CITY OF WICHITA

Wichita-Sedgwick County Metropolitan Area Planning Department

January 19, 2018

Ms. Ashley Giles
December 8, 2017
9529 South K-15 Highway
Derby, KS 67037

RE: CON2017-00037 - County request to grant a Conditional Use Permit to allow a 1-acre borrow pit on property West of K-15 Highway at South 95th Street (9529 South K-15 Highway).

Dear Applicant:

At its regular meeting on **January 17, 2017,** the Board of Sedgwick County Commissioners considered the above captioned request. The action of the Board was to **APPROVE** the request, subject to certain restrictions different than recommended by the Metropolitan Area Planning Commission. In short, not all of the Supplementary Use requirements of the Unified Zoning Code were waived.

The actual Resolution that was approved is attached.

If you have any questions concerning this application, please contact our office at 268-4421.

Sincerely,

David L. Yearout, AICP
Principal Planner

Copies to: MABCD
Jayla Sweely, 6805 E. Winterberry Cir, Wichita, KS 67226
James Howell, BCCC District V, County Mail Stop #320
Justin Waggoner,County Law, Mail Stop #349
Mr. Morris 9339 S. K-15, Derby, Kansas 67037
Christopher Loveless, 9715 S. 63rd St. E.Derby, Kansas 67037

RESOLUTION NO. 013-2018

Published on: _____

A RESOLUTION GRANTING A CONDITIONAL USE FOR CERTAIN LANDS LOCATED WITHIN THE UNINCORPORATED AREA OF SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-D AS ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY KANSAS, DECEMBER 12, 1984, AND SUBSEQUENTLY AMENDED.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS

SECTION I. That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission, and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section V-D of the Wichita Sedgwick County Unified Zoning Code, a Conditional Use for the lands legally described hereby is approved as follows:

Case No. CON 2017-00037

A Conditional Use request to allow a Borrow Pit in a RR Rural Residential District and legally described as follows:

Part of the SE ¼ of Section 13, and part of Government Lot 4 in the NW ¼ of Section 24, beginning of the south line of the SE ¼ at the west line of the ATSF right-of-way, thence west 1,370 feet; thence 340 feet northeasterly; thence 810 feet northeasterly; thence 190 feet northerly; thence 190 feet easterly; thence 70 feet southerly along said ATSF right-of-way to the point of beginning; in the SE ¼ of Section 13, Township 29 South, Range 1 East, and in the NW ¼ of Section 24, Township 29 South, Range 1 East; Sedgwick County, Kansas.

SECTION II. That application CON2017-0037 is hereby approved and the Conditional Use is subject to the following Conditions:

1. The excavation activity shall be restricted to the area shown on the site plan submitted by the applicant/agent and shall not be perpetuated beyond the agreement to provide dirt for the project(s) within the City of Derby, with all excavation activity to be completed by the end of December, 2018.

2. The performance standards and requirements specified in the Supplementary Uses, Article III, Section III(d)(6)(gg) of the Unified Zoning Code shall be followed, with the exception of those included within Article III, Section III(d)(6)(gg)(4) through (9), which are waived.

3. All permits and approvals that might otherwise be identified and needed shall be obtained, with copies placed on file with the Metropolitan Area Planning Department, including documentation from KDOT, Burlington Northern/Santa Fe Railroad, and appropriate State and Federal agencies, if any.

4. If the Zoning Administrator finds there is a violation of any provision or condition of the Conditional Use, or any other provision of the Unified Zoning Code (UZC), the Zoning Administrator shall enforce all remedies of Section VIII of the UZC, and with the concurrence of the Planning Director, declare the Conditional Use null and void.

SECTION III. That upon the taking effect of this Resolution, the notation of such Conditional Use shall be shown on the "Official Zoning District Map" on file in the office of the Planning Director of the Wichita-Sedgwick County Metropolitan Area Planning Department.

SECTION IV. That this Resolution shall take effect and be in force from and after its adoption by the Governing Body and publication in the official county newspaper.

