

February 8, 2010

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RECEIVED

FEB 16 2010

City County Planning Office  
Lawrence, Kansas

RE: Intolerable junkyard activities in our neighborhood

Dear Mayor Chestnut:

On January 27, the 12<sup>th</sup> & Haskell Bargain & Recycling Center's junkyard had another fire, the seventh documented fire on their property in the last five and a half years, with six of those fires involving vehicles. This last fire produced flames approximately 20 feet high and involved six vehicles. It may be a safe assumption that the recurring fires are due to continued negligent, careless, and possibly illegal handling of automobile fluids. This fire engulfed our neighborhood in toxic smoke that penetrated our homes.

The recurring fires are one of many nuisances the Bargain Center inflicts on its neighbors. The activities of the junkyard have been intolerable to its neighbors for many years. The junkyard is across the street from what would be, and used to be, a quiet residential area, with children and many long-term residents. It is time for the City of Lawrence to thoroughly review the activities of the 12<sup>th</sup> & Haskell Bargain & Recycling Center and take immediate action to remedy the situation.

The main issues affecting our neighborhood are as follows:

- 1) The 12<sup>th</sup> & Haskell Bargain Center junkyard produces a nearly constant loud noise of motorized industrial equipment associated with unloading, loading, moving, crushing and processing of material. The junkyard's activity consistently violates ordinance 14-414A, Disturbing the Peace which states: "*It shall be unlawful for any person to make, continue, maintain or cause to be made or continue any excessive, unreasonable or unusually loud noise which disturbs, injures, endangers the repose, health, peace or safety of other people of ordinary sensitivity within the vicinity of the noise.*" The equipment noise is accented with tremendous crashing sounds of metal being dropped into transport containers, which shakes my house and others in the immediate vicinity. These aggravating noises penetrate the neighborhood throughout the week and sometimes early in the morning, into the evening hours, and during the weekend. The loud dumping of glass from private recyclers extends very late into the evening hours. In addition, an outdoor speaker used for communication with vehicles on the scales adds to the unwelcome noises heard throughout the day.
- 2) The facility is an eyesore which violates several city codes related to litter and fencing, such as: 14-119 Owner to Maintain Premises Free of Litter. "*The owner or person in control of any private property shall at all times maintain the premises free of litter. This Section shall not prohibit the storage of litter in authorized private receptacles for collection. (Code 1979, 14-119)*" There is a constant supply of trash in the ditches around this business and when the trash is picked up by neighbors, it quickly reappears. Bags float around the neighborhood and up into our trees. Trash also blows into the new rail to trail project area. Material is frequently stacked above the privacy fence. The fence itself has been damaged by their activities and looks unsightly. Junk stacked in the yard is almost always very visible since it extends above fence level.
- 3) Gasoline, oil and solvent odors are frequent and sometimes are quite potent depending on the direction of the wind. We are concerned about the negative impact to our air quality and our health from the toxic-smelling odors and the diesel exhaust from the near-constant use of the loaders and other equipment. 9-201 Nuisances Defined; Prohibited. "*It shall be unlawful for any person to permit, cause, keep or maintain any nuisance, or cause to be committed, caused, kept or maintained any nuisance within the City. Anything dangerous to human health, or anything that renders the ground, the water, the air or food hazardous or injurious to human health is hereby deemed and declared to be a nuisance. (Code 1979, 9-201)*"
- 4) The junkyard is located in the 100-year flood plain, and we are concerned that the years--since they opened--of accumulated motor oil and other toxic car fluids, such as brake fluid, antifreeze and gasoline,

may be adversely affecting ground water and surface runoff. Streams run on two sides of the junkyard property, which empty into the Kansas River. See the attached city codes 20-1204 (e)(viii) regarding storage of material in the floodplain and requirements to keep materials "readily removable."

5) The amount of material stored in the junkyard has gradually increased over time. The number of junk vehicles has varied tremendously, and is currently around 70. The junkyard includes a very large pile of scrap in the middle, a section for aluminum scrap, miscellaneous materials scattered throughout, palletized storage of compacted metal, and uncovered recycling drop off receptacles. Note in Article 15 of the current Development Code (20-1502 (b)(1,3)) that states the nonconforming use may not be changed or expanded unless it reduces the nonconforming aspects of the situation-- which means that the junkyard is only allowed to become more like a residential use, and less intensely an industrial use.

