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## PLANNING COMMISSION STAFF REPORT

**SUBJECT:** Kinder Construction; 5782 West Feulner Park Circle; Conditional Use Permit for Outdoor Storage and Operations in a Drinking Water Source Protection Zone; M-1 Zone; Kinder Construction/Jim Kinder (applicant) [Megan Jensen #34333; parcel 26-11-226-007]

**SUMMARY:** The applicant is requesting approval of a Conditional Use Permit to operate outdoor storage in a Light Industrial (M-1) and Drinking Water Source Protection Overlay zone.

**STAFF RECOMMENDATION:** Staff recommends that the Planning Commission approve the Conditional Use Permit for Outdoor Storage and Operations, located at 5782 West Feulner Park Circle in an M-1 zone and Drinking Water Source Protection Overlay zone, with the conditions of approval listed in this staff report.

**MOTION RECOMMENDED:** "Based on the information and findings set forth in this staff report and upon the evidence and explanations received today, I, as the Zoning Administrator approve the Administrative Conditional Use Permit for Outdoor Storage and Operations, located at 5782 West Feulner Park Circle in an M-1 zone and Drinking Water Source Protection Overlay zone, subject to all the conditions of approval."

**CONDITIONS AND REQUIREMENTS OF APPROVAL:**

1. All vehicles and equipment shall be stored on the designated asphalt parking area. No vehicles or equipment with the potential to leak contaminating substances shall be stored on the gravel or recycled asphalt areas.

2. Loose materials such as sand shall be contained on site by covering the loose material piles with secured coverings, placing the loose materials inside buildings, watering the material piles, or other methods to eliminate material blowing from the site.

#### 13-7E-6: ACTION BY PLANNING COMMISSION:

A. Staff Report: Prior to the consideration of a conditional use application, the community development department, in consultation with other appropriate city departments, shall review and study the application and prepare a staff report that:

1. Describes the reasonably anticipated detrimental effects of the proposed conditional use as compared with the standards of this article (section 13-7E-7) and detail the reasons why each of the reasonably anticipated detrimental effects will be detrimental; and

2. Suggests reasonable conditions, which will reasonably relate to mitigating each of the reasonably anticipated detrimental effects of the proposed conditional use.

B. Determining Effects and Conditions: Prior to any decision on any conditional use application, the planning commission shall:

1. Determine any reasonably anticipated detrimental effects of the proposed conditional use:

a. Specify why each of the identified reasonably anticipated detrimental effects will be detrimental based on the standards in this article; this is necessary to determine what conditions may be imposed to mitigate the detrimental effects; and

b. If no reasonably anticipated detrimental effects can be determined, conditions are unnecessary, and should not be imposed;

2. Determine reasonable conditions which are reasonably related to the purposes and goals of the standards of this article (section 13-7E-7) and address the reasonably anticipated detrimental effects in a reasonable manner:

a. The conditions must be supported by substantial evidence in the record;

b. A condition is unnecessary and shall not be imposed if it requires the applicant to meet a requirement of existing law that they are subject to; therefore, requirements to comply with existing law are not conditions; and

c. A condition not tied to a reasonably anticipated detrimental effect cannot be imposed, even if it would be beneficial to the community; and

3. Approval: State on the record as part of the decision:

a. Each of the identified reasonably anticipated detrimental effects;

b. Each of the identified reasonable conditions, imposed by the city, which reasonably relate to mitigating each of the reasonably anticipated detrimental effects of the proposed conditional use; and

c. A Determination that the conditions imposed will substantially mitigate the detrimental effects. "Substantially mitigated" does not mean the same as "completely eliminated."

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#### **I. BACKGROUND:**

The site is part of the Wells Industrial Park 2 Subdivision and has been used as an outdoor storage yard for vehicles and equipment with no building or site improvements, and is therefore out of

compliance with City code regarding outdoor storage requirements.

