



Wichita-Sedgwick County Metropolitan Area Planning Department

May 22, 2012

Chad G & Lori F Leonard
14230 W 70th Circle North
Colwich, KS, 67030-9651

REFERENCE: CON2012-00019 - Country Conditional Use for Mining & Quarring (soil extraction) on RR Rural Residential ("RR") zoned property; generally located on the south side of 47th Street South and east of 167th Street West. Legal Description: The E. 785.75' of the West 1,811.33' of the North 630.00' of the NW 1/4, EXC. Road R/W, Sec. 22-28-2W.

Dear Applicant:

At its regular meeting on **May 17, 2012**, the Wichita - Sedgwick County Metropolitan Area Planning Commission considered the above captioned request. The action of the MAPC was to **APPROVE** the request, subject to the following conditions:

1. The extraction operation on the site shall proceed in accordance with an operational plan 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. Excavation will be at a maximum depth, at a slope as reviewed and approved by all local, state and federal agencies, including the FAA or for 5 years, whichever comes first.
2. The excavation operation will have to abide by the rules and design set forth in the Federal Aviation Administration Advisory Circular 150/5300-33B "Hazardous Wildlife Attractants On or Near Airports" to prevent attracting any hazardous wildlife.
3. The operational plan shall illustrate which area is to be excavated and in what phase.
4. Uses after the conclusion of the extraction operation, shall be submitted to the Planning Director for review and a recommendation to the Planning Commission as to whether or

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not the development plan is compatible with surrounding land uses, the Comprehensive Plan or other plans or policies being utilized by the City or County.

5. As approved by the County Engineer, adjacent to the perimeter of the excavation area, a minimum 48-inch high, five strand barbwire fences shall be constructed prior to the beginning of any extraction operation and shall be maintained at the locations depicted on the approved operational plan. The posts shall not be set more than 50 feet apart. In reference to the site being in FEMA AH, AE, AO, A, Flood Zone, regarding concerns about obstruction.
6. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
7. The owner of the property shall be responsible for minimizing blowing dust from the site. To minimize blowing soil, overburden shall not be removed more than six months in advance of the excavation area being expanded, per the operational plan, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion. As part of the required operational plan, the site shall be divided into at least two distinct areas for the purpose of showing phased excavation over time.
8. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses that will permit the establishment of sod cover to help prevent erosion.
9. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to 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, or closer than 50 feet to any property line. The pond shall not extend into the setback established by 47th Street South, a section line road.
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.
13. Hours of operation for extraction shall be limited to 6:00 a.m. to sunset.

↑ NEED

REFERENCE: CON2012-00019 - Country Conditional Use for Mining & Quarring (soil extraction) on RR Rural Residential ("RR") zoned property; generally located on the south side of 47th Street South and east of 167th Street West.

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14. Any on-site storage of fuels or chemicals must be approved by the Sedgwick County Environmental Resources.
15. A drainage plan shall be submitted to and approved by County Public Works prior to starting the extraction operation. All of the area included in the extraction operation shall be graded in accordance with the approved drainage plan. The extraction area shall be developed so as to not become a wetland area.
16. 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.
17. All applicable local, state, and federal permits necessary for the extraction operation and for flood plain development shall be obtained and maintained.
18. If operations have not begun within one year of approval, the Conditional Use shall be null and void.
19. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

NOTICE: The public hearing on planning items is conducted by the MAPC under provisions of State Law. Adopted policy is that the County Commission will not take additional testimony on zoning related applications and other issues for which the MAPC has held a public hearing.

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 County Clerk within 14 days of the conclusion of the MAPC hearing, by **May 31, 2012, at 5 p.m.** 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 3/4 of its members.

If there are no valid appeals or protest petitions filed opposing this action by **May 31, 2012**, the action of the MAPC will be considered final. If appeals or protest petitions are filed, your application will be forwarded to the **June 20, 2012** County Commission meeting for review and final action.

This is a reminder that the zoning notification signs should now be removed from the property. If you have any questions concerning this application, please contact our office at 268-4421.

