



LAWRENCE BOARD OF ZONING APPEALS  
AGENDA FOR **OCTOBER 3, 2019**  
1<sup>ST</sup> FLOOR OF CITY HALL, 6 E. 6<sup>TH</sup> STREET, CITY COMMISSION MEETING ROOM  
**6:30 PM**

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**TAKE A ROLL CALL TO DETERMINE IF THERE IS A QUORUM OF MEMBERS PRESENT**

**ELECTION OF OFFICERS FOR 2019-2020**

Accept nominations for and elect Chair and Vice-Chair for the coming year.

**ITEM NO. 1 COMMUNICATIONS**

- A. Acknowledge communications to the come before the Board.
- B. Disclosure of ex-parte communications and/or abstentions for specific agenda items.
- C. Announce any agenda items that will be deferred.

**BEGIN PUBLIC HEARING:**

**ITEM NO. 2 APPEAL OF AN ADMINISTRATIVE DECISION WHICH FOUND THAT THE SITE IS CURRENTLY BEING UTILIZED FOR *MINING* USE; 5851 Overland Drive**

**B-19-00393:** Consider an appeal filed by Matthew S. Gough, Barber Emerson, L.C., representing JAL LLC, property owner of record of the real property at 5851 Overland Drive. The appeal challenges an administrative determination issued by letter dated July 12, 2019, by the Planning & Development Services Director, which found that the site is currently being utilized for Mining use. The appeal was filed under the guidelines of Section 20-1311 in the Land Development Code of the City of Lawrence, Kansas, 2018 edition. Reasons for filing this appeal are cited by the appellant in their appeal packet dated July 25, 2019, and received in the Planning Office on July 26, 2019.

**ITEM NO. 3 MISCELLANEOUS**

- A. Board of Zoning Appeals general training.
- B. Approve 2019-2020 BZA calendar.
- C. Consider any other business to come before the Board.

**ITEM NO. 2**      **APPEAL OF AN ADMINISTRATIVE DECISION WHICH FOUND THAT THE SITE IS CURRENTLY BEING UTILIZED FOR *MINING* USE LOCATED AT 5851 OVERLAND DRIVE [KEW]**

**B-19-00393:** Consider an appeal filed by Matthew S. Gough, Barber Emerson, L.C., representing JAL LLC, property owner of record of the real property at 5851 Overland Drive. The appeal challenges an administrative determination, issued by letter dated July 12, 2019, by the Planning and Development Services Director, which found that the site is currently being utilized for *Mining* use. The appeal was filed under the guidelines of Section 20-1311 in the Land Development Code of the City of Lawrence, Kansas, 2015 edition. Reasons for filing this appeal are cited by the appellant in their appeal packet dated July 25, 2019, and received in the Planning Office on July 26, 2019.

**MATTER BEFORE THE BZA**

The only question before the Board of Zoning Appeals is: **Did Staff err when it issued a written determination which found that the site is being utilized for a *Mining* use as defined by the Land Development Code and issued a notice and order to cease mining operations.**

**REASON FOR THE APPEAL**

Section 20-1311 authorizes the Board of Zoning Appeals to; “hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of the provisions of this Development Code.”

Between July 1<sup>st</sup> and July 3<sup>rd</sup> 2019, the Planning and Development Services office received three separate complaints from adjacent residential property owners concerning excavation and crushing of rock at the property that was allegedly an ongoing operation continuously for 2-3 weeks prior to the complaints. Upon receiving the complaints, staff went out to the site to take photos of activity occurring on-site. (Figure 1, Figure 2, and Figure 3).

Staff reached out to the property owner via phone and left voice messages regarding the complaints between July 1<sup>st</sup> and July 3<sup>rd</sup>.

An inspection of the property on July 3<sup>rd</sup> confirmed a large-scale operation of rock excavation and crushing was occurring on the site.

In follow-up, it was determined that the excavation and crushing of rock ceased after the site inspection and shortly after the July 4<sup>th</sup> holiday. The property owner had relayed to staff that they ceased the operations voluntarily upon receiving complaints from adjacent property owners directly. The activity has remained stopped.

On July 12, 2019, a notice and order to cease mining operations letter was sent to the property owner of record. The letter stated that no further excavation or crushing of rock is permitted on the property unless a special use permit is applied for and approved. The property is in the RM12 (Multi-Dwelling Residential) District. *Mining* is not a permitted use in this district and would not be permitted via a special use permit. In the notice and order, the special use process was incorrectly identified as one way to come into compliance with the *Mining* use standards; however, this option would only apply to IG districts.

An additional site inspection with the property owner and the Planning Director took place on July 23<sup>rd</sup>, 2019. The notice and order to cease mining operations letter and the activity on the site was discussed. The Planning Director reaffirmed that the activity was *Mining* as defined in the Land Development Code. The applicant disagreed that it was grading. The Planning Director advised the property owner that one avenue for relief was to appeal the administrative decision to the Board of Zoning Appeals.

A notice of appeal to an administrative determination was received in the Planning and Development Services office on July 26, 2019. The appeal states that the activities on the site do not constitute *Mining* and further states that Section 20-515(2) expressly identifies five activities that “shall not be considered *Mining*” of which the appeal argues that two apply to the activities taking place on the property, specifically: Grading in a subdivision that has been approved by the City in accordance with Article 8, Subdivision Regulations, of this development code and any amendments thereto. (Section 20-515(2)(iii)) and Temporary crushing of excavated stone on-site for use within the development or hauled off-site for another construction-related use. (Section 20-512(2)(iv)).

On August 19, 2019, staff went to the property to take additional photos. (Figure 4, Figure 5, Figure 6, and Figure 7).

The excavation and crushing of rock is regulated in the Use Tables of Article 4 and by the Use Regulations in Section 20-515 (*Mining*) of the Land Development Code. *Mining* use is only permitted in the IG District (Section 20-403), except as enumerated in 20-515 (*Mining*).

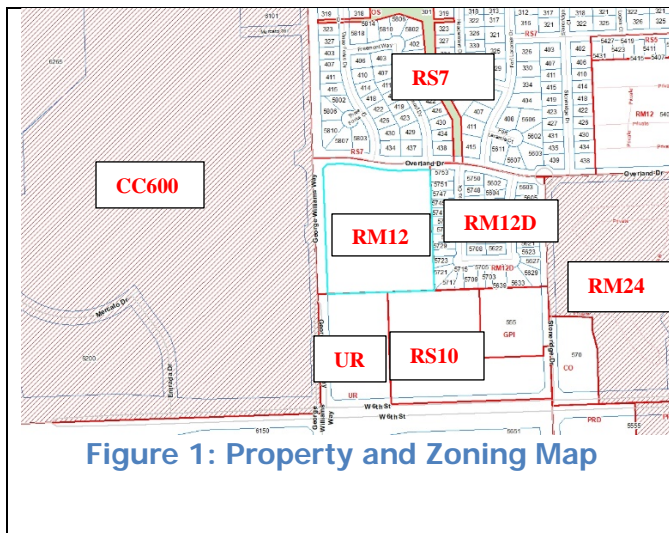


Figure 1: Property and Zoning Map



Figure 2: Aerial Image of Property

March 8, 2018

## **ATTACHMENTS**

1. Administrative determination letter
2. Applicants reason for appeal
3. Photos of activity; Figures 1 through 7. (Included at the end of the report.)
4. Aerial images of property; Figures 8 through 15. (Included at the end of the report.)
5. Plat

## **CURRENT ZONING AND LAND USE**

Current Zoning & Land Use:

RM12 (Multi-Dwelling Residential) District; undeveloped land.

Surrounding Zoning and Land Use: RS7 (Single-Dwelling Residential) District to the north. Existing detached dwellings and undeveloped single-dwelling residential lots.

RM12D (Multi-Dwelling Residential) District to the east. Existing duplex dwellings.

RS10 and UR (Single-Dwelling Residential) and (Urban Reserve) Districts to the south.

CC600 (Community Commercial Centers) District to the west. Undeveloped land.

## **BACKGROUND SUMMARY**

The use standards for the *Mining* use are specifically addressed in Section 20-515 of the Land Development Code. "Mining, including extraction of clay, gravel, or sand; quarrying of rock or stone; earth moving and excavation, including removal of topsoil; and depositing of construction material, clay, earth, gravel, minerals, rock, sand or stone on the ground." It is also defined in Article 17 as, "Mining or extraction of mineral or aggregate resources from the ground for off-site use. Examples include quarrying or dredging for sand, gravel or other aggregate materials; mining; and oil and gas drilling."

## **ARTICLE 5 USE REGULATIONS**

### **20-515 Mining**

Mining, including extraction of clay, gravel, or sand; quarrying of rock or stone; earth moving and excavation, including removal of topsoil; and depositing of construction material, clay, earth, gravel, minerals, rock, sand or stone on the ground, will not be construed to be an allowed use in any District but IG, except as provided below:

#### **(1) A Special Use Permit for a temporary basis.**

Mining may be approved as a Special Use that is to be allowed on a temporary basis in accordance with the Special Use procedures of Section 20-1306. Such a Special Use approval is revocable and valid for specified periods of time, to permit *Mining* or extractions from or deposits on the earth of rock, stone, gravel, sand, earth, minerals, or Building or construction materials; and,

#### **(2) The following activities shall not be considered Mining:**

- (i) Excavations for the foundation or Basement of an Building or for a swimming pool which a Building Permit has been issued, or deposits on the earth of and Building or construction materials to be used on-site in a Structure for which a Building Permit has been issued.
- (ii) Grading of any Parcel of land for a permitted use where no bank of more than 4 feet in vertical Height is left standing and exposed.
- (iii) Grading in a subdivision that has been approved by the City in accordance with Article 8, Subdivision Regulations, of this development code and any amendments thereto.
- (iv) Temporary crushing of excavated stone on-site for use within the development or hauled off-site for another construction-related use.



- (v) Any extractive operation existing and operating as such on the Effective Date shall conform to the provisions set forth herein within one year of the Effective Date.

Some information from the Kansas Geological Survey and the American Geosciences institute regarding sand, gravel and crushed stone also provide some context for the common definitions of mining as it relates to the activity on-site. Industrial mineral production in Kansas mainly involves those commodities that are important to the construction industry and construction aggregate is the largest mining industry in most states. The activity on the property falls into this category of mining for use in the construction industry and specifically for construction aggregate. It further goes on to state that there are several classifications of mining which help to determine the specific type of mining activity occurring on the site falls into the category of "Surface Mining", which includes strip mining, a mine that is worked from the earth's surface by stripping of overburden, including soil, to extract the ore or resource.

Classifications of Mining (source: American Geosciences Institute) (4 Main Methods)

1. Underground Mining - The overlying rock is left in place while extracting mineral or ore deposits.
2. Surface Mining- Removal of soil and rock overlying the mineral or ore deposit.  
Includes: strip mining, open pit mining, quarrying and mountain top removal mining.
3. Placer Mining – Extracting minerals from a placer by washing, dredging or hydraulics.
4. In-Situ Mining – involves dissolving the mineral resource in place then processing it at the surface without moving rock from the ground.

The zoning of this property is RM12 (Multi-Dwelling Residential) District. The *Mining* use is specifically prohibited in all districts but is permitted in IG (General Industrial) by special use permit. The use tables in Article 4, Section 20-402; Residential, shows *Mining* as not permitted in the RM12 district. Section 20-515 further states, "will not be construed to be an allowed use in any district, but IG, except as provided below." The conditions of "except" being a special use permit is required in the IG district with the intent of the special use permit process to identify a specific time period for the *Mining* use and to mitigate identified off-site impacts. The use standard also enumerates 5 activities that do not constitute *Mining* and would not require the special use permit in IG districts. The use tables and meanings of the letters and symbols in the tables are listed below.

## ARTICLE 4 USE TABLE

### 20-401 Use Table

The Use Table of this article lists the Principle Uses allowed within all of the Base Districts except the UR District (See Section 20-233(b) for UR District use regulations). The symbols used in the Use Table are defined in the following paragraphs.

#### (b) [S] Special Uses

An "S" indicates that a use is allowed only if reviewed and approved in accordance with the Special Use procedures of Section 20-1306.

#### (d) Uses Not allowed

Cells containing a dash (-) indicate that the listed use is not allowed in the respective Zoning District.

#### (e) Use-Specific Standards

Many allowed uses, whether permitted by-right or by Special Use, are subject to compliance with use-specific standards and conditions. An Asterisk (\*) after the P, S, or

A use code identifies the use is subject to use-specific standards and conditions. The sections in which these standards and conditions are located are identified in the far right column titled Use Specific Standard.

## 20-402 Residential District Use Table

<b>Key:</b> A = Accessory P = Permitted S = Special Use * = Standard Applies - = Use not allowed		Base Zoning Districts														Use-Specific Standards (Sec. 20-)
		RS40	RS20	RS10	RS7	RS5	RS3	RSO	RM12	RM12D	RM15	RM24	RM32	RMG	RMO	
Mining	Mining	-	-	-	-	-	-	-	-	-	-	-	-	-	-	

## 20-403 Nonresidential District Use Table

Key: A = Accessory P = Permitted S = Special Use * = Standard Applies - = Use not allowed		Base Zoning Districts															Use-Specific Standards (Sec. 20-)	
		CN1	CN2	MU (PRIMARY / SECONDARY)	MU (TERTIARY)	CO	CD	CC	CR	CS	IBP	IL	IM	IG	OS	GPI		H
OTHER USES GROUP																		
Mining	Mining	-	-	-	-	-	-	-	-	-	-	-	-	S*	-	-	-	515

There were two specific enumerated activities that do not constitute *Mining*, as listed in the Use Regulations of the Land Development Code, Section 20-515, the appellant notes in the Notice of Appeal as errors in interpretation of the code and they are discussed below.

The first enumerated item in the notice, Section 20-515(2)(iii), states "Grading in a subdivision that has been approved by the city in accordance with Article 8, regulations, of this development code and any amendments thereto." For the activity on the site to satisfy this enumerated item it must fit the definition of "grading" and be occurring in a subdivision as approved under Article 8 regulations of the Land Development Code. This property is located on a lot that is part of a platted subdivision in the City of Lawrence and is legally platted as Lot 17, Block 5, Oregon Trail Addition 2<sup>nd</sup> Plat. The plat was recorded May, 15<sup>th</sup> 2009. However, the activity taking place on the property as documented by site inspection and photographs (Figures 1 through 7) does not meet the definition of "grading".

Article 1; Introductory Provisions of the Land Development Code provide guidance in interpreting the code. Section 20-107(b)(1) and Section 20-107(b)(2) address the language and specifics for words and terms which has been utilized in determining if the activity met the standard for activity not constituting *Mining*. Section 20-107(b)(1) states that the language of the Development Code shall be read literally. Regulations are no more strict or less strict than stated. Words used in the Development Code have the standard dictionary definition unless they are defined in Article 17. Words defined in Article 17 have the specific meaning assigned, unless the context expressly indicates another meaning. The word "grading" is not specifically defined in Article 17 so the standard definition is applicable.

**Grading (verb)**

(1) : to level off to a smooth horizontal or sloping surface

The standard definition is “to level off to a smooth horizontal or sloping surface”. The activity documented on the property (Figures 1 through 7) goes beyond grading and rises to a level of *Mining* as defined in Section 20-515 of the Land Development Code. The property has been excavated to a level of 10 feet or more, and in stages across the property. The excavation and harvesting of ore (rock and gravel) have left large vertical banks and piles of resulting ore. The surface of the property is neither horizontal nor sloping over the majority of the surface. The property, based on aerial photography as recently as 2012 (Figures 8 through 15), used to be sloping. Nearby properties that have slopes similar to those that were on this property have since been developed with residential structures. Activity on the site, based on aerial photographs from 2013 to 2018 (Figures 11 through 15) establish that the property has been mined over time for approximately the last 5 years. Further, staff believes the intent of this enumerated activity is to allow for the actual construction of a subdivision infrastructure; streets, storm sewer, and other components outside of the individual lots without the need to go through the special use permit process.

The second enumerated item in the notice, Section 20-512(2)(iv) states, “Temporary crushing of excavated stone on-site for use within the development or hauled off-site for another construction-related use.” For the activity on the site to satisfy this enumerated item it must be temporary and for use within the development or hauled off-site for another construction-related use. The literal reading of the item uses the words “temporary” and “use within the development” or hauled “off-site” which, the latter, is also used in Article 17 under the specific definition of “mining”. As stated in 20-107(b); Meaning and Intent, Words defined in Article 17 have specific meaning assigned unless the context expressly indicates another meaning.

