

MINUTES

RILEY COUNTY PLANNING BOARD/ BOARD OF ZONING APPEALS

Monday, June 14, 2021
7:30 pm

Courthouse Plaza East
Commission Meeting Room
115 North 4th Street

Members Present: Dr. Tom Taul, Chair
Diane Hoobler, Vice-Chair
John Wienck
Nathan Larson

Members Absent: Joe Gelroth

Staff Present: Amanda Smeller – Director, Bob Isaac – Planner, Lisa Daily -
Administrative Assistant, Anita Bloom – Clerical Assistant, Steve Higgins
– Zoning Enforcement Officer

Others Present: Roger Andres, Harold Bailey, Douglas Routh, Craig Cox - Deputy County
Counselor, Shaun Linenberger, Joann Zahner, Greg Wilson, Rob Ott –
Public Works Director, City of Manhattan, Bill Heatherman – Stormwater
Compliance Engineer, City of Manhattan, Scott Sowell, Tim Sowell,
Monte Johnson and Tony Akin

OPEN PUBLIC COMMENTS

None.

CONSENT AGENDA

The minutes of the May 10, 2021 meeting and the Report of Fees for the month of May (\$4,288.00) was presented.

John Wienck moved to approve the consent agenda as presented. Diane Hoobler seconded. Carried 4-0.

Diane Hoobler moved to adjourn the joint meeting of the Riley County Planning Board/Board of Zoning Appeals and reconvene as the Riley County Planning Board. Nathan Larson seconded. Carried 4-0.

RILEY COUNTY PLANNING BOARD

Zahner – Replat

Chairman Taul opened the public hearing at the request of Josephine A. Zahner, petitioner and owner, to replat Lots 122, 123, and 124 of University Park (subdivision) into a one (1) lot in Sherman Township, Section 12, Township 8 South, Range 6 East, in Riley County, Kansas.

Bob Isaac presented the request stating the subject was platted as Lots 122, 123, and 124 of University Park, in September 1959. The applicant wishes to combine the lots in order to construct an accessory structure on existing Lot 124.

Staff recommended that the Planning Board approve the Final Plat of University Park Unit Fourteen, as it has been determined to meet the minimum requirements of the Riley County Zoning and Subdivision Regulations and Sanitary Code.

Chairman Taul opened the public hearing and asked if the applicant wanted to speak.

Joann Zahner stated the accessory structure will add value to the property and this will be her retirement home.

There were no proponents or opponents.

John Wienck moved to close the public hearing. Diane Hoobler seconded. Carried 4-0.

John Wienck moved to approve the request to replat Lots 122, 123, and 124 of University Park (subdivision) into a one (1) lot, for reasons stated in the staff report.

Diane Hoobler seconded. Carried 4-0.

Mr. Isaac announced that the Board of County Commissioners would hear the request on June 24, 2021, at 10:20 am, in the County Commission Chambers.

John Wienck moved to adjourn the Riley County Planning Board and moved to reconvene as Board of Zoning Appeals. Diane Hoobler seconded. Carried 4-0.

RILEY COUNTY BOARD OF ZONING APPEALS

Rockin Kansas – Conditional Use

Chairman Taul opened the public hearing at the request of Rockin Kansas LLC, petitioner and Routh Family LLC, owner, for a conditional use authorization for a limestone quarry operation for a tract of land in Zeandale Township, Sections 10 and 15, Township 11 South, Range 9 East.

Bob Isaac presented the request stating the applicant wishes to quarry a shelf of a particular type of limestone, which extends along a ridge that meanders throughout specific areas of the subject site. He said the subject site consists of two large, unplatted parcels; 235.91 acres and 593.02 acres, respectively. Mr. Isaac said that due to the enormity of the site, the duration for the quarry is expected to be several years.

Mr. Isaac explained the subject site shares a common boundary line with the McCoy Limestone Quarry to the west. He said the McCoy Limestone Quarry received conditional use approval in December 2019 and that the operation has not yet commenced.