Sincerely,

REFERENCE: CON2012-00019 - Country Conditional Use for Mining & Quarring (soil extraction) on RR Rural Residential ("RR") zoned property; generally located on the south side of 47th Street South and east of 167th Street West.

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Bill Longnecker
Senior Planner

BL:mc

Copies to: STEINKE FARMS LLC, 15509 W 47TH ST S, CLEARWATER, KS, 67026-8511

Kenneth C Mattley Trust (Juliet An Mattley as Trustee), 145 N Rutland, Wichita, KS, 67206-2022

DOUGLAS A & TERESA BURNS, PO BOX 446, GODDARD, KS, 67052-0446

PATRICK F & LINDA MCCLURE, 15911 W 47TH S, CLEARWATER, KS, 67026-8541

JOHN E DUGAN FAMILY PARTNERSHIP LP 2416 MORNING DEW, WICHITA, KS, 67205-1302

JOHN W DUGAN, 15810 W 47TH ST S, CLEARWATER, KS, 67026-9046

Illinois Township, c/o Michael Dreiling, 3700 S 151st St., W, Goddard, KS, 67052

Karl Peterjohn, BoCC #3, County Mail Stop Rm 320

Bob Parnacott, County Law, County Mail Stop Rm 359

Jim Weber, County Public Works, 1144 S. Seneca, Wichita, KS, 67213

Bud Lett, County Code Enforcement, 1144 S. Seneca, Wichita, KS, 67213

CONDITIONAL USE RESOLUTION NO. CON2012-00019

WHEREAS, Chad G & Lori F Leonard (owners); pursuant to Section V-D of the Wichita-Sedgwick County Unified Zoning Code (herein referred to as Unified Zoning Code), requests a Conditional Use for Mining & Quarrying (soil extraction) on approximately 11.36-acres zoned RR Rural Residential ("RR"), described as:

The E. 785.75' of the West 1,811.33' of the North 630.00' of the NW 1/4, EXC. Road R/W, Sec. 22-28-2W, Sedgwick County, Kansas; generally located on the south side of 47th Street South and east of 167th Street West.

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 May 17, 2012, 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 allow a Conditional Use for Mining & Quarrying (soil extraction) on approximately 11.36-acres zoned RR Rural Residential ("RR"), described as:

The E. 785.75' of the West 1,811.33' of the North 630.00' of the NW 1/4, EXC. Road R/W, Sec. 22-28-2W, Sedgwick County, Kansas; generally located on the south side of 47th Street South and east of 167th Street West.

Approved subject to the following conditions:

1. 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. Excavation will be at a maximum depth, at a slope as reviewed and approved by all local, state and federal agencies, including the FAA or for 5 years, whichever comes first.
2. The excavation operation will have to abide by the rules and design set forth in the Federal Aviation Administration Advisory Circular 150/5300-33B "Hazardous Wildlife Attractants On or Near Airports" to prevent attracting any hazardous wildlife.
3. The operational plan shall illustrate which area is to be excavated and in what phase.
4. Uses after the conclusion of the extraction operation, shall be submitted to the Planning Director for review and a recommendation to the Planning Commission as to whether or not the development plan is compatible with surrounding land uses, the Comprehensive Plan or other plans or policies being utilized by the City or County.
5. As approved by the County Engineer, adjacent to the perimeter of the excavation area, a minimum 48-inch high, five strand barbwire fences shall be constructed prior to the beginning of any extraction operation and shall be maintained at the locations depicted on the approved operational plan. The posts shall not be set more than 50 feet apart. In reference to the site being in FEMA AH, AE, AO, A, Flood Zone, regarding concerns about obstruction.

6. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
7. The owner of the property shall be responsible for minimizing blowing dust from the site. To minimize blowing soil, overburden shall not be removed more than six months in advance of the excavation area being expanded, per the operational plan, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion. As part of the required operational plan, the site shall be divided into at least two distinct areas for the purpose of showing phased excavation over time.
8. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses that will permit the establishment of sod cover to help prevent erosion.
9. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to 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, or closer than 50 feet to any property line. The pond shall not extend into the setback established by 47th Street South, a section line road.
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.
13. Hours of operation for extraction shall be limited to 6:00 a.m. to sunset.
14. Any on-site storage of fuels or chemicals must be approved by the Sedgwick County Environmental Resources.
15. A drainage plan shall be submitted to and approved by County Public Works prior to starting the extraction operation. All of the area included in the extraction operation shall be graded in accordance with the approved drainage plan. The extraction area shall be developed so as to not become a wetland area.
16. 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.
17. All applicable local, state, and federal permits necessary for the extraction operation and for flood plain development shall be obtained and maintained.
18. If operations have not begun within one year of approval, the Conditional Use shall be null and void.
19. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

Adopted this 17th day of May 2012.