**20-107 General Rules For Interpreting the Development Code**

**(b) Meanings and Intent**

- (1) The language of the Development Code shall be read literally. Regulations are no more or less strict than stated. Words used in the Development Code have the standard dictionary definition unless they are defined in Article 17. Words defined in Article 17 have the specific meaning assigned, unless the context expressly indicates another meaning.

The definitions of “mining” in Article 17 and as described in the Use Regulations for *Mining* 20-515 provide the interpretation context for the distinction between *Mining* as a use and the enumerated item specifically not categorized as mining, temporary crushing of stone. The definition of “mining” in Section 20-1742 specifically states: “Mining or extraction of mineral or aggregate resources from the ground for off-site use. Examples include quarrying or dredging for sand, gravel or other aggregate materials...”

**20-1742 Mining**

Mining or extraction of mineral or aggregate resources from the ground for off-site use. Examples include quarrying or dredging for sand, gravel or other aggregate materials; mining; and oil and gas drilling.

The difference in the enumerated activity not classified as *Mining* is that there is a specific associated development on site as stated by the definitive article “the”. The specificity of this enumerated item offers the relief from the use standards of *Mining* by permitting excavated stone of the development to temporarily be crushed on site as the part of that specified development or if not used on that site in

that development, to be hauled off-site for another construction-related use. Because the definition of mining specifically states the extraction of mineral or aggregate resources from the ground for "off-site" uses, and the enumerated item also uses "off-site". The distinction between *Mining* as a use and temporary crushing of stone as not being classified as *Mining*, the context and literal language of the code must be used for interpretation. This is the difference in the determination that the activities on this site constitute *Mining* under the Land Development Code. The activity on this site is not associated with the development because there isn't a development project on this property and there isn't an application for any type of development permit on file to date.

As shown by the aerial imagery taken from the site over the years (Figures 8 through 15), excavation activity has been occurring on the site since at least a portion of 2014 and most substantially since 2015. The excavation activity on the property as shown in the attached photos (Figures 1 through 7), exceeds grading; it is more than just "excavating or filling to a horizontal or sloping surface" and constitutes *Mining*; "extraction of mineral or aggregate resources from the ground for off-site use." under the regulations of the code. This activity would require an approved special use permit in an IG (General Industrial) District. This property however, is zoned RM12 (Multi-Dwelling Residential), which does not permit *Mining* and is not eligible for a special use permit as listed in Section 20-402.

The interpretation of the Planning Director is not an unprecedented application of the *Mining* use definition. There was communication regarding a complaint regarding rock crushing on a nearby property in 2014. The communication was based on a general inquiry regarding a rock crusher located on the nearby property. The Planning Director determined that excavated rock from the site, as an act of grading would be permitted but rock hauled in and then sold would not be permitted without proper zoning and site planning. If any of the rock at this location is being hauled in and then crushed has not been addressed. The interpretation is addressing the excavation and crushing of rock on-site. The current determination from the planning director regarding the activity on-site being classified as *Mining* is consistent with previous communication regarding the use. The current determination is also based on more detailed information regarding the on-site activity and has resulted in the Planning Director reviewing Section 20-515 in greater detail and reaffirming the determination that excavating on property where no development permits have been issued, at a scale greater than grading, is a *Mining* use as defined in Section 20-515 of the Land Development Code.

## **LAND DEVELOPMENT CODE DEFINITIONS and other Key Definitions**

### **Article 17. TERMINOLOGY**

#### **20-1701 General Terms**

**Base District** – Any Zoning District delineated on the Official Zoning District Map under The terms and provisions of this Development Code, as amended, for which regulations Governing the area, use of Buildings, or use of land, and other regulations relating to the Development or maintenance of existing uses or Structures, are uniform; but not including Overlay Zoning Districts.

**Development Activity** – Any human-made change to the Premises, including but not Limited to:

- (a) The erection, conversion, expansion, reconstruction, renovation, movement or Structural Alteration, or partial or total demolition of Buildings and Structures;
- (b) The subdivision of land;
- (c) Changing the use of land, or Buildings or Structures on land, or

(d) Mining, dredging, filling, grading, paving, excavation, drilling, or Landscaping of land or bodies of water on land.

**District, Zoning or Zoning District** – A portion of the territory of the City of Lawrence within which certain uniform regulations and requirements or various combinations thereof apply under the provisions of this Chapter.

**Premises** – A lot, together with all Buildings and Structures thereon.

### **Common Definitions (source: Merriam Webster)**

**Development (noun)** See Development Activity in Article 17 for specific context activity

(1) : the state of being developed

(2) : the act, process or result of developing

**Excavating (verb)**

(1) : to form a cavity or hole in

(2) : to form by hollowing out

(3) : to dig out and remove

(4) : to expose to view by or as if by digging away a covering

**Excavation (noun)**

(1) : the action or process of excavating

(2) : a cavity formed by cutting, digging or scooping

**Extraction (noun)**

(1) : the act or process of extracting something

**Extracting (verb)**

(1) : to withdraw something by physical or chemical process

**Grading (verb)**

(1) : to level off to a smooth horizontal or sloping surface

**Ore (noun)**

(1) : a naturally occurring mineral containing a valuable constituent for which it is mined or worked

**Strip Mining (noun)**

(1): a mine that is worked from the earth's surface by stripping of overburden

**Temporary (adjective)**

(1) : lasting for a limited time

**The (definite article)**

(1) : - used as a function word to indicate that a following noun or noun equivalent is definite or has been previously specified by context or by circumstance

**MATTER BEFORE THE BZA**

The only question before the Board of Zoning Appeals is: **Did Staff err when it issued a written determination which found that the site is being utilized for a *Mining* use as defined by the Land Development Code and issued a notice and order to cease mining operations.**

**ACTION REQUESTED:**

Find no error was made in the determination that the site is being utilized for *Mining* use and issued a notice and order to cease mining operations dated July 12, 2019, issued to JAL LLC.

**Photos of Activity on site:**



**Figure 1:** 5851 Overland Drive west elevation. Photo taken on 7/01/19.





**Figure 2:** 5851 Overland Drive northwest elevation. Photo taken on 7/01/19.



**Figure 3:** 5851 Overland Drive north elevation. Photo taken on 7/01/19.





**Figure 4:** 5851 Overland Drive east elevation at entrance to property. Photo taken on August 19, 2019.



**Figure 5:** 5851 Overland Drive northeast elevation from entrance to property. Photo taken on August 19, 2019.





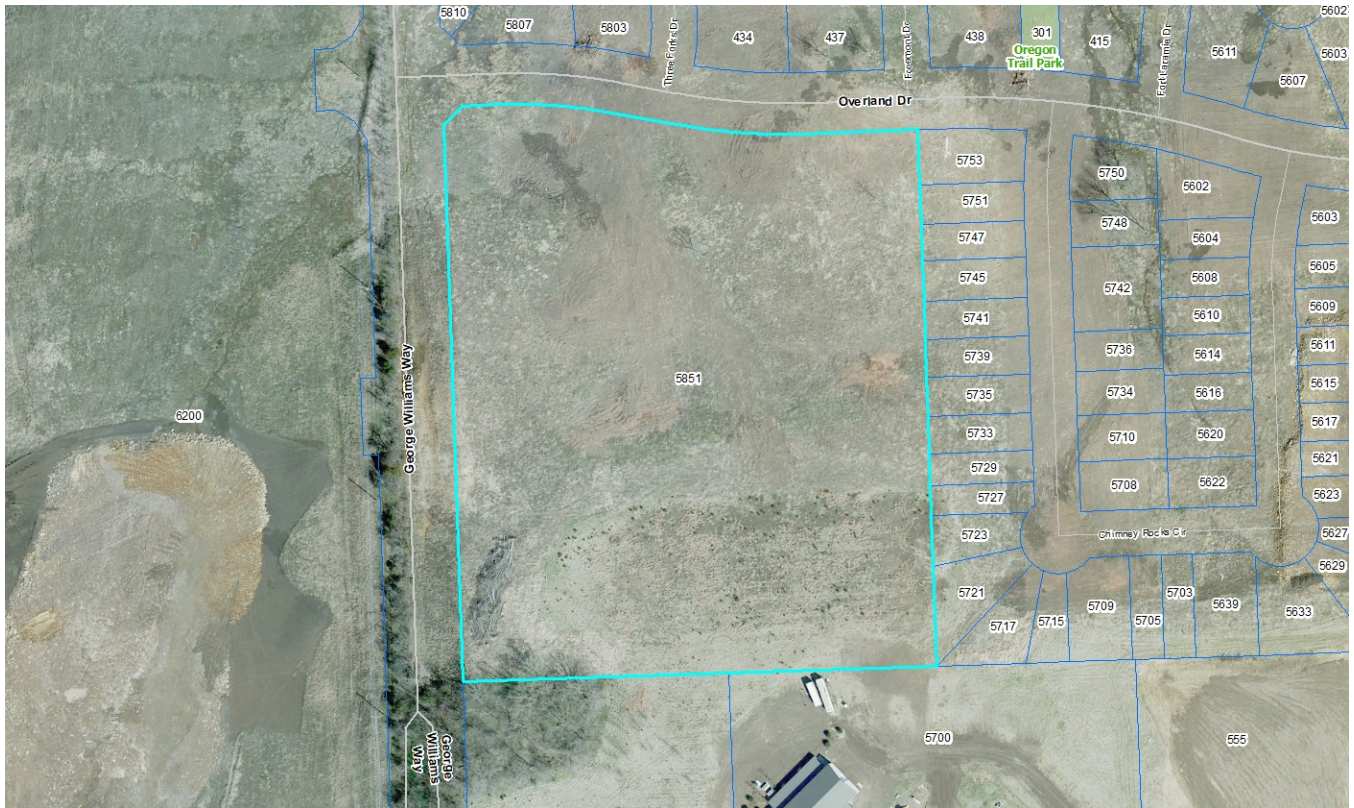
**Figure 6:** 5851 Overland Drive east elevation. Photo taken on August 19, 2019.



**Figure 7:** 5851 Overland Drive southeast elevation. Photo taken on August 19, 2019.



**Aerial Photos of site:**



**Figure 8:** 2006 aerial image.



**Figure 9:** 2009 aerial image.





**Figure 10:** 2012 aerial image.



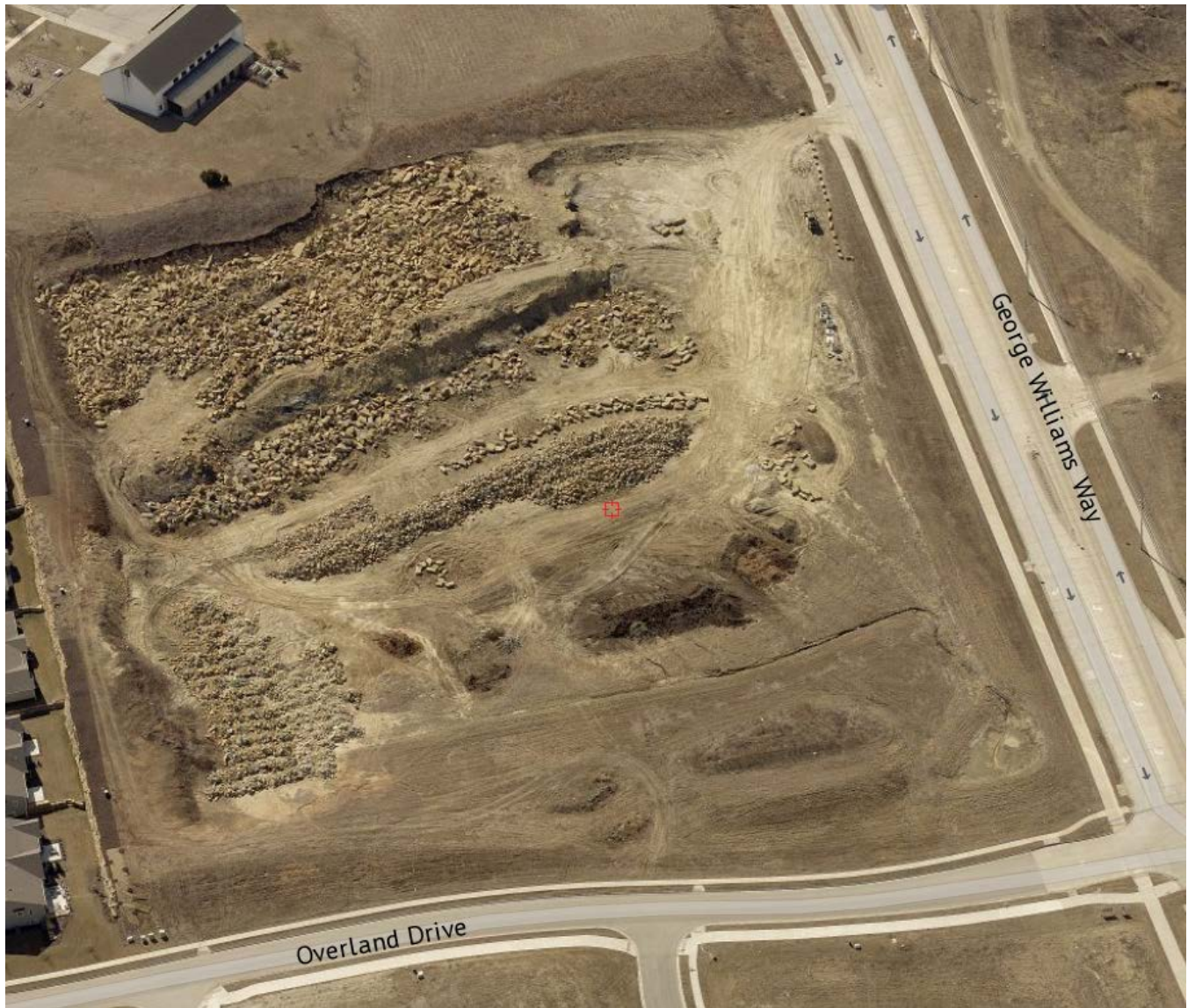
**Figure 11:** 2013 aerial image.





**Figure 12:** 2014 aerial image.





**Figure 13:** February 17, 2015 Pictometry image.





**Figure 14:** 2016 aerial image.



**Figure 15: 2018 aerial image.**



# LEGAL DESCRIPTION

A REPLAT OF LOTS 1-9, BLOCK 1, LOTS 1-13, BLOCK 2, LOTS 1-47, BLOCK 3, LOTS 1-14, BLOCK 4, LOTS 1-19, BLOCK 5, LOTS 1-10, BLOCK 6, AND LOTS 1-11, BLOCK 7, IN OREGON TRAIL ADDITION, A SUBDIVISION IN THE CITY OF LAWRENCE, DOUGLAS COUNTY, KANSAS, CONTAINS 11.730 ACRES, MORE OR LESS, EXCLUSIVE OF EXISTING RIGHT-OF-WAY AND TRACTS A & B.

# SIGNATURES

OWNERS OF LOTS 1-9, BLOCK 1, LOTS 1-13, BLOCK 2, LOTS 1-47, BLOCK 3, LOTS 1-14, BLOCK 4, LOTS 1-19, BLOCK 5, LOTS 1-10, BLOCK 6, AND LOTS 1-11, BLOCK 7, IN OREGON TRAIL ADDITION

JOHN M. McCREW, MANAGER  
OREGON TRAIL HOLDINGS LC

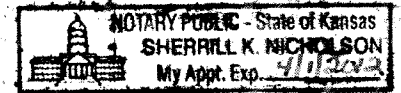
ROGER D. JOHNSON, MANAGER  
OREGON TRAIL HOLDINGS LC

# ACKNOWLEDGEMENT

STATE OF KANSAS  
COUNTY OF DOUGLAS

BE IT REMEMBERED THAT ON THIS 7th DAY OF May, 2009, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC, IN AND FOR SAID COUNTY AND STATE, CAME JOHN M. McCREW, MANAGER, OREGON TRAIL HOLDINGS LC AND ROGER D. JOHNSON, MANAGER, OREGON TRAIL HOLDINGS LC WHO IS (ARE) PERSONALLY KNOWN TO ME TO BE THE SAME PERSON(S) WHO EXECUTED THE FOREGOING INSTRUMENT OF WRITING AND DULY ACKNOWLEDGE THE EXECUTION OF THE SAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY SEAL ON THE DAY AND YEAR LAST WRITTEN ABOVE.



Sherrell K. Nicholson  
NOTARY PUBLIC

MY COMMISSION EXPIRES

APPROVED AS A MINOR SUBDIVISION UNDER THE SUBDIVISION REGULATIONS OF THE CITY OF LAWRENCE AND THE UNINCORPORATED AREA OF DOUGLAS COUNTY

Scott McCullough, 05/13/2009  
PLANNING DIRECTOR  
SCOTT MCCULLOUGH

REVIEWED IN COMPLIANCE WITH K.S.A. 58-2005.

