



**Wichita-Sedgwick County Metropolitan Area Planning Department**

April 16, 2009

RRM Properties, LLC  
2060 E. Tulsa  
Wichita, KS 67216

City of Wichita  
Property Management  
455 N. Main, 13<sup>th</sup> Floor  
Wichita, KS 67202

**RE: CON2009-00003** - Amendment to City Conditional Use 425, as amended, to increase the height of fill permitted on a C&D landfill located southwest of K-15 and 31st Street South.

Dear Ladies and Gentlemen:

At its regular meeting on April 7, 2009, the Wichita City Council considered the above captioned request. The action of the Council was to APPROVE the request subject to the conditions stated in the enclosed resolution.

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

Sincerely,

A handwritten signature in cursive script that reads 'Dale Miller'.

Dale Miller  
Current Plans Manager  
Current Plans Division

DLM:mc

Copies to: Bob Kaplan, 430 N. Market, Wichita, KS 67202  
Paul Clark, 1109 N. Topeka, Wichita, KS 67214  
Kenneth Dixon, 3010 Conamore, Wichita, KS 67216  
John Kemp, 3000 E. Dunham, Wichita, KS 67216  
City Hall • 10th Floor • 455 North Main • Wichita, Kansas 67202-1688

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[www.wichita.gov](http://www.wichita.gov)

Street South to I-35 (KTA).

As indicated above, a portion of the site is owned by the City of Wichita. (See attached map.) The City's property is leased to Cornejo and Sons, Inc. and RRM, LLC c/o Ron Cornejo, under the terms established by the June 3, 1997, lease agreement. By the terms of the lease, C&D activities are scheduled to cease by December 31, 2010, (CON2005-01). Condition 10 of the lease states that within six months after the cessation of operations the site is to be closed, and the applicant is expected to return the leased premises to the City in a condition established by Exhibit B of the lease that depicts the site as a linear park (attached). The lease agreement expired on April 1, 2005, but was automatically extended to be coterminous with extensions to the Conditional Use permit. If this request is approved as requested, the contract should be amended to address the park site plan as it appears to have a wider, flatter top than depicted by the site plan associated with this application. It should be noted that this land is not owned by the Wichita Park Board, as is some city park land; therefore the ultimate re-use of the site rests with the City Council. Some safety concerns have been expressed about having a park whose only access is across an active railroad line. Another aspect regarding re-use of the site for a park is: while the proposed steeper slope may limit some of the uses to which the re-developed site might be put to use, the higher elevation will provide a better screen between the shoreline of the river and the urban activity occurring on the railroad tracks, K-15 and the other more intensely developed properties located east of the site. Shoreline is highly valued as a recreational setting, and a screen that isolates the river bank from more active uses could be viewed as an amenity once land filling activities are complete.

It has also been noted that the applicant is currently excavating and replacing material previously installed, and is re-grading the site to meet KDHE compaction and slope requirements. As part of that activity, the applicant is expected to gain additional fill volume, possibly as much as eight feet in some places, due to improved compaction.

The majority of the land located west of K-15 Highway, and north of the landfill site is zoned LI, and is currently used for construction activities, including a rock crusher and a building wrecking/salvage construction business. The Wichita Wastewater Treatment facility, the closed Chapin landfill, the Wichita drainage canal and the Arkansas River are located west of the application area. East of the site are: railroad tracks, K-15 Highway, several single-family residences on property zoned SF-5 Single-family Residential ("SF-5"), and a mobile home park (at the southeast corner of 31<sup>st</sup> street and K-15) located on property zoned LC Limited Commercial ("LC") and manufactured home park on property zoned MH Manufactured Home ("MH") directly east of the site. Several commercial uses are located at the northeast corner of 31<sup>st</sup> Street and K-15 on property zoned LC. Areas south of the landfill are undeveloped and zoned LI.

**CASE HISTORY:** CU-425, approved in February 1997, allowed the establishment of the C&D landfill, subject to conditions, including maximum height of fill limitations, and the initial closure date of April 1, 2003. CON2002-37, granted in 2002, extended the deadline for closure to April 1, 2004. The applicant stated that, in part, they needed the time extension due to the nearly two years that were lost between the City's initially conditional use permit approval in

1997 and KDHE permit approval in 1999. CON2003-51 extended the deadline to April 1, 2005, and CON2005-00001 to December 31, 2010. CON2008-42 added acreage to the area permitted to be filled and eliminated the restriction that only licensed haulers can bring loads to the landfill.

