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CITY MANAGERS OFFICE
LAWRENCE, KS

Brook Creek Neighborhood Association

Julia Mitchell, President

1231 Brook St., 66044

Telephone: 785-865-3688

e-mail: brookcreekna@gmail.com; juliahenrym@yahoo.com

Mayor Aron Cromwell
Lawrence City Hall
6 East 6th Street
Lawrence KS 66044

September 30, 2011

RE: The 12th & Haskell Bargain Center – intolerable salvage yard activities in our neighborhood

Dear Mayor Cromwell,

After the large toxic fire at the 12th & Haskell Bargain Center's salvage yard on January 27, 2010, the neighborhood again brought to the attention of City officials the ongoing and increasing nuisances emanating from the junkyard. This resulted in a fact-finding investigation that has now stagnated. The City has not made any resolute final decision to eliminate the multiple code violations and ongoing nuisance issues that are despoiling our adjoining residential neighborhood.

1) On May 4, 2010, Planning & Development Services issued a Notice of Violation with multiple citations, listing four actions that the 12th and Haskell Bargain Center must complete by May 31, 2010, including submittal of a site plan and a flood plain development permit. Subsequently, it has been more than a year since August 11, 2010 when the city gave the 12th and Haskell Bargain Center an additional 45 days to submit a site plan and flood plain permit. A formal site plan has yet to be submitted and the Bargain Center is still operating without a proper site plan and permit. Scott McCullough sent a memo to David Corliss on September 22, 2011, with an update of the situation. We strongly disagree that "Mr. Killough has reduced the open use of land to levels found to be acceptable by staff in the context of the enforcement action." Please see attached aerial photo dated May 31, 2011, along with a copy of said memo.

2) The Notice of Violation stated clearly that "A non-conforming commercial or industrial open use of land shall be discontinued . . .", with Section 20-1701 defining Open Use of Land to include "auto wrecking yards, junk and salvage yards, storage yards . . ." This is code-compulsory language, yet Planning & Development Services did not make this one of the actions required of the 12th and Haskell Bargain Center, and continues to ignore this strong justification for shutting down the activities there.

3) The city made a mistake by not recognizing the 10 year gap in salvage use activities from 1993 to 2003, subsequently granting an illegal nonconforming use permit in 2003. According to City code, the abandonment of the nonconforming use (Ray's old auto salvage) in 1993 should have permanently ended the nonconforming use of this property. When applying for non-conforming use in 2003, the business owner, Bo Killough, postured himself as "purchasing returned or rejected housewares and appliances and furniture to repair and resell . . . within the structures on the site". If any non-conforming use is possibly legal on this residentially zoned site, it must be within the confines of the building.

4) When the City issued the non-conforming use permit to the Bargain Center in late 2003, the neighborhood was not notified of the permit request nor the granting of the request, making it impossible for the neighborhood to respond within the required protest period.

5) The daily aggravating and disturbing nuisances have not been stopped nor have they subsided. The nearly constant jolting loud noises (along with seismic waves) and the fouled air are at the top of the list. This is negatively affecting the peace and the health of the neighbors in the adjacent neighborhood.

6) It is clear that the Bargain Center has exceeded their permitted use, morphing from a small second hand merchandise shop into a full blown intensive salvage yard operation, large collection recycling facility, and recycling processing facility, all of which are allowed only in IL and IG zoning.

7) Numerous city codes have been violated and continue to be violated including: disturbing the peace, flood zone issues, groundwater pollution, air pollution, traffic congestion issues, failure of property to lose its nonconforming status after 10 year abandonment of non-conforming use, and operating in violation of the nonconforming open use of land code.

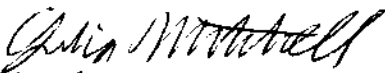
8) We urge you to give Scott McCullough your full support to resolve this intolerable nuisance in a prompt manner. It is now time for the City to make a final decision regardless of any perceived threat of legal action. The neighborhood expects tangible action within 45 days of this letter.

