

CU-192 - James O. Smith, etal  
requests Raw Materials Extraction  
operation at the southeast corner  
of 37th St. North and West Street,  
by Oblinger-Smith Corp. (Gary Wiley)

*POSTED  
11-3-76*

ACTION

DATE

COMMITTEE

M.A.P.C. *upper sub. to Bonds. 11-24-76*

~~B.C.C.~~ B. CO. C. *approved on 12-22-76*  
*recommended + time limitation*

*closed*

Map No. 5251  
Sec. 36  
Twp. 26S  
Range 1W

DATA SHEET  
(ZONING & CONDITIONAL USE)

Z- \_\_\_\_\_  
SCZ- \_\_\_\_\_  
CU- 192  
Filed 11-1-76

APPLICATION DATA: From "R-1" & "TC" to \_\_\_\_\_

1. Applicant: James O. Smith, etal  
Address 200 W. Douglas, 67202 Phone 263-7209
2. Agent: Oblinger-Smith Corporation (Gary Wiley)  
Address 625 First Natl Bank Bldg. 67202 Phone 262-0451
3. General Location: southeast corner of 37th St. North and West St.  
Address \_\_\_\_\_
4. Proposed Use: Raw Materials Extraction Operation

AREA DATA:

1. Acres: 111 ( 1212EGULAR ) ( 1900 ft. by 2640 ft. )
2. Adjoining Zoning: E "R-1" S "R-1" W "R-1" +LC N "R-1" +LC
3. Land Use: East BIG DITCH South SINGLE FAN  
West \_\_\_\_\_ North SINGLE FAN
4. Sketch Plan Land Use is for: \_\_\_\_\_
5. Present Land Use is for: UNDEVELOPED
6. Area (is) (is not) platted.

PROCEDURE DATA:

1. Zoning Committee \_\_\_\_\_ by \_\_\_\_\_
2. MAPC Meeting: \_\_\_\_\_

Date	Action
Wed. <u>11-24-76</u>	<u>Approved sub to conditions</u>
_____	_____
_____	_____

3. Governing Body (Bd. City Commissioners - Bd. County Commissioners)

Date	Action	Resolution
<u>12-22-76</u>	<u>Approved sub to conditions &amp; zoning</u>	<u>Resolution</u>
_____	_____	_____
_____	_____	_____

Pub: Jan 10, 1977 (error in print)  
Republished Jan 25, 1977

NOTES:

HAYNES, INC. LOS ANGELES  
LOAN ON - MEMORANDUM, TX U. S. A.

No. 253C  
S  
Standard

Map No. 5251  
Sec. 36  
Twp. 26S  
Range 1W

DATA SHEET  
(ZONING & CONDITIONAL USE)

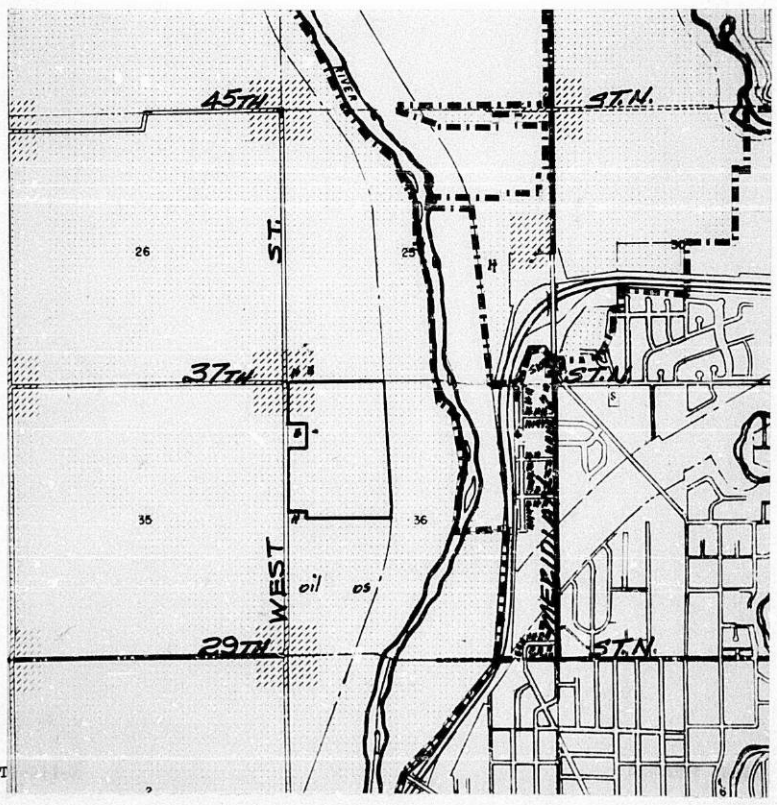
Z- \_\_\_\_\_  
SCZ- \_\_\_\_\_  
CU- 192  
Filed 11-1-76