Commissioners present and voting were:

DAVID M. UNRUH	Aye
MICHAEL B. O'DONNELL, II	Aye
DAVID T. DENNIS	Aye
RICHARD RANZAU	No
JAMES M. HOWELL	Aye

Dated this 17th day of January, 2018.

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

ATTEST:

for Karen S Ball
KELLY B. ARNOLD, County Clerk

CLERK OF SEDGWICK COUNTY SEDGWICK COUNTY KANSAS KANSAS

DAVID T. DENNIS, Chairman
Commissioner, Third District

DAVID M. UNRUH, Chair Pro Tem
Commissioner, First District

APPROVED AS TO FORM:

JUSTIN M. WAGGONER
Assistant County Counselor

MICHAEL B. O'DONNELL, II
Commissioner, Second District

RICHARD RANZAU
Commissioner, Fourth District

JAMES M. HOWELL
Commissioner, Fifth District

WICHITA—SEDGWICK COUNTY
METROPOLITAN AREA PLANNING

AGENDA ITEM NO. 5

STAFF REPORT

MAPC December 7, 2017

CASE NUMBER: CON2017-00037

APPLICANT/AGENT: Ashley Giles (Owner)/Jesse Watson (Agent)

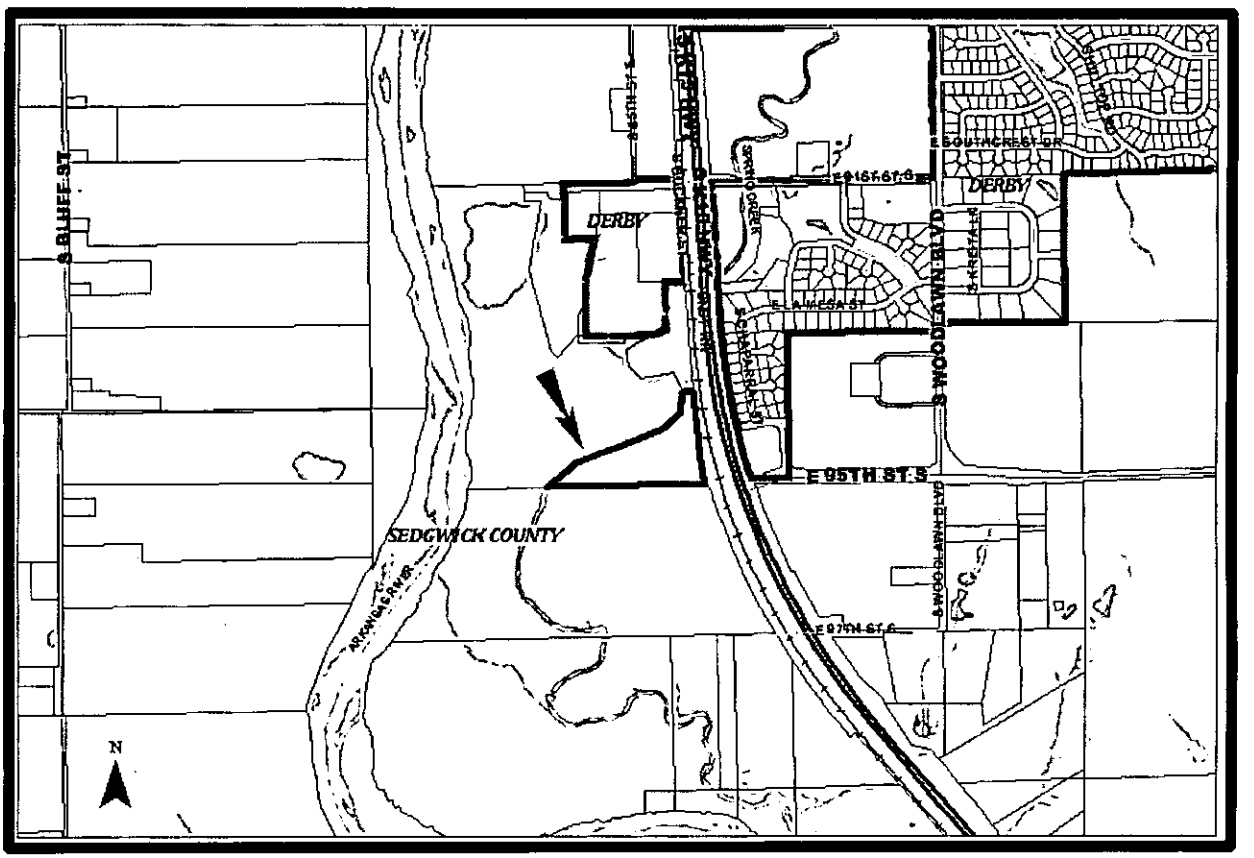
REQUEST: Conditional Use to permit a borrow pit

