

BOARD OF COUNTY COMMISSIONERS

AGENDA MEMO

July 18, 2022

FROM: Stephan Metzger, County Planner
BOCC MEETING DATE: July 18, 2022
SUBJECT: Conditional Use Request

BACKGROUND

Applicants: Hamm Companies

Property Owners: Martha Biesenthal Trust

Location: Two tracts located at the northwest corner of White Eagle Rd and Wheaton Rd

Tract Size: 350.7 acres

Request: The request is to allow a conditional use permit for a rock quarry

Current Zoning: A1-Agriculture. The A1 district is intended to conserve rural character and promote the preservation of productive agricultural land; contribute to the safe, convenient and efficient conduct of farming; support the social and economic convenience of the farm family; lessen the conflict between urban development and agriculture, and allow certain uses convenient to and appropriate for the agricultural community. This zone is an "exclusive use" district that does not impose regulations, except for FEMA Flood Plain provisions, building setbacks requirements, and sanitary regulations, on any building, structure or use that has an agricultural purpose as defined throughout the General Statutes of Kansas

Requested CUP: Rock quarries are large uses with potentially negative impacts and are thus not permitted by right in the A1 – Agriculture district. In addition to the usual factors to determine suitability, Planning Commission must review dust, noise, blasting, stormwater, and light mitigation efforts (*for a more detailed explanation see attached Staff Report*).

PUBLIC HEARING

The public hearing regarding the request was held before the Planning Commission on May 19, 2022 and June 09, 2022. A notice of the hearing was published in the Wamego *Times* and all property owners within 1000' of the boundary of the subject tract were notified of the hearing by mail. This consisted of 10 property owners, owning 14 properties. Of the 10 property owners notified, six were present at the public hearing on May 19, besides the applicant, in-person. One attended the meeting via Zoom. Many other interested persons were also in attendance for both meetings (*see attached map, public comment, and meeting minutes*).

After discussion, the Planning Commission by a vote of **6 in favor, 1 against** to recommend **denial** of the Conditional Use Permit.

RECOMMENDATION

Planning Staff recommended approval of the Conditional Use Permit in our Staff report. If the County Commission wishes to override the Planning Commission's recommendation of denial, Staff recommends that the **following conditions** be included:

1. The operator shall follow all items of the submitted Development Plan including, proposed dust mitigation, proposed noise mitigation, proposed stormwater runoff mitigation (including an approved Stormwater Pollution Prevention Plan), and proposed light mitigation.
2. Hours of operation shall be limited to 6.00am to 6.00pm Monday through Friday with occasional Saturdays, as needed.
3. As part of the Development Plan, the Applicant shall provide a dust control plan which describes the precautions and maintenance activities the Operator will undertake to prevent fugitive dust contamination from the site and on the designated haul route to the site, including spray bars and other dust control best management practices. The Operator will implement the dust control plan. The dust control plan may be modified by County if the existing dust control plan does not adequately address issues of dust control.
4. A pre-excavation seismology study shall be conducted at the property boundaries and at any residence within 1,000 feet that requests it prior to the commencement of quarrying operations. Notice of this study shall be mailed to all property owners within 1,000 feet of the proposed quarry. Further a copy of the study shall be provided to the Office of Planning and Zoning to be maintained in the file and a copy shall also be maintained on site.
5. The operator shall adhere to the following blasting requirements:
 - a. Blasting shall only be set in sequential delays
 - b. No blasting shall occur before 8.00AM or after 4.00PM
 - c. No fly rock shall leave the property
 - d. A signaling system shall be used to alert people in the neighboring vicinity
 - e. No explosives will be set in the ground overnight unguarded
 - f. The Operator shall obtain the timing and locations of bus routes adjacent to the quarry site. Blasting shall not occur fifteen minutes prior to or following the presence of a school bus, on an official route, adjacent to the quarry site
6. The operator shall adhere to the development and reclamation proposals submitted as part of this application and that no more than 40 acres shall be open, mined, and extracted at any one time on the quarry site, exclusive of the proposed staging area in Sheets 2 and 3 of Hamm Companies' application.
7. The mining area shall be fenced or bermed, and the operator shall maintain the fencing or berms
8. All loads shall be covered when leaving the site, and Operator is responsible for spillage and cleanup of aggregate within one mile of the plant site
9. The following setbacks shall be adhered to:
 - a. 100 feet from non-applicant property lines
 - b. 100 feet along Wheaton Rd
 - c. 50 feet from all other public rights-of-way
 - d. 1,000 feet from all non-participating dwellings, unless written agreement is obtained by the operator
10. The County and operator enter into a road maintenance agreement that addresses the following:
 - a. Designation of an entrance onto Wheaton Rd, entrance shall meet County site distance requirements
 - b. Designation of haul routes
 - c. Future maintenance of Wheaton Rd and other County roads designated as haul routes. Operator's obligations to the future maintenance of County roads shall be commensurate with their impact.
11. A reclamation bond, letter of credit, surety bond, or other approved financial assurance, shall be provided. The amount of which shall be established based on