RAW MATERIALS EXTRACTION OPERATION

- APPLICATION DATA: From "R-1" & "LC" to \_\_\_\_\_
1. Applicant: James O. Smith, etal  
Address 200 W. Douglas, 67202 Phone 263-7209
  2. Agent: Oblinger-Smith Corporation (Gary Wiley)  
Address 625 First Natl Bank Bldg., 67202 Phone 262-0451
  3. General Location: southeast corner of 37th St. North and West St.  
Address \_\_\_\_\_
  4. Proposed Use: Raw materials extraction operation.

- AREA DATA:
1. Acres: 111 (1900 (IRREGULAR) ft. by 2640 ft.)
  2. Adjoining Zoning: E "R-1" S "R-1" W "R-1" & "LC" N "R-1" & "LC"
  3. Land Use: East BIG DITCH South SINGLE FAM  
West UNDEVELOPED North SINGLE FAM
  4. Sketch Plan Land Use is for: \_\_\_\_\_
  5. Present Land Use is for: UNDEVELOPED
  6. Area (is) (is not) platted. \_\_\_\_\_

PHOTO DATA: CU-192  
Taken by \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_



STATE OF KANSAS  
SEDGWICK COUNTY  
FILED FOR RECORD AT  
JUL 11 1980  
P.S. (L.M.)

4 35586  
BY: BETTE F. MCCARTY  
REGISTER OF DEEDS

*Let Mitchell  
K. Smith*

FILM 426 RE:1555

AMENDED  
COVENANT RUNNING WITH THE LAND

JAMES O. SMITH and RUBY J. SMITH fee owners of the following described realty, to wit:

That part of Government Lots 5 and 6 and the west half of the northwest quarter (W $\frac{1}{2}$ , NW $\frac{1}{4}$ ) of Section 36, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, lying west of the Arkansas River Levee, except: The south 120 feet of the west 360 feet; and except: The south 415 feet more or less of the west 360 feet of the north 1,285 feet more or less. (Generally located at the southeast corner of 37th St. North and West Street,

who wish to amend and revise a COVENANT RUNNING WITH THE LAND executed by us on December 2, 1976, and recorded on Film 224 at Page 1477 in the Office of the Register of Deeds of Sedgwick County, Kansas, do hereby make the following declaration of restrictions, limitations and use of said realty, and that said declaration shall constitute covenants running with the land and shall be binding upon all owners and their heirs, successors and assigns:

If the construction of a loop levee is deemed necessary by the City-County Flood Control Office, or their successors of office, in connection with conducting operations for the removal of sand and gravel from the premises, the fee owners agree to construct and maintain a loop levee on the premises at such a location as the Flood Control Office may direct, in accordance with construction specifications, Sections 1 through 4, inclusive, and maintenance specifications, Sections 1 and 2 of Construction and Maintenance Specifications as prepared by the City-County Flood Control Office.

The above restrictions and agreements shall be deemed covenants running with the land and shall not be amended, deleted or changed without written consent of the City-County Flood Control Office, or their successors of office.

In the event of the failure by the undersigned or any successors of title to fulfill the obligation set forth above within sixty (60) days after receipt of written notice from the City-County Flood Control Office, or their successors of Office, then the appropriate governing body may order such work done and maintained and charge the entire cost of such construction and maintenance as a first lien against said realty to be collected and foreclosed in the same manner as a mortgage is foreclosed.