**ADJACENT ZONING AND LAND USE:**

NORTH:	LI, LC	Rock crusher, building wrecking/salvage, mobile home park, vacant commercial buildings, auto repair
SOUTH:	LI	KTA, lumber yard, Chapin Park
EAST:	LI, SF-5, MH	Railroad line, single-family residences, manufactured home park
WEST:	LI	Arkansas River, Wastewater Treatment Plant

**PUBLIC SERVICES:** The site has access to K-15 Highway, a four-lane expressway. Municipal sewer and 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 C&D site generally meets these criteria. The plan does not have location guidelines for C&D landfills. Plan objectives also recognize the need to minimize the potential for environmental contamination while maintaining cost efficiency by proper management of construction debris generated throughout the County. The Arkansas River has traditionally had a status as a “navigable stream used for interstate commerce,” under landfill regulations and other statutory and judicial interpretations. These concerns and environmental concerns were addressed in previous Conditional Use and KDHE permit reviews, and it was found to be an appropriate use under State law and KDHE regulations.

**RECOMMENDATION:** Approval of the request would allow for the complete use of the site as a C&D facility, and by some measure, may reduce the demand for C&D capacity in other locations by the volume allowed with the increased height on this site. Currently, this is the only C&D facility operating in the southern part of Sedgwick County. Increasing the fill height of the facility could reduce the travel distance for citizens, smaller contractors or home remodelers living or working in the southern part of the city and county. The requested height extension up to 1362 on the north would allow a portion of the fill to be some 72 feet higher than the currently permitted northern fill elevation of 1290. The requested southern elevation of 1320 is more consistent with the currently permitted elevation of 1313. Approval of the request to increase the fill height by 72 feet potentially makes it more difficult to re-use the site as a traditional linear park; however improvements such as paved walkways may mitigate some of that concern. It is recommended that the site be developed consistent with the conditions listed below, amending Condition H to permit fill to a maximum height of 1351 NGVD29 on the north and 1320 NGVD29 on the south, including the soil cap required for closure; and references to a transfer station be removed from the site plan.

A. Demolition and construction wastes as defined by KAR 28-29-3(G) and City Code

7.08.020(8), shall be the only landfill material permitted. Hazardous or toxic wastes, as defined by K.S.A. 65-3430 et seq. shall not be permitted for disposal at the site.

- B. The landfill operation shall obtain all applicable permits and proceed in accordance with all conditions established by the Kansas Department of Health and Environment (KDHE), Wichita-Sedgwick County Health Department, FEMA, the Corps of Engineers, the Department Wildlife and Parks.
- C. The deposit of material on site shall cease by December 31, 2010.
- D. The landfill may be open to the general public. A landfill operator shall be on the site during all hours of operation for the purpose of screening incoming trucks for inventory of the type, size and quantity loads, and direction of loads to the appropriate cells. Hours of operation shall not exceed 7:00 AM to 6:00 PM Monday through Saturday. Access to the subject property shall be prohibited except during the hours of operation.
- E. The delivery of construction and demolition waste to the site shall be only by way of the K-15 entrance.
- F. A minimum 6-foot high fence shall be installed on the earthen screening berms along the northeastern property line, if determined to be needed by the Zoning Administrator, to minimize the blowing of any materials onto adjacent properties. The fence shall be either chain link or welded or woven wire with openings no larger than two inches.
- G. Upon written notice of any violation by the City Zoning Administrator or the Wichita-Sedgwick County Health Department, the operation shall cease and the violation shall be corrected within 48 hours.
- H. A detailed grading/drainage plan shall be submitted to the Department of Public Works for review and approval prior to commencement of operations. A copy of the approved grading and drainage plan shall be submitted to the Planning Department for filing with other case materials. The operation of the landfill shall be in conformance with the approved grading and drainage plan, and with the "Site Plan, as amended" and "Sections on Construction and Demolition Area" attached as exhibits to these conditions, except that the maximum height of the fill, including closure cap (exclusive of the screening berm) shall be no more than 5 feet higher than the elevation of the Santa Fe railroad track in any cross-section not exceed NGVD29 Datum elevation of 1351 on the north and 1320 on the south, and the final contour of the fill area shall conform to the elevations depicted on the site plan titled "Closure Plan" and dated 12-24-08. Landfill operations shall be staged, with berms to be constructed and seeded along the east face of the fill to screen the operations for view in that direction. No more than 6 acres shall be in operation at any one time. Prior to the opening of any new area the previous area shall be graded and seeded in accordance with the approved plan.
- I. Prior to commencement of the landfill operation the applicant/owner shall obtain a

guarantee acceptable to the City Attorney and payable to the City of Wichita guaranteeing that cover material, final grading, and seeding are performed, as detailed in the approved grading plan. This guarantee shall be in the amount of \$100,000.00.