Mr. Isaac said the subject site is directly served by a driveway that accesses Tabor Valley Road. He said the Applicant will need to obtain an entrance permit from Riley County Public Works. Mr. Isaac explained that reclamation will happen as the project moves along in phases.

Mr. Isaac stated there is an existing house on the site and the property owner signed the application. He said the house will be unaffected by the quarry operation as the zoning regulations prohibits quarrying activity within 300 feet of a residence.

Mr. Isaac explained that unlike borrow pits, quarries are subject to licensing requirements by the State of Kansas through the Division of Conservation, Department of Agriculture. He said as such they are required to submit and receive approval for a reclamation plan. Mr. Isaac said according to the Applicant, the reclamation will occur immediately after the mining is done on an as-you-go basis.

Mr. Isaac discussed the haul route. He said the trucks will leave the site via Tabor Valley Road going north to K-18. He said once they reach K-18, they will go either west to Manhattan or east to Highway 99. He stated the Riley County Engineer and staff calculated the letter of credit amount of \$13,000 which must be submitted by the Applicant to cover the potential cost of repairs of any damage to the roads caused by the truck traffic prior to commencing quarrying operations.

Mr. Isaac explained that a Fugitive Dust Plan has been submitted and reviewed by the Riley County Engineer. He said the plan is to utilize dust control methods and materials on an as-needed basis, with emphasis on coordinating with Riley County Public Works regarding timing, as Riley County maintains Tabor Valley Road.

Staff recommended the requested Conditional Use be approved with the following conditions:

1. This Conditional Use Authorization shall apply to the legally described parent tract and shall be subject to the minimum requirements of the Riley County Zoning Regulations regarding quarrying and mining;
2. The subject site shall be served by an existing entrance to Tabor Valley Road, located approximately 9000 feet east of the intersection of Tabor Valley Road and Tabor Lane; an entrance permit may be required from Riley County Public Works;
3. Vehicles and equipment involved with the operation shall access the site via the aforementioned entrance;
4. Prior to commencing excavation operations, the applicant shall obtain an Excavation License from Riley County Planning and Development;
5. Prior to commencing excavation operations, a Reclamation Plan shall be submitted to and approved by the Riley County Board of Zoning Appeals;
6. Prior to commencing excavation operations, a Fugitive Dust Plan shall be submitted to and approved by the Riley County Board of Zoning Appeals;
7. Prior to commencing excavation operations the applicant must provide financial assurances through a surety bond, performance bond, escrow deposit or letter of credit in the amount of \$13,000 to cover the cost of repair of any damage to the roads due to ongoing truck traffic resulting from the operation. Such letter of credit shall be made out to and kept by Riley County Planning and Development.
8. When said quarry operation is abandoned or discontinued, the land shall be reclaimed within 30 days, as set forth in the Surface Mining Land Conservation and Reclamation Act (K.S.A. 49-601 through 624);
9. The use of explosives shall be strictly prohibited; and

10. Hours of operation shall be limited to daylight hours; Monday through Friday, closed on weekends.

Diane Hoobler asked when is the excavation license required to be obtained.

Bob Isaac responded after the Conditional Use Authorization is approved, the applicant can apply for an excavation license.

Chairman Taul asked why Wabaunsee County was listed on the Application for New Site Registration.

Bob Isaac explained the business Rockin Kansas LLC is located in Wabaunsee County.

Chairman Taul asked for confirmation that it was the County Engineer that determined the \$13,000 for road maintenance.

Bob Isaac affirmed.

John Wienck questioned the 800 acres that was crossed out on the Application for New Site Registration and the circled number five.

Scott Dinger replied the State only allows five acres to be excavated at a time.

Bob Isaac explained the conditional use boundary is quite a bit larger than what will actually be mined. He said the area further south will be too steep to do this type of mining. He explained that if it can't be reclaimed, it can't be mined.

Diane Hoobler mentioned the dust control prevention and asked why it will only be applied in the residential areas. She said the entire road is very dusty.