Michael D. Kelly, P.L.S. #869  
DOUGLAS COUNTY SURVEYOR

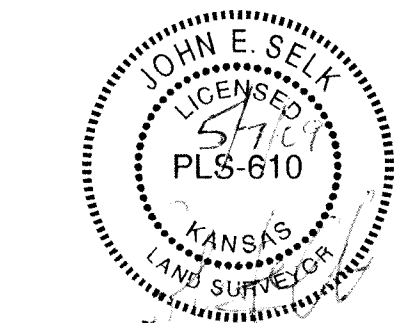
# FILING RECORD

STATE OF KANSAS  
COUNTY OF DOUGLAS

THIS IS TO CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD IN THE OFFICE OF THE DOUGLAS COUNTY REGISTER OF DEEDS ON THIS 15th DAY OF May, 2009, AND IS DULY RECORDED AT 10:10 AM, IN PLAT BOOK 7-18 PAGE 341.

# CERTIFICATION

I HEREBY CERTIFY THAT THE PLATTED AREA SHOWN HEREON IS THE RESULT OF A FIELD SURVEY PERFORMED UNDER MY DIRECT SUPERVISION IN THE MONTH OF APRIL, 2005 AND THAT THIS SURVEY CONFORMS TO THE KANSAS MINIMUM STANDARDS FOR BOUNDARY SURVEYS. THE SURVEY DOES NOT CERTIFY OWNERSHIP OR EASEMENTS, NOR SHALL IT BE CONSTRUED TO CERTIFY THAT GOVERNING SETBACK REQUIREMENTS, BUILDING CODES, SUBDIVISION REGULATIONS OR ZONING ORDINANCES WILL BE MET NOW OR AT ANY TIME HEREAFTER.



JOHN E. SELK, P.E., P.L.S. #610  
1310 WAKARUSA DRIVE  
LAWRENCE, KANSAS 66049  
(785) 843-7530

PLAT PREPARED MAY, 2009

# NOTES

STREET TREES SHALL BE PROVIDED IN ACCORDANCE WITH THE MASTER STREET TREE PLAN FILED WITH THE REGISTER OF DEEDS. BOOK 10-10, PAGE 5115.

THE CITY IS HEREBY GRANTED A TEMPORARY RIGHT OF ENTRY TO PLANT THE REQUIRED STREET TREES PURSUANT TO SECTION 20-811(g) OF THE CITY SUBDIVISION REGULATIONS.

BASIS OF BEARINGS FOR THIS PLAT IS NAD83-MODIFIED STATE PLANE COORDINATES. (KANSAS NORTH ZONE)

ERROR OF CLOSURE = 1 : 1,405,034.

TRACTS 'A' AND 'B' HAVE BEEN CONVEYED TO THE CITY OF LAWRENCE (VIA WARRANTY DEED, BOOK 1024, PAGE 132) GENERALLY FOR PUBLIC PARKLAND/RECREATION PATH PURPOSES (INCLUDING EASEMENTS AS SHOWN).

SINGLE-FAMILY AND DUPLEX DRIVEWAY ACCESS TO/FROM OVERLAND DRIVE, GEORGE WILLIAMS WAY AND STONERIDGE DRIVE IS PROHIBITED.

MULTI-FAMILY DRIVEWAY ACCESS (LOT 17, BLOCK FIVE) IS LIMITED TO ONE TO/FROM GEORGE WILLIAMS WAY (TO BE SHARED WITH THE PROPERTY IMMEDIATELY TO THE SOUTH) AND ONE TO/FROM OVERLAND DRIVE.

SOIL INVESTIGATIONS SHALL BE PERFORMED BEFORE PRIMARY STRUCTURES ARE ERECTED ON LOTS WITH SLOPES GREATER THAN 3:1, OR NON-ENGINEERED FILL GREATER THAN 12 INCHES. A SOILS ENGINEER LICENSED BY THE STATE OF KANSAS SHALL PERFORM INVESTIGATIONS, AND A REPORT OF THE INVESTIGATION SHALL BE SUBMITTED TO THE CITY OF LAWRENCE CODES ENFORCEMENT DIVISION. OTHER LOTS MAY BE REQUIRED TO BE INVESTIGATED WHERE EXCAVATION REVEALS INDICATIONS OF UNSUITABLE CONDITIONS.

NO BUILDING PERMITS WILL BE ISSUED UNTIL THE COMPLETION OF GEORGE WILLIAMS WAY, STONERIDGE DRIVE OR OVERLAND DRIVE TO SERVE THE SUBDIVISION.

BUILDING PERMITS ISSUED WITHIN THIS SUBDIVISION SHALL BE LIMITED TO A MAXIMUM NUMBER OF DWELLING UNITS (BASED UPON AN UPDATED REVISED TRAFFIC IMPACT STUDY SHOWING ONLY ONE ACCESS INTO THE SUBDIVISION WITH LEVEL OF SERVICE OF "C" OR BETTER, AT THE INTERSECTION OF GEORGE WILLIAMS WAY AND WEST 6TH STREET, OR STONERIDGE DRIVE AND WEST 6TH STREET) UNTIL SUCH TIME AS A SECOND ACCESS TO THE SUBDIVISION IS COMPLETED.

THE INDIVIDUAL PROPERTY OWNERS FOR LOTS 6-11 AND 14-15, BLOCK THREE, OREGON TRAIL ADDITION, ARE RESPONSIBLE FOR THE OWNERSHIP AND MAINTENANCE OF THE PRIVATE INDIVIDUAL SANITARY SEWER SERVICES LOCATED ON CITY PROPERTY (TRACT A).

THE DRAINAGE EASEMENTS WILL REMAIN FREE OF ANY NATURAL OR NON-NATURAL STRUCTURES OR VEGETATIVE BARRIERS (INCLUDING BUT NOT LIMITED TO TREES, SHRUBBERY, BERMS, FENCES, AND WALLS).

FURTHER DIVISION OR CONSOLIDATION OF ANY LOTS CONTAINED IN THIS MINOR SUBDIVISION IS PROHIBITED AND SHALL BE PROCESSED AS MAJOR SUBDIVISION(S).

CURVE	LENGTH	RADIUS	CHORD	BEARING
C1	263.05	425.00	257.92	N15°38'11"E
C2	127.85	425.00	127.37	N08°33'27"E
C3	134.19	425.00	133.64	N24°15'17"E
C4	255.42	500.00	252.66	S18°39'56"W
C5	138.05	500.00	137.61	S25°23'26"W
C6	117.37	500.00	117.11	S10°45'21"W
C7	174.00	135.00	172.20	S38°57'06"E
C8	151.80	560.00	151.33	S05°43'50"W
C9	263.93	500.00	260.87	S17°08'21"E
C10	205.41	275.00	200.67	N10°49'44"W
C11	62.03	300.00	61.92	N82°05'34"E
C12	86.84	420.00	86.69	S82°05'34"W
C13	157.83	340.00	156.42	S15°16'57"E
C14	157.83	340.00	156.42	N15°16'57"W
C15	164.33	750.00	164.00	N85°42'35"W
C16	164.33	750.00	164.00	S85°42'35"E
C17	393.90	1200.00	392.13	N82°34'48"W
C18	100.84	1200.00	100.81	N75°35'02"W
C19	245.50	750.00	244.40	S82°33'14"E
C20	153.79	1200.00	153.69	N81°18'44"W
C21	139.26	1200.00	139.19	N81°18'57"W
C22	153.79	750.00	153.71	N04°27'17"E
C23	169.75	750.00	169.39	S85°26'50"E
C24	113.56	500.00	113.32	S04°31'23"W
C25	64.08	500.00	64.04	S01°41'16"W
C26	46.36	50.00	44.72	N24°32'15"E
C27	44.11	50.00	42.79	N27°18'02"E
C28	46.55	50.00	44.88	N29°14'13"E
C29	34.17	50.00	33.57	S24°30'43"W
C30	135.33	105.00	126.46	S36°57'06"E
C31	4.36	165.00	4.36	S02°47'07"E
C32	76.74	165.00	76.05	S16°52'03"E
C33	78.99	165.00	78.23	S43°54'21"E
C34	52.57	165.00	52.35	S66°44'52"E
C35	89.39	395.00	89.20	N04°27'17"E
C36	94.10	395.00	93.87	N26°28'33"E
C37	18.98	530.00	18.98	S32°16'28"W
C38	91.45	530.00	91.34	S26°18'19"W
C39	88.26	530.00	88.16	S16°35'29"W
C40	72.06	530.00	72.00	S07°55'33"W
C41	80.76	470.00	80.60	S08°57'12"W
C42	30.36	50.00	29.89	S37°32'43"E
C43	48.34	50.00	46.48	S82°42'14"E
C44	42.22	50.00	40.97	N45°24'37"E
C45	44.87	50.00	43.38	N04°29'05"W
C46	45.59	50.00	44.03	N56°18'55"W
C47	38.43	50.00	37.49	S75°32'30"W
C48	99.29	470.00	99.11	S27°14'53"W
C49	34.72	455.00	34.71	N31°06'51"E
C50	86.31	455.00	86.18	N23°29'37"E
C51	93.01	455.00	92.85	N12°12'10"E
C52	66.50	455.00	66.44	N02°09'34"E
C53	34.09	685.00	34.09	N88°51'14"E
C54	45.35	710.00	45.35	S86°17'13"E
C55	136.61	710.00	136.40	S73°19'17"E
C56	3.18	710.00	3.18	S73°19'17"E
C57	79.48	1240.00	79.47	N75°00'46"W
C58	101.44	1240.00	101.41	N81°59'26"W
C59	50.33	1240.00	50.32	N85°29'49"W
C60	115.23	1240.00	115.18	N89°19'18"W
C61	15.40	710.00	15.40	N88°38'15"E
C62	125.19	710.00	125.03	S85°41'24"E
C63	98.83	790.00	98.77	N83°00'50"W
C64	74.26	790.00	74.24	N89°17'27"W
C65	179.57	245.00	175.58	N11°13'48"W
C66	77.90	50.00	70.26	N49°16'32"E
C67	46.66	50.00	44.98	S59°21'34"E
C68	51.00	50.00	48.82	S03°24'25"E
C69	74.25	50.00	67.62	S68°21'29"W
C70	112.18	530.00	111.97	S26°09'50"E
C71	102.62	530.00	102.45	S14°33'13"E
C72	64.97	530.00	64.93	S05°29'43"E
C73	64.71	590.00	64.68	S01°09'31"W
C74	54.14	590.00	54.12	S06°55'47"W
C75	44.22	50.00	42.80	S16°16'46"E
C76	69.04	50.00	63.69	S48°37'37"E
C77	68.76	50.00	63.47	N52°25'34"W
C78	67.74	50.00	62.67	N25°46'43"E
C79	40.00	530.00	39.99	S07°10'41"W
C80	64.75	530.00	64.71	S01°30'58"W
C81	36.95	270.00	36.92	N84°05'46"E
C82	18.88	270.00	18.88	N78°10'22"E
C83	31.72	450.00	31.72	S78°11'21"W
C84	50.05	450.00	50.02	S83°21'41"W
C85	39.05	50.00	38.06	S57°03'28"W
C86	49.86	50.00	47.82	N71°59'53"W
C87	53.67	50.00	51.13	N12°40'29"W
C88	28.86	50.00	28.46	N34°36'45"E
C89	11.56	310.00	11.56	S03°03'07"E
C90	132.35	310.00	131.34	S16°21'03"E
C91	41.39	370.00	41.37	N25°22'34"W
C92	102.38	370.00	102.05	N14°14'39"W
C93	27.98	370.00	27.98	N04°09'02"W
C94	30.67	310.00	30.66	N04°49'05"W
C95	113.24	310.00	112.61	N18°07'00"W
C96	32.19	370.00	32.18	S26°05'20"E
C97	93.86	370.00	93.51	S16°19'45"E
C98	45.71	370.00	45.68	S05°31'22"E
C99	79.47	390.00	79.33	S82°00'26"W
C100	17.75	330.00	17.75	N77°42'38"E
C101	48.48	330.00	48.43	N83°38'02"E
C102	89.44	470.00	89.30	S07°26'07"E
C103	124.85	470.00	124.48	S20°29'47"E
C104	33.81	470.00	33.80	S30°10'01"E
C105	64.25	305.00	64.13	N26°11'34"W
C106	71.04	305.00	71.24	N13°27'04"W
C107	88.58	305.00	88.27	N01°34'32"E
C108	101.56	790.00	101.49	S84°49'22"E
C109	49.78	790.00	49.78	S74°58'54"E
C110	91.87	1160.00	91.85	N72°26'43"W
C111	110.23	1160.00	110.18	N80°28'11"W
C112	118.66	1160.00	118.61	N89°03'11"W
C113	173.09	790.00	172.75	S85°42'25"E
C114	155.57	710.00	155.25	N85°42'25"W
C115	104.52	470.00	104.30	S04°39'33"W
C116	2.23	470.00	2.23	S01°50'51"E
C117	34.90	470.00	34.20	N35°07'03"W
C118	58.56	50.00	55.27	N18°25'57"E
C119	68.27	50.00	63.09	S88°53'46"E
C120	9.59	50.00	9.57	S44°17'06"E
C121	37.37	50.00	36.50	N56°21'25"E
C122	48.23	50.00	46.38	S74°36'10"E
C123	73.51	50.00	67.07	S04°51'13"E
C124	12.11	50.00	12.08	S44°12'19"W
C125	67.93	530.00	67.88	S01°41'16"W
C126	60.24	470.00	60.19	S01°41'16"W
C127	45.94	530.00	45.92	S00°29'58"W
C128	74.44	530.00	74.38	S07°00'22"W

MEBO	LOT NO.	MEBO
TWO	3	977.0
TWO	4	977.0
TWO	9	980.0
TWO	10	980.0
THREE	1	962.4
THREE	2	962.4
THREE	4	962.4
THREE	5	962.4
THREE	6	966.1
THREE	7	968.2
THREE	8	972.6
THREE	9	977.4
THREE	10	987.5
THREE	11	994.5
THREE	14	1002.3
THREE	15	1010.1
THREE	16	1008.8
THREE	17	999.4
THREE	18	987.5
THREE	19	982.1
THREE	20	978.2
THREE	21	972.4
THREE	22	966.1
THREE	23	962.4
THREE	24	962.4
THREE	25	962.4
THREE	27	962.4
THREE	28	962.4
THREE	29	962.4
THREE	32	1073.0
FIVE	6	1049.0
FIVE	7	1049.0
FIVE	8	1049.0
FIVE	9	1047.0

	LOT NO.	SQ. FT.	ACRES		LOT NO.	SQ. FT.	ACRES		LOT NO.	SQ. FT.	ACRES
BLOCK ONE	1	14,480	0.332		17	15,116	0.347		1	16,135	0.370
	2	13,945	0.320		18	13,349	0.306		2	13,497	0.309
	3	13,386	0.307		19	12,842	0.294		3	13,505	0.310
	4	15,872	0.364		20	15,308	0.351		4	13,176	0.302
	5	14,803	0.339		21	10,241	0.235		5	17,503	0.401
	6	10,516	0.241		22	11,829	0.271		6	13,144	0.301
	7	10,840	0.248		23	12,769	0.293		7	11,121	0.255
	8	17,036	0.391		24	10,238	0.235		8	11,145	0.255
BLOCK TWO	9	1	0.000		25	1	0.000		9	1	0.000
	10	10,900	0.257		26	10,900	0.257		10	10,900	0.257
	11	8,050	0.184		27	8,050	0.184		11	8,050	0.184
	12	8,337	0.191		28	8,337	0.191		12	8,337	0.191
	13	8,337	0.191		29	8,337	0.191		13	8,337	0.191
	14	8,050	0.184		30	8,050	0.184		14	8,050	0.184
	15	14,034	0.322		31	14,034	0.322		15	14,034	0.322
	16	17,312	0.371		32	17,312	0.371		16	17,312	0.371
BLOCK THREE	17	10,530	0.241		33	10,530	0.241		17	10,530	0.241
	18	11,547	0.261		34	11,547	0.261		18	11,547	0.261
	19	8,482	0.194		35	8,482	0.194		19	8,482	0.194
	20	11,890	0.188		36	11,890	0.188		20	11,890	0.188
	21	10,530	0.241		37	10,530	0.241		21	10,530	0.241
	22	8,022	0.184		38	8,022	0.184		22	8,022	0.184
	23	8,048	0.184		39	8,048	0.184		23	8,048	0.184
	24	8,812	0.193		40	8,812	0.193		24	8,812	0.193
BLOCK FOUR	25	8,301	0.190		41	8,301	0.190		25	8,301	0.190
	26	8,240	0.189		42	8,240	0.189		26	8,240	0.189
	27	8,382	0.192		43	8,382	0.192		27	8,382	0.192
	28	8,382	0.192		44	8,382	0.192		28	8,382	0.192
	29	12,480	0.286		45	12,480	0.286		29	12,480	0.286
	30	13,567	0.311		46	13,567	0.311		30	13,567	0.311
	31	16,552	0.379		47	16,552	0.379		31	16,552	0.379
	32	11,989	0.275		48	11,989	0.275		32	11,989	0.275
BLOCK FIVE	33	13,218	0.312		49	13,218	0.312		33	13,218	0.312
	34	13,538	0.280		50	13,538	0.280		34	13,538	0.280
	35	13,855	0.318		51	13,855	0.318		35	13,855	0.318
	36	15,562	0.357		52	15,562	0.357		36	15,562	0.357



LAW OFFICES  
**BARBER EMERSON, L.C.**

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July 26, 2019

**VIA HAND DELIVERY AND E-MAIL**

Scott McCullough, Director  
City of Lawrence, Planning and Development Services  
1 Riverfront Plaza, Suite 320  
Lawrence, KS 66044

**NOTICE OF APPEAL**

Mr. McCullough:

Pursuant to § 20-1311 of the City's Land Development Code (the "**Code**"), JAL, L.L.C. ("**JAL**") hereby appeals the City's administrative findings set forth in that certain *Notice and Order to Cease Mining Operations* dated July 12, 2019 and postmarked on July 15, 2019 (the "**Order**"). A copy of the Order and postmarked envelope is attached to this appeal. The Order is unlawful because it erroneously applies § 20-515 of the City's Land Development Code (the "**Code**"), and is overbroad.