- J. The applicant/owner shall pay a yearly fee to the City of Wichita to offset the cost of landfill inspection by the Wichita-Sedgwick County Health Department. The fee shall be paid prior to the operation of the landfill and shall be \$1,000.00 for the first 12 months of operation. The fee for subsequent periods shall be established after review and recommendation by the Wichita-Sedgwick County Health Department to the City Council. The maximum increase in the fee shall be limited to 100% for any 12-month period. In no event shall said fee exceed the actual direct and indirect cost of such inspection.
- K. Prior to commencement of the landfill operation the applicant/owner shall file a restrictive covenant for the application area, which shall remain in perpetuity with the property. This covenant shall prohibit the use of the land for human habitation, prohibit the construction of structures which penetrate the final cap or cover, unless authorized by the Health Department; and require approval of the Wichita-Sedgwick County Health Department for use of the land for the production of food crops. The covenant shall be in such form as may be approved by the City Attorney.
- L. The applicant/owner shall erect a sign prior to landfill operation. This sign shall be a minimum 8-foot wide by 4 foot high and be prominently displayed at the site entrance. The sign shall include the display of the following message in 4 inch or larger letters that contrast with the background:

THIS LANDFILL MAY ONLY ACCEPT DEMOLITION WASTE.  
GARBAGE AND HAZARDOUS WASTE IS NOT ALLOWED.  
LANDFILL OPERATES 7:00 AM TO 6:00 PM MONDAY THROUGH  
SATURDAY.

In addition to above information, the sign shall contain all information required by state agencies. The sign shall be maintained in good repair and be clearly visible.

- M. Prior to the commencement of the landfill operation, the applicant shall remove from the site all surface material which is not defined as demolition or construction waste by KAR 28-29-3(G) and City Code 7.08.020(8).
- N. Prior to the commencement of the landfill operation, the applicant shall provide for installation and monitoring of a network of at least four wells, which draw water from the uppermost permanent aquifer. These wells will be installed, constructed, operated and sampled to comply with the requirements of the Wichita-Sedgwick County, and shall remain in operation for 10 years from the date landfill closure. Collection and analysis of samples from the wells will be accomplished on a quarterly basis by the Health Department on a quarterly basis, and the actual costs of the monitoring shall be

reimbursed by the applicant/owner. Monitoring of runoff and methane shall also be provided for 10 years after closure of the landfill.

- O. The applicant shall pave the 31<sup>st</sup> Street entrance, as well as water all unpaved roadways, as needed, in order to minimize dust. Cover material shall be applied daily to the area being filled. The operator shall be responsible for street sweeping as necessary on K-15 to minimize the accumulation of mud or debris.
- P. The applicant shall install traffic detectors at the time the entrance drive is paved, in accordance with City Engineering specifications.
- Q. The applicant shall install a deceleration lane to City Engineering specifications on southbound K-15 at the entrance to the landfill, prior to commencement of the landfill operation.
- R. This proposed construction and demolition waste landfill shall be in compliance with all conditions of approval by the MAPC, and/or the Governing Body, as specified above or this conditional use shall be considered null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The majority of the land located west of K-15 Highway, and north of the landfill site is zoned LI, and is currently used for construction activities, including a rock crusher and a building wrecking/salvage construction business. The Wichita Wastewater Treatment facility, the closed Chapin landfill, the Wichita drainage canal and the Arkansas River are located west of the application area. East of the site are: railroad tracks, K-15 Highway, several single-family residences on property zoned SF-5, and a mobile home park (at the southeast corner of 31<sup>st</sup> street and K-15) located on property zoned LC and manufactured home park on property zoned MH directly east of the proposed Phase III area. Several commercial uses are located at the northeast corner of 31<sup>st</sup> Street and K-15 on property zoned LC. Areas south of the landfill are undeveloped and zoned LI. The character of the area is predominantly industrial and commercial, except for the manufactured home park and the single-family subdivision located east of K-15.
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 the conditions in CU-425, as amended by CON2002-37, CON2003-00051, CON2005-00001 and CON2008-42, and has been used for a C&D landfill since about 2000. From a physical standpoint, the site appears to be able to accommodate the proposed increased heights. On the flip side, one of the conditions of approval requires that the C&D operations cease by December 31, 2010, while another condition limited the height of fill to no higher than five feet above the elevation of the railroad tracks at any cross section, 1290 to 1313 NGVD29. The site has already been filled, at one location, to an approximate elevation of 1351, 61 feet higher than initially expected. Other portions of the site are proposed to be filled to 1320

NGVD29, seven feet higher than permitted by the current Conditional Use approval. The City of Wichita owns a portion of the application area, and has allowed the operator to develop the C&D landfill subject to the conditions contained in the Conditional Use approvals referenced above, and the lease agreement. The lease agreement intended that the site be reused as a linear park. Increasing the height of fill with the contours shown on the submitted site plan may limit the reuse of the site as a traditional park as depicted on Exhibit B of the lease agreement, but does leave the site to be used in some capacity as a park or open space and as a screen for the river bank. Concerns have been expressed with the safety of having parkland whose only access is across an active railroad track.