CURRENT ZONING: RR Rural Residential

SITE SIZE: 11.51 acres

LOCATION: West side of K-15 Highway north of 95th Street South (9529 South K-15 Highway)

PROPOSED USE: Borrow Pit



BACKGROUND: The applicant is requesting a Conditional Use to permit a borrow pit on their property, which is zoned RR Rural Residential (RR). The intent is for the dirt to be used for construction project(s) in Derby by the contractor removing the dirt. The end result will be a pond for private use by the landowner.

According to information provided by the applicant/agent, the borrow pit will cover a little over 1 acre of land and be located south of the driveway in the southeast corner of the property. It is estimated that about 26,000 yards of dirt will be removed. Once work begins, it is anticipated the removal of the dirt will take between 60 and 90 days; however the exact time to complete the removal is unknown.

The applicant has indicated contact has been made with both KDOT and with the Railroad regarding this new activity (truck traffic) on the drive entrance to K-15 and crossing of the railroad. No objections have been made from either entity. Written confirmation of these contacts has been provided.

The owner/agent has stated an intent for the resulting pond to be for personal use only.

The applicant has indicated the County plans to extend 95th Street west from K-15 along the south side of his property and construct a new bridge over the Arkansas River. That project is proposed in the long range future Transportation Plans for the south area and are being supported by both the City of Derby and City of Haysville; however there is no specific timing anticipated for when and/or if the project would occur.

The matter was reviewed by staff and other agencies of the County regarding the impacts. Sedgwick County officials have discussed this issue with the agent regarding floodplain impacts and other potential state permitting requirements. To date, no other issues have been identified that would delay or negatively impact the proposed use.

Under the application of the definitions and requirements of the Unified Zoning Code, this activity is to be treated in the same manner as all other "mining and quarrying", which include the provisions of the Supplementary Uses, Article III, Section III(d)(6)(gg) as follows:

gg. Mining or Quarrying, sand and gravel extraction. Sand and gravel extraction operations shall be subject to the following conditions:

(1) The extraction operation on the Site shall proceed in accordance with an operational plan approved by the Planning Commission. The perimeter of the lake excavation shall conform to the approximate size and shape indicated on the approved operational plan. To assist in the enforcement of the operational plan, a copy of the approved operational plan shall be posted in the extraction office.

(2) The operational plan shall illustrate which area is to be excavated and at what time.

(3) As part of the Conditional Use approval, the development plan for Uses after the conclusion of the extraction operation shall be submitted to the Planning Director for review and a recommendation to the Planning Commission as to whether or not the development plan is compatible with surrounding land uses, the *Comprehensive Plan* or other plans or policies being utilized by the City or County.

(4) Abutting the perimeter of the application area, a minimum 60-inch high Fence shall be constructed prior to the beginning of any extraction operation and shall be maintained at the locations depicted on the approved operational plan. Said Fence shall be placed on

steel posts that are not less than seven feet tall. The posts shall not be set more than 16 feet apart. The Fence shall be a minimum height of 60 inches and shall be of the following types of construction:

(a) a 48-inch high or higher chain link Fence with three or more strands of barbed wire; or

(b) a 48-inch high or higher solid metal or solid masonry Screening Wall with three or more strands of barbed wire; or

(c) a 48-inch high or higher wood Fence that may have cracks or openings not in excess of five percent of the area of such Fence, with three or more strands of barbed wire; whereby

(d) the term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of four inches apart and placed at the top of the Fence and gate at an angle not to exceed 160 degrees facing away from the excavation.