JAL's activities at 5851 Overland Drive (legally described as Lot 17, Block Five, Oregon Trail Addition 2nd Plat, an addition to the City of Lawrence, Douglas County) (the "**Property**") did not and will not constitute Mining. Since at least 1979, the City has regulated "Mining" in much the same way as today. See, e.g., Code 1997-2006, §20-1419, enclosed.<sup>1</sup> Code § 20-515(2) expressly identifies five activities that "shall not be considered Mining," at least two of which clearly apply to JAL's activities on the Property:

- (iii) Grading in a subdivision that has been approved by the City in accordance with Article 8, Subdivision Regulations, of this development code and any amendments thereto.
- (iv) Temporary crushing of excavated stone on-site for use within the development or hauled off-site for another construction-related use.

When a municipal ordinance is plain and unambiguous, it must be interpreted according to its express language. *Robinson v. City of Wichita Employees' Ret. Bd. of Trs.*, 241 P.3d 15, 21 (Kan. 2010); see also *Layle v. City of Mission Hills*, 401 P.3d 1052, 1057 (Kan. Ct. App. 2017) (declining to resort to canons of construction when the municipal ordinance is plain and unambiguous). The Order erroneously misinterprets the Code and exceeds the lawful authority of the Planning Director. Moreover, the Order appears to be an unprecedented departure from the City's prior application of the Mining regulations of the Code.

<sup>1</sup>Also available at <https://assets.lawrenceks.org/assets/pds/planning/documents/OldCode.pdf>

**1. JAL's Activities Constitute "Grading in a Subdivision".**

If an activity in a subdivision meets the definition of "grading," that activity is, by definition, not "Mining." "Grading" is defined in Article 8 of the Code as: "[t]he act of excavation or filling or a combination of both or any leveling to a smooth horizontal or sloping surface on a property . . ." Code § 20-815(b). The Code contains no other definition of "grading," and does not create any limitations on the scope or extent of permitted excavation, filling, or leveling which can occur and still be considered "grading." By the time JAL acquired the Property in 2016, the prior owner had already graded most of the Property to the lower grade established by George Williams Way. Consistent with its longstanding prior practice, the City did not issue any orders to stop that activity. JAL must grade the rest of the Property in order to make the Property (which is zoned RM12) ready for residential development.

The purpose of JAL's activity is to smooth and level the Property, to enable development, and is "grading" under the Code. To achieve that purpose, JAL must excavate soil and rock. By contrast, the purpose of mining is to extract material from land.<sup>2</sup> Often, the resulting topography of a mine is neither smooth nor level, and must often be remediated (unlike grading). Regardless of how broad the Code defines "Mining," and even if you believe that JAL's activity fits within the general definition of Mining, you are obligated to withdraw the Order (or the Board of Zoning Appeals should overturn it) because § 20-515(2)(iii) declares that grading in a subdivision is not Mining, as a matter of law. The facts are clear, that (1) the Property is in a subdivision, and (2) the activity fits within the definition of grading.

**2. Temporary Stone Crushing is Not Mining.**

The stone crushing that occurred earlier this year, which prompted the issuance of the Order in the first place, was temporary and falls squarely within § 20-515(2)(iv). In the future, crushing excavated stone will take a matter of weeks, and is therefore temporary. Regardless of whether JAL would use the crushed stone "within the development" or have it "hailed off-site for another construction-related use," the act of crushing the stone is expressly permitted, because the Code clearly states that such activity is not Mining. The Order can not bar an activity that is permitted under the Code, and should not have purported to prohibit this activity in the future.

The Order improperly overemphasizes the Code's broad general definition of "Mining," and ignores the safe harbors of 20-515(2) that completely remove JAL's past and future activity from the Mining regulation. The Board of Zoning Appeals should overturn the Order.

Respectfully submitted,

BARBER EMERSON, L.C.



Matthew S. Gough

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<sup>2</sup> Merriam-Webster definition of "mine" is "to get (something, such as ore) from the earth; to extract from a source" and similar definitions. *And see* Code § 20-1742 ("Mining or extraction of mineral or aggregate resources from the ground for off-site use ...")



# City of Lawrence

PLANNING & DEVELOPMENT SERVICES

RECEIVED  
JUL 17 2019

1 Riverfront Plaza, Suite 320  
P.O. Box 708  
Lawrence, KS 66044

[www.lawrenceks.org/pds/](http://www.lawrenceks.org/pds/)

Phone 785-832-7700  
Tdd 785-832-3205  
Fax 785-832-3110

## NOTICE AND ORDER TO CEASE MINING OPERATIONS

July 12, 2019

JAL LLC  
Attn: Roger Johnson  
PO Box 3789  
Lawrence, KS 66046

RE: 5851 Overland Dr. - Mining Operations

Dear Roger,

During the week of July 1<sup>st</sup>, our office received multiple complaints from adjacent residential property owners concerning the excavation and crushing of rock at the referenced property that was allegedly an ongoing operation continuously for 2-3 weeks. The surrounding owners' main concern was the amount of dust leaving the property and covering their outdoor living areas, vehicles and homes. An inspection of the property on July 3<sup>rd</sup> confirmed a large scale operation of rock excavation and crushing was occurring on the site which resulted in several large mounds of crushed rock which remain on the property. In following up with neighbors this week, it is our understanding that the excavation and crushing of rock ceased shortly after the July 4<sup>th</sup> holiday. Follow up inspections this week have confirmed that the operations have remained stopped.

The excavation and crushing of rock is regulated the City's Land Development Code, Section 20-515 (Mining) which states the following:

Mining, including extraction of clay, gravel, or sand; quarrying of rock or stone; earth moving and excavation, including removal of topsoil; and depositing of construction material, clay, earth, gravel, minerals, rock, sand, or stone on the ground, will not be construed to be an allowed use in any District, but IG (Industrial General), except as provided below:

**(1) A Special Use Permit for a temporary basis.**

Mining may be approved as a Special Use that is to be allowed on a temporary basis in accordance with the Special Use procedures of Section 20-1306. Such a Special Use approval is revocable and valid for specified periods of time, to permit Mining, or extractions from or deposits on the earth of rock, stone, gravel, sand, earth, minerals, or Building or construction materials; and

**(2) The following activities shall not be considered Mining:**



- (i) Excavations for the foundation or Basement of any Building or for a swimming pool for which a Building Permit has been issued, or deposits on the earth of any Building or construction materials to be used on-site in a Structure for which a Building Permit has been issued.
- (ii) Grading of any Parcel of land for a permitted use where no bank of more than 4 feet in vertical Height is left standing and exposed.
- (iii) Grading in a subdivision that has been approved by the City in accordance with Article, Subdivision Regulations, of this development code and amendments thereto.
- (iv) Temporary crushing of excavated stone on site for use within the development or hauled off-site for another construction-related use.
- (v) Any extractive operation existing and operating as such on the Effective Date shall conform to the provisions set forth herein within one year of the Effective Date.

The property in question is zoned RM12 (Residential-Multi-Family), therefore Mining is not a permitted use on the property without first following the procedures outlined in Section 20-1306 to obtain a Special Use Permit for such activity.

**No further excavation or crushing of rock is permitted on the property until a Special Use Permit is applied for and approved.**

You may call me at 785-832-3111 to discuss this matter in further detail.

Sincerely,



Brian Jimenez  
Code Enforcement Manager

Cc: Scott McCullough, Director Planning & Development Services

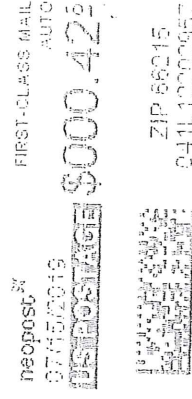


# City of Lawrence

6 East 6th Street / P.O. Box 708  
Lawrence, KS 66044  
lawrenceks.org

ADDRESS SERVICE REQUESTED

JAL LLC  
Attn: Roger Johnson  
PO Box 3789  
Lawrence, KS 66046



PREPARED BY



detrimental to the existing land uses in the area and that the health, safety, and welfare of neighboring property owners will not be unduly affected, and further, that the following requirements have been met:

(a) All exterior storage and processing areas abutting a thoroughfare shall be screened by a solid masonry wall or solid wood fence at least six feet high and shall be designed and located to prevent visibility of stored or stacked material and such fence shall be located no closer than 15 feet to any street right-of-way. In no case shall the height of the solid fence exceed 10 feet and no stored or stacked material shall exceed the height of the fence. Fencing shall be placed along the side and rear of all processing areas and may be of any approved type including live screening where deemed appropriate.

(b) No open burning of junked, salvaged, or discarded materials shall be permitted. Incinerators may be used for burning of wastes or the conducting of salvage operations if such incinerators are of a type approved by the Kansas State Department of Health. (Code 1979, 20-1118)

**20-1419. MINING, QUARRYING, EARTHMOVING.**

Mining, including extraction of clay, gravel, or sand; quarrying of rock or stone; earth moving and excavation, including removal of topsoil; depositing of construction material, clay, earth, gravel, minerals, rock, sand or stone on the ground shall not be construed to be a permitted use in any district, except M-3 District, unless and until a "Temporary Uses Permitted upon Review" application shall first be approved as provided in section 20-1612, except for the following defined extraction and deposits:

(a) Excavations for the foundation or basement of any building or for a swimming pool for which a building permit has been issued, or deposits on the earth of any building or construction materials to be used in a structure for which a building permit has been issued.

(b) Grading of any parcel of land for a permitted use where no bank is left standing and exposed of more than four feet in vertical height.

(c) Grading in a subdivision which has been approved by the city in accordance with the City of Lawrence Subdivision Regulations and any amendments thereto.

(d) Any extractive operation existing and operating as such on the effective date of this ordinance shall conform with the provisions set forth herein within one year of the adoption of this ordinance.

The city commission shall have the power to approve applications for "Temporary Uses Permitted upon Review," revocable and valid for specified periods of time, to permit mining or extractions from or deposits on the earth of rock, stone, gravel, sand, earth, minerals, or building or construction materials, as set forth in section 20-1612 of this chapter. The building inspector shall make such inspection as he deems necessary or as are required by the city commission to insure that all work is in accordance with the approved "Temporary Use Permitted upon Review" application. (Code 1979, 20-1119)

**20-1420. MOBILE HOMES.**

Parking of a mobile home in any district or floodplain overlay districts for residential purposes shall be prohibited, except as follows:

(a) A mobile home may be parked in a mobile home park, as provided by this ordinance with the exception that all mobile homes are prohibited from placement within the floodplain overlay districts.

(b) In any approved district, the wheels or any similar transporting devices of any mobile home or camping trailer shall not be removed except for repairs, nor shall such mobile home or camping trailer be otherwise permanently fixed to the ground or permanently fastened to another mobile home unit in a manner that would prevent ready removal of said mobile home or camping trailer. Tires and rims may be removed for storage purposes.





## **Appeal of Administrative Decision to the Board of Zoning Appeals (BZA)**

### **Application Requirements**

This checklist has been provided to assist you as you prepare your application. Submission of less information than necessary to adequately review and process your application may delay the review process. Planning Staff will determine the completeness, accuracy, and sufficiency of the application within five (5) business days of submission.

- ☐ 1. **Filing Deadline.** Appeals of administrative decisions shall be filed with the Planning Director within ten (10) working days after the administrative official's decision.

### **General Submittal Requirements**

- ☐ 2. A complete application form.
- ☐ 3. Owner Authorization form if applicant is not the legal owner of the property.

### **Requirements for Public Notification of the Public Hearing**

- ☐ 4. Legal description of the property in print and electronic (Microsoft Word) formats (if relevant).
- ☐ 5. A list certified by the City Clerk of all property owners within the notification area of the subject property (if relevant).
- ☐ 6. Ownership List Certification form (if relevant).

### **Other Requirements**

- ☐ 7. Plot plan illustrating the issue appealed (if relevant).
  - a. Submit paper and electronic formats.



## **RESOURCES AVAILABLE TO THE APPLICANT**

1. Planning Staff
2. Calendars:
  - Board of Zoning Appeals Submittal Deadlines and Meeting Dates
  - Planning Commission Submittal Deadlines and Meeting Dates
  - Historic Resources Commission Submittal Deadlines and Meeting Dates
3. Fee Schedule
4. City of Lawrence Development Code:
  - Article 13, Section 20-1310: Appeals of Administrative Decisions.

## **PLANNING DEPARTMENT PROCEDURES**

*Public Hearing:* Planning Staff will schedule a hearing before the Board of Zoning Appeals, which is responsible for hearing the request.

*Newspaper Publication:* Planning Staff will publish the notice of the public hearing twenty (20) days prior to the date of the public hearing.

*Mailed Notice:* Planning Staff will mail notices of the public hearing to all property owners within the required notification area at least twenty (20) days prior to the public hearing. Planning Staff will also mail notice to any Registered Neighborhood Associations whose boundaries include or are contiguous to the subject property. Additionally, a copy of the notice will be mailed to each party of the appeal at least twenty (20) days before the hearing.



### OWNER AUTHORIZATION

I/WE \_\_\_\_\_ JAL, LLC \_\_\_\_\_, hereby referred to as the "Undersigned", being of lawful age, do hereby on this 25<sup>th</sup> day of July, 20 19, make the following statements to wit:

1. I/We the Undersigned, on the date first above written, am/are the lawful owner(s) in fee simple absolute of the following described real property:

See "Exhibit A, Legal Description" attached hereto and incorporated herein by reference.

2. I/We the undersigned, have previously authorized and hereby authorize \_\_\_\_\_ Barber Emerson, L.C., including \_\_\_\_\_ Matthew \_\_\_\_\_ S. Gough \_\_\_\_\_ (Herein referred to as "Applicant"), to act on my/our behalf for the purpose of making application with the Planning Office of Lawrence/Douglas County, Kansas, regarding \_\_\_\_\_ 5851 Overland Drive Lawrence Kansas \_\_\_\_\_ (common address), the subject property, or portion thereof. Such authorization includes, but is not limited to, all acts or things whatsoever necessarily required of Applicant in the application process.

3. It is understood that in the event the Undersigned is a corporation or partnership then the individual whose signature appears below for and on behalf of the corporation or partnership has in fact the authority to so bind the corporation or partnership to the terms and statements contained within this instrument.

IN WITNESS THEREOF, I, the Undersigned, have set my hand and seal below.

Owner

Owner

STATE OF KANSAS  
COUNTY OF DOUGLAS

The foregoing instrument was acknowledged before me on this 25<sup>th</sup> day of July, 20 19, by Roger D. Johnson, Manager of JAL, L.L.C.