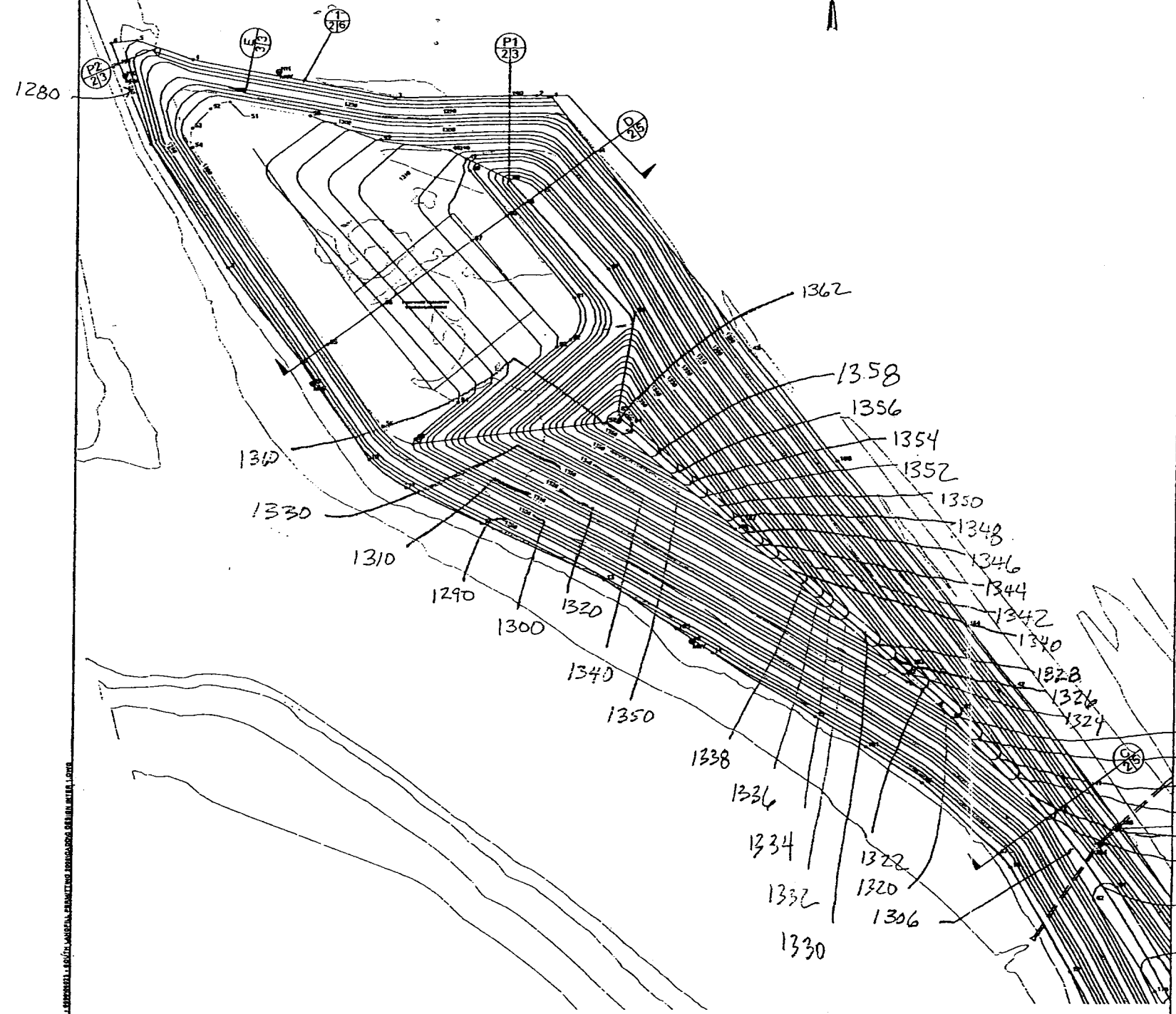
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of this request increases the height of the landfill approximately 72 feet over the current height limitation, and would make the landfill the highest land form in the immediate area. Since the commencement of landfill operations, nearby residents have complained to the Office of Central Inspection (OCI) about dust and debris, allegedly coming from the application area. The operator has had four time extensions, keeping the use in operation much longer than initially expected by nearby residents. Depending upon the volume of material coming into the site, and compaction of the fill material, increasing the height could well lead to another request for extension of time, leaving residents to continue to react to what they feel is dust and debris generated from the site. OCI reports that they have investigated a number of complaints but have not filed any criminal complaints against the applicant. Nearby property owners have an expectation by the terms of the previously approved conditional uses and the lease agreement that the fill area would have a limited height and the site would be able to be developed into a linear park. Approval of this request probably limits the range active recreational uses of the site due to the slope and the narrow flat area left on top, and the need to prevent erosion that could compromise the soil cap. However, increasing the height should not detrimentally impact nearby property owners to any greater extent than they are being impacted today.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Increasing the height to elevation 1351 and 1320 NGVD29 would allow the site to be fully utilized as a C&D landfill, and not cause the operator to remove material already placed on the site. Limiting the height to current elevations of 1351 and 1320 NGVD29 would presumably, with better compaction, allow for more fill material to be brought in, thus reducing haul time, expense and convenience for dropping off demolition wastes in the southern part of Sedgwick County. Presumably denial of the applicant's request entirely and leaving the height limitation of five feet above the tracks of the railroad would be an economic hardship upon the operator.
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 C&D site generally meets these criteria. The plan does not have location guidelines for C&D landfills. Plan objectives also recognize the need to minimize the potential for environmental contamination while maintaining cost efficiency by proper management of construction debris generated throughout the County. The Arkansas River has traditionally had a status as a “navigable stream used for interstate commerce,” under landfill regulations and other statutory and judicial interpretations. These concerns and environmental concerns were addressed in previous Conditional Use and KDHE permit reviews, and it was found to be an appropriate use under State law and KDHE regulations.