(5) The extraction shall be to at least a minimum depth of six feet below the normal water table, as determined by the Director of Sedgwick County Code Enforcement.

(6) The Owner of the property shall be responsible for minimizing blowing dust from the Site. To minimize blowing soil, overburden shall not be removed more than six months in advance of the lake being expanded into an area, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion. As part of the required operational plan, the site shall be divided into at least two distinct areas for the purpose of showing phased excavation over time.

(7) All slopes shall have vegetative covering consisting of a perennial drought- resistant grass or combination of grasses that will permit the establishment of sod cover to help prevent erosion.

(8) To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no steeper than five horizontal to one vertical.

(9) Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.

(10) The property shall be platted prior to the issuance of any zoning or Building Permits, except those permits necessary for the extraction operation.

(11) No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the development area, unless duly authorized under provisions of this Code and amendments thereto.

(12) The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the City or County legal counsel (as applicable), prior to the commencement

of any extraction operation, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.

(13) The storage of equipment or stockpiling of sand or overburden is not permitted closer than 100 feet to any public right-of-way or closer than 50 feet to any property line.

(14) Nothing in the approval of a Conditional Use shall be construed to permit a con-tractor's material and equipment storage yard. Within 60 days after completion of the extraction operation, the land surrounding the lake shall be properly graded and planted with a vegetative cover. Also, all stockpiled sand or over-burden and sand pumping and related equipment shall be removed from the subject site.

(15) The length of time for the extraction operation and the hours of operation for removal of the overburden shall be set at the time of approval of the Conditional Use. Subject operation is to cease after that period of time with all equipment and materials associated with the operation removed from the premises.

(16) Hours of operation for the removal of overburden shall be limited to 6:00 a.m. to sunset. The same hours of operation shall apply if sand removal is conducted with the use of non-electric driven equipment. If sand is removed with the use of an electrical pump, sand extraction may operate 24 hours a day.

(17) All on-site water and sewage facilities shall be approved by and constructed to the standards of the Department of Code Enforcement for the County or Department of Environmental Services for the City.

(18) Any water wells needed to operate the facility must comply with the Water Well Construction Standards contained in Article 30 of the Kansas Department of Health and Environment rules and regulations.

(19) The applicant shall make the Site available to the Department of Code Enforcement for land in the County or Department of Environmental Services for land in the City for the installation and management of groundwater monitoring wells.

(20) Any on-site storage of fuels or chemicals must be approved by the Sedgwick County Department of Environmental Resources for land in the County or Department of Environmental Services for land in the City.

(21) A drainage plan shall be submitted to and approved by City or County Public Works (as applicable) prior to starting the extraction operation. All of the area included within the fenced sand extraction operation shall be graded in accordance with the approved drainage plan. Additional requirements, such as a public drainage easement, a floodway reserve, or a covenant authorizing the area of the Site for use as a detention storage facility for public drainage purposes, may be required as a condition of approval for the drain-age plan.

(22) All operational roads shall be maintained in a sand or graveled condition and shall be treated water or other acceptable dust retardant to minimize blowing dust.

(23) All applicable local, state, and federal permits necessary for the extraction operation shall be obtained and maintained.

The applicant is requesting that this operation not be declared as "mining and quarrying" subject to the provisions listed above. The applicant has indicated the site will be secured and maintained such to meet the spirit and intent of what the above standards are attempting to establish, however the above standards appear to be more applicable to commercial operations that are intended to exist for an extended period of time. This operation will be of relatively short duration and will be only for one user tied to a project or projects occurring in the City of Derby needing fill dirt. Given that the pit will only cover about 1 acre and be used for a pond upon completion of the excavation, the request for the waiver of the "mining and quarrying" standards appears reasonable. That waiver cannot be granted by the MAPC, therefore this case will be required to be considered by the Board of County Commissioners.