6) This facility is contributing to the propagation of pests in the neighborhood. The trapped rain water in the vast quantities of scrap material in the yard is no doubt adding to the increased number of mosquitoes. The facility also has, at times, piled plastic bags and bottles up against the building—approximately 6 feet high—which may harbor vermin. These nuisances are a public health threat and prevent us from enjoying our property in peace.

7) The junkyard business has brought a dramatic increase in vehicle traffic in the neighborhood. Large trucks and other vehicles drop off and pick up material throughout the day and travel down local residential roads - adding to the noise, localized exhaust pollution, and damage to roads not designed for heavy truck use. Twelfth St. just east of Haskell sometimes gets very congested with cars parking on both sides of the street, blocking traffic flow. The vehicles also drag a lot of mud from the yard out onto the street, and several neighbors have reported flat tires due to littered scrap objects on 12<sup>th</sup> street adjacent to the junkyard. One of the ordinances violated is 14-108 Truck Loads Causing Litter. "... Nor shall any person drive or move any vehicle or truck within the City, the wheels or tires of which carry onto or deposit in any street, alley or other public place, mud, dirt, sticky substances, litter or foreign matter of any kind." Trucks have trenched our yards when they have backed up onto Almira Avenue to turn around.

8) We are very concerned about the frequency of toxic fires so close to our residential neighborhood. Here is a history of the fires on the property:

06-28-2004 - explosion, vehicle fire and smoke  
01-25-2006 - large vehicle fire, nasty black plume of smoke  
10-27-2006 - vehicle fire  
01-04-2007 - vehicle fire  
04-26-2007 - vehicle fire  
01-02-2009 - small trash fire  
01-27-2009 - a fire involving six vehicles, toxic smoke engulfs neighborhood

The information above is documented by photographs, written documentation, public records and testimony from neighbors. The items mentioned above are just the highlights of an extensive list of problems, not including issues from the first two years of operation.

Here is a brief history of the property use over the years. Prior to 1951, the current site of the 12<sup>th</sup> & Haskell Bargain & Recycling Center was farmland. From 1951 through 1993 the Ray family operated Ray's Garage & Auto Salvage (*Used, Rebuilt, New Parts, Buy & Sell American Wrecked Cars, Auto Repair & Installation*). Based on an interview with a 54-year resident of the neighborhood, the old car salvage operation was quiet, the cars were parked in rows neatly below fence level, and there were no traffic issues. Aerial photographs confirm tidiness of the site. The Ray family salvage yard ceased operations in 1993 and from 1993 through 2003 the property was rented out to auto repair businesses (Bill & Wayne's Car Care, Mikes Auto Service, Harris Auto Repair, and Pearson Frame & Alignment) and to a towing company (Quality Tow Service). None of these business conducted any salvage-related business. Quality Tow Service arrived in 1997. They impounded vehicles that were abandoned or illegally parked. Unclaimed vehicles were auctioned off about three or four times a year and no salvage activities took place.

An aerial photo from 2000 shows that the yard was nearly empty, indicating that the towing company which used the majority of the property, was winding down their activities. The property was sold in late 2003 to Bo Killough and the 12<sup>th</sup> & Haskell Bargain & Recycling Center slowly started building their junkyard operation. Aerial photographs verify the dramatically different nature of the historical use of the property, compared to the current use.

Junkyards and salvage yards are required to operate in Intensive Industrial zones, away from schools and neighborhoods; however, the 12<sup>th</sup> & Haskell Bargain & Recycling Center property has residential zoning, and operates with a non-conforming use obtained by the previous owners. In 2006, Sheila Stogsdill explained that the non-conforming use permit allows the junkyard to bypass review by the Planning Commission and the City Commission, and that they are not required to get a Use Permitted Upon Review (UPR). The 12<sup>th</sup> & Haskell Bargain & Recycling Center does not have a Special Use Permit (SUP) either.