6. Impact of the proposed development on community facilities: Approval of staff’s recommendation will leave the site in a better position to be used as a public park than if the applicant’s request is approved. Due to neighborhood complaints, the facility has generated additional inspections from various enforcement officers.
7. Neighborhood support or opposition. There has been significant neighborhood opposition to earlier requests to modify conditions regulating landfill operations at this location, and there have been subsequent complaints regarding dust and debris.

PROPOSED  
ELEVATIONS

NORTH END



**RE: CON2009-00003** - Amendment to City Conditional Use 425, as amended, to increase the height of fill permitted on a C&D landfill located southwest of K-15 and 31st Street South.

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April 16, 2009

E-mail Rose Mary Lynch, K and R RV Park  
K-15 Organization, John Kemp, 3000 E. Dunham, Wichita, KS 67216  
Oakview, Barbara Stapleton, 4940 S. Hemlock, Wichita, KS 67216  
Planeview, Rob Snyder, 3620 Sunnybrook, Wichita, KS 67210  
South Area, Judy Dillard, 4560 S. Hydraulic St. Lot 414, Wichita, KS 67216  
South City, Carole Campbell, 2821 S. Mosley, Wichita, KS 67217  
South Wichita Business Assoc, Rob Detrick, 5055 S. Broadway, Wichita, KS  
67216  
WCC III, Jim Skelton, Mail Stop 1-13  
N.A. III, Janet Johnson, Mail Stop 1-135  
Julianne Kallman, Engineering, Mail Stop 1-71  
Kurt Schroeder, Office of Central Inspection, Mail Stop 1-72  
J. R. Cox, Office of Central Inspection, Mail Stop 1-72  
Paul Hays, Office of Central Inspection, Mail Stop 1-72

RESOLUTION No. 09-089

A RESOLUTION AUTHORIZING AN AMENDMENT TO CONDITIONAL USE 425, AS AMENDED, TO MODIFY THE MAXIMUM HEIGHT OF FILL FOR A CONSTRUCTION AND DEMOLITION LANDFILL LOCATED SOUTH OF SOUTH 31<sup>ST</sup> STREET AND WEST OF HIGHWAY K-15 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 permit a construction and demolition landfill on approximately 38.71 acres zoned LI Limited Industrial ("LI"), subject to the conditions listed below:

**CASE No. CON2009-00003**

An amendment to Conditional Use-425, as amended, to modify the maximum height of fill for a construction and demolition landfill on approximately 38.71 acres zoned LC Limited Industrial.

That part of Government Lot 1 in Sec. 10, Twp. 28-S, R-1-E of the 6<sup>th</sup> 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 Sec. 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 Sec. 10, Twp. 28-S, R-1-E of the 6<sup>th</sup> 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, N89° 47' W, 1526.15 feet and S37° 31' E, 859.98 feet from the Northeast corner of the said NE 1/4 of said Sec. 10; thence along said westerly right-of-way line S 37° 31' E, 1499.21 feet to the east line of said NE 1/4; thence along said East line S02° 46' W, 242.34 feet to the centerline of Chisholm Creek; thence along said centerline the following bearings and distances N26° 46' W, 46.59 feet, N13°15' W, 213.50 feet, N43°01' W, 349.10 feet, N28° 53' W, 472.42 feet, N49° 23' W, 417.83 feet, S25°00' W, 138.42 feet, S76°24' W, 96.58 feet, N31° 05' W, 209.45 feet, N05°10' W, 194.00 feet, N47°00' W, 25.48 feet; thence S 89°47'E,

248.34 feet to the point of beginning, TOGETHER WITH those portions of Government Lots 1 and 2 of Sec. 11, Twp. 28-S, R-1-E 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 The Burlington Northern and Santa Fe Railway Company's (formerly the Atchison, 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 N80°00'W, 137.6 feet; thence N05°15'W, 60.25 feet; thence west to the left bank of the Arkansas River.