My Commission Expires: Aug. 5, 2020 Sharla M. O'Dea  
Notary Public





City of Lawrence  
Douglas County  
PLANNING & DEVELOPMENT SERVICES

**Lawrence Douglas County  
Metropolitan Planning Office**  
1 Riverfront Plaza, Ste 320 | P.O. Box 708  
Lawrence, KS 66044  
(785) 832-7700 Fax (785) 832-3110  
<http://www.lawrenceks.org/pds/>

**Lot 17, Block Five, Oregon Trail Addition 2<sup>nd</sup> Plat, an addition to the City of Lawrence, Douglas County, Kansas.**





### PROPERTY OWNERSHIP LIST CERTIFICATION

As required by Article 13, Section 20-1301(q) of the Development Code, the applicant is responsible for providing certified Ownership information (including names and mailing addresses) of all real property owners within a defined radius from the subject property. The Planning Department is required by the Development Code to use the submitted Ownership list to mail notice of the public hearing to surrounding property owners regarding this Application.

#### Ownership Information

The applicant is responsible for providing certified Ownership information. Current Ownership information shall be obtained from the Douglas County Clerk. Ownership information will be considered current if it is **no more than 30 days old** at the time an application is submitted to the Planning Department.

#### Radius of Notification

The Ownership list shall include the record Owner of the subject property and all Owners of property located within 200 feet of the subject property. If the subject property is adjacent to the City limits the area of notification shall be extended to at least 1,000 feet into the unincorporated area.

#### THE FOLLOWING IS TO BE COMPLETED AND SUBMITTED BY THE APPLICANT.

I certify that I have read and understood the above information and that the submitted Ownership list:

- (a) was obtained from and certified by the Douglas County Clerk,
- (b) is current (**no more than 30 days old**), and
- (c) includes all property owners within the required notification radius of the subject property.

Signature

Date

7-26-19

Printed Name

Matthew S. Gouge



**APPLICATION FOR  
APPEAL OF ADMINISTRATIVE DECISION TO THE  
BOARD OF ZONING APPEALS (BZA)**

**OWNER INFORMATION (if relevant)**

Name(s) JAL LLC

Contact Barber Emerson, L.C.

Address 1211 Massachusetts Street, Lawrence, Kansas 66044

Phone (\_\_\_\_) 785-843-6600 Fax (\_\_\_\_) 785-843-8405

E-mail mgough@barberemerson.com Mobile/Pager (\_\_\_\_) \_\_\_\_\_

**APPLICANT/AGENT INFORMATION**

Contact Matthew S. Gough

Contact Barber Emerson, L.C.

Address 1211 Massachusetts Street, Lawrence, Kansas 66044

Phone (\_\_\_\_) 785-843-6600 Fax (\_\_\_\_) 785-843-8405

E-mail mgough@barberemerson.com Mobile/Pager (\_\_\_\_) \_\_\_\_\_

Pre-Application Meeting Date July 23, 2019 Planner Scott McCullough

**PROPERTY INFORMATION (if relevant)**

Present Zoning District RM 12 Present Land Use Vacant

Proposed Land Use Not applicable

Legal Description (*may be attached*) attached

Address of Property 5851 Overland Drive

Total Site Area Per Final Plat

Number and Description of Existing Improvements or Structures None



**Please indicate the reason for appeal:**

**(Alternatively, attach a letter to the Planning Director.)**

See letter dated July 25, 2019

**SIGNATURE**

I/We, the undersigned am/are the **(owner(s))**, **(duly authorized agent)**, **(circle one if relevant)** of the aforementioned property.

By execution of my/our signature, I/we do hereby officially apply for an appeal to the Board of Zoning Appeals as indicated above.

Signature(s):

Date

Date

Date

**STAFF USE ONLY**

Application No. \_\_\_\_\_

Date Received \_\_\_\_\_

BZA Date \_\_\_\_\_

Fee \$ \_\_\_\_\_

LAW OFFICES  
**BARBER EMERSON, L.C.**

RICHARD L. ZINN  
CALVIN J. KARLIN  
JANE M. ELDREDGE  
MARK A. ANDERSEN\*  
TERRENCE J. CAMPBELL\*  
MATTHEW S. GOUGH\*  
CATHERINE C. THEISEN  
BETHANY J. ROBERTS  
  
\*ADMITTED IN KANSAS AND MISSOURI

1211 MASSACHUSETTS STREET  
POST OFFICE BOX 667  
**LAWRENCE, KANSAS 66044**  
(785) 843-6600  
FACSIMILE (785) 843-8405

LINDA K. GUTIERREZ  
MATTHEW J. ROGERS\*  
CASEY E. FORSYTH

RICHARD A. BARBER  
(1911-1998)

Matthew S. Gough  
Email: mgough@barberemerson.com

October 2, 2019

**VIA E-MAIL ONLY**

Board of Zoning Appeals  
City of Lawrence, Planning and Development Services  
1 Riverfront Plaza, Suite 320  
Lawrence, KS 66044

*Re: October 3, 2019 Board of Zoning Appeals ("BZA") Meeting  
JAL, L.L.C. ("JAL") Agenda Item 2*

**Board Members:**

Staff erred when it issued a written determination which found that the site is being utilized for a *Mining* use as defined by the Land Development Code (the "**Code**") and issued a notice and order to cease mining operations. JAL requests that the BZA overturn that determination. The Code's definition of *Mining* is broad enough to include every type of earth work in the City of Lawrence, because it includes "extraction of clay, gravel, or sand; . . . earth moving and excavation, including removal of topsoil." § 20-515(1). Although the general definition of *Mining* is very broad, several of the exceptions clearly apply.

JAL's activities are within the standard dictionary definition of "grading," because the City constructed the grade of George Williams Way below the property's native elevation and JAL's purpose in the activity is to establish a compatible grade for development as a RM12 project. JAL made no profit from its excavation activities (nor did it intend to) and would never have commenced any work on the site if the property was not platted and zoned RM12. The temporary crushing of stone excavated from the JAL site is part of "the development" of the property as a RM12 lot, and, regardless, § 20-515(2)(iv) permits temporary rock crushing in two separate and independent instances: (1) for use within the development or (2) hauled off-site for another construction use.

*Whether Excavation is "Grading" Depends on the Facts.*

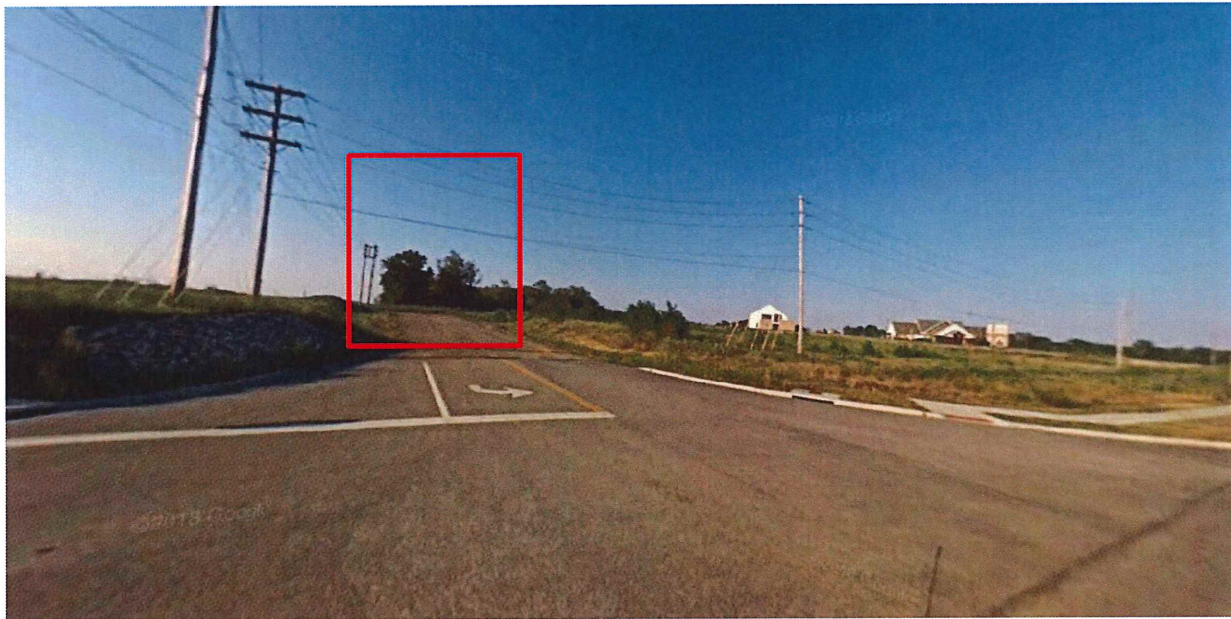
The City did extensive "grading" in order to build George Williams Way north of West 6<sup>th</sup> Street. Until that time, the old road dead-ended in a row of trees, shown in the red box below:





**Exhibit 1** - City of Lawrence GIS, 2006 Aerial Image.

Before building George Williams Way, the old road followed the natural grade of the land. Below is a view looking north from the intersection, with the red box identifying the trees visible in Exhibit 1:



**Exhibit 2** - Google Maps, Image Capture August 2007.

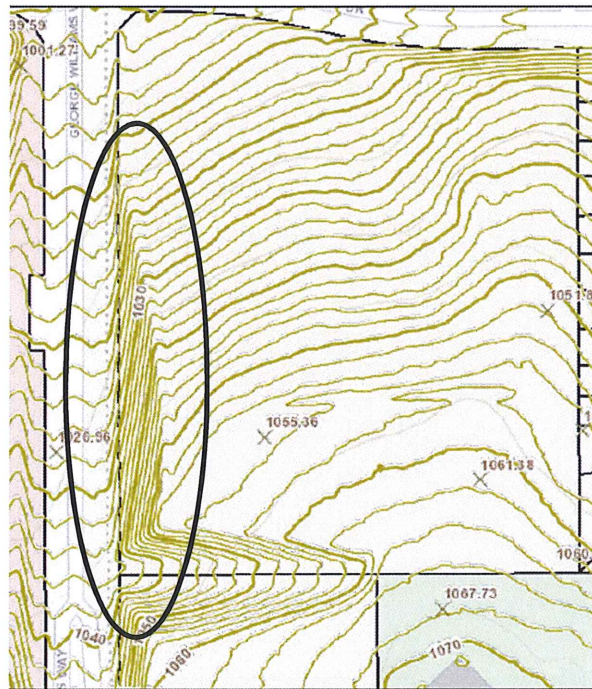


By contrast, the completed intersection at 6<sup>th</sup> Street and George Williams Way, depicted below, was constructed below the natural grade:



**Exhibit 3** - Google Maps, Image Capture April 2016

The below topographical map from the City's GIS Website shows the severe cuts to the natural elevation that occurred as part of the construction of George Williams Way.



**Exhibit 4** - City GIS Map, 2015 Topography Data



As of May 2011 (shortly after completion of George Williams Way), the subject property retained much of its original grade and, as such, was not compatible for development. The development must take access from the lower grade of George Williams Way. The native grade is too steep to permit construction of public or private access roads as part of a development. See § 20-810(e)(6) (establishing maximum street slopes); and see § 20-810(e)(10)(ii)(b) (requiring private streets to be built to the same standards).



**Exhibit 5** - Google Maps, Image Capture May 2011

Below is a current image of the subject property.



**Exhibit 6** - JAL, LLC, as of October 2, 2019



*When the City Established the Grade of George Williams Way, the City Also Established the Development Grade of the JAL Property.*

The JAL property is part of Oregon Trail Addition 2<sup>nd</sup> Plat (the “**Plat**”). The Plat, attached hereto as **Exhibit 7** and, by reference, incorporated herein, contains the following comment, applicable specifically to JAL’s property:

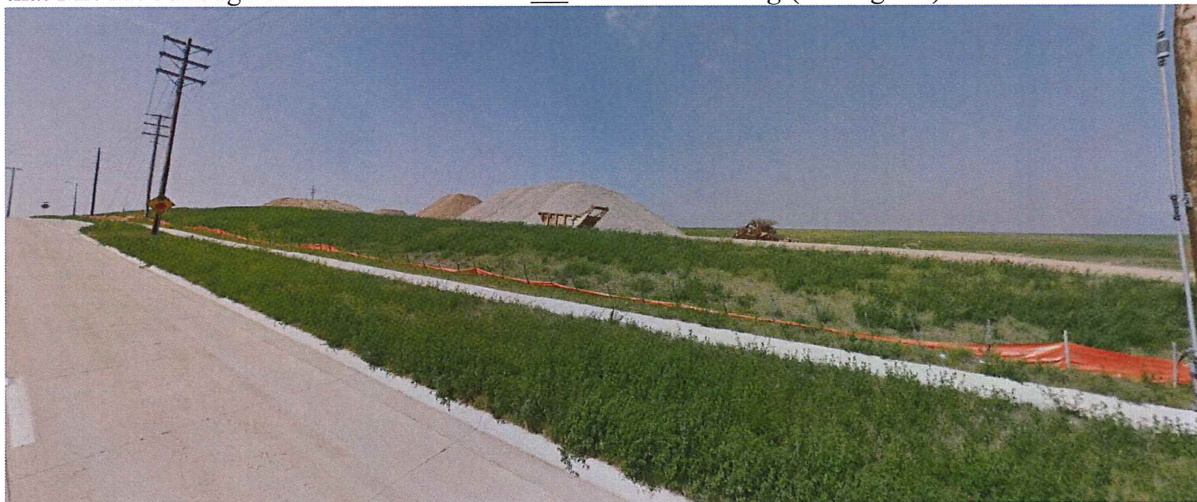
MULTI-FAMILY DRIVEWAY ACCESS (LOT 17, BLOCK FIVE) IS LIMITED TO ONE TO/FROM GEORGE WILLIAMS WAY (TO BE SHARED WITH THE PROPERTY IMMEDIATELY TO THE SOUTH) AND ONE TO/FROM OVERLAND DRIVE.

Thus, the access drive depicted above is the one and only permitted access point on George Williams Way. As shown in the May 2011 image, significant site “grading” would be necessary in order to develop the JAL property as a RM12 multi-family development. The prior owner of the property has already excavated and graded seven (7) out of ten (10) acres. JAL has not excavated any earth, and only crushed the rock previously excavated. JAL desires to grade the remainder of the property (approximately three (3) acres) to match the lower grade already established. **JAL made no profit from selling crushed rock – the act of crushing rock, removing it, and eventually excavating the rest of the site will cost more than any revenue it might create. JAL would not excavate if the lot was not zoned RM12.**

*The Planning Director Changed His Interpretation of the Code.*

Enclosed with this letter is Mr. McCullough’s responsive e-mail to me dated July 30, 2019, wherein he specifically states that “. . .my current interpretation of the code has changed. My current interpretation of the code is that the activity of excavating rock on property where no development permits have been issued, at a scale greater than mere grading, is a mining use.” See **Exhibit 8**, attached to and, by reference, incorporated herein. The words of the code, however, did not change, and the effect of his “new” interpretation is unfair to JAL and all developers.

By way of comparison, the image below, taken in 2011, illustrates the rock crushing operation that Mr. McCullough concluded in 2014 did not constitute *Mining* (JAL agrees):



**Exhibit 9** - Google Maps, Image Capture May 2011



Below is JAL's operation, taken by staff from George Williams Way:



**Exhibit 10** - Staff Report, Page 9.

These pictures portray two similar activities, met with very different treatment.

*The Staff Failed To Apply the Standard Definition of “Grading.”*

The Staff quotes the standard dictionary definition of “grading” as the “correct” definition of the word. The Staff confirms that the Code is to be read literally, and no more strict or less strict than stated. Despite that, the Staff proceeds to ignore those rules and definitions, and insert limitations and requirements that simply do not exist. For example, Staff states that “the intent” of the “grading” exception is “to [only] allow for the actual construction of a subdivision infrastructure; streets, storm sewer, and other components *outside of the individual lots . . .*” and states that “excavating on property where no development permits have been issued, at a scale larger than grading, is a *Mining* use [under the Code].” (emphasis added). By adding these terms to the meaning of the Code, the Staff fails to literally apply the words of the Code, and simultaneously adopts a stricter interpretation than stated. Read together, the Staff’s manipulations of the plain language create an unworkable quagmire for developers.

By way of illustration, a person who reads the Code sees two separate and exclusive exceptions to *Mining* in § 20-515(2) – there are five, but two are discussed here:

- (iii) Grading in a subdivision that has been approved by the City in accordance with Article 8, Subdivision Regulations, of this development code and any amendments thereto.
- (iv) Temporary crushing of excavated stone on-site for use within the development or hauled off-site for another construction-related use.

In ascertaining what “grading” means, a person reading the Code might find the dictionary definition of the word, namely “to level off to a smooth horizontal or sloping surface.” For the reader who only searched the Code itself for a definition of “grading,” the dictionary version is not materially different than Article 8 of the Code’s definition of Grading in § 20-815(b) (i.e., “[t]he act of excavation or filling or a combination of both or any leveling to a smooth horizontal or sloping surface on a property”). So, the first of the Staff’s statements appears logical: (1) “grading” in a subdivision is not *Mining*.

