

CONDITIONAL USE RESOLUTION NO. CON-2001-00061

WHEREAS, Komp Living Trust (owner), Rufus J. Komp (trustee); PEC, P.A., c/o Gary Wiley, (agent), pursuant to Section V-D of the Wichita-Sedgwick County Unified Zoning Code (herein referred to as Unified Zoning Code), requested a Conditional Use to allow Mining and Quarrying, the excavation of fill material on 27.4 acres zoned "LC" Limited Commercial and "SF-20" Single-Family Residential described as:

That part of the W1/2, NW1/4, Section 15, T28S, R1W of the 6th P.M., Sedgwick County, Kansas, described as follows:

Beginning at the NW corner of the NW 1/4 of Section 15, T28S, R2W of the 6th P.M., thence bearing S 00 degrees 13'10"E along the west line of said NW 1/4 a distance of 1472.52 feet; thence bearing S 88 degrees 35'E a distance of 1326.03 feet; thence bearing N 0 degrees 16'14"W along the east line of the W 1/2 of the NW 1/4 a distance of 1541.92 feet to the NE corner of said W 1/2 of NW 1/4; thence bearing S 88 degrees 24'57"W along the north line of said W 1/2 of NW 1/4 a distance of 1324.49 feet to the point of beginning; except the north 40 feet and the west 55 feet for road R/W; and except that part lying easterly and northerly of the center line of the Cowskin Creek. Generally located at the southeast corner of Ridge Road and MacArthur.

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 January 10, 2002, 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 a Conditional Use to allow Mining and Quarrying, the excavation of fill material on 27.4 acres zoned "LC" Limited Commercial and "SF-20" Single-Family Residential described as:

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subject to the following conditions:

1. Dedication of right of way on Ridge and MacArthur to bring the application area in conformance with Subdivision Regulations. The instrument of dedication to be submitted to County Public Works prior to commencing operations.
2. An extraction plan, and modified site plan, shall provide for a minimum 100-foot buffer area to be maintained between the centerline of Cowskin Creek and the excavation area.
3. The extraction operation on the site shall proceed in accordance with an operational plan to be 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.
4. The operational plan shall illustrate which area is to be excavated and in what phase.
5. Adjacent to the perimeter of the application area, a minimum 48-inch high, five strand barbwire fence shall be constructed prior to the beginning of any extraction operation and shall be maintained at the locations depicted on the approved operational plan. Driven posts shall be placed a minimum of 100 feet from the centerline of the Cowskin Creek on the northern boundary of the application area, marking a 100-foot stream buffer. The posts shall not be set more than 50 feet apart.
6. 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.

7. 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. A \$1,500 bond for the purpose of ensuring slope stabilization shall be submitted to the MAPD prior to commencing operations.
8. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no steeper than four horizontal to one vertical above any future water table. The side slopes of the extraction shall be no steeper than one horizontal to one vertical below any future water table.
9. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the city or county legal counsel (as applicable), 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, closer than 100 feet to the centerline of Cowskin Creek, 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.
12. The Conditional Use for the extraction operation shall be valid for a period of 7 years.
13. Hours of operation for extraction shall be limited to 6:00 a.m. to sunset.
14. The applicant shall make the site available to the Wichita-Sedgwick County Health Department for the installation and management of groundwater monitoring wells.
15. Any on-site storage of fuels or chemicals must be approved by the Wichita-Sedgwick County Health Department.
16. A drainage plan shall be submitted to and approved by County Public Works prior to starting the extraction operation. All of the area included within the fenced extraction operation shall be graded in accordance with the approved drainage plan. Said plan shall be designed to minimize the discharge of sediment

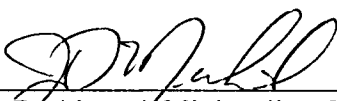
and other potential contaminants into the Cowskin Creek. Additional requirements, such as a public drainage easement, a floodway reserve, or a covenant authorizing the site for use as a detention storage facility for public drainage purposes, may be required as a condition of approval for the drainage plan. The extraction area shall be developed so as to not become a wetland area.