AND

A tract of land in the Northeast Quarter of Section 10, Township 28 South, Range 1 East of the Sixth 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, N89° 47'W, 1526.15 feet and S37° 31'E , 859.98 feet from the Northeast corner of the said NE/4 of said Section 10; thence along said westerly right-of-way line S 37° 31' E, 1499.21 feet to the east line of said NE/4; thence along said East line S02° 46' W, 242.34 feet to the centerline of Chisholm Creek; thence along said centerline the following bearings and distances N26° 46'W, 46.59 feet, N13°15'W, 213.50 feet, N43°01'W, 349.10 feet, N28° 53'W, 472.42 feet, N49° 23'W, 417.83 feet, S25°00'W, 138.42 feet, S76°24'W, 96.58 feet, N31° 05'W, 209.45 feet, N05°10'W, 194.00 feet, N47°00'W, 25.48 feet; thence S 89°47'E, 248.34 feet to the point of beginning, shown by actual survey to contain 4.30 acres more or less.

AND

That part of the West Half (W ½) of the Southwest Quarter (SW ¼) of Section 11, Township 28 South, Range 1 East of the 6<sup>th</sup> P.M. in Sedgwick County, Kansas, bounded on the South by the Kansas Turnpike Right-of-Way; on the West by the Arkansas River; on the East by the Right-of-Way of the Atchison, Topeka & Santa Fe Railroad; and on the North by the tract of land heretofore deeded to the Atchison, Topeka & Santa Fe Railroad Company, as disclosed in Book 548 at Page 136 of the Register of Deeds of Sedgwick County, Kansas, and containing approximately 4 Acres, more or less.

AND

Commencing on the W line of RR & 378.75' SE of the N line of the NE/4; then W 526.58' for the beginning; then SE 260.26' then Easterly 121.39' to the center line of the creek; then SW 141.2' to the E line of the canal; then NW to a point West of beginning; then E 21.47' to the point of beginning in Section 10, Township 28 South, Range 1 East. Generally located south of South 31<sup>st</sup> Street and west of Highway K-15.

SUBJECT TO THE FOLLOWING CONDITIONS:

- A. Demolition and construction wastes as defined by KAR 28-29-3(G) and City Code 7.08.020(8), shall be the only landfill material permitted. Hazardous or toxic wastes, as defined by K.S.A. 65-3430 et seq. shall not be permitted for disposal at the site.
- B. The landfill operation shall obtain all applicable permits and proceed in accordance with all conditions established by the Kansas Department of Health and Environment (KDHE), Wichita-Sedgwick County Health Department, FEMA, the Corps of Engineers, the Department Wildlife and Parks.
- C. The deposit of material on site shall cease by December 31, 2010.
- D. The landfill may be open to the general public. A landfill operator shall be on the site during all hours of operation for the purpose of screening incoming trucks for inventory of the type, size and quantity loads, and direction of loads to the appropriate cells. Hours of operation shall not exceed 7:00 AM to 6:00 PM Monday through Saturday. Access to the subject property shall be prohibited except during the hours of operation.
- E. The delivery of construction and demolition waste to the site shall be only by way of the K-15 entrance.
- F. A minimum 6-foot high fence shall be installed on the earthen screening berms along the northeastern property line, if determined to be needed by the Zoning Administrator, to minimize the blowing of any materials onto adjacent properties. The fence shall be either chain link or welded or woven wire with openings no larger than two inches.
- G. Upon written notice of any violation by the City Zoning Administrator or the Wichita-Sedgwick County Health Department, the operation shall cease and the violation shall be corrected with 48 hours.
- H. A detailed grading/drainage plan shall be submitted to the Department of Public Works for review and approval prior to commencement of operations. A copy of the approved grading and drainage plan shall be submitted to the Planning Department for filing with other case materials. The operation of the landfill shall be in conformance with the approved grading and drainage plan, and with the "Site Plan, as amended" and "Sections on Construction and Demolition Area" attached as exhibits to these conditions, except that the maximum height of the fill, including closure cap (exclusive of the screening berm) shall not exceed NGVD29 Datum elevation of 1354 on the north and 1316 on the south. Landfill operations shall be staged, with berms to be constructed and seeded along the east face of the fill to screen the operations for view in that direction. No more than 6 acres shall be in operation at any one time. Prior to the opening of any new area the previous area shall be graded and seeded in accordance with the approved plan.
- I. Prior to commencement of the landfill operation the applicant/owner shall obtain a guarantee acceptable to the City Attorney and payable to the City of Wichita guaranteeing

that cover material, final grading, and seeding are performed, as detailed in the approved grading plan. This guarantee shall be in the amount of \$100,000.00.