Last, I would like you to consider the situation from our point of view. Consider YOUR neighborhood, the one you choose to live in. Except for some occasional normal traffic noise, it was (at the time you purchased the property) probably a peaceful and quiet place with air that was mostly clean. Now imagine that a large nearby empty tract of land is suddenly occupied by a salvage yard that constantly produces annoying and intolerable sounds both inside and outside of your private home. Foul and potentially long term hazardous petroleum based odors drift through your neighborhood. How would you feel? How would you resolve the problem?

The attached text outlines the nuisance issues, history of the situation, suggested actions and resolutions, and pertinent activities that have transpired since March 2010. We will gladly share any additional documentation.

Sincerely yours,

Julia Mitchell



Attachments:

- 1) 05-04-2010 Notice of violation
- 2) Synopsis of past history, nuisances and recent history of action
- 3) Aerial photo of May 2011 open use of land
- 4) Aerial photo from 2003
- 5) McCullough memo of September 22, 2011

cc: Bob Schumm
Mike Amyx
Michael Dever
Hugh Carter
David Corliss



Brook Creek Neighborhood Association

Julia Mitchell, President

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Telephone: 785-865-3688

e-mail: brookcreekna@gmail.com; juliahenrym@yahoo.com

12th & Haskell Bargain Center background data detail

September 30, 2011

1) The 12th & Haskell Bargain Center salvage yard produces a nearly constant loud noise of motorized industrial equipment associated with unloading, loading, moving, crushing and processing of material. The salvage yard's activities consistently violate 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 neighboring houses 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 has at time extended very late into the evening hours.

Since March 2010 the only changes to noise levels have been the removal of a loud outdoor speaker used for communication with vehicles on the scales and the relocation of the aluminum storage and loading area. For all intents and purposes, this has not changed the duration nor the intensity of the excessively loud noises.

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.

Since March 2010 there has only been some minor improvements in the amount of litter spewing out onto the surrounding area. Mud clods still continue on occasion to be tracked out onto Haskell Avenue. The stacked aluminum has been removed below fence level. However, by standing just south of the fence, offensive piles of junk can frequently be seen looming above the level of the fence.

3) Gasoline, oil and solvent odors are frequent and sometimes are quite potent depending on the direction and velocity of the wind. We are concerned about the negative impact to our air quality and our health from the toxic and foul smelling odors and the diesel exhaust from the near-constant use of the loaders and other equipment. From City Code, 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)".

Nothing has changed for the better since March 2010. The vapors and exhaust are ever present and as objectionable as they always have been.

4) The salvage yard is located in the 100-year flood plain and a floodway. We are concerned that over the years since they opened, the 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 salvage yard property, which empty into the Kansas River. City codes require material stored in floodplains to be "readily removable," an impossibility in this situation. 20-1204 (e)(viii) regarding storage of material in the floodplain and requirements to keep materials "readily removable."

Since March 2010 the city has been working on this issue and think that some preliminary changes have been made. It is our understanding that a final ruling on the positioning of stored materials has not been made. After multiple complaints and investigations (KDHE and the city), the Bargain Center now appears to be collecting some toxic and hazardous fluids before vehicular crushing activities.

5) The amount of material stored in the salvage yard has gradually increased over time. The number of junk vehicles at any given time has varied tremendously. The salvage yard 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 that 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 salvage yard is only allowed to become more like a residential use, and less intensely an industrial use.

Since March 2010 the amount of material stored and processed has likely stabilized and but continues to be in a state of flux. The processing of the material occurs most of the day, five and a half days of the week.

6) This facility is contributing to the propagation of pests in the neighborhood. The trapped rainwater 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. This has the potential for harboring vermin. These nuisances are a public health threat and prevent us from enjoying our property in peace.

Since March 2010 there have been some minor storage changes but this does not affect the overall pest propagation issue.

7) The salvage yard business has brought a dramatic increase in vehicular 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 Bargain Center vehicles parking on both sides of the street, blocking traffic flow. This occasionally creates a hazardous situation at the intersection of 12th and Haskell.