Bob Isaac replied the application of dust control materials will be emphasized more so in front of residences to control the dust, but the entire road will be treated.

Nathan Larson asked how much truck traffic will be anticipated.

Scott Dinger said as far as truckloads, some days will be seven to eight trucks and some days one or two. He said they already are mining in Wabaunsee County and last week they hauled 25 loads. Mr. Dinger stated that in the winter time it slows down to nothing.

Mr. Dinger said he instructs his truck drivers that when they meet an oncoming vehicle to pull over and stop. He said the other day he met a truck that wouldn't pull over and he lost a \$600 windshield.

Diane Hoobler asked where the quarry in Wabaunsee County located.

Mr. Dinger said it is south of the City of Wabaunsee.

Diane Hoobler asked if rock is stock piled on site.

Mr. Dinger explained the site plan and where the lay down site will be located.

Diane Hoobler asked if there are any regulations about two quarries operating so closely together. She said her main concern was with truck traffic from both sites operating at the same time.

Bob Isaac replied that it comes down to the capacity of the road. He said the County Engineer makes an assessment of all traffic to determine if this additional traffic is acceptable, as this is a public road. He said it is not a first come, first serve basis.

Chairman Taul opened the public hearing and asked if there were any proponents for the request.

Doug Routh explained he owns the subject site and said when he purchased it two years was a perfect example of 40 years of neglect. He stated he has spent the last two years trying to clean it up to grow hay. He said in the process of mining rock, they are going to finish cleaning up all the washouts and preserve and put it back the way it belongs. Mr. Routh stated his son also runs cattle on this property.

Chairman Taul asked if there were any opponents for the request.

Roger Andres stated he lives next to the subject site and visited with Bob Isaac several times about his concerns. He said he asked for a copy of the conditional use authorization to review but was told that couldn't be done until it was provided to the Board first. He said that process doesn't give him time to review it and the Board will be making a decision tonight.

Mr. Andres stated he lives within four miles of three active quarries. He said another has been approved, but is not active yet. He said if you approve this request there will be five quarries and, as he has heard, maybe one in the future south of him. He stated that totals six quarries within four miles of his house.

Mr. Andres stated that Bayer's is a busy place. He would really like to know how many trucks leave Bayer's and go to K-18. He said he estimates 100 to 125 trucks per day. He also stated there is a choke point when you get to K-18. He said trucks tend to back up on Tabor Valley Road waiting to turn onto K-18. He stated he would like to know how many trucks go through there a day.

John Wienck said County public works should be able to provide that information to him.

Mr. Andres said he just walked in and they were unable to tell him. He said he went to Mr. Ellermann, the County Engineer, to discuss the choke point and that had not been looked into. He stated his main concerns are the high traffic and density of the quarries.

Chairman Taul stated the Board has to base their evaluation on the information by the county engineer.

Diane Hoobler moved to close the public hearing.

John Wienck seconded. Carried 4-0.

Diane Hoobler said she didn't consider the intersection of K-18 and Tabor Valley Road. She said there is a deep drop-off on both sides of the road. She said for semi and dump trucks, it's hard enough for them to turn onto Tabor Valley, but these will be low boys and honestly doesn't know how they will be able to do it.

Chairman Taul asked if the county engineer was present.

John Ellermann, Riley County Engineer stated that he was present.

Chairman Taul asked him if he was comfortable with the increase in extra traffic.

Mr. Ellermann stated he was and that Tabor Valley Road is a public road. He said if it needs to be fixed, it will be added to list to be repaired.

Diane Hoobler asked Mr. Ellermann about the intersection of K-18 and Tabor Valley Road.

Mr. Ellermann stated he was taking notes and will have to look at it. He said if they need to get with KDOT to widen the intersection, they will; however, it may take a while since it has not been planned for budgeted for.

Nathan Larson moved to approve the request for a Conditional Use Authorization to allow for a limestone quarry operation.

John Wienck seconded.