17. All operational roads shall be maintained in a sand or graveled condition and shall be treated with water or other acceptable dust retardant to minimize blowing dust.

18. All applicable local, state, and federal permits necessary for the extraction operation and for flood plain development shall be obtained and maintained.

Adopted this 10th day of JANUARY, 2002. This resolution shall become effective on the fifteenth day after the date last noted above unless the matter is forwarded to the Governing Body for final action under the provisions of Section V-D.6. When any one or more of the exceptions listed in Section V-D.6 exist, this resolution with its conditions of approval shall be considered a recommendation of the MAPC to the Governing Body which shall then have final authority to approve, approve with conditions or modifications, or deny the Conditional Use application.

METROPOLITAN AREA PLANNING COMMISSION



J.D. (Jerry) Michaelis, Chair MAPC

ATTEST:



Marvin S. Krout, Secretary MAPC

NW Corner NW 1/4
Sec. 15, T28S, R1W

MacArthur Road

1324.49'

40'

375'

75'

75'

60'

Existing KGE
Water Well

PROPOSED
HAUL ROAD



REVISED 01/08/02

Cowskin Creek

TOP OF BANK
4/1 SIDE SLOPES

150'

PHASE 2

BORROW AREA
13.9 Acres ±
BORROW TO BE EXTRACTED
TO A DEPTH OF 10 FEET

PHASE 1

50'

805'±

1541.92'

Ridge Road

1472.52'

Existing
Field Entrance

Existing Pond

Existing 5 Strand
Barb Wire Fence (Typ.)

1326.03'

50'

Existing Pond

KOMP LIVING TRUST

CONDITIONAL USE
CON 2001-00061



REVISED

AGENDA ITEM NO. 4

STAFF REPORT

MAPC 01-10-02

CASE NUMBER: CON2001-00061

APPLICANT/AGENT: Komp Living Trust (owner), Rufus J. Komp (trustee); PEC, P.A. c/o Gary Wiley (agent)

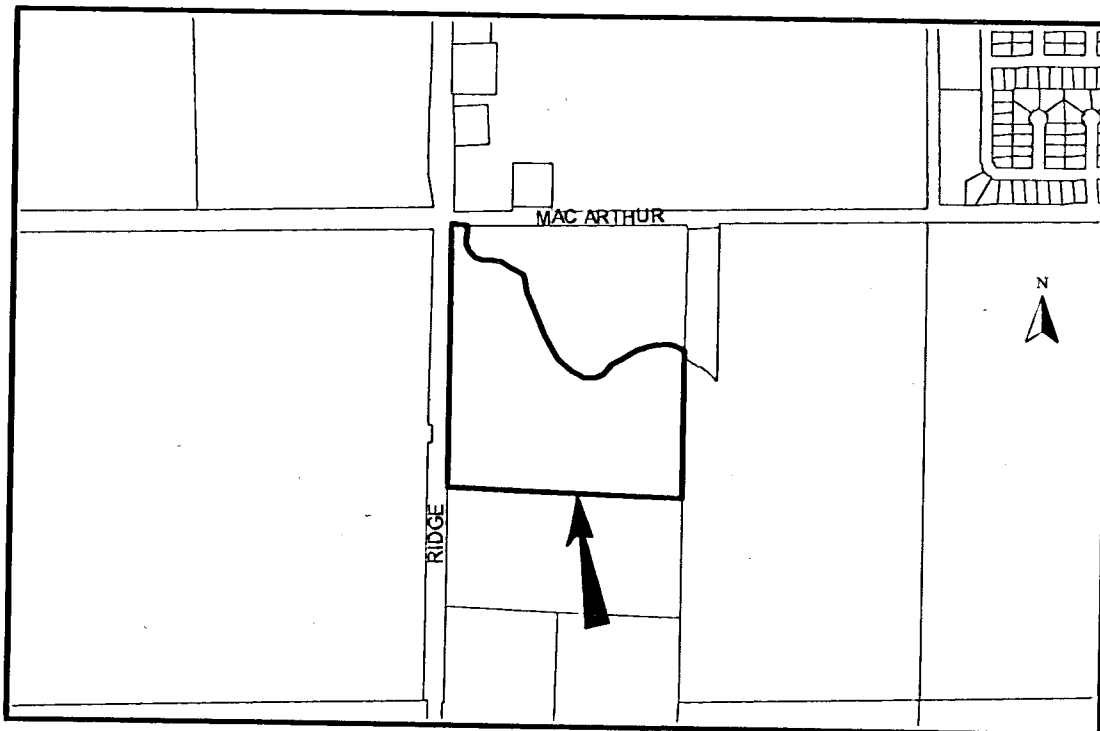
REQUEST: Conditional Use to allow "Mining and Quarrying," the excavation of fill material