Vehicles also track mud from the yard out onto the street, and several neighbors have reported flat tires due to littered scrap objects on 12th Street adjacent to the salvage yard. 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 rutted our yards when they have backed up onto Almira Avenue to turn around.

Since March 2010 nothing has changed in this category. There is still heavy parked traffic at times blocking 12th Street traffic flow.

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

01-27-2010 - a fire involving six vehicles, toxic smoke engulfs neighborhood

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

A brief history of the property use over the years.

Prior to 1951, the current site of the 12th & 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 old salvage yard 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 businesses 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.

A separate timeline document is available showing how this property was used over time.

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 12th & Haskell Bargain & Recycling Center slowly started building their junkyard and salvage 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, churches and neighborhoods; however, the 12th & 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 salvage yard 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 12th & Haskell Bargain & Recycling Center does not have a Special Use Permit (SUP) either.

When the 12th & Haskell Bargain 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 nonconforming 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 12th & 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.

Under chapter 20, article 15, section 20-1502 (d) "Discontinuance of Nonconforming Open Uses of Land," it is clearly stated that the use of this non-conforming property should have been discontinued years ago.

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 salvage yard adjacent to any neighborhood in this city would be immediately halted due to outrage from residents regardless of whether or not city codes barred such activities.

Neighborhood Resources was asked to address issues at the 12th 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.

Suggested action

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 request the following actions for a satisfactory resolution of this situation:

- 1) The salvage yard 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) All aspects of the open use of land must cease immediately according to code-compulsory language of City Code Section 20-1502 (d), and according to City staff determination, as indicated in the Notice of Violation.
- 3) The City of Lawrence should consider assisting the owner to relocate to a proper intensive industrial zoned location.
- 4) A thorough evaluation of the environmental damage to the property, including soil and water contamination, should be initiated.
- 5) 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.

History of events since February 2010

02-2010 - "KDHE issued an emergency order for the owner to "cease and desist activities that create a hazard and immediate danger to surrounding property and to public health and safety." Investigators found that they were not properly removing gasoline before crushing. More than 200 vehicles on the property. 65 of 75 vehicles contained flammable automotive fluids. Killough told KDHE inspectors that he was unaware that fluids needed to be removed from salvage vehicles prior to crushing. The order states: "By failing to remove the gasoline and other automotive fluids prior to crushing, respondents have created an immediate danger and hazard to the surrounding properties and property owners from fires started at the facility."

03-04-2010 Met with Scott McCullough and staff to discuss the situation. The discussion included historical information, photos, aerial photos, video documentation, etc. We were advised that they conduct their own research.

05-04-2010 Notice of violation sent to Bo Killough, owner of the 12th and Haskell Recycle Center. This stern letter outlines several actions that were to be completed by 05-31-2010, including reducing the activities of the business to city approved activity levels.

05-18-2010 We filed a BZA appeal of the 05-04 Notice of Violation because of certain omissions in the Notice of Violation.

06-01-2010 Met with City staff to discuss the status of the issue and to discuss withdrawing the BZA appeal. Reassurances from staff seemed to indicate that their code enforcement would achieve substantive improvements.

06-22-2010 The BZA appeal was withdrawn.

08-11-2010 A meeting was arranged by Scott McCullough between the neighbors, city staff and Mr. Killough, the owner of the Bargain Center, on location. We all toured the property and were shown how the business operates. It was unveiled that the Bargain Center had made several insignificant changes to ameliorate the nuisance. The core issues were skirted and were not addressed. It was understood and agreed that Bo would submit a site plan for all of us to review within 45 days of this meeting. To date this has not happened.

10-22-2010 – Mr. Killough's attorney sent a letter outlining concerns and proposals. Nothing of any substance is discussed in this letter that would resolve the nuisance issues. Additionally, the non-conforming use of the property is discussed and again an incorrect conclusion is reached suggesting that the property has been utilized continuously for industrial purposes after Rays auto salvage business closed in 1993. Instead of relying on persuasive letters submitted by the attorneys representing the seller and buyer of this property, an independent investigation would have easily revealed this to be incorrect. Bo's attorney's letter also indicates that a site plan proposal is in the works.