Now the person reading the Code must somehow know the unknowable: that the “grading” in a subdivision exception is only intended to apply to building roads, sewers, water lines and the construction of subdivision infrastructure; and if you must excavate “at a scale larger than grading” you must have “development permits.” By modifying the definition of “grading” to be limited to the construction of streets, storm sewers and other infrastructure outside of the individual lots, the Staff is no longer reading the Code literally, as it admits is required on Page 5 of the Staff Report, nor are they interpreting meaning to be no more strict or less strict than stated. **Staff’s statement that “grading” only includes building roads, sewers, water lines and other “subdivision infrastructure” is simply incorrect.** Similarly, to suggest that a developer might be allowed to perform excavation on a scale greater than “grading” (which is, by definition, *Mining*) if certain “development permits” are in place, is incorrect. As the Staff notes, *Mining* is only allowed with a special use permit in an IG district. If the definition of *Mining* is so broad, and the exceptions are so narrow, then suddenly all manner of ordinary and regular construction activities have become illegal.

“Grading” does, in fact, mean “to level off to a smooth horizontal or sloping surface.” The Staff is applying that definition too narrowly, because it fails to acknowledge that the act of “grading” requires a leveled off surface based on some predetermined base elevation. In this case, the base grade was established by the City when it approved the construction of George Williams Way. Making the JAL property compatible with that elevation is “grading” because, when complete, it will be a smooth, horizontal surface. JAL’s only purpose in undertaking this activity is to create a buildable site. As discussed in JAL’s appeal notice, the motive behind an activity is critical to distinguishing between permissible “grading” and *Mining*. BZA should conclude that “grading” includes excavation, when its purpose is to make a platted lot ready for development. The City’s long standing public policy has been to liberally allow “grading” within a subdivision, in order for the subdivision to become developable and to build the tax base.

The 2019 Douglas County Appraised Value of this property, based on its RM12 zoning and potential for development, is \$1,101,900, which means JAL pays approximately \$17,850 in annual real estate taxes. See **Exhibit 11**, attached to and, by reference, incorporated herein. If the Staff is correct, the JAL tract is undevelopable, and that tax value should be reduced significantly (if not to zero). The BZA should not uphold a determination that renders over 10 acres of infill property undevelopable. That decision, if made, would reverse the City’s longstanding public policy and would reduce the tax base. In addition, such a decision may constitute an unlawful regulatory taking.

*The “Temporary Crushing” Exception Also Applies.*

By narrowly reading the phrase “the development” to require the issuance of permits (and ignoring activities that require no permit), the Staff has applied the temporary rock crushing exception more strictly than the Code states. Applying the words of the Code literally, temporary crushing of on-site stone at the JAL property is not *Mining* under the Code. JAL’s activities lasted three weeks, and all the stone being crushed originated from the site. The purpose of the activity was to create a buildable site. The property is annexed, platted and zoned. All of the other real estate in this subdivision has been developed, and the JAL property is part of the same development. Regardless, the literal words of the Code allow *either* use of crushed stone in the development *or* used off-site.

*Fairness Dictates Reversal of the Planning Director's Determination.*

The City of Lawrence needs to apply the Code based on its plain language, in the way the City Commission has adopted it (Staff agrees with this principle), and it is not fair for an applicant to be subject to the shifting, non-public interpretations of the planning director, when the Code itself is unambiguous. It is not fair to add words to the Code, or to deviate from a word's ordinary meaning. The City of Lawrence does not require a "grading" permit. For over 40 years, the City has not attempted to curtail the "grading" of lots in a subdivision, because creating buildable lots inside a subdivision advances the public interest and is sound public policy. If the City Commission wishes to enact a new ordinance that changes this policy, let it do so as part of an open and fair public process.

The Staff Report states, on Pages 5 and 6, that "the activity taking place on the [JAL] property as documented by site inspection and photographs . . . does not meet the definition of "grading," because "the activity . . . goes beyond grading and rises to a level of *Mining* as defined in Section 20-515 of the [Code]." This is wrong. The City of Lawrence controlled the design of George Williams Way, and established a new grade for the JAL property that is much lower than its native elevation. The City approved the plat of the property and zoned it RM12, and restricted the JAL tract to one access point on George Williams Way. Following the dictionary definition of "grading" cited by the Staff, the only way JAL can "level off" this site to a smooth surface that is developable is to match the grade that the City established. Both the "grading in a subdivision" and "temporary crusting of excavated stone" exceptions clearly apply.

Staff erred when it issued a written determination which found that the site is being utilized for a *Mining* use as defined by the Code and issued a notice and order to cease *Mining* operations. JAL requests that the BZA overturn that determination.

The Board of Zoning Appeals should overturn the Staff's Order.

Respectfully submitted,

BARBER EMERSON, L.C.



Matthew S. Gough



LEGAL DESCRIPTION

A REPLAT OF LOTS 1-9, BLOCK 1, LOTS 1-13, BLOCK 2, LOTS 1-47, BLOCK 3, LOTS 1-14, BLOCK 4, LOTS 1-19, BLOCK 5, LOTS 1-10, BLOCK 6, AND LOTS 1-11, BLOCK 7, IN OREGON TRAIL ADDITION, A SUBDIVISION IN THE CITY OF LAWRENCE, DOUGLAS COUNTY, KANSAS. CONTAINS 41,730 ACRES, MORE OR LESS, EXCLUSIVE OF EXISTING RIGHT-OF-WAY AND TRACTS A & B.

SIGNATURES

OWNERS OF LOTS 1-9, BLOCK 1, LOTS 1-13, BLOCK 2, LOTS 1-47, BLOCK 3, LOTS 1-14, BLOCK 4, LOTS 1-19, BLOCK 5, LOTS 1-10, BLOCK 6, AND LOTS 1-11, BLOCK 7, IN OREGON TRAIL ADDITION

JOHN M. MCGREW, MANAGER  
OREGON TRAIL HOLDINGS LLC  
ROGER D. JOHNSON, MANAGER  
OREGON TRAIL HOLDINGS LLC

ACKNOWLEDGEMENT

STATE OF KANSAS  
COUNTY OF DOUGLAS

BE IT REMEMBERED THAT ON THIS 7th DAY OF May, 2009, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC, IN AND FOR SAID COUNTY AND STATE, CAME JOHN M. MCGREW, MANAGER, OREGON TRAIL HOLDINGS LLC AND ROGER D. JOHNSON, MANAGER, OREGON TRAIL HOLDINGS LLC WHO IS (ARE) PERSONALLY KNOWN TO ME TO BE THE SAME PERSON(S) WHO FORGONE INSTRUMENT OF WRITING AND DULY ACKNOWLEDGE THE EXECUTION OF THE SAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY SEAL ON THE DAY AND YEAR LAST WRITTEN ABOVE.

NOTARY PUBLIC, State of Kansas  
SHERILL K. NICHOLSON  
My Exp. 05/15/2011  
SHERILL K. NICHOLSON  
NOTARY PUBLIC  
MY COMMISSION EXPIRES

APPROVED AS A MINOR SUBDIVISION UNDER THE SUBDIVISION REGULATIONS OF THE CITY OF LAWRENCE AND THE UNINCORPORATED AREA OF DOUGLAS COUNTY

SCOTT McCULLOUGH  
PLANNING DIRECTOR  
DATE 05/13/2009

REVIEWED IN COMPLIANCE WITH K.S.A. 58-2005.

MICHAEL D. KELLY, P.L.S. #869  
DOUGLAS COUNTY SURVEYOR

FILING RECORD

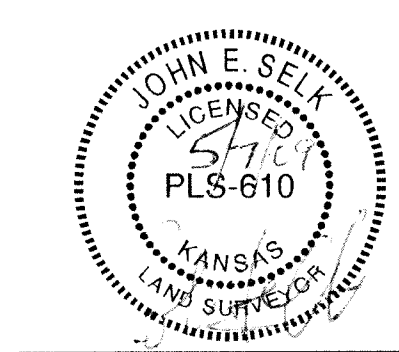
STATE OF KANSAS  
COUNTY OF DOUGLAS

THIS IS TO CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD IN THE OFFICE OF THE DOUGLAS COUNTY REGISTER OF DEEDS ON THIS 15th DAY OF May, 2009, AND IS DULY RECORDED AT 10:18 AM, IN PLAT BOOK 7-18, PAGE 511.

REGISTER OF DEEDS  
KAY PESNELL

CERTIFICATION

I HEREBY CERTIFY THAT THE PLATTED AREA SHOWN HEREON IS THE RESULT OF A FIELD SURVEY PERFORMED UNDER MY DIRECT SUPERVISION IN THE MONTH OF APRIL, 2005 AND THAT THIS SURVEY CONFORMS TO THE KANSAS MINIMUM STANDARDS FOR BOUNDARY SURVEYS. THE SURVEY DOES NOT CERTIFY OWNERSHIP OR EASEMENTS, NOR SHALL IT BE CONSTRUED TO CERTIFY THAT GOVERNING SETBACK REQUIREMENTS, BUILDING CODES, SUBDIVISION REGULATIONS OR ZONING ORDINANCES WILL BE MET NOW OR AT ANY TIME HENCEFORTH.



PLAT PREPARED MAY, 2009

JOHN E. SELK, P.E., P.L.S. #610  
1310 WAKARUSA DRIVE  
LAWRENCE, KANSAS 66049  
(785) 843-7530

NOTES

STREET TREES SHALL BE PROVIDED IN ACCORDANCE WITH THE MASTER STREET TREE PLAN FILED WITH THE REGISTER OF DEEDS. BOOK 1048, PAGE 5115.

THE CITY IS HEREBY GRANTED A TEMPORARY RIGHT OF ENTRY TO PLANT THE REQUIRED STREET TREES PURSUANT TO SECTION 20-811(g) OF THE CITY SUBDIVISION REGULATIONS.

BASIS OF BEARINGS FOR THIS PLAT IS NAD83-MODIFIED STATE PLANE COORDINATES. (KANSAS NORTH ZONE)

ERROR OF CLOSURE = 1 : 1,405.034.

TRACTS 'A' AND 'B' HAVE BEEN CONVEYED TO THE CITY OF LAWRENCE (VIA WARRANTY DEED, BOOK 1024 PAGE 132) GENERALLY FOR PUBLIC PARKLAND/RECREATION PATH PURPOSES (INCLUDING EASEMENTS AS SHOWN).

SINGLE-FAMILY AND DUPLEX DRIVEWAY ACCESS TO/FROM OVERLAND DRIVE, GEORGE WILLIAMS WAY AND STONERIDGE DRIVE IS PROHIBITED.

MULTI-FAMILY DRIVEWAY ACCESS (LOT 17, BLOCK FIVE) IS LIMITED TO ONE TO/FROM GEORGE WILLIAMS WAY (TO BE SHARED WITH THE PROPERTY IMMEDIATELY TO THE SOUTH) AND ONE TO/FROM OVERLAND DRIVE.

SOILS INVESTIGATIONS SHALL BE PERFORMED BEFORE PRIMARY STRUCTURES ARE ERECTED ON LOTS WITH SLOPES GREATER THAN 3:1, OR NON-ENGINEERED FILL GREATER THAN 12 INCHES. A SOILS ENGINEER LICENSED BY THE STATE OF KANSAS SHALL PERFORM INVESTIGATIONS, AND A REPORT OF THE INVESTIGATION SHALL BE SUBMITTED TO THE CITY OF LAWRENCE CODES ENFORCEMENT DIVISION. OTHER LOTS MAY BE REQUIRED TO BE INVESTIGATED WHERE EXCAVATION REVEALS INDICATIONS OF UNSUITABLE CONDITIONS.

NO BUILDING PERMITS WILL BE ISSUED UNTIL THE COMPLETION OF GEORGE WILLIAMS WAY, STONERIDGE DRIVE OR OVERLAND DRIVE TO SERVE THE SUBDIVISION.

BUILDING PERMITS ISSUED WITHIN THIS SUBDIVISION SHALL BE LIMITED TO A MAXIMUM NUMBER OF DWELLING UNITS BASED UPON AN UPDATED REVEDSED TRAFFIC IMPACT STUDY SHOWING ONLY ONE ACCESS INTO THE SUBDIVISION WITH LEVEL OF SERVICE OF "C" OR BETTER, AT THE INTERSECTION OF GEORGE WILLIAMS WAY AND WEST 6TH STREET, OR STONERIDGE DRIVE AND WEST 6TH STREET) UNTIL SUCH TIME AS A SECOND ACCESS TO THE SUBDIVISION IS COMPLETED.

THE INDIVIDUAL PROPERTY OWNERS FOR LOTS 6-11 AND 14-15, BLOCK THREE, OREGON TRAIL ADDITION, ARE RESPONSIBLE FOR THE OWNERSHIP AND MAINTENANCE OF THE PRIVATE INDIVIDUAL SANITARY SEWER SERVICES LOCATED ON CITY PROPERTY (TRACT A).

THE DRAINAGE EASEMENTS WILL REMAIN FREE OF ANY NATURAL OR NON-NATURAL STRUCTURES OR VEGETATIVE BARRIERS (INCLUDING BUT NOT LIMITED TO TREES, SHRUBBERY, BERMS, FENCES, AND WALLS).

FURTHER DIVISION OR CONSOLIDATION OF ANY LOTS CONTAINED IN THIS MINOR SUBDIVISION IS PROHIBITED AND SHALL BE PROCESSED AS MAJOR SUBDIVISION(S).