6100  
*M. S. Mitchell  
1215 Forest  
67203*

This instrument shall be recorded in the Office of the Register of Deeds in Sedgwick County, Kansas, so as to appear in the chain of title of said realty.

Executed this 2<sup>nd</sup> day of July, 1980

James O. Smith  
James O. Smith

Ruby J. Smith  
Ruby J. Smith

A C K N O W L E D G M E N T

STATE OF KANSAS  
SEDGWICK COUNTY SS.

Be it remembered, that on this 2<sup>nd</sup> day of JULY, 1980, before me, the undersigned, a notary public, in and for the County and State aforesaid, came JAMES O. SMITH and RUBY J. SMITH who are personally known to me to be the same persons who executed the foregoing instrument of writing, and such persons duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.



R.K. Eshelman  
Notary Public

My Commission Expires: 6-28-81

Bette F. McCart CERTIFICATE  
I, Bette F. McCart, Register of Deeds in and for said County and State, do hereby certify that the within and foregoing is a full, true and correct copy of an instrument which was filed for record in my office on the 11<sup>th</sup> day of July, 1980, A.D., in Book 426 at Page 1555 File Number 495586  
Witness my hand and official seal at Wichita, Kansas,  
this 11<sup>th</sup> day of July, 1980, A.D.

Page 2 of 2

Bette F. McCart  
Register of Deeds, Sedgwick County, Kansas  
By E. J. Resh Deputy

July 8, 1980

M. S. Mitchell  
Flood Plain Management Specialist  
1215 Forest  
Wichita, Kansas

Re: Authorization to record amended  
covenant associated with CU-192

Dear Mitch,

We are in receipt of a copy of an amended covenant signed by James O. and Ruby J. Smith accompanied by a memorandum of approval from R. W. Bruggeman.

Based upon this approval from Mr. Bruggeman that this amended covenant is satisfactory and will accomplish the intent of the City-County Flood Control Office in providing for the construction of a loop levee only after an order is issued by that office and not prior to the beginning of the excavation of material as the original covenant provided, this is to authorize the recording of the original copy of the amended covenant executed by the Smith's on July 2nd, 1980. This authorization is with the understanding that you will provide both us and the City-County Flood Control Office with a copy of the recorded document.

If you have any questions, please call.

Sincerely,

Robert A. Lakin  
Director of Planning

RAL:JHG:sad

cc: R. W. Bruggeman, Director of Public Works  
Dean Sellers, Acting City Engineer  
Paul Johnston, Acting Flood Control and Landfill Director

THE CITY OF WICHITA

OFFICE OF Director of Public Works

DATE July 7, 1980

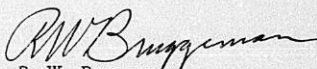
TO Jack Galbraith, Chief Planner, Current Plans Division

FROM R. W. Bruggeman, Director of Public Works

SUBJECT CU 192

I have received a copy of "Amended Covenants Running with the Land" for subject case which involves a permit to operate a raw material extraction operation in the northwest portion of Section 36, T-26-S, R-1-W.

After having discussed the provision of conditional use "C", which might be construed to require construction of a loop levee prior to beginning of material excavation, with Department of Public Works staff, I agree to the revised "Covenant Running with the Land" which would require construction of the loop levee only after such an order would be issued by the City - County Flood Control Office, for the express purpose of containing overflows which would endanger adjacent public and private property or damage to the levee because of sandboils.

  
R. W. Bruggeman  
Director of Public Works

RWB:gr

Attachment

cc: Dean Sellers, Acting City Engineer  
Paul Johnston, Acting Flood Control and Landfill Director

RECEIVED

JUL 7 1980

METROPOLITAN PLANNING

ROUTE

AMENDED  
COVENANT RUNNING WITH THE LAND

JAMES O. SMITH and RUBY J. SMITH fee owners of the following described realty, to wit:

That part of Government Lots 5 and 6 and the west half of the northwest quarter (NW $\frac{1}{2}$ , NW $\frac{1}{4}$ ) of Section 36, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, lying west of the Arkansas River Levee, except: The south 120 feet of the west 360 feet; and except: The south 415 feet more or less of the west 360 feet of the north 1,285 feet more or less. (Generally located at the southeast corner of 37th St. North and West Street,

who wish to amend and revise a COVENANT RUNNING WITH THE LAND executed by us on December 2, 1976, and recorded on Film 224 at Page 1477 in the Office of the Register of Deeds of Sedgwick County, Kansas, do hereby make the following declaration of restrictions, limitations and use of said realty, and that said declaration shall constitute covenants running with the land and shall be binding upon all owners and their heirs, successors and assigns:

If the construction of a loop levee is deemed necessary by the City-County Flood Control Office, or their successors of office, in connection with conducting operations for the removal of sand and gravel from the premises, the fee owners agree to construct and maintain a loop levee on the premises at such a location as the Flood Control Office may direct, in accordance with construction specifications, Sections 1 through 4, inclusive, and maintenance specifications, Sections 1 and 2 of Construction and Maintenance Specifications as prepared by the City-County Flood Control Office.

The above restrictions and agreements shall be deemed covenants running with the land and shall not be amended, deleted or changed without written consent of the City-County Flood Control Office, or their successors of office.

In the event of the failure by the undersigned or any successors of title to fulfill the obligation set forth above within sixty (60) days after receipt of written notice from the City-County Flood Control Office, or their successors of Office, then the appropriate governing body may order such work done and maintained and charge the entire cost of such construction and maintenance as a first lien against said realty to be collected and foreclosed in the same manner as a mortgage is foreclosed.

This instrument shall be recorded in the Office of the Register of Deeds in Sedgwick County, Kansas, so as to appear in the chain of title of said realty.

Executed this 2<sup>nd</sup> day of July, 1980

James O. Smith  
James O. Smith

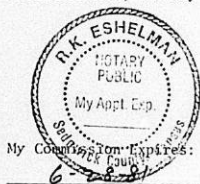
Ruby J. Smith  
Ruby J. Smith

A C K N O W L E D G M E N T

STATE OF KANSAS  
SEDGWICK COUNTY ss.

Be it remembered, that on this 2<sup>nd</sup> day of JULY, 1980, before me, the undersigned, a notary public, in and for the County and State aforesaid, came JAMES O. SMITH and RUBY J. SMITH who are personally known to me to be the same persons who executed the foregoing instrument of writing, and such persons duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.



R.K. Eshelman  
Notary Public

December 27, 1976

Donald C. Gisick, City Clerk

Jack H. Galbraith, Chief Planner

Case No. CU-192 - Raw Materials Extraction Operation at the  
southeast corner of 37th Street North and West Streets

Attached are copies of two covenants and a document marked  
"Exhibit A", which were conditions of approval on the above  
captioned case by the Board of County Commissioners at their  
meeting of December 22, 1976. These covenants and document  
should be filed of record with the Register of Deeds, with  
the cost being billed to Ritchie Paving, Inc., 1900 Amidon,  
Post Office Box 4048, Wichita, Kansas 67204.

Jack H. Galbraith  
Chief Planner

JHG:MM:el

Attachments

(over file) Published in The Wichita Beacon on Jan. 10, 1978 (error in print) Republished Jan. 28, 1977

RESOLUTION

CASE NO. CU-192

A RESOLUTION PERMITTING A RAW MATERIALS EXTRACTION OPERATION ON PROPERTY ZONED "R-1" SUBURBAN RESIDENTIAL DISTRICT AND "LC" LIGHT COMMERCIAL DISTRICT ON CERTAIN LANDS LOCATED WITHIN UNINCORPORATED TERRITORY LYING WITHIN THREE MILES OF EITHER THE CITY OF WICHITA, THE CITY OF HAYSVILLE, THE CITY OF DERBY, THE CITY OF MULVANE, THE CITY OF VALLEY CENTER, THE CITY OF GODDARD, AND THAT PORTION OF THE AREA WITHIN THREE MILES OF THE CITY OF CHENEY AS ESTABLISHED BY THE BOARD OF COUNTY COMMISSIONERS ON OCTOBER 3, 1973, ALL IN SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY SECTION 4.A.10.f. AND SECTION 11.E OF THE ZONING RESOLUTION ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, ON MARCH 3, 1958, AND SUBSEQUENT AMENDMENTS THERETO.