03-2011 – Mr. Killough expressed a desire to meet with the neighbors to discuss his ideas and the neighbors declined to meet at a non-city mediated meeting. At that point in time our concerns have been crystal clear and an appearance of the property owner "working with the neighborhood" seems to be postponing making a resolute decision to end this nuisance. If there was interest in "working with the neighbors," proper adherence to established city codes would have been followed from the beginning. An industrial salvage yard is not an acceptable land use in a residential neighborhood.

04-08-2011 – Contact with Scott indicated that a new city attorney was being brought up to speed on the issues and that the "open use of land" code was being investigated. He also indicated that the issue may boil down to the original non-conforming use permit. There has been no tangible evidence of any action since this point in time.

04-2011 – Julia Mitchell reported that she had a conversation with Scott and was told that this case is mostly closed due the then neighborhood's lack of interest in meeting with the owner. How can this be correct?

07-25-2011 – We were advised by police officers on several occasions that this business is exempt from the noise ordinance. We could not find any exemptions in the City Code that we researched.

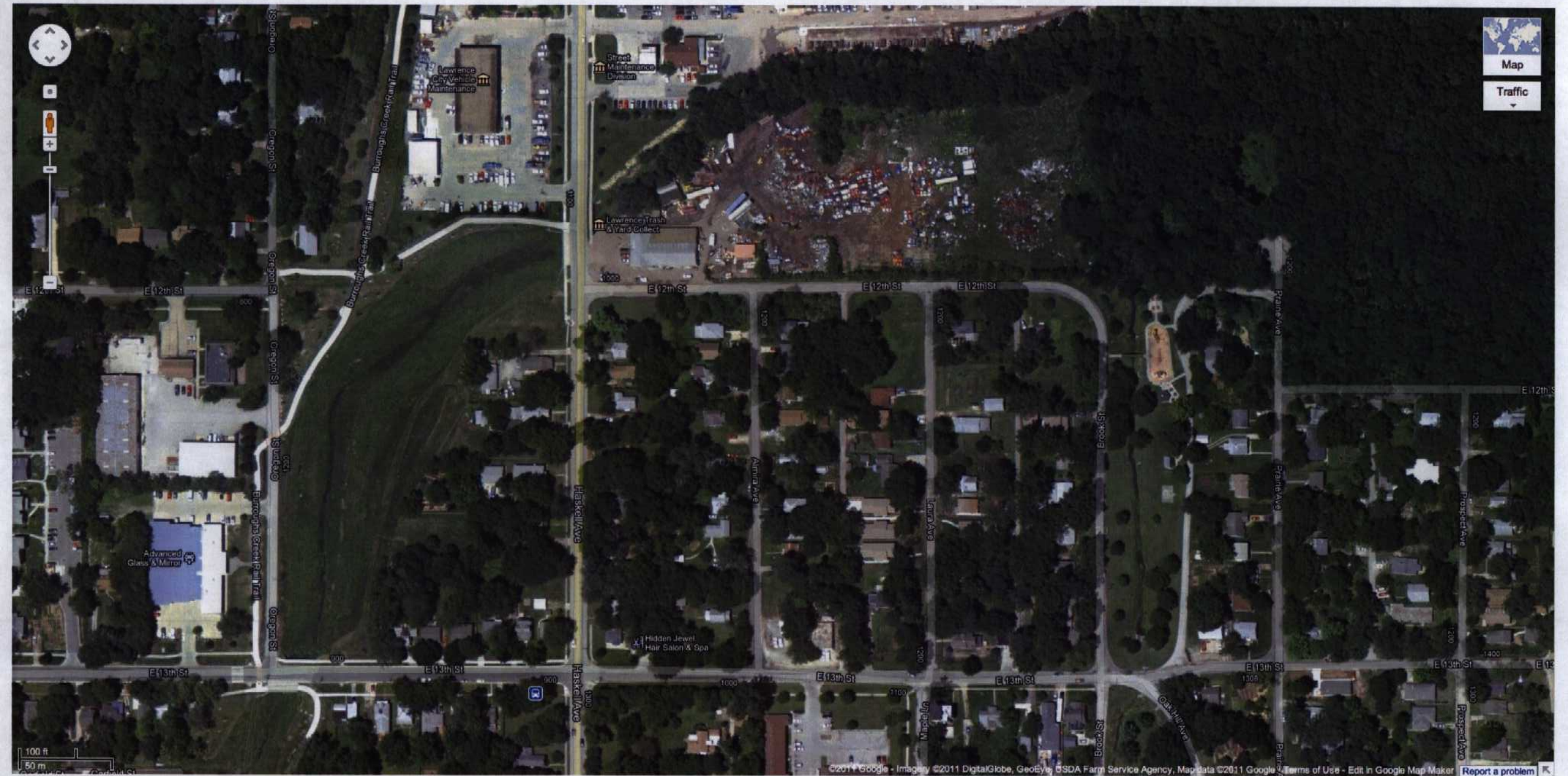
09-14-2011 – Dave Corliss met with the Brook Creek Neighborhood Association about the matter. He reported that he, Scott McCullough, Brad Finkeldei and Mayor Cromwell met within the past month. Supposedly Mr. Finkeldei claims that Bo Killough is operating a legal non-conforming use. Dave said that he disagrees with that assessment. He said he would get us a status report soon.

