

1200 Almira Ave.
Lawrence KS 66044

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

22 June 2010
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JUN 25 2010

City County Planning Office
Lawrence, Kansas

RE: B-5-7-10 – 18 May 2010 Appeal of Administrative Decision on 12th & Haskell Recycle Center

Mr. McCullough:

Thank you for meeting with members of the Brook Creek Neighborhood Association on 1 June. We appreciate your and John Miller's explaining to us the City's options and intent in resolving the zoning and nuisance issues stated in the 4 May 2010 Notice of Violation to Mr. Killough of the 12th & Haskell Recycle Center.

Our position, as we stated in that meeting, is that the Notice of Violation accurately states the types and range of some of the City Code violations, and enumerates several appropriate requirements for Mr. Killough to comply with in order to cease certain of his Code violations. We also understand that the Appeal of your Administrative Decision has stayed your ability to pursue enforcement of the violations listed in the Notice of Violation.

However we have identified certain relevant issues and City Code violations by Mr. Killough upon which you have yet to make a determination. We think the Notice of Violation is on the right track, but some issues that are key to resolving the Neighborhood's immediate and long term concerns were omitted from it. These omissions include, but are not necessarily limited to:

1. The original letter of 5 August 2003 from Linda Finger granting a continuation of a legal nonconforming use of the property was sent to Ron Schneider and CC'd to Price Banks and Neighborhood Resources. Brook Creek Neighborhood Association was not notified at that time, so therefore had no opportunity to appeal that Administrative Decision.
2. The Notice of Violation references a 19 June 2003 letter from Price Banks which describes Mr. Killough's intended business activities, a description that does not include a recycling center of any type or size: reverse vending machines, small collection facilities, large collection facilities, or processing facilities. These categories are within Ord. #3500 of 1966 under which Mr. Killough established the 12th & Haskell Bargain Center, LLC on 12 September 2003. The Notice of Violation omits a compliance requirement that Mr. Killough cease all recycling activities.
3. The Notice of Violation, on page 2, clearly states that Mr. Killough is operating in violation of Section 20-1502(d), the Discontinuance of Non-Conforming Open Uses of Land, of the 2006 Development Code. The Notice indicates such uses legally terminated as of 1 November 2008. Also, when Mr. Killough established his business in 2003, he fell under Section 20-1306, Discontinuance of a Non-Conforming Open Use of Land, of the 1966 Zoning Ord. #3500. Pursuant to the 1966 Code, Mr. Killough's nonconforming use would also have legally terminated on 1 July 2009, three years after the new Development Code was adopted. The Notice of Violation omits listing either or both of these as compliance requirements for Mr. Killough, and that he must cease his open use of land activities.
4. The Notice of Violation lists one of Mr. Killough's violations as "storage of materials in the Floodplain Overlay District", and cites Section 20-1204(b) and 20-1204(e)(vii). However, the Notice of Violation omits a compliance requirement to Section 20-1204(b) for Mr. Killough. Furthermore, the Notice of Violation omits extensive sub-sections of Section 20-1204, Provisions for Flood Hazard Reduction, from both the listing of violations and the listing of compliance requirements. Relevant

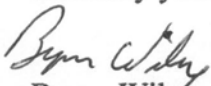
sections Mr. Killough should comply include, but are not limited to: Sec. 20-1204(a), 20-1204(c), 20-1204(d), and 20-1204(e)(1) in it's entirety.

5. The Notice of Violation lists a currently open permit for Flood Plain Development for grading and fill work. However, the The Notice of Violation omits extensive sub-sections of Section 20-1203, Administration (of Floodplain Management Regulations), from both the listing of violations and the listing of requirements for compliance. Relevant sections include, but are not limited to: 20-1203(a), 20-1203(d), and 20-1203(e).
6. The Notice of Violation lists one of the requirements for compliance vague conditions of "reduced to levels approved in 2003, including maintaining only limited palletized or containerized exterior storage". Omitted from the Notice of Violation is the fact that neither Price Banks' letter nor Linda Finger's letter made any mention of "containerized exterior storage". Also omitted from the Notice of Violation is any attempt at a legal definition of "limited", which was also not defined in Price Banks' or Linda Finger's letters.
7. Any site plan that allows the continuation of any recycling collection or processing will be challenged if the main nuisances affecting the neighborhood would be continued. The 2003 letter that established the non-conforming use did not allow this activity. Again, our concerns are as follows:
 - a) Noise from the nearly continuous use of skid loaders near the 12th Street side of the business. Recycled materials are frequently transported around the property on noisy skid loaders.
 - b) The noise resulting from the crushing of metal cans inside the building with the garage door open.
 - c) The noise resulting from the dumping of glass into the recycling container. Glass is deposited from morning till late in the evening. The unloading of metal cans and other scrap on the south side of the building is also intolerable, especially some activity that recently happened on a Sunday morning.
 - d) Traffic issues on 12th Street. There continues to be stopped vehicles both on the south and north side of 12th Street in the vicinity of the business. This impedes traffic flow. Blockage of traffic has nearly caused accidents from folks turning on to 12th from Haskell.
 - e) Litter related to the recycling center aspect of the business is and has been an ongoing problem.
 - f) Requirement of building set-back and fence set-back per Code
 - g) Requirement of lighting stipulations per Code

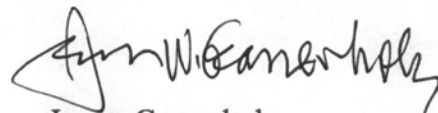
The City of Lawrence Planning or Legal staff have not yet made a formal determination on the above enumerated issues. We are requesting that you immediately notify us of any decisions, filings and other actions regarding the property at 1146 Haskell. Please notify the following people in writing (in addition to notifying Byron): Michael Almon, 1311 Prairie Ave., Lawrence KS 66044, and Julia Mitchell, 1231 Brook St., Lawrence KS 66044.

It is the omissions from the 4 May 2010 Notice of Violation that we were appealing, less so the inclusions. Therefore, we are withdrawing our Appeal of Administrative Decision of 18 May 2010, so you may pursue enforcement of that 4 May 2010 Notice of Violation.

Sincerely yours,


Byron Wiley


Michael Almon


James Grauerholz

cc: Julia Mitchell, Andrea Repinsky