CHARACTER OF AREA: The character of the surrounding area is primarily rural. All of the surrounding properties within the unincorporated portion of Sedgwick County are zoned RR Rural Residential (RR). The land to the north and west is owned by Derby Recycling and Transfer Station, LLC. There is an old BZA case from 2000 regarding that property that appears to be unresolved. That property has both RR Rural Residential and GI General Industrial zoning.

The property to the south is agricultural. The railroad (BNSF) and K-15 Highway are the on the east side of the property. On the east side of K-15 Highway and north of 95th Street is a residential neighborhood within the City of Derby.

CASE HISTORY: The subject property is unplatted. The western portion of the property is in the designated FEMA 100-year flood plain; however the location of the proposed borrow pit/pond is outside that area. The floodplain from the Arkansas River in this area is larger to the south and west.

ADJACENT ZONING AND LAND USE:

NORTH:	RR	rural residential
SOUTH:	RR	rural/agricultural
EAST:	RR & Derby	single family home
WEST:	RR	rural/agricultural

PUBLIC SERVICES: The improvements on the property are served by both on-site water and on-site wastewater treatment. Access to the property is from K-15 Highway with the western portion of the intersection with 95th Street being the "access road/driveway" serving the property, with a crossing of the railroad at grade.

CONFORMANCE TO PLANS/POLICIES: The 2035 Wichita Future Growth Concept map (MAPC approval November 19, 2015) indicates the site is in the "rural area" of Sedgwick County and is adjacent to the "Small City Urban Growth Area" for the City of Derby.

This use is considered appropriate for this area.

RECOMMENDATION: Based upon the information available at the time the staff report, staff recommends the request be **APPROVED**, provided the Board of County Commissioners waive the Supplementary Use restrictions applicable to "mining and quarrying", and subject to the following conditions:

1. The excavation activity shall be restricted to the area shown on the site plan submitted by the applicant/agent and shall not be perpetuated beyond the agreement to provide dirt for the project(s) within the City of Derby, with all excavation activity to be completed by the end of December, 2018.

2. All permits and approvals that might otherwise be identified and needed shall be obtained, with copies placed on file with the Metropolitan Area Planning Department, including documentation from KDOT, Burlington Northern/Santa Fe Railroad, and appropriate State and Federal agencies, if any.

3. If the Zoning Administrator finds there is a violation of any provision or condition of the Conditional Use, or any other provision of the Unified Zoning Code (UZC), the Zoning Administrator shall enforce all remedies of Section VIII of the UZC, and with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The zoning, uses and character of the neighborhood, as noted above, are rural. The impact from this use will be minimal during the excavation process and virtually nonexistent upon completion.

2. The suitability of the subject property for the uses to which it has been restricted: The property is already being used as permitted for its RR Rural Residential classification. This activity will simply add an amenity to the land for future use and enjoyment of the owners

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The requested authorization to permit the borrow pit that will become a pond should have no impact on nearby properties. The location will keep impacts primarily to the public road system which is fully capable of handling the brief increase in truck traffic.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: There is no impacts evident under either situation that dominate. The requested use is reasonable and will enhance value of the land.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2035 Wichita Future Growth Concept map (MAPC approval November 19, 2015) indicates the site is rural. Staff believes this project is in conformance with the adopted Plan.

6. Impact of the proposed development on community facilities: The proposed use will have no detrimental impact on community facilities.