09-22-2011 – Scott McCullough issued a memo stating "Mr. Killough has reduced the open use of land to levels found to be acceptable by staff. Staff is currently working with Mr. Killough to formalize a site plan that clearly delineates the boundary of the open use of land." Being that the Code does not allow open use of land at this location for the current uses, it is our position that there is no acceptable level of open use of land.

5-31-2011



5-31-2011



2003

City of Lawrence



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Layers

- ☒ General Information
 - ☒ City Limits
 - ☒ Douglas County Limits
 - ☒ Highways
 - ☒ Streets
 - ☐ Railroads
 - ☐ Plats
 - ☐ Plot Images
 - ☐ Parcels
 - ☒ Schools
 - ☐ City Parks
 - ☐ Neighborhoods
 - ☐ Universities
 - ☐ School Districts
 - ☐ Zipcodes (ZONES)
 - ☐ Water Bodies
 - ☐ Contours
- ☒ DGC Fire/Medical
- ☒ Special Assessments
- ☒ Planning
- ☒ Public Works
- ☒ Water Distribution
- ☒ Storm Sewer
- ☒ Sanitary Sewer
- ☒ Transit
- ☒ Aerial Photography
 - ☐ Lawrence 2006
 - ☒ Lawrence 2003
 - ☐ Lawrence 2000
 - ☐ Lawrence 1995
 - ☐ LVCO 2foot
 - ☐ DGC 2000 1/2foot
 - ☐ DGC 2000 1foot
 - ☐ DGC 2000 2foot

Refresh Map

Timeline

[illegible]



City of Lawrence

PLANNING & DEVELOPMENT SERVICES

1 Riverfront Plaza, Suite 110
P.O. Box 708
Lawrence, KS 66044

www.lawrenceks.org/pds

Phone 785-832-7700
Tdd 785-832-3205
Fax 785-832-3110

Notice of Violation

May 4, 2010

Mr. Bo Killough
1146 Haskell Ave.
Lawrence, Ks. 66044

RE: 1146 Haskell Avenue (12th & Haskell Recycle Center)

Dear Mr. Killough,

The Planning and Development Services Department received a complaint on February 16, 2010 related to the scope and nature of your business located at 1146 Haskell Avenue. The main allegation of the complaint is that the current business operations appear to exceed the scope of what was approved as a continuance of a legal nonconforming use by the Planning Department in 2003.

On February 22, 2010, City staff inspected the property with your consent to determine if the property was in compliance with the City Code and the requirements of the 2003 letter. At the conclusion of the inspection, you were informed that staff would analyze the information gathered and would conduct further investigation of the complaint.

