

BEFORE THE CITY COUNCIL OF
AKRON, OHIO

APPEAL TO THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

J.W. DIDADO ELECTRIC, LLC,)	CASE NO.:
1033 Kelly Avenue,)	
Akron, Ohio 44306,)	JUDGE:
)	
and)	<u>NOTICE OF APPEAL</u>
)	(Administrative Appeal)
JOYCE A. KEPHART,)	
1345 Austin Avenue,)	
Akron, Ohio 44306,)	
)	
and)	
)	
JOANN ELLIS,)	
1345 Austin Avenue,)	
Akron, Ohio 44306,)	
)	
and)	
)	
KELLY AVENUE PROPERTY, LLC,)	
1033 Kelly Avenue,)	
Akron, Ohio 44306,)	
)	
and)	
)	
AUSTIN AVE., LLC,)	
350 Sharon Falls Drive,)	
Wadsworth, Ohio 44281,)	
)	
and)	
)	
M&M SAFETY SOLUTIONS, LLC,)	
1051 Kelly Avenue,)	
Akron, Ohio 44306,)	
)	
and)	
)	
TRAFFIC SAFETY SOLUTIONS, LLC,)	
1051 Kelly Avenue,)	
Akron, Ohio 44306,)	
)	

and)
)
1051 KELLY AVE. II, LLC,)
1051 Kelly Avenue,)
Akron, Ohio 44306,)
)
Appellants,)
)
vs.)
)
CITY OF AKRON, OHIO)
166 S High Street,)
Akron, Ohio 44308,)
)
and)
)
AKRON, OHIO CITY COUNCIL,)
166 S High Street,)
Akron, Ohio 44308,)
)
and)
)
CROWN ENTERPRISES, INC.,)
12225 Stephens Road,)
Warren, Michigan 48089,)
)
and)
)
CROWN ENTERPRISES, INC.,)
c/o David Rapczak, Statutory Agent)
4363 La France Street)
Newton Falls, Ohio 44444,)
)
and)
)
WASTE MANAGEMENT OF OHIO,)
INC.,)
4400 Easton Commons Way)
Suite 125)
Columbus, Ohio 43219,)
)
Appellees.)
)

Appellants appeal the final decision of the Akron, Ohio (“City”) City Council rendered on October 21, 2024, approving a Petition for a Conditional Use to construct and operate a refuse and recycling transfer station and trash hauling business at 1400 E. Archwood Avenue, Summit County Parcel Number 6720790, by way of Ordinance 368-2024 (“City Decision”). The City Planning Commission (“Planning Commission”) voted to recommended disapproval of the same on August 16, 2024 in Case No. PC-2024-31-CU. The City Decision is attached hereto and incorporated herein by reference as **Exhibit A**. The City Decision was provided to Appellants’ Counsel via email on October 23, 2024.

This appeal is based on questions of law and fact. Appellants appeal the City’s unconstitutional, illegal, arbitrary, capricious, unreasonable, and unsupported decision under Chapters 2505 and 2506 of the Ohio Revised Code. This Court has jurisdiction to hear this appeal under Ohio Revised Code Section 2506.01. No administrative appeal or remedy is available from any other administrative board or body of the City.

A Praecipe has been served upon the City requesting the preparation of a complete transcript of the proceedings and to file the transcript with the Clerk of Common Pleas of Summit County, Ohio, in accordance with Section 2506.02 of the Ohio Revised Code.

Respectfully submitted,

/s/ John P. Slagter

John P. Slagter (#0055513)

Anthony R. Vacanti (#0080834)

Danielle M. Easton (#0099591)

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Attorneys for Appellants

CERTIFICATE OF FILING

I hereby certify that an original of the foregoing **NOTICE OF APPEAL** has been filed this 19th day of November 2024, with the City Council via hand delivery at 166 S High Street, Akron, OH 44308.

