffic over current operations and the demand for municipal services (sewer / water) should be minimal if those services are required.