CURRENT ZONING: "LC" Limited Commercial, and "SF-20" Single Family Residential

SITE SIZE: 27.4 acre

LOCATION: Southeast corner of Ridge Road and MacArthur

PROPOSED USE: To provide fill material for west side projects proposed in the next seven years



BACKGROUND: The applicant requests a Conditional Use to allow "Mining and Quarrying" for the excavation of fill material to be used on west side projects proposed in the next seven years. It is estimated that seven years worth of fill material exists on the site. The undeveloped property, located southeast of the MacArthur and Ridge Road intersection, is currently zoned "LC" and "SF-20"; the site is 27.4 acres in size, only 13.9 acres are to be excavated. The applicant intends to excavate to a depth of 10 feet, excavating from the east to the west, see the attached site plan. Testing of the area by the applicant's engineer indicates that groundwater is not present at this depth. Proposed access to the site is located 375 feet south of MacArthur Road. Existing access is via a field entrance located at the south end of the tract. Setbacks ranging in distance from 50 feet to 600 feet are shown on the site plan. The site is currently fenced by a 5-strand barbed wire fence. A KGE water well exists in the northwest corner of the site, the Cowskin Creek borders the northern side of the site, and the property lies within the 100-year flood plain.

Of some concern in this request is the potential for pollutants, sediment and erosion from the excavation site to enter Cowskin Creek through storm water runoff. A 100-foot stream buffer, with existing natural vegetation, can help to remove pollutants from storm water runoff before entering the Creek.

North of the application area is property zoned "LC" and "SF-20," and developed with businesses, agricultural uses, and single-family residences. The property south of the application area is under the same ownership as the application area; it is zoned "SF-20" and developed with a single-family residence. East of the application area is property zoned "SF-20," some of this property is developed with agricultural uses. West of the application area is property zoned "LC" and "SF-20," and developed with agricultural uses.

A similar extraction Conditional Use was approved in 1973 for a site approximately 2,500 feet south of the application area.

CASE HISTORY: None.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-20," "LC"	businesses, agriculture, single-family residence
SOUTH:	"SF-20"	single-family residence
EAST:	"SF-20"	agriculture
WEST:	"SF-20," "LC"	agriculture

PUBLIC SERVICES: The property is located along Ridge Road, a two-lane, paved section line road. The existing half-width right of way on this section of Ridge Road is

55 feet; County Public Works has indicated a desire to increase that half-width right of way to the desired standard of 70 feet. The traffic count as of July 2000 was 2,260 cars per day (ADTs) on this section of Ridge. The projected traffic volume for 2030 is 3,800 cars per day. The agent for the applicant estimates 125 trips per day generated by the requested Conditional Use. No street projects are included in the C.I.P, and the *2030 Transportation Plan* shows this section of Ridge remaining a two-lane arterial. The property currently has one drive entrance onto Ridge Road.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this property as "low density residential," reflecting the predominant zoning pattern, and the likelihood that sewer and water will be extended to this area to allow urban densities. The new draft revisions to the Guide propose "low density residential" and "commercial" land uses, reflecting the actual zoning. The Plan recommends that the extraction use location be compatible with the built and natural environment.