Carried 4-0.

Greg and Theresa LLC – Conditional Use

Chairman Taul opened the public hearing at the request of Greg and Theresa LLC, petitioner and owner, for a **conditional use** authorization to amend Conditional Use #09-16, allowing a borrow pit operation for resource extraction for a tract of land in Manhattan Township, Section 19, Township 10 South, Range 8 East.

Bob Isaac presented the request stating that, in November 2008, the Applicant received a conditional use authorization for the purpose of establishing a 5-phase borrow pit on an 84.6-acre tract (#08-26). He explained in December of 2009, the Board of Zoning Appeals approved the applicant's request (#09-16) to amend Conditional Use #08-26, by redrawing the phase boundaries on the site plan to create a total of six (6) phases, rather than five (5), within the same conditional use boundary. Mr. Isaac said the amendment included adjustments that would allow a smoother transition between a phase that is to be mined and one that is being terminated and reclaimed.

Mr. Isaac stated the Applicant wishes to amend the aforementioned conditional use authorization and submit a revised site plan which reduces the overall conditional use boundary and reduces the number of phases. He said according to the Applicant, the reason for the amendment is that the City of Manhattan has purchased from the applicant a permanent easement over much of the southeastern portion of the existing conditional use area, in order to provide for a separate, future borrow operation for the City of Manhattan's Levee Flood Risk Project.

Staff recommended the requested Conditional Use be approved with the following conditions:

1. Conditional use shall apply to the entire 52.76-acre tract of land, as legally described herein;
2. The aforementioned tract shall be partitioned into six (6) sections, as per the approved site plan, to be mined in separate phases;
3. The Letter of Credit submitted as part of Petition #09-16 shall be retained to cover costs associated with any future potential damages to Temple Lane not remedied by Applicant; the current \$10,000 Letter of Credit is on file with Riley County Public Works.

4. Prior to commencing operations on any given section, an individual Reclamation Plan, along with an instrument of financial surety (as per Section 22A - Resource Extraction of the Riley County Zoning Regulations) with an accompanying legal description outlining specific area to be mined, shall be submitted to and approved by the Riley County Board of Zoning Appeals;
5. Any section that is considered active shall be no less than 80% reclaimed, along with a determination of such reclamation by the Zoning Enforcement Officer, before any new section is opened for mining (as per the approved site plan).
 - 5a. Prior to the opening of any new section, an additional Letter of Credit shall be submitted to the Riley County Planning & Development Department, along with a legal description describing the specific section to be mined.
 - 5b. Each section-specific instrument of financial surety for reclamation (Letter of Credit) shall not be released until a determination has been made by the Zoning Enforcement Officer that a mined section has been successfully reclaimed in its entirety.
6. No more than one section, plus 20% of a actively mined section, shall be mined at any given time;
7. The Fugitive Dust Plan submitted as part of Petition #09-16, describing proposed dust control measures for Temple Lane, shall be retained and shall satisfy the requirements for this petition. Alternatives shall be considered and approved by Manhattan Township, such as the application of magnesium chloride, calcium chloride or asphalt paving;
8. Prior to establishing any new entrances onto Temple Lane, an entrance permit shall be obtained from Riley County Planning & Development and approved by Manhattan Township;
9. New entrances shall be clearly delineated and consist of all-weather surfacing;
10. No borrow pit shall be located closer than 50 feet from any adjoining property under separate ownership or any public right-of-way.
11. Sections and subsections being mined shall be secured from unauthorized dumping activity by the use of cable/post fencing or barbed wire fencing for at least 50% of the site (100% of the portion of mined section(s) fronting Temple Lane), including entrance;
12. Hours of operation shall be limited to daylight hours, Monday through Saturday, closed on Sundays;
13. In cooperation with surrounding property owners, water wells shall be tested on a semi-annual basis (six month intervals) and a copy of the results submitted to the Riley County Planning & Development Department; and
14. The applicant shall maintain a current Excavation License from Riley County Planning and Development.

