

Planning Commission Staff Report

Applicant

Harshman Construction LLC.
Landowner: K&S Land LLC
N/2 N/2 of SW/4 Sec 28, 19S, 4E

Application

Application number PC-13-01. Applicant is requesting a revision to existing Conditional Use Permits dated Feb. 8, 1999 and March 15, 2010 (PC-10-4). The applicant requests an amendment allowing expansion of Harshman Construction rock quarry in the "AG" Agriculture district.

Project Description

Vickie Kay Kraus and Charles Wayne Seifert (K&S Land LLC) own the North half of the North half of Section 28, Township 19 South, Range 4 East. This tract consists of a 40-acre parcel of open pasture land adjoining the south side of the rock quarry north of Marion. The request is to simply continue to quarry into this tract of land.

Planning Issues

The Public Hearing Notice and Adjacent Property Owner Notification have been completed in accordance with the Marion County Zoning Regulations and Kansas State Statutes on February 6, 2013. No public comments have been received as of February 25, 2013.

In approving a conditional use, the minimum requirements of approval for all similar types of permitted uses in the same district must be met unless otherwise reduced by specific reference in the recommendation of the planning commission or the approval of the governing body. The requirements may be made more stringent if there is potentially injurious effect, which may be anticipated upon other property and the neighborhood or contrary to the welfare and convenience of the public.

Factors to be considered in a conditional use permit recommendation:

-
- 1) Whether approval of the conditional use would be consistent with the intent and purpose of the Marion County Zoning Regulations.
 - 2) Whether the location of the proposed use is compatible to other land uses in the surrounding neighborhood.
 - 3) Whether the proposed use places an undue burden on the existing transportation and service facilities in the area affected and, if so, whether such additional transportation and service facilities can be provided.
 - 4) Whether the proposed use is made necessary or desirable because of

- changed or changing conditions in the area affected.
- 5) The length of time the subject property has remained vacant or undeveloped as zoned; provided, the use of land for agricultural purposes shall be considered as viable use of the land and not be considered as allowing the land to be vacant or undeveloped.
 - 6) Whether the applicant's property is suitable for the proposed use.
 - 7) The recommendations of permanent or professional staff.
 - 8) Whether the proposed conditional use would be in conformance to and further enhance the implementation of the comprehensive plan.
 - 9) Whether the relative gain to the public health, safety and general welfare outweighs the hardship imposed on the applicant by not upgrading the value of the property by approving the conditional use.
 - 10) Whether the proposed conditional use, if it complies with all the conditions upon which the approval is made contingent, will not adversely affect the property in the area affected.
 - 11) Such other factors as may be relevant from the facts and evidence presented in the application.

Harshman Construction is in compliance with the current Kansas Water Pollution Control Permit Authorization to Discharge under the National Pollutant Discharge Elimination System (NPDES), which expires DEC 31, 2013. The permit is on file at the Planning & Zoning office.

The reclamation plan on file says the intent is to spread the retained topsoil on the leveled excavated area filled with unused overburden materials and then seed the area with grass. Staff has inspected the site in the past and land reclamation had been conducted in several areas adjacent to the Hauser's property (Rocky Hett). The reclaimed land is currently being used for milo, corn, wheat, and native grasses.

Existing infrastructure, utilities, and services are adequate to support the proposed CUP. There are no residences within 1,500 feet of the application area. Pizza Hut is over 1,500 feet of the location.

Staff Recommendation

Recommendation to recommend approval of the CUP, thereby allowing the expansion of the quarry into the 40 acres located N/2 N/2 of SW/4 Sec 28, 19S, 4E. The proposed CUP is important for the continuation of the quarry, which benefits the community and county as a whole. Conditions to include: 1. Quarry operator continues to comply with all Federal, State, and local regulations; 2. The existing blasting program days and times still apply; 3. Dust is to be controlled by the operator in compliance with KDHE and EPA Standards; 4. The quarry operator shall provide a Certificate of Comprehensive Liability Insurance in the amount of \$2,000,000 to Marion County; and 5. Restoration is to be performed in accordance with applicable Federal and State regulations.