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

SECTION I. That after receiving a recommendation from 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 4.A.10.f. and Section 11.E. of the Zoning Resolution, as amended, a Conditional Use Permit to allow a raw materials extraction operation on property zoned "R-1" Suburban Residential District and "LC" Light Commercial District, is hereby approved on the lands legally described as follows:

That part of Government Lots 5 and 6 and the west half of the northwest quarter (W 1/2 NW 1/4) of Section 36, Township 26 South, Range 1 West of the 6th P.M., lying west of the Arkansas River Levee, except: The south 120 feet of the west 360 feet; and except: The south 415 feet+ of the west 360 feet of the north 1,285 feet+, all in Sedgwick County, Kansas. Generally located at the southeast corner of 37th Street North and West Street.

SUBJECT TO THE FOLLOWING:

- A. The applicant submitting revised copies of the operational and redevelopment plan indicating a loop levee completely surrounding subject property.
- B. The applicant dedicating by separate instrument 50 feet of half-street right-of-way for the east half of West Street as indicated on the operational plan.
- C. The applicant shall submit a restrictive covenant to the Planning Department, approved as to content by the Flood Control Division and as to form by County Counselor, providing for the construction and/or maintenance of a loop levee around the entire sandpit at a minimum elevation of 1330 MSL, and shall be constructed in accordance with construction specifications, Sections 1 through 4, inclusive, and maintenance specifications, Sections 1 and 2, of Construction and Maintenance Specifications as prepared by the Maintenance Division of the Department of Public Works of the City of Wichita, Kansas; said covenant shall run with the land and be binding on all owners, successors, or assigns.
- D. The applicant shall proceed in accordance with the operational sketch plan approved by the Metropolitan Area Planning Commission, and shall excavate the lake and form the banks as indicated on the approved plan.

E. A minimum 58-inch high fence shall be constructed prior to the beginning of the excavation operation and shall be maintained along the perimeter of the excavation area and plant operation area on no less than 7-foot steel posts, with posts set not more than 16 feet apart. The fence may provide for reasonable access gates installed at the same height and of the same construction as the fence, which gates shall be kept locked except when in use. Such fence and gates shall be a minimum height of 58 inches and shall be of the following types of construction:

1. A 48" or higher chainlink fence with three or more strands of barbed wire; or
2. A 48" or higher solid metal or solid masonry fence with three or more strands of barbed wire; or
3. A 48" or higher wood fence which 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.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence, and gates at an angle not to exceed 160 degrees facing away from the excavation.

- F. The earth shall be extracted to at least a minimum depth of six feet below the normal water table as determined by the City-County Health Department.
- G. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no more steep than five horizontal to one vertical.
- H. All of the area outside of the sandpit lake shall be graded so as to drain into the lake.
- I. The sand plant operator shall be responsible for:
1. Insuring that the loop levee elevation be maintained.
  2. That the grading of the area around the perimeter of the sandpit lake be maintained so as to direct drainage toward the lake.
  3. Construction of any structure, such as culverts, ditches, ditch checks, riprap, etc., necessary to carry out this plan.
  4. Maintaining all operational roads in a graveled condition.
  5. Insuring that drainage from area north of subject location be directed into sand pit when deemed appropriate by the Superintendent of Public Works Maintenance, and preserving existing drainageway through the site until that time.
- J. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County legal counsel, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the excavation after approval of the conditional use by the Board of County Commissioners.
- K. The natural drainage flow shall be protected throughout the area. Any improvements made in the natural drainage or any obstruction or diversions shall meet with the approval of the Wichita-Sedgwick County Flood Control Office and the County Engineer, and shall be according to the specifications and standards of these authorities.