## **II. GENERAL INFORMATION & ANALYSIS:**

The subject property's surrounding zoning and land uses are as follows:

	<b>Future Land Use</b>	<b>Zoning</b>	<b>Current Use</b>
<b>North</b>	Light Industrial	M-1	Vacant
<b>South</b>	Light Industrial	M-1	Industrial
<b>East</b>	Light Industrial	M-1	Industrial
<b>West</b>	Light Industrial	M-1	Industrial

The site is a corner lot and is currently vacant with storage of vehicles and equipment on the north half of the property. Outdoor storage is considered an accessory use and requires a 2,000 SF building on the site where it occurs. Therefore, this site will require site plan approval for the new building and all other required site improvements including parking and landscaping. A site plan has not been applied for yet.

Additionally, the site falls in the Drinking Water Source Protection Overlay zone which aims to protect the City's groundwater from contaminants by regulating uses within the zone. Outdoor

storage permits are typically an administrative process, but conditional uses in this overlay zone require Planning Commission approval.

The applicant is intending to use the site for parking and storage of heavy equipment including dump trucks, tractors, trailers, and other construction vehicles. Additionally, there will be storage of materials such as stockpiles of sand, gravel, aggregate, and others required for construction and maintenance. The proposed site plan shows a future building on the south side with the storage yard on the north. The storage yard will consist of a 1 ½" minus gravel area where no vehicle parking may occur. An asphalt driveway on the northwest side will lead to a recycled asphalt loading area, and a 40'x40' asphalt designating truck parking area to the north. There is an existing 6-foot solid metal fence surrounding the storage area.

### **III. FINDINGS OF FACT:**

#### **13-7E-7: STANDARDS FOR DETERMINATION:**

A. The reasonably anticipated detrimental effects, like all aspects of a conditional use application, must be established by substantial evidence.

B. If the city requires the need for additional conditions to address the reasonably anticipated detrimental effects, the city has the burden of proving both the existence of the reasonably anticipated detrimental effects and the need for conditions.

C. The following specific considerations articulate city purposes or goals related to guiding the planning commission or zoning administrator in identifying reasonably anticipated detrimental effects. The planning commission or zoning administrator shall determine if the proposed conditional use:

***Determination 1. Has any detrimental effects on the general plan or on the purpose of the zoning district in which the proposed site is located that cannot be mitigated by reasonable conditions;***

Substantial Evidence: The site is located in an M-1 zoning district. The purpose of the M-1 zone is to provide areas suited to general manufacturing, assembly, repair and storage. Based on the zoning district and 2023 General Plan, M-1 zones are suitable for outdoor storage operations, and there are several neighboring properties with outdoor storage operations. The proposed use will be in line with the zoning district and 2023 General Plan.

Condition(s) Imposed: Staff believes the applicant's proposal is harmonious with the M-1 zone, and therefore does not recommend any conditions of approval related to Determination 1.

***Determination 2. Is inadequate in size or shape to accommodate the use;***

Substantial Evidence: The property is 0.84 acres and rectangular in shape. The outdoor storage yard will consist of approximately the the north half of the lot, and the future building and parking lot will be to the south. The size and shape of the lot is adequate for the proposed use.

Condition(s) Imposed: Staff does not identify any reasonably anticipated detrimental effects of the use related to Determination 2, and therefore does not recommend any conditions of approval related to Determination 2.

***Determination 3. Has one or more of the requirements for the zone district (including, but***

***not limited to, setbacks, parking, on site circulation, screening, buffering, and landscaping) that are not being met;***

Substantial Evidence: §13-14-3 of City code requires screening of outdoor storage. There is an existing 6-foot solid metal fence surrounding the outdoor storage yard which meets code requirements. All outdoor storage must be contained in this screened area.

The site will require site plan approval as outlined in §13-7B of City code. All requirements of City code must be met including setbacks, parking, landscaping, and on-site circulation. Manufacturing developments require 10% of the site to be landscaped. Parking will be based on the use of the building.