METROPOLITAN AREA PLANNING COMMISSION


Shawn Farney, Chair MAPC

ATTEST:

John L. Schlegel, Secretary

STAFF REPORT

MAPC May 17, 2012

CASE NUMBER: CON2012-00019

APPLICANT/AGENT: Chad and Lori Leonard (Owner)

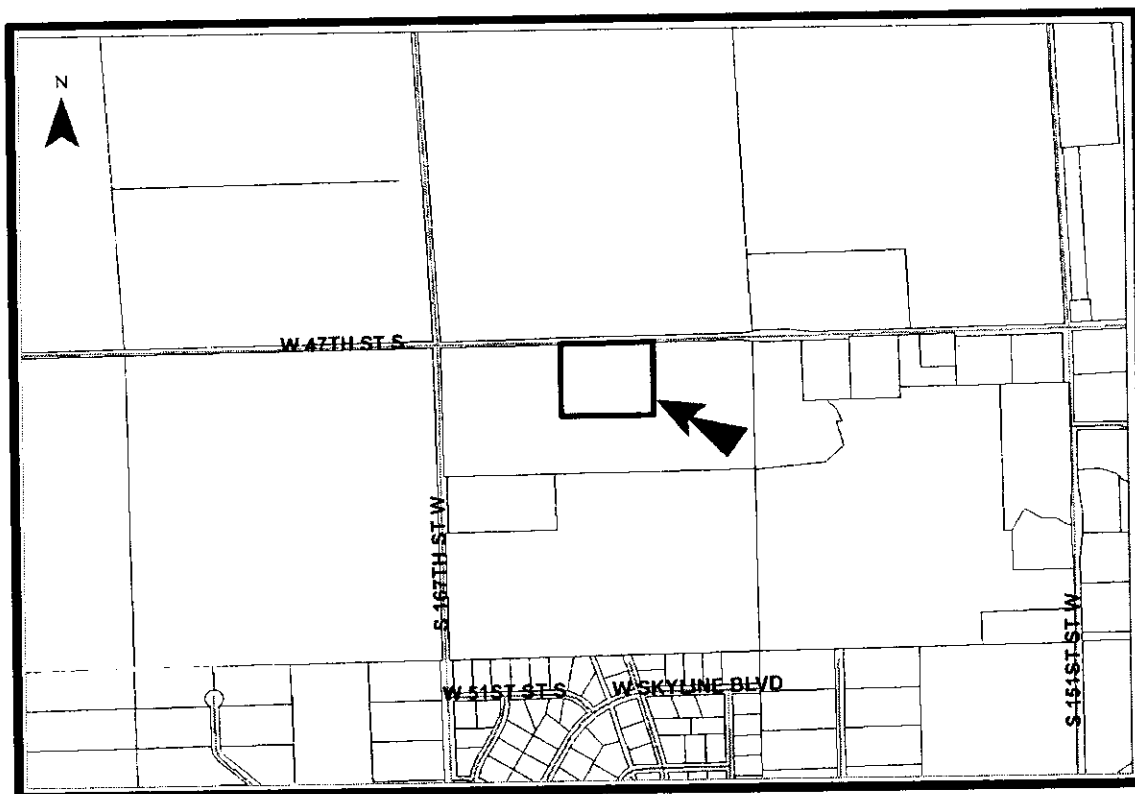
REQUEST: Conditional Use for mining/quarrying (soil extraction)

CURRENT ZONING: RR Rural Residential ("RR")

SITE SIZE: 11.36-acres with a 6.27-acre pond

LOCATION: Generally located on the south side of 47th Street
South and east of 167th Street West.