- L. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the County Zoning Resolution and amendments thereto.
- M. All slopes shall have vegetative covering consisting of a perennial drouth resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
- N. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand excavation operation.
- O. The applicant shall comply with Conditions A, B, C, and J, prior to the publication of the resolution effectuating the conditional Use.
- P. The removal of overburden shall begin within four years from the date of approval and the extraction of sand shall begin within 10 years from the date of approval, however, the owner may request an extension of time.
- Q. Any violation of conditions attached shall declare the conditional use permit null and void.

SECTION II. That upon the taking effect of this Resolution, the notation of such Conditional use approval shall be entered in the Official Zoning atlas on file in the Office of the County Zoning Administrator and in the Office of the Wichita-Sedgwick County Metropolitan Area Planning Department.

SECTION III. That this Resolution shall take effect and be in force from and after its adoption and publication in the Official County paper.

PASSED AND ADOPTED at Sedgwick County, Kansas, this 22nd day of December, 1976.

John Hale, Chairman  
John Hale

Earl Rush, Commissioner  
Earl Rush

Tom Scott, Commissioner  
Tom Scott

ATTEST:  
George Pierce  
George Pierce, County Clerk  
(SEAL)

APPROVED AS TO FORM:  
Theodore H. Hill  
Theodore H. Hill  
County Counselor

COVENANT RUNNING WITH THE LAND

WHEREAS, the undersigned as owner of the property hereinafter described has made application to the Metropolitan Planning Commission of the City of Wichita and County of Sedgwick for permission to use said property as a borrow or sand pit together with such other uses as may be necessary to carry on a borrow or sand pit operation on said land; and

WHEREAS, the lands adjacent to the above described tract are and will be developed for urban purposes and the operation of a borrow or sand pit at such location will endanger the health, welfare and property of residents who may live in such areas unless certain protective measures are taken; and

WHEREAS, the undersigned desires to obligate himself and his successors in title to protect the public welfare by construction and maintaining a loop levee upon said property and to subject and burden the fee title thereto so that such obligation is a covenant running with the land;

NOW THEREFORE, in consideration of the premises and the zoning by the Metropolitan Planning Commission of my land hereinafter described so as to permit the use thereof for borrow and/or sand pit operations, the undersigned hereby covenants to and with the Metropolitan Planning Commission, the Board of County Commissioners of Sedgwick County and City of Wichita, Kansas, on behalf of himself and his successors in title of said land, to construct or cause to be constructed and maintained without cost or expense to the County of Sedgwick or the City of Wichita, a loop levee on, around and enclosing any borrow or sand pit located on the following described land to-wit:

That part of Government Lots 5 and 6 and the west half of the northwest quarter ( $\frac{1}{2}$  NW $\frac{1}{4}$ ) of Section 36, Township 26 South, Range 1 West of the 6th P.M., lying west of the Arkansas River Levee, except: The south 120 feet of the west 360 feet; and except: The south 415 feet  $\pm$  of the west 360 feet of the north 1,285 feet  $\pm$ , all in Sedgwick County, Kansas. Generally located at the southeast corner of 37th St. North and West Street.

All in accordance with the plans and specifications prepared by the City and County Engineers attached hereto marked Exhibit "A" and made a part hereof:

To secure and guarantee the above obligation, the undersigned hereby subjects and encumbers said property with the covenant and obligation to construct and maintain said loop levee as above described as a covenant running with and burdening the land and, in event of the failure by the undersigned or any of his successors in title within sixty (60) days after receipt of written notice from the County or City to fulfill the obligation above set forth, then and in such event the Board of Commissioners of Sedgwick County or the Governing Body of the City of Wichita may order such work done and thereafter maintain and charge the entire cost of such construction and maintenance as a first lien against said land to be collected and foreclosed in the same manner as a mortgage is foreclosed.

The undersigned warrants that he is the owner of the fee title to said tract of land and that the obligation and covenant above set forth constitutes a first and prior lien against and encumbering said land.

This instrument shall be recorded in the Office of the Register of Deeds, Sedgwick County, Kansas, so as to appear in the chain of title of said land.

