

Ordinance Summary published in the Legal Record on _____ and the full text of the Ordinance made available at www.desotoks.us for a minimum of 1 week from the date of publication

Ordinance No. 2416 Summary

On May 4, 2017, the City of De Soto, Kansas, adopted Ordinance No. 2416, granting a Special Use Permit for a period of ten years to the David M. and Carmietta Penny Revocable Trust (d/b/a Kaw Sand) for expansion of a sand and gravel extraction operation, and related uses set forth in the Ordinance, on roughly 92 acres of land in the vicinity of 8150 Gardner Road, in De Soto, Kansas. A complete copy of this ordinance may be obtained or viewed free of charge at the Office of the City Clerk at City Hall, 32905 West 84th Street, De Soto, Kansas or at www.desotoks.us. This summary is certified by Patrick G. Reavey, De Soto City Attorney pursuant to K.S.A. 12-3001, et seq.

ORDINANCE NO. 2416

AN ORDINANCE PROVIDING FOR A SPECIAL USE PERMIT FOR EXPANSION OF A SAND AND GRAVEL EXTRACTION OPERATION ON ROUGHLY 92 ACRES OF LAND IN THE VICINITY OF 8150 GARDNER ROAD, WITHIN THE CITY OF DE SOTO, JOHNSON COUNTY, KANSAS

WHEREAS, a sand and gravel extraction operation has previously been in operation on land (roughly 256 acres) in the vicinity of 8150 Gardner Road in De Soto, Kansas, and said operation has been governed by City Ordinances 1071, 1100, 2268, and 2284; and

WHEREAS, the David M. and Carmietta Penny Revocable Trust (d/b/a Kaw Sand and hereinafter referred to as “Permittee”) [involved in the operations governed by Ordinances 1071, 1100, 2268, and 2284] is now seeking to expand the sand and gravel extraction operation onto 92 additional acres (hereinafter “Expanded Area”) in the same general vicinity of the operation governed by Ordinances 1071, 1100, 2268, and 2284; and

WHEREAS, the special use permit that is the subject of this Ordinance is for the Expanded Area, and not for the land area described and governed by Ordinances 1071, 1100, 2268, and 2284; and

WHEREAS, the operation of a sand and gravel extraction operation [which falls within the regulations for “Mines and Quarries” as set out in the City Zoning Regulations] is permitted by a special use permit in the zoning district that the Expanded Area currently is designated within, that being “R-O” Residential Suburban District; and

WHEREAS, the Planning Commission of the City of De Soto, Kansas did hold a public hearing after proper publication of notice and proper service of notice upon property owners within 200 feet of the Expanded Area that is subject to the requested Special Use Permit; and

WHEREAS, the Planning Commission recommended that the Special Use Permit, with certain specified conditions, be approved for a ten (10) year period.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DE SOTO, KANSAS:

Section 1. Basis of Decision. That the Governing Body, in making its decision on the application for special use permit, considered the evidence forwarded to it by the City Planning Commission, as well as the following general criteria for Special Use Permits contained in the City's Zoning Regulations and as required by Kansas law:

- A. The character of the neighborhood, including but not limited to: zoning, existing and approved land use, platting, density (residential), natural features, and open space.
- B. The nature and intensity of the proposed use and its compatibility with the zoning and uses of nearby properties. Such determination should include the location, nature, and height of structures walls, fences, and other improvements connected with the proposed use, their relation to adjacent property and uses, and the need for buffering or screening.
- C. The extent to which there is a need in the community for the proposed use.
- D. The availability and adequacy of required utilities and services to serve the proposed use. These utilities and services include, but are not limited to, sanitary and storm sewers, water, electrical and gas service, police and fire protection, schools, parks and recreation facilities and services, and other similar public facilities and services.
- E. Adequacy of ingress and egress to and within the site of the proposed use, traffic flow and control, the adequacy of off-street parking and loading areas, the adequacy of required yard and open space requirements and sign provisions.
- F. The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the proposed use, or present parking problems in the vicinity of the property.
- G. The environmental impacts that the proposed use would create (if any) including, but not limited to, excessive storm water runoff, water pollution, air pollution, noise pollution, excessive nighttime lighting or other environmental harm.
- H. The economic impact of the proposed use on the community.
- I. The extent to which the proposed use may detrimentally affect nearby property.
- J. The relative gain (if any) to the public health, safety, and welfare from a denial of the application for special use permit as compared to the hardship imposed upon the special use applicant from such denial.
- K. Consistency with the Comprehensive Plan, Utilities and Facilities Plans, Capital Improvement Plan, Area Plans, ordinances, policies, and applicable City Code of the City of De Soto and the general safety, health, comfort and general welfare of the community.
- L. The recommendation of professional staff.