When the 12<sup>th</sup> & Haskell Bargain & Recycling Center was contemplating purchasing the property and requested the continued non-conforming use, the statement issued by Mr. Killough's attorney in a letter dated June 19, 2003 represented the future activities of the business as follows: *"Bo is in the business of purchasing returned or rejected housewares and outdoor appliances and furniture from distributors and salvaging such items to reassemble and sell. The business is a clean salvage and sales operation. It is anticipated that there will be limited palletized outdoor storage of materials, and that most of the assembly work will be conducted within the structure on the site. It is anticipated that the business hours will be 8:00 a.m. to 6:00 p.m. seven days a week with limited evening hours."*

In a letter dated August 5, 2003, Linda Finger, Director of City/County Planning, approved the non-conforming use: *"The information indicates that the property has been utilized continuously for various industrial/commercial purposes including both wholesale and retail sales since 1951....The uses proposed by Bo Killough for the property which include salvage, assembly and sales of housewares, outdoor appliances and furniture and similar in nature to the previous salvage and sales operation."*

The 12<sup>th</sup> & Haskell Bargain & Recycling Center's damaging activities have clearly expanded beyond the permitted non-conforming use, escalating to a condition intolerable to its residential neighbors. The prior use of this property did not include extensive non-vehicular scrap, and did not approach the current extent of outdoor scattered unpalletized material. The old code in place at the time the property changed hands states the following: 20-1302 Limitations on Non-Conforming Uses. (a) *No non-conforming building, structure, or use of land shall be changed, extended, enlarged, or structurally altered unless:* (see the specific section for the list of exceptions). There was in fact a 10 year period from 1993 through 2003 when there were no scrap and/or salvage activities taking place on the property. Section 20-1304b from the ordinance in place at the time of the approval of the non-conforming use states: *"A lawful non-conforming use of a building, structure, or land that has been voluntarily discontinued for a period of six calendar months shall not thereafter be resumed. (Code 1979, 20-1003; Ord. 5034)"* This ten year period of no salvage activity should have discontinued the non-conforming use status.

The peace, quiet and scenic character of this neighborhood has been violated. Allowing this nuisance to continue will bring continued harm to our neighborhood. Landowners will experience decreased market values, and renting properties will become difficult if not already challenging. "Who wants to live next to a 'dump'," as one neighbor succinctly described the abject situation. An attempt to open a junkyard adjacent to any neighborhood in this city would be immediately halted due outrage from residents regardless of whether or not city codes barred such activities.

Neighborhood Resources was asked to address issues at the 12<sup>th</sup> and Haskell Bargain & Recycling Center in February 2006. They only addressed some minor issues that were not relevant to curtailing the larger continuing nuisance to the neighborhood.

Salvage yards and recycling facilities are a very necessary component of our community. There must be facilities in our community for recycling our materials. It is however, also important to have a cleanly run business, located in a proper zone that does not damage the community in the process.

We suggest these options for a satisfactory resolution to this situation:

- 1) The junkyard activities need to cease immediately in order to bring the facility in compliance with the terms of its non-conforming use. This aspect of the business needs to end permanently on this property.
- 2) The City of Lawrence should consider assisting the owner to relocate to a proper intensive industrial zoned location.
- 3) A thorough evaluation of the environmental damage to the property, including soil and water contamination, should be initiated.
- 4) The environmental damage should be remediated. This should include the removal of all of the junk, cars, metal scrap, and material mixed in the soil (metal, rubber, plastic, etc). The contaminated soil should

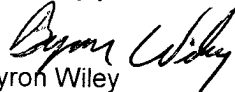
be removed and replaced.

5) If the owner does open a salvage yard on a properly zoned property, a system of monitoring must be in place with regular evaluation to minimize soil, water and air contamination, and violations of city codes, state statutes, and other environmental and nuisance laws.

6) The zoning of the property currently containing the junk yard should be brought up to date, eliminating all future non-conforming use permits and future industrial uses. This property is in a flood plain, which limits its use for future development. Use as a plant nursery, park or future agriculture uses are some ideas.

7) The business building at the corner of 12<sup>th</sup> and Haskell should be rezoned, bringing it up to date for proper light business activity zoning. Zoning and activities for this site should be appropriate for a facility operating adjacent to a neighborhood.