Executed in triplicate this 2 day of December 1976

James O. Smith  
(Owner)

Ruby J. Smith  
(Owner's Wife)

A C K N O W L E D G M E N T

STATE OF KANSAS )  
                  ) SS:  
SEDGWICK COUNTY)

Be it remembered, that on this 2 day of December, 1976, before me, the undersigned, a notary public, in and for the County and State aforesaid, came James O. Smith and

Ruby J. Smith  
who are personally known to me to be the same persons who executed the within instrument of writing, and such persons duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Ronda Hoover  
Notary Public

My Commission Expires:

May 6, 1978



**"EXHIBIT A"**  
CONSTRUCTION SPECIFICATIONS

SECTION I - CLEARING AND GRUBBING

1-01. ORDER OF WORK:

All clearing and grubbing as specified below will be done in advance of sub-grade preparation and levee embankment.

1-02. CLEARING: Operations shall consist of removal and disposal of trees, fallen timber, brush, logs, bushes, vines, stumps, drift wood, fences, heavy growth of crops, weeds and grass and other obstructions existing above ground level. Clearing will be done on the area beneath the levee embankment together with strips 10 feet wide beyond the embankment toe.

1-03. GRUBBING: Operations shall consist of thoroughly cleaning the area outlined in sub-paragraph 1-02 of all stumps, roots, buried logs and other matter which would be objectionable in the foundation of the levee.

SECTION II - EXCAVATION

An inspection trench 4 feet deep and 4 feet wide shall be excavated along the approximate center of the levee base.

SECTION III - EMBANKMENT

3-01. EMBANKMENT FOUNDATION PREPARATION: After clearing and grubbing of the embankment foundation and the excavation of the inspection trench has been completed, and immediately prior to the placement of embankment material, the entire earth surface on or against which fill is to be placed shall be thoroughly broken to a depth of six inches and the area to be occupied by the levee proper shall be compacted in accordance with the provisions of sub-paragraph 3-03. If for any cause this broken surface becomes compacted in such a manner that a plane of seepage or weakness might be induced, it shall again be thoroughly broken before the depositing of material thereon.

a. Drainage - The foundation receiving fill and the inspection ditch hereinbefore specified, and all partially completed fill shall be kept thoroughly drained.

b. Frozen Ground - No fill shall be placed upon frozen ground.

3-02. EMBANKMENT MATERIALS: The levee embankment shall be constructed of the most nearly impervious materials available from the construction site. Under no circumstances shall frozen earth, snow, or ice be placed in the levee. Embankment materials should be as homogeneous as possible and contain no foreign matter or pockets of soft unstable material.

3-03. EMBANKMENT CONSTRUCTION: Materials shall be placed or spread in layers not to exceed 12 inches in thickness prior to compaction. Layers shall be started full out to the toe of the embankment and shall be carried substantially horizontal with sufficient crown or slope to provide satisfactory drainage during construction. When the surface of any compacted layer is too smooth to bond properly with the succeeding layer, it shall be scarified before the succeeding layer is placed on it.

a. Moisture Control - It is the intent of these specifications to secure an embankment having the maximum density obtainable with natural moisture content of the embankment materials. However, if the material is too wet or too dry for proper compaction steps shall be taken to bring the moisture content back to near the optimum range. Wetting may be accomplished by wetting the borrow pit from which the embankment material is obtained or by distribution of sufficient moisture in each layer before rolling.

b. Rolling Operations - When moisture content and conditions of the spread layers are satisfactory, each layer shall be compacted by not less than four (4) complete passes of a tamper-type roller conforming to the requirements of sub-paragraph 3-03c.1, or by not less than two complete passes of a rubber-tired roller conforming to the requirements of sub-paragraph 3-03c.2. Portions of the embankment which the roller cannot reach for any reason must be compacted by other approved means to the density of the surrounding embankment.