A copy of the foregoing was also served/filed on such entities via electronic mail as follows:

Sara Biviano, Clerk of Council
sbiviano@akronohio.gov

Deborah S. Matz, Esq., Director of Law
dmatz@akronohio.gov

Brian T. Angeloni, Esq., Deputy Director of Law
bangeloni@akronohio.gov

Majeed Makhoulf
mmakhoulf@bernssockner.com
Jordan Berns
jberns@bernssockner.com

Counsel for Waste Management Of Ohio, Inc.

A copy of the foregoing was also served upon Crown Enterprises, Inc. via U.S. mail at the following addresses:

12225 Stephens Road,
Warren, Michigan 48089

c/o David Rapczak, Statutory Agent
4363 La France Street
Newton Falls, Ohio 44444

/s/ John P. Slagter

John P. Slagter (#0055513)

One of the Attorneys for Appellants

September 20, 2024

10-3 Davis,
Hannah,
Somerville

**SUBSTITUTE
OFFERED AS
AMENDMENT**

Requested by Department of Planning and Urban Development

City Planning Commission
PC-2024-31-CUOffered By: FUSCO

ORDINANCE NO. 368-2024 authorizing a Conditional Use to construct and operate a refuse and recycling transfer station and trash hauling business at 1400 E. Archwood Avenue; and declaring an emergency.

The streets involved are E. Archwood Avenue and Underwood Avenue.

WHEREAS, WM of Ohio, has petitioned Council for a Conditional Use of property described in Section 1 hereof; and

WHEREAS, under the provisions of Section 153.460-.492 of the Code of Ordinances, the Akron City Planning Commission, at its meeting on August 16, 2024, under file PC-2024-31-CU has reviewed the Conditional Use described in Section 1 hereof; and

WHEREAS, the Planning Staff has found the requested Conditional Use to be consistent with the standards established in Section 153.474; and

WHEREAS, Council, after public notice and hearing, is of the opinion that the Conditional Use described in Section 1 hereof is in the public interest and serves the public good.

NOW, THEREFORE, BE IT ENACTED by the Council of the City of Akron:

Section 1. That WM of Ohio, whose address is 720 East Butterfield Rd., 4th Floor, Lombard, IL 60148, holder of option of the following property described in EXHIBIT A, attached, be and is hereby authorized to under the provisions of Section 153.460-.492 of the Code of Ordinances of Akron, Ohio, to construct a refuse and recycling center and trash hauling business at 1400 E. Archwood Avenue, based on plans to be filed in the office of the City Planning Commission entitled "Overview Conceptual Site Plan; Dated: 05/30/24" and subject to the following conditions:

- (1) That a landscape planting and fencing plan which conforms to the "Akron Development Guide" as referred to in Section 153.300-.310 of the Zoning Code be submitted to the Department of Planning and Urban Development for its review of compliance with said guide, and that the landscaping and fencing be installed and maintained as shown on the approved plan.
- (2) That the Petitioner submit a storm water management plan to control the run-off, siltation and sedimentation during construction and to control the run-off after the development is completed. This plan is to be consistent with all the requirements of Section 192.101-.114 of the Code of Ordinances and is to be subject to the approval of the Bureau of Engineering and submitted prior to the issuance of any building permits.