The application area is within the FEMA 100 year flood plain. The Wichita Sedgwick County Subdivision Regulations allow for development within floodplains provided that buildings and public service facilities are elevated or floodproofed above the Base Flood Elevation.

The Unified Zoning Code lists "Mining or Quarrying" as a Conditional Use in the "LC" and "SF-20" zoning districts. The Zoning Code lists 23 conditions with which "Mining or Quarrying" should comply; these conditions exist for public safety, and to mitigate any negative effects the extraction may have on surrounding properties. Not all of these conditions are applicable to the proposed fill material excavation. Should the Planning Commission recommend modifications to one or more of the Unified Zoning Code conditions for the requested Conditional Use, the request must then be forwarded to the Governing Body for final action.

RECOMMENDATION: With the proper conditions in place, this proposal should not have a detrimental affect on the surrounding properties, as they are developed with agriculture, or well screened by existing natural vegetation. The conditions suggested below should mitigate potential negative impacts caused by this Conditional Use. Required permits and drainage plans should further ensure the safe operation of the Conditional Use. Existing services are adequate for the proposed Conditional Use. Because of its location in a flood plain, development of the application area for commercial or residential uses would be difficult.

For these reasons and based on information available prior to the public hearings, Staff recommends that the Conditional Use request be **APPROVED**, subject to the following conditions:

1. Dedication of right of way on Ridge and MacArthur to bring the application area in conformance with Subdivision Regulations. The instrument of dedication to be submitted to County Public Works prior to commencing operations.
2. An extraction plan, and modified site plan, shall provide for a minimum 100-foot buffer area to be maintained between the centerline of Cowskin Creek and the excavation area.
3. The extraction operation on the site shall proceed in accordance with an operational plan to be 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.
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7. 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. A \$1,500 bond for the purpose of ensuring slope stabilization shall be submitted to the MAPD prior to commencing operations.
8. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no steeper than four horizontal to one vertical above any future water table. The side slopes of the extraction shall be no steeper than

one horizontal to one vertical below any future water table.

9. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the city or county legal counsel (as applicable), 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.
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18. All applicable local, state, and federal permits necessary for the extraction operation and for flood plain development shall be obtained and maintained.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The properties surrounding the application area are zoned "SF-20," with "LC" zoning at the corner of Ridge and MacArthur. The area is dominated by agricultural uses, and is primarily rural in character. Because the surrounding properties are developed with agricultural uses, and are well screened by existing natural vegetation, the Conditional Use should not negatively affect the character of the neighborhood. Provided that a sufficient buffer and drainage plan prevent excavation site pollutants and sediment from entering Cowskin Creek, downstream neighbors should not be negatively affected.
2. The suitability of the subject property for the uses to which it has been restricted: The application area could be developed for commercial and single-family residential use, but its location in a floodplain would make development of those uses difficult.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The conditions provided in the Unified Zoning Code for this Conditional Use should prevent any detrimental affect on nearby property. These conditions work to mitigate any negative dust, noise, or environmental effects. The fencing requirement should prevent trespassing and accidents on this property. The Creek buffer and drainage plan requirements should prevent pollutants and sediment from affecting downstream properties. Prevention of the extraction area from becoming a wetland area will prevent the attraction of waterfowl and other birds to the application area, as the application area is within 10,000 feet of an airport facility.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The *Comprehensive Plan* does not specifically address "borrow pits"; however, the plan does recognize the uniqueness of mining and extractive resources (e.g. sand, gravel, clay soils, etc.). The Plan recommends that the extraction use location be compatible with the built and natural environment.
5. Impact of the proposed development on community facilities: Traffic to and from the requested Conditional Use at this location will increase the daily trips on this section of Ridge; this increase should not exceed the safe capacity of this road. The recommended 15-foot right of way dedication would allow for further widening of Ridge, should an increase in traffic make widening necessary.