Section 2. Special Use Permit for a Sand and Gravel Extraction Operation. That the Governing Body hereby grants a Special Use Permit to Permittee for a sand and gravel extraction operation (and related uses as set forth herein below) -- said operation to be in conformance with and as outlined in the application for the special use permit (attached hereto as **Exhibit A**), the submitted drawings (attached hereto as **Exhibit B**), and in compliance with all of the conditions, requirements, and terms

set forth in this Ordinance, and in the City's Zoning Regulations -- on the following legally described land in the vicinity of 8150 Gardner Road, Johnson County, De Soto, Kansas, and as diagrammed in the attached **Exhibit B**:

PER DEED BOOK 6658 PAGE 509:

The West ½ of the Northwest ¼ of the Northeast ¼ of Section 26, Township 12, Range 22, except any part in streets and roads.

Lots 1 and 2, Block 1, Argubrights Addition to Cedar Junction, a subdivision in the City of DeSoto, Johnson County, Kansas.

PER DEED BOOK 201410 PAGE 000375:

The Northeast ¼ of the Northwest ¼ of Section 26, Township 12, Range 22, Johnson County, Kansas.

The East ½ of the West ½ of the Northeast ¼ of Section 26, Township 12, Range 22, Johnson County, Kansas, lying North of the Atchison, Topeka and Santa Fe Railroad. The Northwest ¼ of the Southwest ¼ of the Northeast ¼, lying North of the Atchison, Topeka and Santa Fe Railroad of Section 26, Township 12, Range 22, Johnson County, Kansas, EXCEPT that part now platted as Argubright's Addition to Cedar Junction.

Lots 3, 4, 5, 6, 7, 8 and 9, Block 1, Argubright's Addition to Cedar Junction, Johnson County, Kansas, according to the recorded plat filed in Plat Book 1, Page 80

Section 3. Conditions. The Special Use Permit granted herein is conditioned on the following:

- a. The sand and gravel extraction operation permitted by this Ordinance shall be in compliance with all terms, conditions, and requirements recited in Ordinances 1071, 1100, 2268, and 2284, understanding, though, that the land described in said Ordinances is different than the Expanded Area that is the subject of this Ordinance No. 2416.
- b. Commencement of any sand and gravel extraction activities into the Expanded Area will require Permittee to install, at its cost and in conformance with all City regulations and standards, approach and deceleration lanes on 83rd Street.
- c. As protection for water wells operated by the City of Olathe, there shall be a setback of 100 feet for any excavating activity, said setback to be measured from the interior edge (i.e. the edge closest to the primary sand and gravel extraction operation area) of the designated easement for the proposed outer loop road depicted in **Exhibit B**.
- d. All outdoor activities conducted pursuant to this Special Use Permit shall not occur earlier than dawn or later than dusk on Mondays through Saturdays. No outdoor activities shall occur on Sundays.
- e. Adequate site lines (as determined by the City Administrator or his designee) shall be maintained, for the duration of the Special Use Permit, at the intersection of

83rd Street and Gardner Road by Permittee removing and trimming vegetation in the vicinity thereof.

- f. Permittee shall extend the “apron” on Gardner Road with like material for an additional 20 feet, at its cost and in conformance with all City regulations and standards.
- g. Permittee shall comply with the reclamation plans and requirements it submitted, set forth on Sheets 2 and 4 of **Exhibit B**.

Section 4. Term of Permit. This Special Use Permit is granted for a period of ten (10) years from the effective date of this Ordinance. For any renewal of this permit beyond the original ten (10) year term, Permittee shall be obligated to pursue said renewal pursuant to application and submittal requirements in effect at the time of renewal.

Section 5. Revocation. The effectiveness of this Special Use Permit is conditioned upon the strict compliance by the Permittee with the provisions contained herein and in the City of De Soto Zoning Regulations. Should Permittee fail to comply with any term or provision thereof and shall such failure continue following notice from City to Permittee specifying the breach and actions to be taken to cure the same, then, at the direction of the City Administrator, Permittee will be notified that this Special Use Permit is revoked prior to its otherwise normal expiration and all uses permitted herein on the Property must immediately cease. Reinstatement following default may only be effected by action of the Governing Body. Wholly separate and apart from the specific conditions of the City’s Zoning Regulations are the City’s interest and duties to protect the public health, safety and welfare. Permittee agrees that this Ordinance shall not operate or be construed to impede or impair the lawful function of City government operation in this area.

Section 6. Effective Date. This ordinance shall take effect and be in force from and after its passage, approval and publication as provided by law, which will also be the effective date for purposes of the Special Use Permit herein granted.

PASSED AND APPROVED BY AT LEAST A 2/3 MAJORITY OF THE GOVERNING BODY THIS 4TH DAY OF MAY, 2017.

(Seal)

Timothy J. Maniez, Mayor

ATTEST:

Lana R. McPherson, MMC, City Clerk

APPROVED AS TO FORM:

Patrick G. Reavey, City Attorney