

**RESOLUTION NO. 2021 - 42**  
**(David Breiner/CX Construction Conditional Use Permit for Quarry Operation)**

**WHEREAS**, pursuant to K.S.A. 12-757, and amendments thereto The Board of County Commissioners of Wabaunsee County, Kansas have considered the following recommendation of the Wabaunsee County Planning and Zoning Commission and;

**WHEREAS**, the Wabaunsee County Planning and Zoning Commission pursuant to K.S.A. 12-757, as amended, following published notification; and,

**WHEREAS**, good and proper written notification was provided to all landowners within the prescribed distance set out in the Wabaunsee County Zoning Regulations and K.S.A. 12-757(b) and,

**WHEREAS**, the Wabaunsee County Planning Commission has conducted a public hearing on the request of CX Construction, agent for David & Diane Breiner, for establishing a rock quarry at 20635 Hessdale Rd Alma, Kansas 66401 on described property as follows:

The Southwest Quarter (1/4) of section Twenty-Eight (28), Township Thirteen (13), Range Eleven (11) , in Wabaunsee County, Kansas, consisting of 160 acres, more or less.  
All in Wabaunsee County, Kansas  
All in Wabaunsee County, Kansas

**WHEREAS**, the Wabaunsee County Planning and Zoning Commission has by a majority vote of a quorum of its membership recommended that the Governing Body of Wabaunsee County, Kansas, approve said Conditional Use permit as proposed subject to the following conditions:

1. Loaded trucks and equipment will travel from a point of entry on Hessdale Road from property owned by Jack Krause (agreement on file) and travel southbound to State Highway 99 to leave Wabaunsee County.
2. CUP holder will pay a \$1000 per year impact fee with payment due upon initial excavation and subsequently as indicated in paragraph 32.



3. Mining shall be limited to 10-acre parcels. Reclamation should be in 10 acres increments including overburden and topsoil. The land should be reclaimed in 10-acre increments within 12 months after quarrying is completed.
4. Conditional Use Permits shall be valid for 24 months from the date of approval by the board of County Commissioners. Periodic spot checks as well as an annual CUP review will be conducted by the Zoning Administrator within 30 days of the CUP anniversary date for compliance to quarry standards and regulations.
5. Maximum depth of quarrying shall not exceed 12 ft from the surface.
6. The rock will not be stockpiled closer than 100 horizontal ft from any road and not less than 30 horizontal ft from all other property lines.
7. Not more than 5 loads of quarried rock shall be removed from the site on any given day. The maximum speed is 30 miles per hour for trucks on the haul route.
8. Loads are required to not exceed the maximum weight as posted for roads and bridges in Wabaunsee County. The Wabaunsee County Road and Bridge Supervisor and/or Township Representative as applicable will monitor road and bridge conditions. The CUP holder shall be responsible for any damage to roads and bridges.
9. Roads shall be monitored for excessive dust conditions and control will be the responsibility of the CUP holder.
10. All mining related waste and machinery not compatible with reclamation shall be removed from the site upon completion of the quarrying and before reclamation activity is approved by the Zoning Administrator.
11. All topsoil shall be stockpiled and remain on site for replacement prior to reseeding at an equivalent depth from which it was removed.
12. Reseeding shall occur with reclamation and be monitored by the Zoning Administrator.
13. Land shall be reseeded with native grass species recommended by the NRCS.
14. Erosion problems occurring due to the quarrying of rock or reclamation shall promptly be corrected and controlled.
15. The Zoning Administrator shall be notified when quarry activity is complete and before the start and upon completion of reclamation to approve compliance of this permit.
16. Trucks or equipment shall not enter or leave the quarry site during anytime a school bus might run on any road or bus route adjacent to the quarry with the intent that truck traffic does not conflict with school bus operations.
17. A Performance Bond, Cash Bond, or Irrevocable Letter of Credit (ILOC) for an amount of not less than \$15000 shall be obtained by the landowner or Quarry Operator for land reclamation to be issued to the county. Such bond or ILOC shall be due within 14 days from Commissioner approval of the CUP or the beginning of excavation, whichever is earlier. Satisfaction of reclamation



and cleanup of the site shall be at the direction and final determination of the Zoning Administrator.