Mr. Isaac said the subject site is located within a floodway. He said the area does flood and moves soil around on the site. He explained the applicant is requesting to reduce the physical

boundary of the conditional use because he will no longer have access to the area the City of Manhattan purchased as a permanent easement.

Mr. Isaac said 1A and 1B have already been reclaimed or is in the process of being reclaimed. Mr. Isaac explained that the Applicant can take borrow, reclaim the pit by filling with clean rubble and then covering it up with topsoil. He said because it is in the floodway, the elevation of the reclaimed portion cannot any higher than the original elevation of the site.

Mr. Isaac explained the progression of the borrow operation goes from north to south. He stated the mining is approximately 50% completed. He said as the mining progresses from one section to the next, it creates a new entrance on to Temple Lane. He said a new road entrance permit is needed each time.

Mr. Isaac stated each section or sub-section being mined shall be secured from unauthorized dumping activity, as much as possible by the use of cable/post fencing or barbed wire fencing for at least 50% of the site (100% of the portion of mined section(s) fronting Temple Lane). He said because this area floods, the fencing has been washed out many times.

Mr. Isaac displayed photos provided by the Applicant of the borrow site. He stated the Applicant is working on replacing the fencing to secure the site. He said there have been incidents where there has been illegal dumping. Mr. Isaac said KDHE has been involved and the Applicant has made strides securing the site.

Mr. Isaac explained this is an existing borrow pit operation that has been in existence since 2008. He said all the Applicant is wishing to do reduce the geographical size of it.

Diane Hoobler asked about the excavation license and how long it is good for.

Bob Isaac replied the licensing is issued annually.

Greg Wilson stated he is the owner of Howie's Recycling and has been operating the borrow pit for the last eight years. He said he has tried to run it efficiently but they have made a few mistakes along the way. He stated they always worked with the County on any issues that have arose.

Chairman Taul opened the public hearing and asked if there were any proponents or opponents for the request.

Scott Sowell stated he owns the land north of the subject site and owns a house there. He said his biggest concern is water. He stated the City will not extend water over the levee. Mr. Sowell said everything they have is based on Mr. Wilson following the rules and keeping the drinking water safe. Mr. Sowell said Mr. Wilson is diligent about testing the water while he is present.

Mr. Sowell questioned which request was actually being reviewed; the site the City of Manhattan will be using or are we discussing Mr. Wilson expanding the existing permit.

Bob Isaac explained Mr. Wilson is requesting to amend the existing conditional use permit in order to reduce the geographical size of the operation, not expand.

Mr. Sowell stated the photos of the subject site were inaccurate. He said the entrance displayed is wide open; anyone can drive through it and it is never locked. Mr. Sowell said you can dump

anytime you want. He said as time has gone on, Mr. Wilson hasn't kept up with the fencing. He also stated he has lived in this area all his life and flooding has not taken out fences.

Mr. Sowell stated his concern is that once you allow Mr. Wilson to continue this operation with no more room to expand, what is going to keep him honest? He asked what is going to keep him from dumping bladders of who knows what from Cat Cans, car wash dumping, people coming in on Saturday and Sundays dumping what they want. He said they have taken numerous photos, made numerous complaints and Mr. Higgins' hands have been tied forever.

Mr. Sowell stated he doesn't have issues with most aspects of the operation, but it has to be clean rubble, it has to be fenced off and has to have repercussions if not. He said once you allow him to ruin my water, ruin my land...he has already tried to buy me out repeatedly. He said that is his goal to push me out of there. Mr. Sowell stated his family has owned land in this area for a very long time and they are not going anywhere. He said there is no gate, no fence, open dumping and there is no gravel at the entrance. He asked where does the dirt and mud go; onto Temple Lane.

Mr. Sowell said more wear and tear is being put on the road which is causing Manhattan Township more money. He said Mr. Wilson does keep the dust controlled. Mr. Sowell said when he has problems, Mr. Wilson does address it. He said he wants to be a good neighbor and is sure Mr. Wilson does too.