An important step in our investigation included reviewing the June 19, 2003 letter that Price Banks delivered on your behalf to Linda Finger, the Planning Director at that time. Mr. Banks requested the continuance of a nonconforming use in which he clearly identified the proposed use as "purchasing returned or rejected house wares and outdoor appliances and furniture from distributors and salvaging such items to reassemble and sell." In addition, the business was described as "a clean salvage and sales operation that would have limited palletized outdoor storage of materials and most of the assembly work would be conducted within the structures on the site."

On August 5, 2003, Linda Finger provided a letter addressed to Ron Schneider which advised him the proposed use, as described in the above referenced letter, would be permitted to continue as a legal non-conforming use.

In response to the complaint, staff has researched the history of the uses for the property and has determined that prior to your business beginning operations, the majority of the property did not have exterior salvage storage from 2000 to 2003. Additionally, you acknowledged to staff during the inspection that the business had expanded substantially over the last several years and is now a full



We are committed to providing excellent city services that enhance the quality of life for the Lawrence Community

scale salvage-recycling business. To support your statement, staff observed salvaged vehicles, paper products, miscellaneous metals, glass, aluminum, appliances and other salvaged items stored throughout the open space of the property which is approximately 6.3 acres in size.

In continuing with our research, staff determined that the current use of the property qualifies as an Open Use of Land and is in violation of the Development Code, Section 20-1502 (d), Discontinuance of Nonconforming Open Uses of Land, which states the following:

A nonconforming commercial or industrial open use of land shall be discontinued, including the removal of all above-surface improvements and Structures accessory to the Open Use of Land, but not to the permitted uses, by November 1, 2008. Any Open Use of Land that becomes nonconforming because of subsequent amendments to this Development Code shall also be discontinued on the same basis within 3 years of the Effective Date of the amendment that renders the use nonconforming.

Section 20-1701 defines Open Use of Land as the following:

A use that does not involve improvements other than grading, drainage, fencing, surfacing, signs, utilities, or Accessory Structures. Open uses of land include, but are not limited to, auction yards, auto wrecking yards, junk and salvage yards, dumps, sale yards, storage yards and race tracks.

The type of business that Price Banks detailed in his letter to Linda Finger described a use that would not qualify as an Open Use of Land, as exterior storage was to be limited palletized storage with most of the assembly work to be conducted within the structure. The use, in its current form, is not in keeping with the 2003 approval granted by the Planning Department.

City Code Violations

The following violations of the City Code have been determined to exist at the property:

1. Expansion of nonconforming use, Section 20-1502(b). The subject property is zoned RS10. The current use of the property has been expanded to a greater intensity than permitted in 2003 and is now classified as an Open Use of Land (Salvage yard) and is not permitted in the RS10 zoning district. The expansion of the nonconforming use granted in 2003 is not in compliance with Section 20-1502(b) related to expanding nonconforming uses.
2. Storage of materials in the Floodplain Overlay District, including encroachment into the Floodway. The storage of materials on the property in locations within the Floodplain Overlay District is a violation of Sections 20-1204(b) and 20-1204(e)(viii).
3. Chapter 9, Article 9, Sections 9-901 & 9-902 of the City Code. The operation has a history of tracking sediment (mud) on the adjacent streets.

Section 9-901(A)(2) states:

The purpose and objectives of this Article are as follows: to prevent the discharge of contaminated stormwater runoff and illicit discharges from industrial, commercial, residential, and construction sites into the storm drainage system within the City of Lawrence.

Section 9-902(A)(1) states:

No person shall release or cause to be released into the storm drainage system any discharge that is not composed entirely of uncontaminated stormwater, except as allowed in Section 9-902(B). Common stormwater contaminants include trash, yard waste, lawn chemicals, pet waste, wastewater, oil, petroleum products, cleaning products, paint products, hazardous waste and *sediment*.

In order to comply, the following actions must be completed by **May 31, 2010**.