PROPOSED USE: Extraction of fill material



BACKGROUND: The applicants request a Conditional Use to allow "Mining and Quarrying" for the excavation of fill material on the RR Rural Residential ("RR") zoned site. The fill material will be used on construction projects. The applicants propose a 6.27-acre on the 11.36-acre RR zoned undeveloped tract. The 11.36-acre site is part of the applicants' 65-acre property located on the southeast corner of 47th Street South and 167th Street West. The pond is designed to retain water and will ultimately be developed with a future home site. The applicants intend to excavate to a maximum depth of approximately 15 feet on the east side and 20 feet on the west side or to excavate for 5-years, whichever comes first. Proposed access to the site is off of 47th Street South approximately 1,000 feet east of 167th Street West. Both 47th and 167th are sand and gravel section line roads. State Highway K-42, the nearest paved road, is located approximately ¾-mile southeast of the site.

As with any excavation, erosion and sediment run off is a possibility. The applicant will have to work with the responsible entities (USDA, KDHE, KDWP, etc.) to mitigate any negative impacts and to acquire the proper permits for the excavation operation.

The site is located on the outmost west edge of the 5-mile perimeter of the Hazardous Wildlife Attractions Overlay District of Wichita Mid-Continent Airport. If the site was located immediately to the west it would be outside the Overlay District. Staff has advised Mid-Continent Airport staff regarding the application. Planning staff expects to know the Airport's position prior to the MAPC meeting, in regards to compliance with the Federal Aviation Administration Office (FAA) Advisory Circulars AC150/5200-33B titled *Hazardous Wildlife Attractants on or near Airports*. Because the airport receives money from the federal government, it is required to comply with FAA regulations. The Airport staff is open to working with the applicants in dealing with this issue including design features such as steep slopes, use of rock and other design features to make the site uncomfortable for birds.

The RR zoned site is located in unincorporated Sedgwick County, surrounded by RR zoned agricultural lands, farmsteads and large tract single-family residences. The large lot (+/- one-acre) K-42 Estates subdivision is located approximately ½-mile south of the pond site. The site and much of the surrounding area is located within a FEMA AH, AE, AO, A, Flood Zone.

CASE HISTORY: The property is currently unplatted.

ADJACENT ZONING AND LAND USE:

NORTH:	RR	Agricultural land, farmstead
SOUTH:	RR	Agricultural land, large tract and large lot single-family subdivision
EAST:	RR	Agricultural land, large tract single-family residences
WEST:	RR	Agricultural land

PUBLIC SERVICES: The proposed access drive to the subject site is located along 47th Street South, a sand and gravel, section line, Illinois Township road. The existing half-width right of way on this section of 47th is 25 feet. There are no traffic counts for this stretch of 47th. The applicant is proposing one drive entrance off of 47th Street.

CONFORMANCE TO PLANS/POLICIES: The Comprehensive Plan identifies this property as Urban Development Mix and located within the Wichita 2030 Urban Growth Area. The urban development mix category encompasses areas of land that will likely be developed or redeveloped within the next 30 years with uses predominately found in the Urban Residential Use category. However, there is a strong likelihood that concentrations and pockets of Major Institutional Uses, Local Commercial Uses and Park and Open Space Uses will ultimately be developed within this area as well, based upon market driven location factors. In certain areas there is the possibility that future uses may include Regional Commercial and Employment/Industry Center. The Wichita 2030 Urban Growth Area is a category that identifies Wichita's urban fringe areas that are presently undeveloped but have the potential to be developed by 2030, based upon Wichita population growth projections and current market trends. This is the area in which City limits expansion and extension of municipal services and infrastructure are expected to be focused during the period from 2005 to 2030. Determination of growth direction and amount is based upon municipal political considerations, anticipated municipal population growth, efficient patterns of municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors. The site is also located just outside of the City of Goddard's Area of Zoning Influence.

The Unified Zoning Code lists "Mining or Quarrying" as a possible Conditional Use in the RR zoning district. 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. If the Planning Commission recommends modifications to one or more of the Unified Zoning Code conditions for the requested Conditional Use, the request will then be forwarded to the Governing Body for final action.