Richard Britt stated he farms Mr. Wilson's ground before and after it is borrowed. He said, regarding the fencing, he explained that the northern rectangle is where they run cattle on, so there is a fence up; but maybe not where is doing the fill. He said south of that he has been farming up to three months ago and that area doesn't get fenced.

Scott Sowell said the fence is only up for the cattle.

Bob Isaac clarified that the requirement is not to fence the entire property. He said the area that has been reclaimed or being reclaimed has a fence along it. Mr. Isaac said that the area being borrowed is required to be fenced with a locking gate. He said there are few things the applicant has been delinquent on, but has a history of abating violations.

Diane Hoobler asked if the fence is electric.

John Wienck asked if the fence will be a 5-wire.

Steve Higgins, Riley County Zoning Enforcement Officer said the conditional use requirement should state the fence needs to be able to keep people from walking through it and it needs to be more than a single cable. He said there needs to be a lock on the gate and closed daily. He said Mr. Wilson understands there can't be anymore illegal dumping.

Greg Wilson said the only reason why they allowed car wash mud was because they received approval from Mr. Higgins. He said maybe the rules changed but they had permission and were not trying to pull the wool over anyone's eyes. Mr. Wilson stated they are not trying to do anything wrong and wants to do what is correct. He said requiring more than one wire (cable) is crazy because all you are doing is keeping trucks out of there. He did say at one time the fencing was not in place, but it is now.

John Wienck said the definition of a legal fence is 3-wires or more in the agricultural business.

Mr. Wilson replied that is because you are trying to keep cattle in.

Bob Isaac said staff researched the issue regarding the car wash mud by contacting KDHE and Perry Piper, Riley County Environmental Health Specialist. He said by state statute, car wash mud is not restricted, but industrial truck wash mud had to be inspected and properly disposed of.

Nathan Larson asked what other type of stuff is allowed like chunks of concrete.

Steve Higgins replied dirt, brick, etc. He said the definition of clean rubble comes from the State. He said you can't put wood in the pit because of false settling.

Bob Isaac re-emphasized the reason for the amendment is to reduce the acreage of the existing operation.

Chairman Taul asked if the conditions could be amended.

Mr. Isaac replied yes.

Tim Sowell stated he is the fifth generation to live on Temple Lane. He said the biggest thing to worry about is accountability. He said he spoke with a state office who told him car wash mud is not part of clean rubble. Mr. Sowell said some people think one wire is enough and some think three wires is. He said they have seen numerous violations in the pit, illegal dumping of all kinds; sludge, trash even on weekends. He said the gate is never closed. He said if you go back north you will find holes in the ground where the flooding came through washing the dirt into those huge 6-8 foot chunks. leaving big caverns. Mr. Sowell stated this is very hazardous for livestock or even people. He said we need to prevent pollution in the future and there is an active investigation going on with possible contamination of the groundwater. He said it would be wise to cease anymore filling until the investigation is completed.

Bob Isaac stated he wanted to make it clear that the applicant is not requesting to change the conditions, rather, he is simply requesting to change the geographical boundary of the existing conditional use. He agreed enforcement needs to happen, but it is a discussion separate from this request.

He said the Board of Zoning Appeals does not have the authority to repeal, retract or deny an existing conditional use; it runs with the land. He said in order for a conditional use to be repealed or removed, the property would have to be rezoned or a judge would have to issue an injunction to correct a violation of the conditions.

Diane Hoobler asked what could be done with enforcement issues because there is no enforcement of anything.

Bob Isaac replied it comes down to the Board of County Commissioners and the process it takes of enforcement, which starts with the Planning Department then onto the County Counselor's Office. He said Riley County has utilized the injunction process.

Scott Sowell said he is in favor of the amendment. He said he has visited with Bob Isaac and Bill Heatherman (with City of Manhattan) about the borrow site for the levee. Mr. Sowell said the complaints made this evening are a separate issue.