18. No blasting is allowed.
19. Landowner or quarry operator will provide the County Appraiser a map of the detailed area being quarried by January 1 of each year.
20. Proof of application from KDHE must be provided to the Wabaunsee County Zoning office within 14 days of CUP approval.
21. Provisions of the Kansas surface Mining Land Conservation and Reclamation Act shall be followed.
22. The Zoning Administrator or designee shall have the right to enter and inspect the operations as defined in this CUP upon notification of the landowner or quarry operator.
23. Mining hours of operation shall be limited to 8:00 am to 4:00 pm.
24. Truck traffic should be on limited basis during rainy periods.
25. Trucks shall not deviate from designated haul routes.
26. Permit fees are due at the time application and are non-refundable.
27. Engineering fees are due prior to CUP application presentation to the Planning Commission.
28. First year Impact fees are due once the surface of the approved area is disturbed for the purpose of harvesting the rock and the quarry no longer meets the definition of an inactive quarry. This will be referred to as the Quarry Activation Date. If harvesting is started without notification to the Zoning Administrator the ATF Penalty will apply (Fees are doubled). All quarries will pay the full impact fee for the first year of operation.
29. Impact Fees for the second year of operation will be charged the same as year 1, unless the operator can provide audited documentation of the loads hauled out on a daily basis for year 1 of operation for each CUP. This document must be provided from an outside, independent third party to be considered as acceptable documentation. No proration will apply unless acceptable load logs show an average of less than 5 loads per day. Averages below 5 loads per day will have impact fees reduced by 50% for the second year of the CUP. In no case will the impact fee be prorated to less than 50% of the 1st year fee. The 1st year impact fee will not be prorated or adjusted retroactively.
30. Once considered an active quarry, the fee structure for an open CUP will remain the same for the full initial CUP approved period (2 years). At renewal the CUP, if approved, will be kept with the same fee structure for the second approved term. The total time for a CUP to operate under the same fee structure will be 4 years. If subsequent renewals are filed, it will be up to the Planning Commission determine what fee schedule will be applied.
31. In the case of a quarry that is approved for a renewal term, the original fee structure will still apply unless operator provides documentation for loads hauled out on a daily basis as established in Item # 28.



32. Impact fees will be due at the Annual Anniversary of the Quarry Activation Date. As long as the quarry does not qualify for an inactive quarry, impact fees will be due on the Anniversary on the Quarry Activation Date. If the CUP has expired and harvesting has ceased, without the property being reclaimed, the Zoning Administrator is authorized to activate the performance bond and proceed to have cleanup activities proceed.

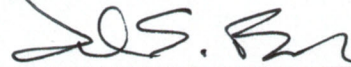
**WHEREAS**, the Board of County Commissioners of Wabaunsee County, Kansas, in due and regular session, met on the 13<sup>th</sup> day of September, 2021 and after public discussion voted to approve the conditional use permit.

**NOW, THEREFORE, BE IT RESOLVED, BY THE BOARD OF COUNTY COMMISSIONERS OF WABAUNSEE, COUNTY KANSAS**, that:

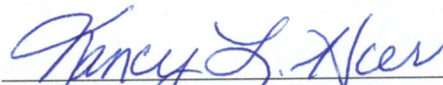
The above described property hereafter is granted the conditional use permit requested as described above and on the conditions stated.

**BE IT FINALLY RESOLVED** that this resolution shall be effective upon publication in the *Wabaunsee County Signal Enterprise*.

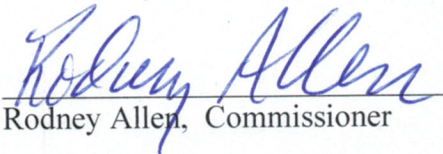
**ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS** of Wabaunsee County, Kansas this 13<sup>th</sup> day of September, 2021.



Joel Fager, Chairman

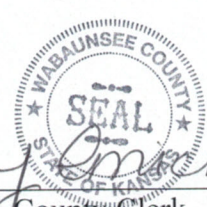



Nancy Hier, Commissioner



Rodney Allen, Commissioner

Attested by:

  
  
Abby Amick, County Clerk