- J. The applicant/owner shall pay a yearly fee to the City of Wichita to offset the cost of landfill inspection by the Wichita-Sedgwick County Health Department. The fee shall be paid prior to the operation of the landfill and shall be \$1,000.00 for the first 12 months of operation. The fee for subsequent periods shall be established after review and recommendation by the Wichita-Sedgwick County Health Department to the City Council. The maximum increase in the fee shall be limited to 100% for any 12-month period. In no event shall said fee exceed the actual direct and indirect cost of such inspection.
- K. Prior to commencement of the landfill operation the applicant/owner shall file a restrictive covenant for the application area, which shall remain in perpetuity with the property. This covenant shall prohibit the use of the land for human habitation, prohibit the construction of structures which penetrate the final cap or cover, unless authorized by the Health Department; and require approval of the Wichita-Sedgwick County Health Department for use of the land for the production of food crops. The covenant shall be in such form as may be approved by the City Attorney.
- L. The applicant/owner shall erect a sign prior to landfill operation. This sign shall be a minimum 8-foot wide by 4 foot high and be prominently displayed at the site entrance. The sign shall include the display of the following message in 4 inch or larger letters that contrast with the background:

THIS LANDFILL MAY ONLY ACCEPT DEMOLITION WASTE. GARBAGE AND  
HAZARDOUS WASTE IS NOT ALLOWED. LANDFILL OPERATES 7:00 AM TO  
6:00 PM MONDAY THROUGH SATURDAY.

In addition to above information, the sign shall contain all information required by state agencies. The sign shall be maintained in good repair and be clearly visible.

- M. Prior to the commencement of the landfill operation, the applicant shall remove from the site all surface material which is not defined as demolition or construction waste by KAR 28-29-3(G) and City Code 7.08.020(8).
- N. Prior to the commencement of the landfill operation, the applicant shall provide for installation and monitoring of a network of at least four wells, which draw water from the uppermost permanent aquifer. These wells will be installed, constructed, operated and sampled to comply with the requirements of the Wichita-Sedgwick County, and shall remain in operation for 10 years from the date landfill closure. Collection and analysis of samples from the wells will be accomplished on a quarterly basis by the Health Department on a quarterly basis, and the actual costs of the monitoring shall be reimbursed by the applicant/owner. Monitoring of runoff and methane shall also be provided for 10 years after closure of the landfill.
- O. The applicant shall pave the 31<sup>st</sup> Street entrance, as well as water all unpaved roadways, as


needed, in order to minimize dust. Cover material shall be applied daily to the area being filled. The operator shall be responsible for street sweeping as necessary on K-15 to minimize the accumulation of mud or debris.


- P. The applicant shall install traffic detectors at the time the entrance drive is paved, in accordance with City Engineering specifications.
- Q. The applicant shall install a deceleration lane to City Engineering specifications on southbound K-15 at the entrance to the landfill, prior to commencement of the landfill operation.
- R. This proposed construction and demolition waste landfill shall be in compliance with all conditions of approval by the MAPC, and/or the Governing Body, as specified above or this conditional use shall be considered null and void.

**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  
Thursday of April, 2009.

  
Carl Brewer, Mayor

ATTEST:  
  
Karen Sublett, City Clerk

Approved as to form:

  
Gary Rebenstorf, City Attorney

**STAFF REPORT**  
MAPC 3-5-09  
DAB III 3-4-09

CASE NUMBER: CON2009-00003

APPLICANT/OWNER: RRM Properties, LLC, RRM, LLC and Comejo & Sons, Inc.  
(applicants, owners and lessee); City of Wichita (owner - lessor)

