

Marion County
Planning, Zoning
Environmental Health

230 E Main St
PO Box 157
Marion, KS 66861
620-382-2945
Fax: 620-382-8823

September 20, 2007

Staff Report for Conditional Use Permit Application No. **ZP07-043**:

The following Golden Factors as required by law must be considered before a decision is made concerning this application:

- 1: ***What is the character of the neighborhood?*** Current zoning for this parcel is Agricultural. One home site exists on this property and the home is owned and occupied by the applicant. There are no other home sites located within ½ mile of this property. Surrounding land is zoned agricultural and is primarily used for crop production.
- 2: ***What zoning and land uses exist on nearby properties?*** Currently, surrounding properties are zoned agricultural. The land use surrounding this parcel is agricultural production. No home sites are located nearby.
- 3: ***Is the parcel suitable for development as one of the uses to which it has been restricted by the zoning regulations?*** The site is currently used as a non-legal, non-conforming junkyard as defined in the zoning regulations. This site has not been licensed by the state as a Salvage Operation. Notice by KDOT has been served on the landowner and an application for a Salvage License has been submitted to them by the applicant. Issuance of the KDOT Salvage and Storage Compliance Certificate is pending, awaiting approval of a Conditional Use Permit granted by the governing body. Uses permitted in the Agricultural zone consist of single-family dwellings and railroad rights-of-way. Minimum acreage for this zoning district is 5 acres with no minimum lot width or depth. Conditional Uses listed in Article 21 of the Zoning Regulations are permitted in this district. The proposed use is listed as Item #24 and is permitted when approved by the Governing Body.
- 4: ***What is the extent to which removal of the restrictions will detrimentally affect nearby property?*** Permitting the requested Conditional Use will not change the condition of the property unless certain conditions for approval are required. There will not be a detrimental affect on neighboring property other than what currently exists. The level of existing detriment is an issue to be determined, in part, by public comment submitted by neighboring landowners. Additionally, because this is an existing use, legal or not, there will not be any increased traffic, aesthetic or environmental impacts, or increased

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demands on public services other than what is now occurring. Conditions imposed on the permit would only decrease the detriment to neighboring properties.

- 5: ***What is the length of time the subject property has remained vacant as zoned?*** The property is not currently vacant. It has been used as a residential home site, farm operation and a salvage storage site. Property taxes are assessed at the agricultural use rate. This will not change if the property is granted a commercial use, as agricultural and commercial land assessments are the same.
- 6: ***What is the relative gain to the public health, safety and welfare by the destruction of the value of applicant's property as compared to the hardship imposed on the individual landowner?*** The community at large would benefit substantially more by permitting this use in this location than at other locations because this property is relatively secluded from other residential uses. This type of use will typically provide rodent harborage, which causes nuisance conditions for neighboring property owners. The seclusion of this property will have a nominal affect on surrounding land uses, since these are all crop production uses and the nearest residence is more than ½ mile from this property. Additionally, the landowner has, for many years, maintained a clean and orderly property, and granting this permit will not likely change his habits. It will ensure screening the property from public view. It should be noted that this office has not received any complaints on this property.
- 7: ***Does the proposed use conform to the Comprehensive Plan?*** I am unable to locate any information regarding junkyards and salvage operations within the Comprehensive Plan.
- 8: ***Recommendation of permanent or professional staff shall be considered.*** Staff recommends the following additional items or issues be discussed prior to a final decision or recommendation to the Board of County Commissioners:
- In order for a use to have grandfather rights, they must be operating legally under the statutes at the time of adoption of the zoning regulations (which is what makes them non-conforming).

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- To be considered “legally operating under the statutes” they must comply with all requirements of the state regulations and have a salvage license issued by Kansas Department of Transportation.
- If they do not have a license at the time of adoption of the zoning regulations, they do not have any right to continue a non-conforming use nor do they have the right to expand the use if the pre-existing size of the operation alleviated the need for a state license.
- If they do have a license at the time of adoption of the zoning regulations, they must maintain a current license continuously or their legal non-conforming use status will expire.
- If, at any time, they fail to comply with state regulations, the 6 month time period begins to elapse, after which, if they haven't come into compliance with state regulations, they will no longer have a legal non-conforming use allowable by the zoning regulations. At that point, the property must be abated or they must obtain a conditional use permit from the county. Professionally, I would strongly discourage issuing a CUP if they lose their state salvage license for a compliance related issue. This is an issue that would be indicative of their ability or desire to comply with local regulations as well as state regulations.
- The zoning regulations call these operations junkyards. The definition of a junkyard is “an establishment which is maintained, operated or used for storing, keeping, buying or selling junk or for the maintenance or operation of motor vehicle graveyards. This term shall include salvage yards.”
- The definition of junk is “old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste or junked, dismantled or wrecked motor vehicles, or parts thereof, iron steel and other old or scrap ferrous or nonferrous material.” This will cover scrapped or abandoned appliances, tires, etc.
- Junkyards are permitted by Article 21 Section 103 Item #24 as a Conditional Use or in Planned Medium Industrial District (IP-2) if they can qualify as a storage yard.

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- In IP-2 districts, they must comply with plan submission and content requirements in Article 14. Because these regulations are intended for large undeveloped lots or parcels, rezoning to this district requires a complete plan for development and phasing, layout and design of designated uses, location and intensity of lighting, drainage, floor elevations of all buildings, layout of utilities, parking and access, etc. IP-2 districts should be located in areas where adequate roadways, railways and utilities exist.

Staff Recommendation: Approve a Conditional Use Permit for the Applicant, with restrictions to the current size and use.