Diane Hoobler moved to close the public hearing.

John Wienck seconded. Carried 4-0.

John Wienck said as you see in other rock quarries you have the gate and the fence on the frontage. He asked is there 100% fencing on Temple Lane.

Bob Isaac explained it is 100% of the mined section that fronts Temple Lane.

Nathan Larson said he thinks the fence should have three strands.

Steve Higgins asked the applicant if he would agreeable to three-strands of cable for the fencing.

Mr. Wilson said he didn't think it was necessary but would not be opposed to it.

Nathan Larson stated the purpose of the fence is to keep people and trucks from illegal dumping. He said cable will accomplish that versus three-strand barbed wire.

John Wienck replied the gate has to be shut. He asked Mr. Higgins about fencing in the floodplain.

He said the type of fencing that is being used right now allows for it be taken down easily and relocated. If the fence is too sturdy; during flooding things can get caught up in the fencing.

Bob Isaac suggested the following changes to the Conditions and asked if they were acceptable to the Board.

#9 added lockable gate;

#11 added three-strand to cable/post fencing requirement

John Wienck moved to approve the request for a Conditional Use Authorization to amend Conditional Use #09-16 allowing a borrow pit operation for resource extraction with the recommended changes to conditions #9 and #11.

Diane Hoobler seconded.

Carried 4-0.

City of Manhattan – Conditional Use

Chairman Taul opened the public hearing at the request of the City of Manhattan, petitioner and Greg and Theresa LLC, owner, for a conditional use authorization to permit a borrow pit for resource extraction for a tract of land in Manhattan Township, Section 19, Township 10 South, Range 8 East.

Bob Isaac presented the request and described the background, location and physical characteristics of the subject property. He explained the City has purchased a permanent easement to the property but does not own the land. He said the site will be mined in a single phase.

Mr. Isaac reviewed the condition, as follows:

1. Conditional use shall apply to the entire 31.33-acre tract of land, as legally described herein;
2. As per the approved site plan, the site shall be mined in a single phase. Prior to commencing operations, a Reclamation Plan, along with an instrument of financial surety (\$1500 per acre, as per Section 22A - Resource Extraction of the Riley County Zoning

Regulations) with an accompanying legal description outlining specific area to be mined, shall be submitted to and approved by the Riley County Board of Zoning Appeals;

3. The applicant shall maintain Temple Lane and haul route in a good and passable condition throughout the borrow operation and promptly repair damages that occur. A pre-construction video and photos of Temple Lane shall be submitted to the Riley County Engineer prior to commencement of activities. At the conclusion of borrow operations, Temple Lane shall be restored to a condition that is as good as existed prior to the operation;
4. Prior to commencing operations, a Letter of Credit in the amount of \$27,000 (as per analysis of Temple Lane by Riley County Public Works) shall be submitted to Riley County Planning & Development to cover costs associated with any future damages to Temple Lane not remedied by Applicant and kept on file with Riley County Public Works;
5. A Fugitive Dust Plan shall be submitted and approved, describing proposed dust control measures for Temple Lane, including the application of water as needed. Alternatives shall be considered and approved by Manhattan Township, such as the application of magnesium chloride, calcium chloride, etc.;
6. Prior to establishing any new entrances onto Temple Lane, an entrance permit shall be obtained from Riley County Planning & Development and approved by Manhattan Township;
7. New entrances shall be clearly delineated and consist of all-weather surfacing;
8. The proposed borrow pit shall not be located closer than 50 feet from any adjoining property under separate ownership or any public right-of-way;
9. The borrow area shall be secured from unauthorized dumping activity by the use of active monitoring by the contractor and delineation of at least 50% of the perimeter of the borrow area with orange construction fencing at a minimum. Additional fencing and controls may be required if unauthorized activity is detected;
10. The entrance and access road to the borrow area shall be gated to prevent unauthorized entrance to the site; and have sufficient delineation with fencing to prevent trespassing;
11. Hours of operation shall be limited to daylight hours, Monday through Saturday, unless special approval is obtained from the Planning and Development Director; and
12. The applicant shall obtain and maintain a current Excavation License from Riley County Planning and Development.