Staff Report Attachments:

1. Zoning Exhibit
2. Aerial Photos
3. Proposed Site Plan

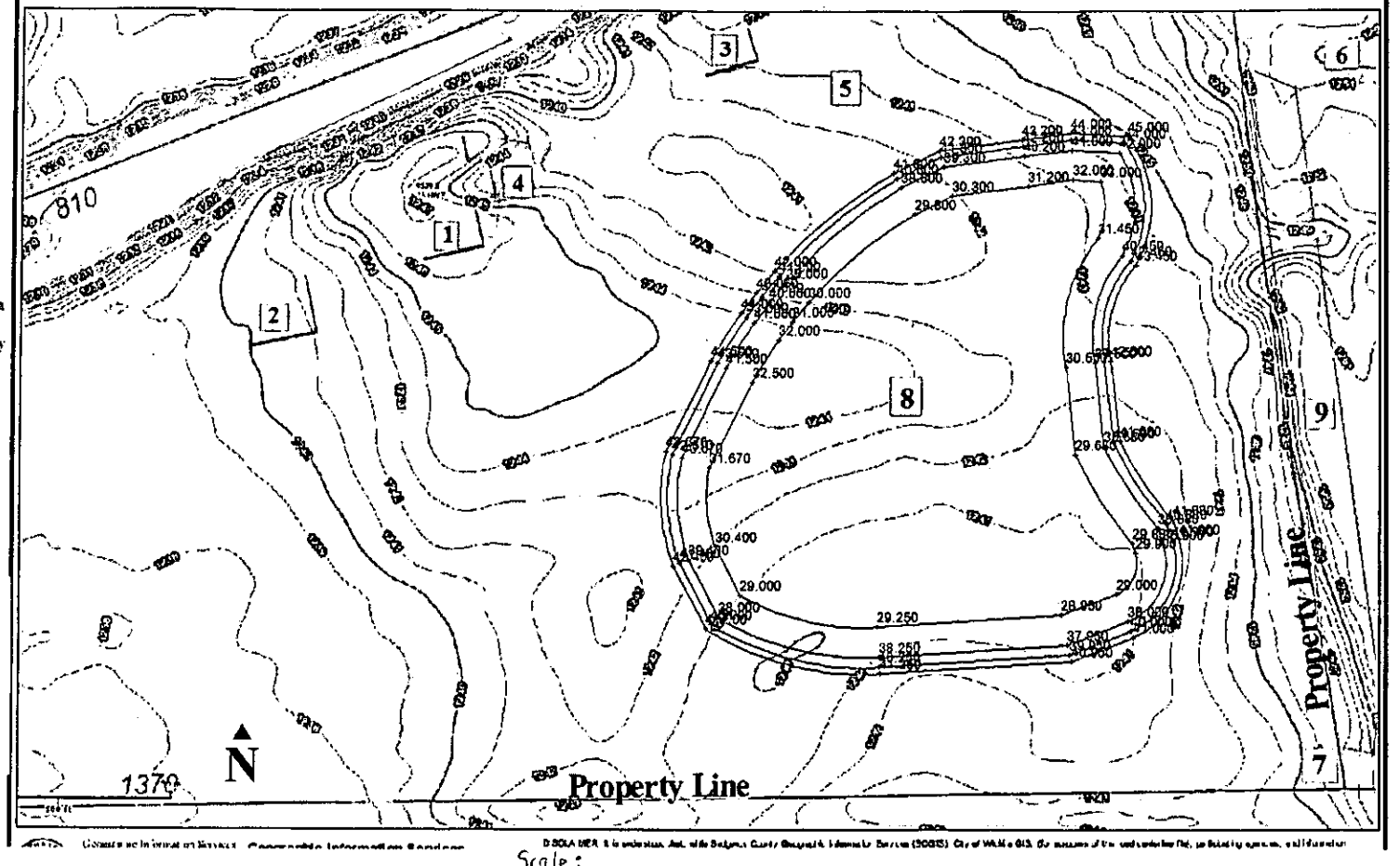
Jesse Watson
Borrow Pit Addition
9529 South K15 Highway Derby, KS

LEGEND

1. 60' x 35' House with 20' x 12' attached porch
2. 40' x 35' Existing Structure
3. [redacted]25' Existing Structure
4. 35' x 25' Ex. Rock Parking Area
5. 450' x 12' Exist. Rock Driveway
6. Rockford Rd.
7. Property Corner
8. Proposed Area for Borrow Pit
9. Tree Row

Vicinity Map





Scale:
1" = 60'

0 60