Condition(s) Imposed: Staff does not identify any reasonably anticipated detrimental effects of the use related to Determination 3, and therefore does not recommend any conditions of approval related to Determination 3.

***Determination 4. Has inadequate access to public streets and highways or has any detrimental effects on traffic (which may be generated) that cannot be mitigated by reasonable conditions;***

Substantial Evidence: The applicant is proposing one access on Feulner Park Circle and one on Feulner Park Road. These accesses will need to be approved by the City Engineer during the site plan process, however, there is no concern with the proposed accesses at this time. The proposed use is not anticipated to generate traffic that will create a detrimental effect.

Condition(s) Imposed: Staff does not identify any reasonably anticipated detrimental effects of the use related to Determination 4, and therefore is not recommending any conditions of approval related to Determination 4.

***Determination 5. Has any detrimental effects on public safety services that cannot be mitigated by reasonable conditions;***

Substantial Evidence: Staff does not anticipate any detrimental effects caused by the proposed use related to public safety services.

Condition(s) Imposed: Staff does not identify any reasonably anticipated detrimental effects of the use related to Determination 5, and therefore does not recommend any conditions of approval related to Determination 5.

***Determination 6. Will unreasonably interfere with the lawful use of properties within the vicinity of the proposed conditional use that cannot be mitigated by reasonable conditions;***

Substantial Evidence: Staff does not anticipate any detrimental effects caused by the proposed use that will unreasonably interfere with the lawful use of properties within the vicinity.

Condition(s) Imposed: Staff does not identify any reasonably anticipated detrimental effects of the use related to Determination 6, and therefore does not recommend any conditions of approval related to Determination 6.

***Determination 7. Will create an additional need for essential city services or utilities that***

***cannot be met without unreasonable efforts or expenditures of city or public resources;***

Substantial Evidence: Staff does not anticipate the proposed use will create an additional need for essential city services or utilities that cannot be met.

Condition(s) Imposed: Staff does not identify any reasonably anticipated detrimental effects of the use related to Determination 7, and therefore does not recommend any conditions of approval related to Determination 7.

***Determination 8. Will have any detrimental effects regarding public health, safety, and welfare.***

Substantial Evidence: The site falls in the Drinking Water Source Protection Overlay zone which aims to protect the City's groundwater from contaminants by regulating uses within the zone. Parking motorized vehicles on permeable surfaces such as dirt or gravel have the potential to leak contaminating fluids and infiltrate the underground water system. Therefore, all motorized vehicles and other equipment that could leak contaminating substances into the City's groundwater system should be stored on an asphalt or concrete surface at all times. The conditional use was reviewed by the City Engineer and Utilities Manager to ensure the site will meet standards and protect the City's groundwater supply.

The applicant intends to store some materials such as stockpiles of sand, gravel, and aggregate. Storage of loose materials such as sand have the potential to blow from the site, especially if the stockpiles exceed the height of the fence. Measures should be taken to mitigate sand or other loose materials from blowing onto neighboring properties.

Condition(s) Imposed:

- 1. All motorized vehicles and equipment shall be stored on the designated asphalt parking area. No vehicles or equipment with the potential to leak contaminating substances shall be stored on the gravel or recycled asphalt areas.*
- 2. Loose materials such as sand shall be contained on site by covering the loose material piles with secured coverings, placing the loose materials inside buildings, watering the material piles, or other methods to eliminate material blowing from the site.*

#### **IV. CONCLUSION:**

Staff recommends that the Planning Commission approve the Conditional Use Permit for Outdoor Storage and Operations, located at 5782 West Feulner Park Circle in an M-1 zone and Drinking Water Source Protection Overlay zone, with the conditions of approval listed in this staff report.

#### **V. ATTACHMENTS:**

Exhibit A – Aerial Map  
Exhibit B – Zoning & Future Land Use Map  
Exhibit C – Drinking Water Source Protection Overlay Map  
Exhibit D – Site Plan

Exhibit E – Letter of Intent  
Exhibit F – Fence Pictures  
Exhibit G – Application