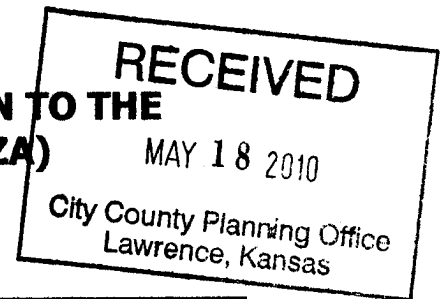




**APPLICATION FOR
APPEAL OF ADMINISTRATIVE DECISION TO THE
BOARD OF ZONING APPEALS (BZA)**



OWNER INFORMATION (if relevant)

Name(s) _____
Contact _____
Address _____
City _____ State _____ ZIP _____
Phone (____) _____ Fax (____) _____
E-mail _____ Mobile/Pager (____) _____

APPLICANT/AGENT INFORMATION

Contact Byron Wiley
Company _____
Address 1200 Almira
City Lawrence State KS ZIP 66044
Phone (785) 841-2829 Fax (____) _____
E-mail bwiley@shcglobal.net Mobile/Pager (____) _____
Pre-Application Meeting Date _____ Planner _____

PROPERTY INFORMATION (if relevant)

Present Zoning District RS10 Present Land Use non conforming use
Proposed Land Use see attached letter
Legal Description (*may be attached*) _____
Address of Property 1146 Haskell
Total Site Area approximately 7.5 acres
Number and Description of Existing Improvements or Structures _____



Please indicate the reason for appeal:

(Alternatively, attach a letter to the Planning Director.)

See attached letter to the Director of Planning dated 5-12-2010

SIGNATURE

I/We, the undersigned am/are the **(owner(s))**, **(duly authorized agent)**, **(circle one if relevant)** of the aforementioned property.

By execution of my/our signature, I/we do hereby officially apply for an appeal to the Board of Zoning Appeals as indicated above.

Signature(s): *Bryan Wiley* Date 5-17-2010
Michael Almon Date 18 May 2010
Ann M. Eckenholz Date 18 May 2010

STAFF USE ONLY

Application No. _____
Date Received _____
BZA Date _____
Fee \$ _____



PROPERTY OWNERSHIP LIST CERTIFICATION

As required by Article 13, Section 20-1301(q) of the Development Code, the applicant is responsible for providing certified Ownership information (including names and mailing addresses) of all real property owners within a defined radius from the subject property. The Planning Department is required by the Development Code to use the submitted Ownership list to mail notice of the public hearing to surrounding property owners regarding this Application.

Ownership Information

The applicant is responsible for providing certified Ownership information. Current Ownership information shall be obtained from the Douglas County Clerk. Ownership information will be considered current if it is **no more than 30 days old** at the time an application is submitted to the Planning Department.

Radius of Notification

The Ownership list shall include the record Owner of the subject property and all Owners of property located within 200 feet of the subject property. If the subject property is adjacent to the City limits the area of notification shall be extended to at least 1,000 feet into the unincorporated area.

THE FOLLOWING IS TO BE COMPLETED AND SUBMITTED BY THE APPLICANT.

I certify that I have read and understood the above information and that the submitted Ownership list:

- (a) was obtained from and certified by the Douglas County Clerk,
- (b) is current (**no more than 30 days old**), and
- (c) includes all property owners within the required notification radius of the subject property.

Byron Wiley
Signature

5-18-2010
Date

Byron Wiley
Printed Name

1146 Haskell - Legal Information:

32-12-20 COM AT NW COR SW 1/4 SD SEC TH S89DEG49'43"E ON N LINE
SW 1/4 SD SEC 40 FT TH S 0DEGE ON E R/W LINE HASKELL AVE 769.83
FT FOR PT BEG: TH N49DEG13'20"E ON N EDGE EXISTING RETAINING
WALL 71.23 FT TO NE COR OF EXISTING RETAINING WALL TH
N40DEG09'35"E 64.57 FT TH N51DEG52'59"E 129.77 FT TH N57DEG01'E
84.74 FT TH N76DEG28'20"E 146.79 FT TH S87DEG56'50"E 95.81 FT TH
S89DEG16'47"E 194.15 FT TH N79DEG48'03"E 129.77 FT TH
N65DEG54'53"E 91.49 FT TH S0DEG00'37"W 397.32 FT TO N R/W LINE
12TH ST TH S89DEG57'16"W ON N R/W LINE 12TH ST 912.55 FT TO E R/W
LINE HASKELL AVE TH N 0DEGE ON E R/W LINE HASKELL AVE 87.17
FT TO PT BEG 6.353A (DIV 2003 U13467)