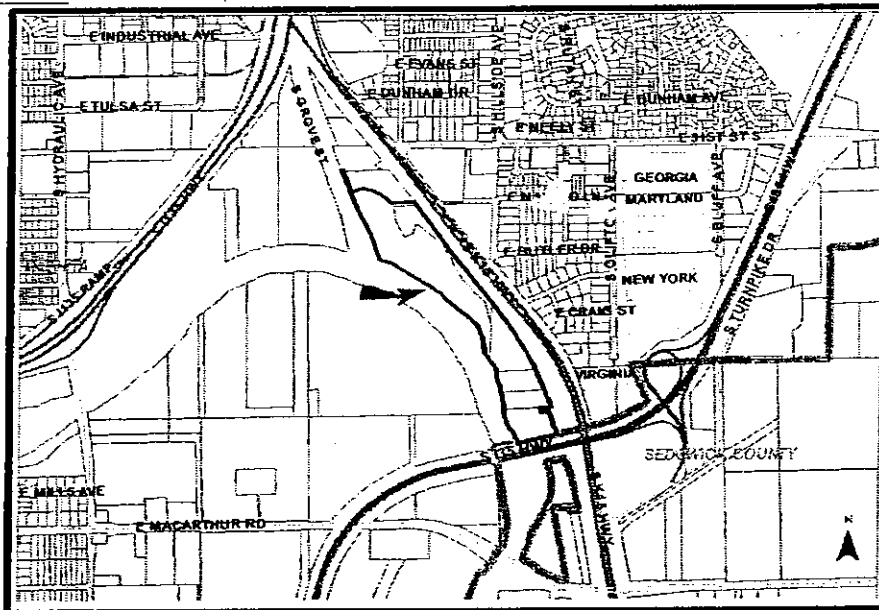
REQUEST: Conditional Use amendment to CU-425 (permits a construction and demolition landfill), as subsequently amended by CON2008-42, CON2005-01, CON2003-51 and CON2002-37, to increase the height of fill to NGVD29 elevation of 1362.

CURRENT ZONING: Limited Industrial ("LI")

SITE SIZE: 38.71 acres

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

PROPOSED USE: Construction and demolition landfill



**BACKGROUND:** In February of 1997, Conditional Use 425 (CU 425) was approved by the Metropolitan Area Planning Commission (MAPC) that allowed RRM, LLC to develop a construction and demolition (C&D) landfill on a tract of land that is located south of 31<sup>st</sup> Street South and west of Highway K-15. Ownership of the application area is divided between the City of Wichita, 17.46 acres, and the applicant who owns an abutting 19.18 acres. Combined the two ownerships make up the 38.71-acre C&D site, and the application area that is the subject of this request. Among the conditions of approval was a condition that established a maximum height of fill. The applicant is requesting an amendment to CU-425 (as amended previously by Conditional Use (CON) applications: CON2002-37, CON 2003-51, CON2005-01 and CON2008-42) to increase the allowed height of fill for the C&D landfill to an elevation of 1362 NGVD29 (National Geodetic Vertical Datum of 1929) on the northern end, and 1320 NGVD29 on the southern end. Condition H of both previously approved CON2003-51 and CON2005-01 limit the maximum height of C&D fill to no higher than five feet above the grade of railroad tracks at any cross section.

According to the applicant's engineer, the elevation of the land closest to the railroad tracks ranges from a low point of 1285 NGVD29 to a high of 1308 NGVD29. Since Condition H limits the height of the fill to no higher than five feet above the tracks at any cross section, the current maximum height of fill is limited to an elevation of 1290 NGVD29 on the north and 1313 NGVD29 on the south, plus the height of the railroad bed ballast, ties and tracks. The requested maximum height of 1362 NGVD29 on the northern end is 72 feet higher than currently permitted. The requested height of 1320 NGVD29 on the southern end is seven feet higher than currently permitted. The present highest height of the fill on the northern end was reported by the applicant on February 13, 2009, to be 1351 NGVD29, and the highest point on the southern end is 1307 NGVD 29.

The applicant's proposed profile has its highest point, 1362, on the northern end sloping down southward to the approximate center of the fill area, which is proposed to have an approximate elevation of 1306, then increases in elevation as one goes further south to the proposed southern high elevation of 1320 NGVD29.

The applicant is not requesting any change or additions in permitted use or extension of time for operation of the C&D landfill, just the increase in height of fill; however, the applicant's site plan proposes to leave an unfilled area in the northwest corner of the site that is labeled "proposed transfer station location." This application, CON2009-03, did not include a request for a transfer station. A separate application will have to be made for consideration of a transfer station, or CON2009-03 will have to be amended to include consideration of a transfer station at the same time the current application for an increase in height is being considered. Any action taken on CON2009-03, as currently filed, does not represent an approval or denial of a transfer station, and does not permit the applicant to install or operate such a use on the site.

Access to the site is by a driveway connected to Highway K-15. The property is zoned Limited Industrial ("LI") subject to development conditions contained in the previously mentioned conditional uses, and is located southwest of the intersection K-15 with 31<sup>st</sup> Street South, including the land between K-15 and the Arkansas River, from south of the terminus of 31<sup>st</sup>