1. The business use and operation must be reduced to levels approved in 2003, including maintaining only limited palletized or containerized exterior storage and ceasing the operational characteristics of an open salvage yard. This will require submitting a site plan and floodplain development permit to the Planning Department depicting the location of the palletized or containerized storage and then reducing the use to this area.
2. The property shall be brought into compliance with Section 20-1204(e)(viii) of the Development Code and inspected for compliance.
3. There is currently an open Flood Plain Development permit, application #FP-3-4-10, for grading and fill work that must be successfully completed by providing staff additional information as to the scope of work being performed.
4. Both access points into the fenced area of the property shall have appropriate surfacing that will prevent the depositing of mud and/or dirt on Haskell Avenue and 12th St. This surfacing shall lead to compliance with Chapter 9, Article 9, Sections 9-901 & 9-902 of the City Code.

PLEASE BE ADVISED:

If you fail to comply with all of the above requirements by the date identified, the City may pursue legal relief as identified in City Code Section 20-1605(f) and 9-904. The City may commence the appropriate action(s) to stop these violations of the City Code. The relief may include:

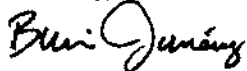
- 1) an injunction or other equitable relief;
- 2) an order in the nature of mandamus or abatement;
- 3) a judgment or order enforcing any requirement of, or under, this Development Code to pay a fee or reimburse or compensate the City, including when the City is required or authorized to take specified action at the expense of the landowner; or
- 4) any other judgment or order available under Kansas law or City of Lawrence City Code.

The City may also seek criminal penalties for the Development Code violations as outlined in 20-1605(g). Each and every violation and non-compliance respectively shall be deemed guilty of a misdemeanor, and upon conviction therefore shall be, for each offense:

- 1) fined in a sum not less than \$10 nor more than \$500;
- 2) imprisoned for not more than six months; or both fined and imprisoned

The City is cognizant that land use violations are often complicated issues; therefore, City staff welcomes a meeting with you to discuss the content of this letter in further detail to help you resolve the land use violation. The referenced letters are enclosed for your review. Please do not hesitate to contact me at 832-3111 or Scott McCullough at 832-3154 to discuss further.

Sincerely,



Brian Jimenez
Code Enforcement Manager

CC: Scott McCullough, Director, Planning and Development Services
Sheila Stogsdill, Assistant Planning Director
John Miller, Legal Staff Attorney

Encl: June 19, 2003 Letter from Price Banks
August 3, 2003 Letter from Linda Finger

Memorandum

City of Lawrence

Planning & Development Services

TO: David L. Corliss, City Manager

FROM: Scott McCullough, Director

Date: September 22, 2011

RE: 12th and Haskell Recycling Center

You have requested an update on the enforcement case noted above.

On May 4, 2010, the Planning and Development Services Department provided a notice of violation to Bo Killough concerning several violations found to be evident at the property, including existence of an "open use of land", materials stored in the floodplain, and tracking mud on city streets.

Subsequent to the notice, Mr. Killough removed the majority of the materials from the floodplain, has significantly reduced the materials on the property that are contributing to the open use of land, and has requested permission to install a concrete drive to halt the mud from entering onto city streets.

Mr. Killough operates a nonconforming business at the property and one of the main violation matters includes operating a portion of the business as an open use of land. The initial investigation yielded evidence of significant portions of the property being used for storage of recycling materials. Since the initial findings were made, Mr. Killough has reduced the open use of land to levels found to be acceptable by staff in the context of the enforcement action. Staff is currently working with Mr. Killough to formalize a site plan that clearly delineates the boundary of the open use of land. With this effort, Mr. Killough will have the ability to use a much smaller outdoor portion of the property for a use accessory to the recycling center operated within the structure.

Accepting Mr. Killough's proposal to reduce the open use of land to an acceptable level will permit staff to also approve a floodplain development permit to permit the installation of a concrete drive, which will greatly reduce the amount of mud being tracked onto the public streets.

Please let me know of any questions.