May 18, 2010

Director of Planning
Scott McCullough
6 East 6th Street
Lawrence, KS 66044

RE: Notice of Violation – 12th & Haskell Recycle Center dated 05-04-2010

We appreciate the time and attention that you have given to this issue as is evidenced by the Notice of Violation letter dated 05-04-2010. We are satisfied with the general scope and recommended actions outlined within that letter. The majority of the nuisance issues are a result of the operation of the junkyard/salvage yard operation and that is what needs to be discontinued.

There are three issues that we believe are not adequately addressed in the Notice of Violation letter dated 05-04-2010.

- 1) Revocation of the non-conforming use permit
 - 2) Option of rezoning of the property
 - 3) Concerns with the recycling aspect of the business.
 - 4) Request that any Site Plan Review for recycling be discussed in a public hearing.
- Pursuant to Section 20-1311 (Appeals of Administrative Decisions), these four issues are outlined below.

In regards to the history of the property, the letter dated 05-04-2010 from the city indicates that “the majority of the property did not have exterior salvage storage from 2000 to 2003.” Our research indicates that there was almost a 10 year gap from 1993 through 2003 in which there was no exterior salvage storage. Rays Garage & Auto Salvage closed in 1993 and none of the businesses occupying the property after that date had any exterior salvage storage on the property.

Pursuant to 20-1304b (old code), the non-conforming use should have been retired and brought up to date, eliminating all future non-conforming use permits and industrial uses. Section 20-1605 (Remedies and Enforcement Powers) states the following: *Any permit or other form of authorization required under this Development Code may be revoked by the Director of Neighborhood Resources or by any City Official with authority to issue such permit when the Director of Neighborhood Resources or other City official determines: (1) that there is a departure from the plans, specifications, or conditions as required under the terms of the permit, (2) that the development permit was procured by false representation or was issued by mistake, or (3) that any of the provisions of this Development Code are being violated.* We believe that this determination should have been made.

We believe that the buildings on the west end of the property could be rezoned for light commercial activity, appropriate for a facility operating adjacent to a neighborhood. The most intensive activity allowed should be on the level of light automotive repair or retail. As addressed in the Notice of Violation letter dated 05-04-2010, section 20-1502(D) states that “the nonconforming commercial or industrial open use of land shall be

discontinued.” It is our assumption that this part of the site would revert back to its historical residential zoning.

A separate issue regarding the recycling center activities was not addressed in the letter dated 05-04-2010. Based on the information that we have gathered and feedback from our interactions with the Planning office, it appears that the recycling center aspect of the Bargain Center’s business was never approved. The intention of operating a recycling center was never mentioned by Bo Killoughs’s attorney in the 2003 “letter of intended use” and was not mentioned in the non-conforming use permit signed by Linda Finger. There has never been a recycling center on this property prior to the Bargain Center’s operation.

The old code (20-1450) governing recycling centers at the time the Bargain Center started its recycling activities states that *(a) Permits required: No person shall permit the placement, construction or operation of any recycling facility without first obtaining an approval of a site plan or Use Permitted upon Review (UPR) pursuant to the provisions set forth in this Section.*

Specific criteria related to the granting of a use permit are listed both under the sections for a “Large Collection Facility” and for a “Processing Facility.” The Bargain Center is currently a large recycling center and also processes material by crushing and packaging it.

Here are some of the specific “old” code issues that are of particular interest and need to be addressed in regards to the permitting of a recycling center on this property.