- (3) That the location and sizes of points of ingress and egress be subject to the approval of the Traffic Engineer.
- (4) That all walkways, driveways, and parking areas be hard surfaced and curbed to Bureau of Engineering specifications.
- (5) That the Petitioner, at his total expense, install, restore and repair curbing, sidewalks, abandoned driveway cuts and approaches along E. Archwood Avenue and comply with Section 98.21 of the Code of Ordinances.
- (6) That the Petitioner provide adequately dustproofed off-street parking for construction workers and off-street storage space for materials and equipment during construction.
- (7) That the structures and layout of the development conform substantially to the approved plans; however, minor changes may be approved by the Department of Planning and Urban Development.
- (8) That all exterior building facade, wall and other surfaces at the property shall be kept in good repair, in a safe condition, and, if constructed of a non-weatherproof material, or if currently coated by stucco, paint or other treatment, or if required to be coated by the Building Code, shall be protected against decay from the elements, and shall be uniformly coated by paint or other treatment, free of chips, cracks, flaking, chalking, peeling or exposed underlying surfaces, and shall be free of holes, cracks, or broken, loose or decaying materials.
- (9) That the construction material of the exterior walls of the structures shall be subject to the approval of the Department of Planning and Urban Development.
- (10) That any projections above the roof line of the structure, excepting parapets or chimneys, be adequately screened to the satisfaction of the Department of Planning and Urban Development.
- (11) That the outside storage of scrap, trash, or recyclable material be prohibited.
- (12) That the outdoor yard areas be kept free of trash and litter.
- (13) That the odor suppression systems remain operable and in use at all times.
- (14) That all public utility services be installed underground, and their locations suitably marked for safety.
- (15) That the hours of the operation shall be limited to 4:00am to 8:00pm Monday through Friday, and 6:00am to 12:00pm on Saturdays. Saturday hours can be extended to 4:00am to 8:00pm on weeks with inclement weather and holidays, at the discretion of the Service Director.

- (16) That the outside storage of route trucks and containers be screened from view by either solid fencing or dense landscaping to be incorporated in Item (1), subject to the approval of the Department of Planning and Urban Development.
- (17) That all exterior lighting on the Petitioner's property, if any, be installed so as not to impair in any way the safe movement of traffic on any street or highway or so as not to intrude on the surrounding properties.
- (18) That the number, size, and location of all exterior signs shall be subject to the approval of the Department of Planning and Urban Development, and these signs shall conform to Section 153.345-.375 of the Zoning Code.
- (19) That the Petitioner, at his total expense, install fire hydrants and/or a fire alarm system to the satisfaction of the Fire Department.
- (20) That the City of Akron shall retain its 15-foot easement for a storm trunk sewer across the property. That no building or grade changes shall occur within this easement and that the City shall be held harmless for damages to private improvements as a result of any repair or relocation of this sewer.
- (21) That the Petitioner shall comply with all Ohio EPA siting, permitting, bonding and monitoring requirements.
- (22) That the Conditional Use be subject to annual renewal by the City Planning Commission. This requirement for annual renewal may be removed by the Planning Commission three years after completion of the project.
- (23) That to ensure development as shown on the approved plans, a Performance Bond be placed with the Department of Planning and Urban Development at 100% of the estimated cost of the following:
 - (a) Landscaping installation as referred to in Item (1) above.
 - (b) Hardsurfacing installation as referred to in Item (4) above.
- (24) That as a prerequisite to the issuance of any building or grading permit incident hereto, the following be submitted to the City:
 - (a) Bond as referred to in Item (20) above.
 - (b) Landscape plan as referred to in Item (1) above.
 - (c) Storm water management plan as referred to in Item (2) above.

Section 2. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety for the reason that the refuse and recycling transfer station and trash hauling business will consolidate and replace outdated facilities on Fountain Street and Exeter Road, and if this ordinance receives the affirmative vote of two-thirds of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

Passed October 21, 2024

Wanda R. Biviano
Clerk of Council

Shirley Ann Mull
President of Council

Approved October 22nd, 2024

Shirley Ann Mull
MAYOR

I HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE AND CORRECT COPY OF Ord
No. 368-2024 AS TAKEN FROM THE
RECORDS ON FILE IN THE OFFICE OF THE
CLERK OF COUNCIL.

Wanda R. Biviano
CLERK OF COUNCIL

RECEIVED
2024 SEP 20 PM 1:28
AKRON CITY COUNCIL

PC-2024-31-CU

Petition of WM of Ohio for a Conditional Use to operate a refuse and recycling transfer station and trash hauling business at 1400 E. Archwood Avenue

★ Conditional Use

- | | | | |
|--|------------------------------|--|----------------------|
| | U1 Single Family Residential | | U3 Retail Business |
| | U1 Two Family Residential | | U4 Commercial |
| | U2 Apartment House | | U5 Ordinary Industry |



0 400'

Created 06/18/2024 jwh
Revised 06/20/2024 jwh