CURVE TABLE				
CURVE	LENGTH	RADIUS	CHORD	BEARING
C1	262.05	425.00	257.92	N15°38'11"E
C2	127.85	425.00	127.37	N06°35'27"E
C3	134.19	425.00	133.64	N24°15'17"E
C4	255.42	500.00	252.66	S18°39'56"W
C5	138.05	500.00	137.61	S25°23'25"W
C6	117.37	500.00	117.11	S10°45'21"W
C7	174.00	135.00	162.20	S38°57'06"E
C8	151.80	560.00	151.33	S05°46'55"W
C9	263.93	500.00	260.87	S17°06'21"E
C10	205.41	275.00	200.67	N10°49'44"W
C11	62.03	300.00	61.92	N82°05'34"E
C12	86.84	420.00	86.69	S82°05'34"W
C13	157.83	340.00	156.42	S15°16'57"E
C14	157.83	340.00	156.42	N15°16'57"W
C15	164.33	750.00	164.00	N85°42'25"W
C16	164.33	750.00	164.00	S85°42'25"E
C17	393.90	1200.00	392.13	N82°34'48"W
C18	100.84	1200.00	100.81	N75°35'02"W
C19	245.50	750.00	244.40	S82°33'14"E
C20	153.79	1200.00	153.69	N88°18'44"W
C21	139.26	1200.00	139.19	N81°18'57"W
C22	75.75	750.00	75.71	S76°04'11"E
C23	169.75	750.00	169.39	S85°26'50"E
C24	113.56	500.00	113.32	S04°31'23"W
C25	64.08	500.00	64.04	S01°41'16"W
C26	46.36	50.00	44.72	N24°32'15"E
C27	44.11	50.00	42.70	N27°48'07"E
C28	46.55	50.00	44.88	N79°14'43"W
C29	34.17	50.00	33.57	S54°30'22"W
C30	135.33	105.00	126.46	S38°57'06"E
C31	4.36	165.00	4.36	S02°47'07"E
C32	76.74	165.00	76.05	S16°52'03"E
C33	78.99	165.00	78.23	S43°54'21"E
C34	52.57	165.00	52.35	S68°44'52"E
C35	89.39	395.00	89.20	N04°27'19"E
C36	94.10	395.00	93.87	N26°28'33"E
C37	18.98	395.00	18.98	S32°16'28"W
C38	91.45	530.00	91.34	S26°18'19"W
C39	88.26	530.00	88.16	S16°35'29"W
C40	72.06	530.00	72.00	S07°55'33"W
C41	80.76	470.00	80.68	S85°57'12"W
C42	50.76	60.00	29.89	S37°36'43"E
C43	48.34	50.00	46.48	S82°21'14"E
C44	42.22	50.00	40.97	N45°24'37"E
C45	44.87	50.00	43.38	N04°29'05"W
C46	45.59	50.00	44.03	N56°18'55"W
C47	38.43	50.00	37.49	S75°32'30"W
C48	99.29	470.00	99.11	S27°14'53"W
C49	34.72	455.00	34.71	N31°06'51"E
C50	86.31	455.00	86.18	N23°29'37"E
C51	93.01	455.00	92.85	N12°21'07"E
C52	66.50	455.00	66.44	N02°09'34"E
C53	34.09	685.00	34.09	N88°51'14"E
C54	45.35	710.00	45.35	S86°17'13"E
C55	136.61	710.00	136.40	S78°56'42"E
C56	3.18	710.00	3.18	S73°18'17"E
C57	79.48	1240.00	79.47	N75°00'46"W
C58	101.44	1240.00	101.41	N81°59'26"W
C59	50.33	1240.00	50.32	N85°29'49"W
C60	115.23	1240.00	115.18	N89°19'18"W
C61	15.40	710.00	15.40	N83°38'15"E
C62	125.19	710.00	125.03	S85°41'24"E
C63	98.83	790.00	98.77	N83°00'50"W
C64	74.26	790.00	74.24	N89°17'27"W
C65	179.57	245.00	175.58	N11°13'48"W
C66	77.90	50.00	70.26	N49°16'32"E
C67	46.66	50.00	44.98	S59°21'34"E
C68	51.00	50.00	48.82	S03°24'25"E
C69	74.25	50.00	67.62	S68°21'29"W
C70	112.18	530.00	111.97	S26°09'50"E
C71	102.62	530.00	102.45	S14°33'13"E
C72	64.97	530.00	64.93	S08°29'43"E
C73	64.71	590.00	64.68	S01°09'31"W
C74	54.14	590.00	54.12	S06°55'47"W
C75	44.22	50.00	42.80	S16°16'46"E
C76	69.04	50.00	63.69	S48°37'08"W
C77	68.76	50.00	63.47	N52°25'34"W
C78	67.74	50.00	62.67	N25°46'43"E
C79	40.00	530.00	39.99	S07°10'41"W
C80	64.75	530.00	64.71	S01°30'58"W
C81	36.95	270.00	36.92	N84°05'46"E
C82	18.88	270.00	18.88	N78°10'22"E
C83	31.72	450.00	31.72	S78°11'21"W
C84	50.05	450.00	50.02	S83°23'41"W
C85	39.05	50.00	38.06	S57°03'28"W
C86	49.86	50.00	47.82	N71°59'53"W
C87	53.67	50.00	51.13	N12°40'29"W
C88	28.98	50.00	28.46	N34°36'45"E
C89	11.56	310.00	11.56	S03°30'07"E
C90	132.35	310.00	131.34	S16°21'03"E
C91	41.39	370.00	41.37	N25°22'34"W
C92	102.38	370.00	102.05	N14°14'39"W
C93	27.98	370.00	27.98	N04°09'02"W
C94	30.67	310.00	30.66	N04°49'05"W
C95	113.24	310.00	112.61	N18°07'00"W
C96	32.19	370.00	32.18	S26°05'20"E
C97	93.86	370.00	93.61	S16°19'45"E
C98	45.71	370.00	45.68	S05°32'22"E
C99	79.47	390.00	79.33	S82°00'26"W
C100	17.75	330.00	17.75	N77°42'38"E
C101	50.48	330.00	50.43	N83°38'02"E
C102	89.44	470.00	89.30	S07°26'07"E
C103	124.85	470.00	124.48	S20°29'47"E
C104	33.81	470.00	33.80	S03°10'01"E
C105	64.25	305.00	64.13	N26°11'34"W
C106	71.40	305.00	71.24	N13°27'04"W
C107	88.58	305.00	88.27	N01°34'32"E
C108	101.56	790.00	101.49	S84°49'22"E
C109	49.78	790.00	49.78	S74°58'54"E
C110	91.87	1160.00	91.85	N75°26'43"W
C111	110.23	1160.00	110.18	N80°26'11"W
C112	118.66	1160.00	118.61	N89°03'11"W
C113	173.09	790.00	172.75	S85°42'25"E
C114	155.57	710.00	155.25	N85°42'25"W
C115	104.52	470.00	104.30	S04°39'33"W
C116	2.23	470.00	2.23	S01°59'51"E
C117	34.90	50.00	34.20	N35°07'03"W
C118	58.56	50.00	55.27	N18°25'57"E
C119	68.27	50.00	63.09	S88°53'46"E
C120	9.59	50.00	9.57	S44°17'06"E
C121	37.37	50.00	36.50	N56°21'25"E
C122	48.23	50.00	46.38	S74°36'10"E
C123	73.51	50.00	67.07	S04°51'13"E
C124	12.11	50.00	12.08	S44°12'19"W
C125	67.93	530.00	67.88	S01°41'16"W
C126	60.24	470.00	60.19	S01°41'16"W
C127	45.94	530.00	45.92	S00°29'58"W
C128	74.44	530.00	74.38	S07°00'22"W

MEBO TABLE		
BLOCK	LOT NO.	MEBO
TWO	3	977.0
TWO	4	977.0
TWO	9	980.0
TWO	10	980.0
THREE	1	962.4
THREE	2	962.4
THREE	3	962.4
THREE	4	962.4
THREE	5	962.4
THREE	6	966.1
THREE	7	968.2
THREE	8	972.6
THREE	9	977.4
THREE	10	987.5
THREE	11	994.5
THREE	14	1002.3
THREE	15	1010.1
THREE	16	1008.8
THREE	17	999.4
THREE	18	987.5
THREE	19	982.1
THREE	20	978.2
THREE	21	972.4
THREE	22	966.1
THREE	23	962.4
THREE	24	962.4
THREE	25	962.4
THREE	27	962.4
THREE	28	962.4
THREE	29	962.4
THREE	32	1073.0
FIVE	6	1049.0
FIVE	7	1049.0
FIVE	8	1049.0
FIVE	9	1047.0

		LOT AREA TABLE							
		LOT NO.	SQ. FT.	ACRES	LOT NO.	SQ. FT.	ACRES		
BLOCK ONE	1	14,480	0.332	17	15,116	0.347	1	16,135	0.370
	2	13,945	0.320	18	13,349	0.306	2	13,497	0.309
	3	13,386	0.307	19	12,842	0.294	3	13,505	0.310
	4	15,872	0.364	20	15,308	0.351	4	13,176	0.302
	5	14,803	0.339	21	15,241	0.335	5	17,503	0.401
	6	10,516	0.241	22	11,829	0.271	6	13,144	0.301
	7	10,840	0.248	23	12,769	0.293	7	11,121	0.255
	8	17,036	0.391	24	10,238	0.235	8	11,145	0.255
BLOCK TWO	1	10,350	0.237	25	9,776	0.224	9	10,763	0.247
	2	8,050	0.184	26	12,794	0.293	10	13,658	0.313
	3	8,337	0.191	27	13,604	0.312	11	16,376	0.375
	4	8,337	0.191	28	13,530	0.310	12	10,760	0.247
	5	8,050	0.184	29	25,533	0.586	13	13,499	0.309
	6	14,034	0.322	30	25,995	0.596	14	13,499	0.309
	7	13,812	0.317	31	13,375	0.307	15	13,499	0.309
	8	10,530	0.241	32	13,291	0.305	16	16,722	0.383
BLOCK THREE	9	11,407	0.261	33	12,013	0.275	17	446,808	10.257
	10	8,482	0.194	34	12,013	0.275	1	15,539	0.356
	11	8,190	0.188	35	12,098	0.277	2	12,650	0.290
	12	10,530	0.241	36	13,358	0.306	3	12,650	0.290
	1	8,022	0.184	37	18,435	0.423	4	14,375	0.330
	2	8,048	0.184	38	14,022	0.321	5	14,375	0.330
	3	8,012	0.183	39	18,161	0.416	6	11,500	0.264
	4	8,301	0.190	40	18,247	0.418	7	11,530	0.264
BLOCK FOUR	5	8,240	0.189	1	15,144	0.347	8	15,794	0.362
	6	8,362	0.192	2	13,531	0.310	1	14,480	0.332
	7	8,362	0.192	3	11,636	0.267	2	12,518	0.287
	8	8,480	0.194	4	11,202	0.257	3	13,728	0.315
	9	12,480	0.286	5	10,944	0.251	4	16,965	0.389
	10	13,567	0.311	6	11,828	0.271	5	13,414	0.307
	11	16,552	0.379	7	15,485	0.355	6	15,426	0.354
	12	11,989	0.275	8	12,639	0.290	7	11,829	0.271
BLOCK SEVEN	13	13,318	0.282	9	11,792	0.270	8	16,933	0.388
	14	13,538	0.310	10	11,354	0.260	9	11,075	0.254
	15	13,855	0.318	11	12,706	0.321	10	12,970	0.297
	16	15,562	0.357	12	12,249	0.281			



## Matthew Gough

---

**From:** Scott McCullough <smccullough@lawrenceks.org>  
**Sent:** Monday, July 29, 2019 2:57 PM  
**To:** Matthew Gough; City Clerk  
**Cc:** Katherine Weik; Jeff Crick  
**Subject:** RE: Open Records Request  
**Attachments:** Email concerning complaint and findings.pdf

Matt,

Attached is the only document we have related to Section 20-515. It was related to an inquiry we received when rock crushing was occurring at the Mercato site in 2014 and we found that the crushing of rock was compliant with Section 20-515. This most recent complaint, on Roger's property, has lead us to once again review Section 20-515 and my interpretation of the code has changed. My current interpretation of the code is that the activity of excavating rock on property where no development permits have been issued, at a scale greater than mere grading, is a mining use.

***Scott McCullough, Director***

Planning and Development Services – [www.lawrenceks.org](http://www.lawrenceks.org)  
City Hall Riverfront  
1 Riverfront Plaza, Suite 320  
P.O. Box 708, Lawrence, KS 66044-0708  
office (785) 832-3154 | fax (785) 832-3110

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**From:** Matthew Gough <[mgough@barberemerson.com](mailto:mgough@barberemerson.com)>  
**Sent:** Wednesday, July 24, 2019 4:33 PM  
**To:** City Clerk <[cityclerk@lawrenceks.org](mailto:cityclerk@lawrenceks.org)>  
**Cc:** Scott McCullough <[smccullough@lawrenceks.org](mailto:smccullough@lawrenceks.org)>  
**Subject:** Open Records Request

Sherri:

Please find attached an open records request. Please let me know what the City's fee might be.

Thank you,  
Matt

THE LAW OFFICES OF  
**BARBER EMERSON, L.C.**

Matthew S. Gough | Attorney  
1211 Massachusetts Street  
P.O. Box 667  
Lawrence, Kansas 66044  
(785) 843-6600 (phone)  
(785) 843-8405 (fax)  
E-mail: [mgough@barberemerson.com](mailto:mgough@barberemerson.com)  
[www.barberemerson.com](http://www.barberemerson.com)

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# Property Search Results: Real Property

**Please Note:** This information is assumed current as of: **9/30/2019**. For more current information, please call the Appraiser's Office: (785) 832-5133.

Property Information		<a href="#">Map this Property</a>
Year: 2019	Pin Number: 023-069-29-0-40-05-017.00-0	Plate/Record Id: U13968-104
Owner 1: JAL LLC		
Owner 2: (no record)		
In-Care-Of: (no record)		
Property Address: 5851 OVERLAND DR, LAWRENCE, KANSAS		
Mailing Address: PO BOX 3789 LAWRENCE, KS, 66046		
Delinquent Tax: No	Tax Unit: 041	School: USD 497
Sec-Twp-Rng: (no record)	Book: 1142	Page: 5617

Value Information						
Class	Appraised			Assessed		
	Land	Improvements	Total*	Land	Improvements	Total
<b>V</b>	\$1,101,900	\$0	\$1,101,900	\$132,228	\$0	\$132,228

**\*Market or Ag use**

Tax Information
<i>Tax data for 2019 has not been calculated at this time. To view taxes for this property, please select a previous year.</i>

Property Description
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RP 5-14-09 OREGON TRAIL ADDITION 2ND BLK 5 LT 17 446624SF 725.5 X 619.2(I)
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<b>Legal Description (<i>Note: Not to be used on legal documents</i>)</b>
---

OREGON TRAIL ADDITION 2ND PLATBLK 5 LT 17
---

**From:** [Scott McCullough](#)  
**To:** [J. Dean Grob](#)  
**Cc:** ["Roger Johnson"](#); [Jeff Crick](#); [Katherine Weik](#)  
**Subject:** RE: Oregon Trail - Lot 17, Block Five Development  
**Date:** Wednesday, August 28, 2019 11:55:28 AM

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It has not but is under investigation and is not the subject of this appeal.

***Scott McCullough, Director***

Planning and Development Services – [www.lawrenceks.org](http://www.lawrenceks.org)  
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<http://lawrenceks.org/pds/survey/satisfaction>."*

---

**From:** J. Dean Grob <jdgrob@grobengineering.com>  
**Sent:** Wednesday, August 28, 2019 11:41 AM  
**To:** Scott McCullough <smccullough@lawrenceks.org>  
**Cc:** 'Roger Johnson' <rjohnson@alcoveproperty.com>; Jeff Crick <jcrick@lawrenceks.org>; Katherine Weik <kweik@lawrenceks.org>  
**Subject:** RE: Oregon Trail - Lot 17, Block Five Development

Scott,

Then can I assume that the "mining" operations that have been occurring on the property directly west across George Williams Way from this property over the last 5+ years has received a similar notice and order to cease mining operations?

Please advise.

Dean

J. Dean Grob  
Grob Engineering Services, LLC  
3210 Mesa Way, Suite A  
Lawrence, Kansas 66049  
Work (785) 856-1900  
Fax (785) 856-1901  
Mobile (785) 766-3740  
[www.grobengineering.com](http://www.grobengineering.com)

---

**From:** Scott McCullough <[smccullough@lawrenceks.org](mailto:smccullough@lawrenceks.org)>  
**Sent:** Wednesday, August 28, 2019 11:25 AM

**To:** J. Dean Grob <[jdgrob@grobengineering.com](mailto:jdgrob@grobengineering.com)>

**Cc:** Roger Johnson <[rjohnson@alcoveproperty.com](mailto:rjohnson@alcoveproperty.com)>; Jeff Crick <[jcrick@lawrenceks.org](mailto:jcrick@lawrenceks.org)>; Katherine Weik <[kweik@lawrenceks.org](mailto:kweik@lawrenceks.org)>

**Subject:** RE: Oregon Trail - Lot 17, Block Five Development

Dean,

Thank you for the additional information, but the Notice and Order stands for the reasons noted below.

In reference to the notice and order to cease mining operations, I made the determination that the activity on the site rose to the level of "*Mining*" as defined in Section 20-515 of the Land Development Code. There are several enumerated activities that are also defined in that same section that shall not be considered *Mining*. The determination made by this office was that the work occurring on the site does not meet those activities enumerated since no approved development plan has been issued for the site. The plans attached in your e-mail, and done as preliminary work between owner and consultant, were not part of a land development application and did not receive any review or approval by the city, thus does not qualify as the development on the property. Staff has prepared a report in response to a notice of appeal to the administrative decision that the activity on site is *Mining* as defined in the Use Regulations of the code. The appeal is scheduled to be heard by the Board of Zoning Appeals on September 5<sup>th</sup>, 2019.

The report discusses why the activity does not meet, and/or exceeds the activities listed in the code section that shall not be considered *Mining*. Those specifically addressed in the notice of appeal are items in Section 20-515(2)(iii) and Section 20-515(2)(iv). These items specifically relate to grading and the temporary crushing of stone in the development and are discussed in detail.

Also note that as part of the notice and order to cease mining operations, an approved special use permit was incorrectly listed as a process that would be applicable in the RM12 zoning district. This process only applies to *Mining* proposed in IG zoning districts. The applicability to the IG district specifically is also discussed in the staff report. To complete the work that Roger would like to do would require the appropriate approvals to develop the property.

The packet for the upcoming Board of Zoning Appeals meeting, including the notice and order, notice of appeal, and staff report, will be posted tomorrow, August 29, 2019. We will include this email exchange and your plans as communications in the packet.

**Scott McCullough, Director**

Planning and Development Services – [www.lawrenceks.org](http://www.lawrenceks.org)

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P.O. Box 708, Lawrence, KS 66044-0708

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*by completing this short online Customer Satisfaction Survey:  
<http://lawrenceks.org/pds/survey/satisfaction>."*

---

**From:** J. Dean Grob <[jdgrob@grobengineering.com](mailto:jdgrob@grobengineering.com)>  
**Sent:** Tuesday, August 27, 2019 4:32 PM  
**To:** Scott McCullough <[smccullough@lawrenceks.org](mailto:smccullough@lawrenceks.org)>  
**Cc:** Roger Johnson <[rjohnson@alcoveproperty.com](mailto:rjohnson@alcoveproperty.com)>  
**Subject:** Oregon Trail - Lot 17, Block Five Development

Scott,

This email is in regards to a "Notice and order to cease mining operations" letter received by Roger Johnson, JAL, LLC dated July 12, 2019. I will try to outline the engineering that has been done to date on Oregon Trail. The original plat was first recorded in May of 2007, with the subject property being the same configuration now as was originally platted. This piece of property was not further platted into smaller lots as the end use of the property was not yet confirmed. One of the major reason the final development scheme was never finalized is that the topography was quite steep and would require massive excavation in order to create more suitable grading for development whether developed as a one-lot multi-family project or subdivided into smaller lots.