engineering or contractor estimates for reclamation of the mined area, or area proposed to be mined, as shown on the submitted reclamation proposals as part of this application.

12. Design of all stormwater ponds shall be reviewed and approved by County Engineer prior to construction, and operator shall provide documentation of all sediment removal from said ponds, if necessary. The design of the stormwater detention ponds shall address, at minimum, a 25-year storm event, however, if the County Engineer believes an additional protection from heavier storm events is necessary, Operator shall comply with the County Engineer's requirements
13. Copies of all KDHE inspection reports shall be submitted to the County by the operator upon receipt
14. The site shall not be utilized, temporarily or permanently, by the Operator as a landfill or for the disposal of commercial, household, or hazardous waste materials
15. The conditional use permit shall be subject to review by Planning Commission every five (5) years following the initial issuance of the Conditional Use Permit. The review shall not be considered a new application. The Planning Commission may consider compliance by the Operator with the provisions of the CUP and compliance by the Operator with any local, state, or federal regulations, including KDHE regulations during their review. Planning Commission may recommend to County Commission that a formal hearing be conducted to rescind the CUP if found to be deficient in any of the areas above.
16. County Staff may enter the site and inspect the premises, as needed. However, an inspection shall occur not less than once every three months. Inspections shall evaluate compliance with the conditions imposed with the permit. If the operation is found to be in violation, the permit may be rescinded according the provisions of Article 10.4 of the Unified Development Regulations. Written notice detailing violations and corrective measures to the Operator shall be provided 60 days in advance of a public hearing.
17. The Operator will comply with all KDHE requirements and recommendations for the operation of a rock quarry. Where CUP conditions are more restrictive than KDHE regulations or requirements, the more restrictive CUP conditions will control
18. Inoperable motor vehicles or construction equipment shall not be openly stored on site, nor shall they be allowed to stand within the mining areas or stockpile areas.

PROTEST PETITION

Rock quarries and other uses associated with the Kansas Surface Mining and Reclamation Act may not be approved by more than a simple majority of the Governing Body (KSA 12-757a), as such, a protest petition has no effect on the voting requirements of the County Commission.

ACTIONS

It appears the Board of County Commissioners has the following options concerning action on the requests,

1. Deny the Conditional Use Permit as recommended by the Planning Commission.
2. Override Planning Commission's recommendation for stated reasons and approve the conditional use permit with conditions
3. Override Planning Commission's recommendation for stated reasons and approve the conditional use permit without conditions
4. Send the request back to Planning Commission with a request for additional findings on specific issues.

A motion is needed for any of the proposed actions.

Links to Materials

- [Locator Map](#)
- [Area Map showing notified property owners](#)
- [Staff Report from the public hearing](#)
- [Application Materials](#)
- [Meeting Minutes from May 19](#)
- [Meeting Minutes from June 09](#)
- [Received Public Comment](#)