

Byron Wiley  
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April 26, 2015

RE: SUP-15-00019 - Haskell Recycle Center

To: The Mayor and City Commissioners

I am appreciative of the staff response to Brook Creek Neighborhood's concerns. I am concerned about current and future activities related to the Haskell Recycle Center. Over a 7 year period of time (2005 - 2013) the business morphed into large salvage yard operation adjacent to our neighborhood. Daily egregious nuisances included unacceptable noise (thunderous at times), and environmental pollution that ranged from localized air pollution (diesel exhaust fumes and oily/gasoline odors), toxic fluid releases including auto fluids (oil, brake fluid, gasoline, etc) and several vehicle fires over the years.

I am impressed that the new facility was properly sited and reviewed before commencing operation. I noted also that in the staff response that there have not been any reported violations after locating in their new location. Despite these positive steps, I have concerns because of past business practices. I feel that the use permits should be reviewed annually to assure compliance.

Sincerely yours,

Byron Wiley

1311 Prairie Ave.  
Lawrence KS 66044

27 April 2015

re: SUP-15-00019

Lawrence City Commission  
City Hall  
6 East 6th St.  
Lawrence KS 66044

Mayor Farmer and Commission:

Given the propensity of Mr. Robert Killough to consider compliance with the law to be optional, I ask that you place a one year time limit on the period of time the proposed SUP-15-00019 is to be allowed.

Development Code Sec. 20-1306(i) "Review and Decision-Making Criteria" gives you the authority by stating "decision making bodies shall consider at least the following factors"; with Sub-Sec. (7) reading "whether it is appropriate to place a time limit on the period of time the proposed use is to be allowed by special use permit and, if so, what that time period should be."

For nine years from 2003 to 2012, the residents of Brook Creek Neighborhood endured Mr. Killough's non-permitted scrap and salvage operation at 12th and Haskell Ave., a non-compliant industrial land use immediately adjacent to residential zoning, a non-conforming open use of land required by City Code Sec. 20-1502(d) to be discontinued by November 1 2008, the storage of materials in the Floodplain Overlay District in violation of Sec. 20-1204(b) and 20-1204(e)(vii), daily occurrences of toxic fumes and exhaust and excessive seismic noise, the release into the soil of hazardous automotive fluids not removed from cars before crushing, and seven automotive fires. (see attached Lawrence Notice of Violation, 4 May 2010)

This is not the record of a businessman who adheres to the precautionary principle. This is the record of a man who answered the KDHE Findings of Fact by saying "he was not aware that fluids must be removed from salvage vehicles prior to crushing". These violations are in the public record, not merely "assertions" as Planning Director, Scott McCullough, portrayed them. Mr. McCullough did not enforce the May 4th 2010 Notice of Violation, claiming the law had too much grey area, and that Mr. Killough was simply engaging in "temporary outdoor palletized storage". On 5 April 2012, the attorney for the Brook Creek Neighborhood prevailed at the Board of Zoning Appeals, and forced Mr. McCullough to require Mr. Killough to either come into compliance, or move.

I am happy that Mr. Killough is now running a legally zoned scrap and salvage operation at 11th & Haskell Ave. But he can't be trusted not to cut corners with the law. And I am happy the City Commission is reviewing the decision-making criteria, because once again Mr. McCullough claims that the applicant "employs the best management practices" and "pollution should not be an issue". The case history is indeed germane to the current application. If Mr. Killough's SUP is reviewed yearly, the Commission can assure that he will not revert to questionable practices.

Sincerely,

Michael Almon



# City of Lawrence

PLANNING & DEVELOPMENT SERVICES

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## Notice of Violation

May 4, 2010

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

RE: 1146 Haskell Avenue (12<sup>th</sup> & 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



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 12<sup>th</sup> 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:

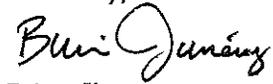
- 1) an injunction or other equitable relief;
- 2) an order in the nature of mandamus or abatement;
- 3) a judgment or order enforcing any requirement of, or under, this Development Code to pay a fee or reimburse or compensate the City, including when the City is required or authorized to take specified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