In August 2015, I was engaged by Mr. Johnson's ownership group to consider development options for the lot or creation of possible layouts for further subdivision and development of single family small lot patio homes or duplex units (one scenario shown on attached drawing). The small lot configuration was geared toward senior housing and included a prompt care type facility as part of the development. While not shown in that drawing, I created a rough grading scheme similar to what is shown in the attached drawing dated 8-27-19 to estimate and illustrate the required excavation necessary for the then proposed development. I have updated the drawing with the originally considered duplex lot configuration with the rough grading scheme included. You can see from the drawing that excavation depths exceed 10-14 feet in numerous locations and that there would be little site filling.

The owner would content that a development scheme has truly been in place since 2015 and excavation and subsequent processing of materials on site is necessary to ultimately develop the site whether done as a one-lot multi-family development or with further subdivision into single-family or duplex type lots. The crushed and process AB-3 limestone gravel is solely for use within the development or other construction related uses. Soil material excavated from the property would have the same use. The discussion of either further subdivision into smaller lots or development of a Site Plan for a one-lot development has been discussed on several occasions in the past but not executed given the plat or site plan would mostly likely expire prior to reaching the desired topography for development. Again, the property is a conforming platted lot and the City of Lawrence does not require a permit for grading.

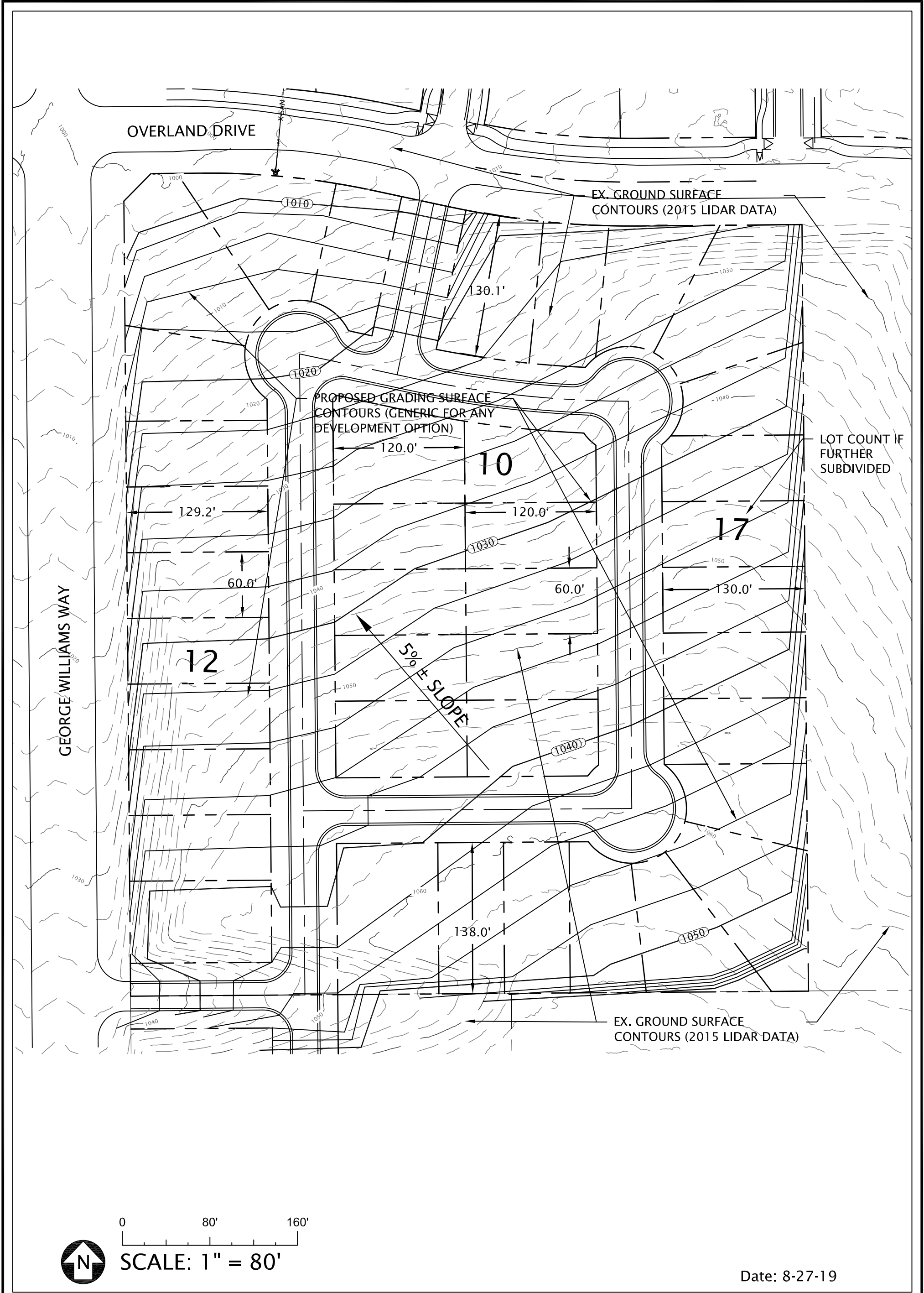
Having said all that, Mr. Johnson is requesting that the "Notice and Order to Cease" be removed from the subject property as the work being perform falls within several activities noted in your letter as activities that are not considered mining.

Roger and I would be happy to meet to discuss if there are questions about the current operations and possible future development of the subject property.

Thanks for your consideration.

Dean

J. Dean Grob  
Grob Engineering Services, LLC  
3210 Mesa Way, Suite A  
Lawrence, Kansas 66049  
Work (785) 856-1900  
Fax (785) 856-1901  
Mobile (785) 766-3740  
[www.grobengineering.com](http://www.grobengineering.com)

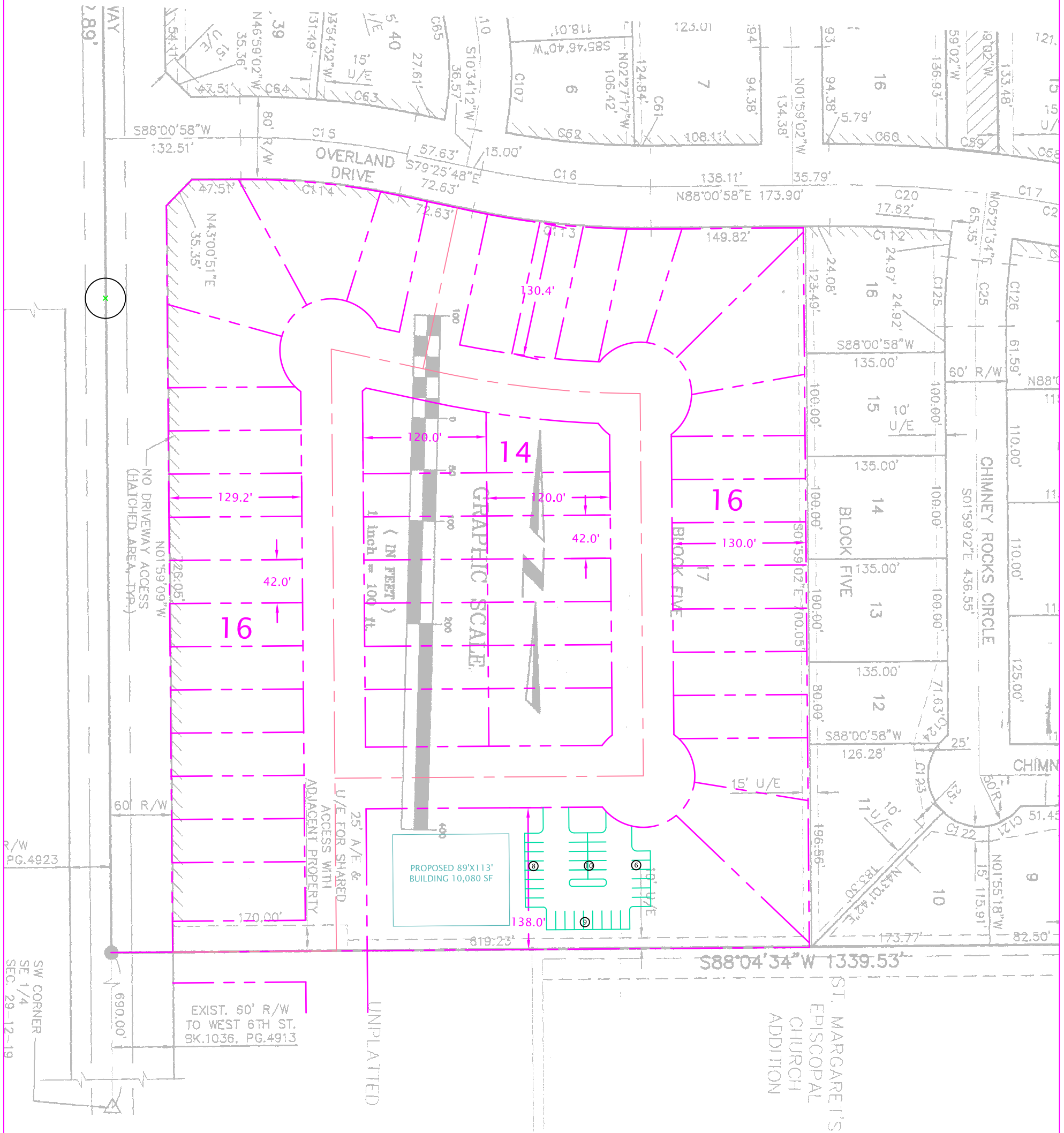


# OREGON TRAIL ADDITION

LAWRENCE, KANSAS

## PRELIMINARY CONFIGURATION LOT 17, BLOCK FIVE





Date: 8-17-15

GES

GROB  
ENGINEERING  
SERVICES, LLC

Site | Civil | Consulting | Construction Management

3210 Mesa Way, Suite A \* Lawrence, Kansas 66049  
Phone 785 856-1900 \* Fax 785 856-1901

OREGON TRAIL ADDITION

LAWRENCE, KANSAS

PRELIMINARY CONFIGURATION

## Brian Jimenez

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**From:** Brian Jimenez  
**Sent:** Tuesday, August 26, 2014 10:21 AM  
**To:** Scott McCullough; Travis Halm  
**Cc:** Amy Miller  
**Subject:** RE: Rock Crushing Complaint

I contacted an employee of King's Excavation. All rock that is being crushed is from the site. There is much more to complete and it is estimated at least 2 more months.

---

**From:** Scott McCullough  
**Sent:** Monday, August 25, 2014 10:09 AM  
**To:** Brian Jimenez; Travis Halm  
**Cc:** Amy Miller  
**Subject:** RE: Rock Crushing Complaint

Crushing rock, if it is rock excavated from the site, is permitted as an act of grading. Crushing rock hauled in and then sold is an industrial use and not permitted without proper zoning and site planning.

**Scott McCullough, Director**  
Planning and Development Services – [www.lawrenceks.org](http://www.lawrenceks.org)  
City Hall, 6 E. 6<sup>th</sup> Street  
P.O. Box 708, Lawrence, KS 66044-0708  
office (785) 832-3154 | fax (785) 832-3160

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**From:** Brian Jimenez  
**Sent:** Monday, August 25, 2014 8:47 AM  
**To:** Travis Halm  
**Cc:** Amy Miller; Scott McCullough  
**Subject:** RE: Rock Crushing Complaint

No, I do not. We can visit this morning to find out.

---

**From:** Travis Halm  
**Sent:** Friday, August 22, 2014 4:49 PM  
**To:** Brian Jimenez  
**Cc:** Amy Miller; Scott McCullough  
**Subject:** Rock Crushing Complaint

Brian

I received a complaint about a Rock Crusher on the Mercado site. I see no active permits on the site. Do you have any record of whether they are crushing native rock from the site or rock that is transported to the site?

Thank you

**Travis L. Halm, Planner I**

[thalm@lawrenceks.org](mailto:thalm@lawrenceks.org)

City of Lawrence, Planning & Development Services

6 E 6th Street, Lawrence, KS 66044

office (785)-832-3153 | fax (785)-832-3160

[www.lawrenceks.org/pds/](http://www.lawrenceks.org/pds/)

*"Your opinion counts! Customer feedback helps us serve you better. Please tell us how we're doing by completing this short online Customer Satisfaction Survey: <http://lawrenceks.org/pds/survey/satisfaction>."*



**From:** [Scott McCullough](#)  
**To:** [Matthew Gough](#); [City Clerk](#)  
**Cc:** [Katherine Weik](#); [Jeff Crick](#)  
**Subject:** RE: Open Records Request  
**Date:** Monday, July 29, 2019 2:56:45 PM  
**Attachments:** [Email concerning complaint and findings.pdf](#)

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Matt,

Attached is the only document we have related to Section 20-515. It was related to an inquiry we received when rock crushing was occurring at the Mercato site in 2014 and we found that the crushing of rock was compliant with Section 20-515. This most recent complaint, on Roger's property, has lead us to once again review Section 20-515 and my interpretation of the code has changed. My current interpretation of the code is that the activity of excavating rock on property where no development permits have been issued, at a scale greater than mere grading, is a mining use.

***Scott McCullough, Director***

Planning and Development Services – [www.lawrenceks.org](http://www.lawrenceks.org)  
City Hall Riverfront  
1 Riverfront Plaza, Suite 320  
P.O. Box 708, Lawrence, KS 66044-0708  
office (785) 832-3154 | fax (785) 832-3110

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**From:** Matthew Gough <[mgough@barberemerson.com](mailto:mgough@barberemerson.com)>  
**Sent:** Wednesday, July 24, 2019 4:33 PM  
**To:** City Clerk <[cityclerk@lawrenceks.org](mailto:cityclerk@lawrenceks.org)>  
**Cc:** Scott McCullough <[smccullough@lawrenceks.org](mailto:smccullough@lawrenceks.org)>  
**Subject:** Open Records Request

Sherri:

Please find attached an open records request. Please let me know what the City's fee might be.

Thank you,  
Matt

THE LAW OFFICES OF  
**BARBER EMERSON, L.C.**

Matthew S. Gough | Attorney  
1211 Massachusetts Street  
P.O. Box 667  
Lawrence, Kansas 66044  
(785) 843-6600 (phone)  
(785) 843-8405 (fax)  
E-mail: [mgough@barberemerson.com](mailto:mgough@barberemerson.com)  
[www.barberemerson.com](http://www.barberemerson.com)

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## Lawrence Board of Zoning Appeals

### 2020 Meeting Calendar

Board of Zoning Appeals Meeting 6:30 pm		Application Deadline • (3:00 pm)	Public Comment Deadline (10:00 am)
	Thursday	Friday	Thursday
January	January 9	December 6, 2019	January 9
February	February 6	January 3	February 6
March	March 5	February 7	March 5
April	April 2	March 6	April 2
May	May 7	April 3	May 7
June	June 4	May 8	June 4
July	July 2	June 5	July 2
August	August 6	July 3	August 6
September	September 3	August 7	September 3
October	October 1	September 4	October 1
November	November 5	October 2	November 5
December	December 3	November 6	December 3
January 2021	January 7, 2021	December 4, 2020	January 7, 2021
February 2021	February 4, 2021	January 8, 2021	February 4, 2021

• Deadlines pertain to submittal of completed applications including fees, property owner list, plans and electronic copies. Extensions will not be granted. Application deadlines are on Mondays if the designated Friday is a holiday.

#### Meeting Location

**City Commission Meeting Room, 1<sup>st</sup> Floor, Lawrence City Hall, 6 E. 6<sup>th</sup> Street**

#### Applications

Complete applications submitted by 3:00pm on the deadline day will be tentatively placed on the agenda as shown. More complex projects may take additional time. Deficiencies in submitted applications/plans will be discussed with the applicant and revisions must be submitted by the deadline established by the project planner to remain on the scheduled agenda.

#### Written Communication

Written communications must be received by the Planning Office by 10:00am on the day of the scheduled meeting.

#### Historic Resources Items

If an application is located in a historic district or within the environs of a historic property or district, the BZA will delay hearing the application until after the application is considered by the Historic Resources Commission or approved by the Historic Resources Administrator.