RECOMMENDATION: With the proper conditions in place, this proposal should not have a detrimental impact on the surrounding properties, as they are developed with agriculture, or well screened by existing natural vegetation. If any the possible public safety issues involved with the possible attraction of migrating birds and its vicinity near the airport and the consequences the airport and the City of Wichita may face if federal funding is affected by the proposal, staff recommends that the Conditional Use request be **APPROVED** with the following conditions:

1. 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. Excavation will be at a maximum depth, at a slope as reviewed and approved by all local, state and federal agencies, including the FAA or for 5 years, whichever comes first.
2. The excavation operation will have to abide by the rules and design set forth in the Federal Aviation Administration Advisory Circular 150/5300-33B "Hazardous Wildlife Attractants On or Near Airports" to prevent attracting any hazardous wildlife.
3. The operational plan shall illustrate which area is to be excavated and in what phase.

4. Uses after the conclusion of the extraction operation, shall be submitted to the Planning Director for review and a recommendation to the Planning Commission as to whether or not the development plan is compatible with surrounding land uses, the Comprehensive Plan or other plans or policies being utilized by the City or County.
5. As approved by the County Engineer, adjacent to the perimeter of the excavation area, a minimum 48-inch high, five strand barbwire fences shall be constructed prior to the beginning of any extraction operation and shall be maintained at the locations depicted on the approved operational plan. The posts shall not be set more than 50 feet apart.
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8. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses that will permit the establishment of sod cover to help prevent erosion.
9. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to 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, or closer than 50 feet to any property line. The pond shall not extend into the setback established by 47th Street South, a section line road.
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.
13. Hours of operation for extraction shall be limited to 6:00 a.m. to 6:00pm.
14. Any on-site storage of fuels or chemicals must be approved by the Sedgwick County Fire.

15. A drainage plan shall be submitted to and approved by County Public Works prior to starting the extraction operation. All of the area included in the extraction operation shall be graded in accordance with the approved drainage plan. The extraction area shall be developed so as to not become a wetland area.
16. 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.
17. 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 RR zoned area is located within unincorporated, rural Sedgwick County. Agricultural lands, farmsteads and large tract single-family residences are the most common uses of the area. The large lot (+/- one-acre) K-42 Estates subdivision is located approximately ½-mile south of the pond site. Most of the site and much of the surrounding area is located within a FEMA AH, AE, AO, A, Flood Zone.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site could be used for the uses permitted by its current zoning.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The site is located on the outmost west edge of the 5-mile perimeter of the Hazardous Wildlife Attractions Overlay District of Wichita Mid-Continent Airport. If the site was located immediately to the west it would be outside the Overlay District. There is the potential that federal funding for the airport could be affected by this request as the city is responsible for operating the runway in compliance with FAA regulations. The airport has stated that there are ways to design an excavation area that would help to mitigate the potential hazard, but at this time, the application is still being considered by Mid-Continent Airport. The recommended conditions of approval will mitigate anticipated impact.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The Comprehensive Plan identifies this property as Urban Development Mix within the Wichita 2030 Urban Growth Area. The urban development mix category encompasses areas of land that will likely be developed or redeveloped within the next 30 years with uses predominately found in the Urban Residential Use category. However, there is a strong likelihood that concentrations and pockets of Major Institutional Uses, Local Commercial Uses and Park and Open Space Uses will ultimately be developed within this area as well, based upon market driven location factors. In certain areas there is the possibility that future uses may include Regional Commercial and Employment/Industry Center. The Wichita 2030 Urban Growth Area is a category that identifies Wichita's urban fringe areas that are presently undeveloped but have the potential to be developed by 2030, based upon Wichita population growth projections and current market trends. This is the area in which City limits expansion and extension of

municipal services and infrastructure should be focused during the period from 2005 to 2030. Determination of growth direction and amount is based upon municipal political considerations, anticipated municipal population growth, efficient patterns of municipal growth, current infrastructure limitations, cost effective delivery of future municipal services and environmental factors.

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 47th Street South. Illinois Township maintains this section of 47th Street South.