20-1450 (3) *(Large Collection Facility section)*

- (a) Does not abut a property zoned or used for residential purposes*
- (2) Shall be at least 150 feet from property zoned or used for residential purposes;*
- (c) Shall meet all applicable noise standards in the City Code;*
- (e) Shall provide all exterior storage of material in sturdy containers or enclosures which are covered, secured, and maintained in good condition, or shall be baled or on pallets. Storage containers for combustible material shall be constructed of non-flammable material. Oil storage approved by the City Sanitation Official shall be in containers. No storage, excluding truck trailers and overseas containers, shall be visible above the height of the fencing;*
- (f) Shall be cleaned of loose debris on a daily basis and the site shall be maintained free of litter and any other undesirable materials;*
- (g) Shall provide space on site, in anticipation of peak load of customers, to provide for vehicular circulation, parking and the deposit of recyclable materials. If the facility is open to the public, space shall be provided for a minimum of ten (10) customers or the peak load, whichever is higher, unless the planning office determines that allowing overflow traffic is compatible with surrounding businesses and public safety;*
- (i) Shall be operated in compliance with the City of Lawrence Noise Ordinance No. 6088;*

(j) Shall not be in operation between 8:00 PM and 7:00 AM if the facility (permanent building structure) is located within 500 feet of property zoned, used or occupied for residential purposes;

20-1450 (4) (Processing Facility section)

(a) Facility shall not abut a property zoned or used for residential purposes;

(b) The processing facility shall operate in a wholly enclosed building; or,

(1) Within an area enclosed on all sides by an opaque fence or wall not less than eight (8) feet in height and landscaped on all street frontages; and

(2) Located at least 150 feet from property zoned or used for residential purposes.

(g) All exterior storage of material shall be in sturdy containers or enclosures which are covered, secured, and maintained in good condition, or shall be baled or on pallets.

Storage containers of combustible material shall be constructed of nonflammable material. Oil storage must be in containers approved by the local fire and health officials. No storage, excluding truck trailers and overseas containers, necessary to the processing operation, shall be visible above the height of the fencing. Overseas containers shall not be stacked;

(h) Site shall be maintained free of litter and any other undesirable materials, and will be cleaned of loose debris on a daily basis and will be secured from unauthorized entry and removal of materials when attendants are not present;

(i) Space shall be provided on site for the anticipated peak load of customers to circulate, park and deposit recyclable material. If the facility is open to the public, space will be provided for a minimum of (10) customers or the peak load, which ever is higher, except where the planning office determines that allowing over flow traffic is compatible with surrounding business and public safety;

(l) If the facility is located within 500 feet of property zoned or planned for residential use, it shall not be in operation between 8:00 PM and 7:00 AM. The facility shall be administered by on-site personnel during the hours the facility is open;

(p) No dust, fumes, smoke, vibration or odor above ambient level may be detectable on neighboring properties;

The current code that regulates recycling centers is addressed under section 20-540 (Small and Large Collection Recycling Facilities). In this section it is clear that a site plan must be submitted and approved by the Planning Director. Our concerns about this process are listed below.

According to Section 20-402 (new code), the Residential District Use Table indicates that recycling centers (large collection, small collection and processing centers) in the residential district are not allowed.

According to Section 20-403 (new code), the Non-residential District Use Table indicates that large collection recycling facilities are allowed in the following commercial classifications: CC, CR, CS, IL, and IG

Small collection recycling facilities are allowed in all commercial zoning with the exception of OS zoning.

Recycling processing centers are only allowed in IL and IG zoning.

Our primary concern with the recycling aspect of the business (a separate issue from the salvage and scrap activities) are as follows:

- 1) Noise from the nearly continuous use of skid loaders near the 12th St. side of the business. Recycled materials are frequently transported on skid loaders.
- 2) The noise resulting from the crushing of metal cans inside the building with the garage door open.
- 3) The noise resulting from the dumping of glass into the recycling container. Glass is deposited from morning till late in the evening.
- 4) Traffic issues on 12th St. There continues to be stopped vehicles both on the south and north side of 12th Street in the vicinity of the business. This causes traffic flow issues and has been outright hazardous at times in regards to traffic turning onto 12th from Haskell.
- 5) Litter related to the recycling aspect of the business is and has been an ongoing problem. This needs to be addressed.

It is our understanding that the Bargain Center will be required to submit a site plan for review in regards to their recycling center operation. We are concerned that an administrative decision in regards to the recycling center will bypass neighborhood concern. We have listed our five concerns above and request they be discussed in a public hearing.