Staff recommended the requested Conditional Use be approved as it was determined to meet the minimum requirements of the Riley County Zoning Regulations.

Diane Hoobler questioned the orange snow fencing.

Robert Ott, Director of Public Works for the City of Manhattan, announced that Bill Heatherman - Storm water Compliance Officer, Brian Johnson - City of Engineer and Bill Frost - attorney helping with acquisition, were in attendance this evening.

Mr. Ott said he has been working with the levee since he started back in 2005, with the original feasibility study. He explained the purpose for the project is to increase the height of the levee system and reinforce it structurally. He said the system was constructed in the 1960's and the goal of the project is to increase the reliability and performance of the levee to withstand events greater than a 100-year event.

Diane Hoobler asked about the projected drainage areas into the river and what will keep the water from the river backing up into the pit.

Bill Heatherman said they will not cut the drains at the beginning of the project and the pit will have pumps. He explained ditches will not be constructed until the end of the project. He said the drainage areas are for the permanent ability to drain water out once the pit has been stabilized so it can be used for farming or grazing.

Diane Hoobler asked if there is way the water from the river won't come in.

Mr. Heatherman explained the elevation will be six feet lower and if the river reaches that point, it will back up into the field.

Diane Hoobler asked if the area will be filled back in.

Mr. Ott replied that the pit will not be filled back in, but they will cap it with top soil to stabilize it so sediment is not running off.

Chairman Taul opened the public hearing and asked if there were any proponents or opponents for the request.

Richard Britt explained he currently is the tenant and there are two things he would like to see done. He said he does like the projected drainage areas and allowing it to flow back onto the site. He said the soil is very sandy and when it rains it will soak into the soil. Mr. Britt said by having those two exits cut in will allow a lot of water in anytime the river gets too high. He said it will make the property less valuable and he won't want to farm it.

Mr. Britt asked if dump trucks will be hauling the material.

Mr. Ott replied yes.

Mr. Britt said that is going to be a lot of trucks going up and down that small road and would like to see Temple Lane be paved. He said he didn't think the dust mitigation will be enough. He said he farms to the west of Temple Lane and doesn't want the dust or mitigation efforts to hurt his crops.

John Wienck asked how wide Temple Lane is and the distance from the entrance to Pottawatomie Avenue.

Mr. Ott replied about half mile.

Chairman Taul asked if there had been any discussion about asphaltting the road.

Bill Heatherman said the trucks themselves will be providing compaction. He said if you asphalt it in the beginning, then you are setting yourself up for pot holes and ruts which will need to be re-asphalted. He said if they maintain it in a gravel condition and a contractor will have earth work equipment right there, we believe we will have much better chance to maintain pass-ability

with the road as is. Mr. Heatherman stated this would be beyond the scope of their request to pave it with asphalt.

Tony Akin asked if the Corp of Engineers had anything to say about this. He said with two drains and as soon as water breaches it, you have changed the river channel.

Bill Heatherman said this project was designed by the Corp of Engineers and they do not have that concern.

John Wienck moved to close the public hearing.

Diane Hoobler seconded. Carried 4-0.

Diane Hoobler moved to approve the request for a Conditional Use Authorization to permit a borrow pit for resource extraction.

John Wienck seconded. Carried 4-0.

Diane Hoobler moved to adjourn as the Board of Zoning Appeals and reconvene as the Riley County Planning Board. John Wienck seconded. Carried 4-0.

Annual Review of the Comprehensive Plan

Diane Hoobler moved to table the Annual Review of the Comprehensive Plan to the July 12, 2021 Riley County Planning Board meeting.

John Wienck seconded. Carried 4-0

Nathan Larson moved to adjourn. Diane Hoobler seconded. Carried 4-0.

The meeting was adjourned at 10:10 P.M.