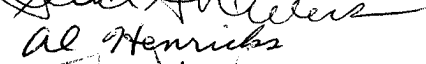

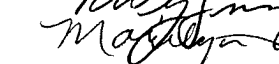

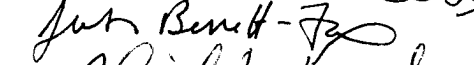

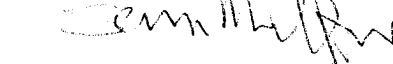
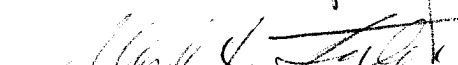
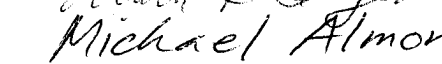


Sincerely yours,

  
Byron Wiley

Attachments:


- 1) List of pertinent city codes pertinent to the situation
- 2) Aerial photos

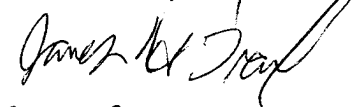
cc: Mike Amyx  
Aron Cromwell  
Lance Johnson  
Michael Dever  
David Corliss  
Scott McCullough  
Mark Bradford  
Charles Soules  
Rod Bremby

Patti Beedles	1208 Almira	
Kirk Rhorer	1208 Almira	
Andrea Repinsky	1222 Almira	
Staci Ahlvers	1226 Almira	
Al Henricks	1229 Almira	
Sarah Abel	1244 Laura Ave	
Russell Wiggins	1223 LAURA AVE.	
Marilyn Wiggins	1223 LAURA AVE	
Rebecca Barrett-Fox	1215 Laura Ave	
Jason Barrett-Fox	1215 Laura Ave	
Phil Wood	1202 Laura Ave	
Sam Muffwing	1201 Brook	
Mark Taylor	1305 Prairie	
Michael Almon	1311 Prairie	
Patricia A. Miller	1223 Almira	

We the undersigned, support the effort for the City of Lawrence to take action outlined in the letter addressing the "Intolerable junkyard activities in our neighborhood."

Cecelia Mora 1229 Almira Ave Lawrence, KS Cecelia Mora

KURT MANGOLD 1140 E 13<sup>th</sup> ST LAWRENCE KS 

James Traul 1228 Laura Ave Lawrence KS 

Wendy Traul 1228 Laura Ave

~~Teresa Schwartz~~ 1222 Laura Ave

~~Leo F. Schwartz~~ 1222 Lawrence Ave

Julie Mitchell 1231 Brook Street

GARY MEYER 1227 Brook St.

Mary Meyer 1227 Brook St.

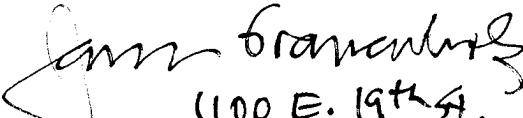
Jeffrey Meyer 1227 Brook St.

Daniel P. Poul 821 Ohio

SIMRAN SETHI 1333 NY

Julian Kuelher 1200 Almira St.

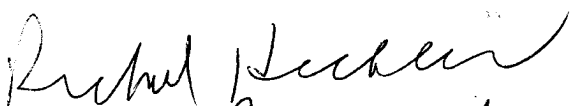
~~Debra Miller~~ 1235 Prairie Ave.

 JAMES GRAUERHOLZ  
1100 E. 19<sup>th</sup> St.

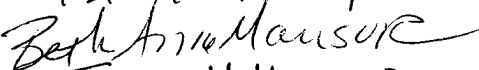
#

Robert and Mary Taylor

1403 Haskell Ave #3

 - Richard Hecker


1217 Prospect Ave - Beth Anne Mansur



Tim von Holten } 1216 Prospect Ave.

Leslie von Holten }

Jill Jevens 1301 Prospect Ave

 Susan Miller 1235 Prairie Ave.

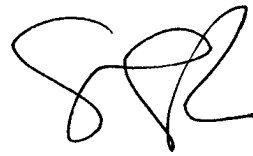
Wendy Traul

TERESA SCHWARTZ

LEO F. SCHWARTZ

Julie Mitchell

Julie Bonhart



We the undersigned, support the effort for the City of Lawrence to take action outlined in the letter addressing the "Intolerable junkyard activities in our neighborhood."

NATHAN JEFFRIES

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*Nathan Jeffries*

RACHEL JEFFRIES

1224 PRAIRIE AVE, LAWRENCE, KS

*Rachel Jeffries*

John Grob

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*John Grob*

Matt Cramer

1225 Prairie Ave

*Matt Cramer*

Amanda Grooms

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1239 prairie ave Lawrence KS

*Edward Morehouse*

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1247 prairie ave Lawrence KS

*Wayne Kennedy*

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Lawrence KS

*Castel Hyatt*

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1210 E 13th

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BETSY MADL

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1211 Almiria

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*Jonathan Bunch*

Timothy Piller

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*Timothy Piller*