c. Compaction Equipment -

1. Tamping Rollers - Tamping rollers shall consist of one or more units. Each unit shall consist of a cylindrical drum not less than 48 inches in length and not less than 48 inches in diameter. The drums shall be water or sand and water ballasted. Each drum shall have staggered feet uniformly spaced over the cylindrical surface such as to provide approximately three tamping feet for each two square feet of drum surface. The tamping feet shall be seven to nine inches in clear projection from the cylindrical surface of the roller and shall have a face area of not less than five nor more than seven square inches. The units shall be equipped with a suitable device for cleaning the feet. The rolling units of multiple-type tamping rollers shall be pivoted on the main frame in a manner which will permit the units to adapt themselves to uneven ground surfaces and to rotate independently. The weight of the roller shall be not less than 1,500 pounds per linear foot of drum length weighted, and shall be not more than 750 pounds per foot of drum length empty. The design and operation of the tamping roller shall be subject to the approval of the contracting officer who shall have the right at any time during the prosecution of the work to direct such

repairs to the tamping feet, minor alterations in the roller, and variations in the weight as may be found necessary to secure optimum compaction of the earth-fill materials. The roller shall be pulled by a crawler-type tractor of sufficient power to operate the roller at a speed of approximately 3-1/2 miles per hour.

2. Rubber-Tired Rollers - Rubber-tired rollers shall have a minimum of four wheels equipped with pneumatic tires. The tires shall be of such size and ply as to be capable of being operated at tire pressures between 80 and 100 pounds per square inch at a 25,000-pound wheel load. The roller wheels shall be located abreast and so designed that each wheel will carry approximately equal load in traversing uneven ground. The spacing of the wheels will be such that the distance between the nearest edges of adjacent tires will not be greater than 50 percent of the rated tire width of a single tire at the operating pressure for a 25,000-pound wheel load. The roller shall have a rigid steel frame provided with a body suitable for ballast loading such that the load per wheel may be varied, as directed by the contracting officer, from 18,000 to 25,000 pounds. The entire assembly (roller plus motivating equipment) must be capable of executing a 180 degree turn on a 15-foot radius. The roller shall be towed at speeds not to exceed ten miles per hour by pneumatic-tired equipment. The character and efficiency of this equipment shall be subject to the approval of the contracting officer.

d. Cross-Section of Levee Embankment - The levee embankment shall be constructed to conform with the requirements of typical standard levee section shown on Figure 1. Shrinkage and settlement allowances shall be allowed for by constructing the standard levee section plus a 5% addition in crest height.

#### SECTION IV - TURFING

4-01. SCOPE: It is the intent of these specifications to obtain a good firm stand of native grass or grass which will insure the stability of the levee embankment. Good vegetative cover is of prime importance to the maintenance and operation of the levee embankment. The top, slopes and a 5 foot wide strip at the base of the levee on each side shall be turfed.

#### 4-02. MULCHING:

a. Soil Preparation - If necessary the soil shall be loosened to a depth of 2 inches before application of the mulch material.

b. Materials - Hay shall be native prairie hay and a minimum of 50 percent by weight shall be 10 inches or more in length.

c. Application of Mulch - Mulch material shall be spread uniformly in a continuous blanket over the area to be mulched at the rate of approximately 3 $\frac{1}{2}$  tons per acre. Mulch may be spread by hand or by mechanical means which do not break up the hay. Immediately following the spreading of the mulch material, it shall be anchored to the soil by pressing into the ground a minimum depth of 1 $\frac{1}{2}$  inches, leaving enough material sticking upright to accomplish its primary purpose of temporary dust and erosion control. Anchoring shall be accomplished by using a mulch anchoring machine equipped with straight rolling Coulter-type discs that are spaced not more than 10 inches or less than 7 inches apart. The rolling discs shall be sufficiently dull to prevent cutting the mulch material. If anchoring machinery is not used, the mulch material shall be anchored with a spade at 6 inch intervals.

#### 4-03. FERTILIZING AND SEEDING:

##### a. Materials -

1. Fertilizer shall be dry, free-flowing materials which can be distributed uniformly, and shall be commercial grade 15-10-10 or the equivalent.

2. Seed - Seed of mixed bluestem, switch grass, blue grama grass, side oats grama, sand dropseed grass, sand lovegrass, weeping lovegrass, or native bermuda grass, or a mixture of any or all of the above may be used.

b. Application - Fertilizer shall be applied uniformly at the approximate rate of 400 lbs per acre. Seed should be applied uniformly at the rate of approximately 30 lbs per acre.

## MAINTENANCE SPECIFICATIONS

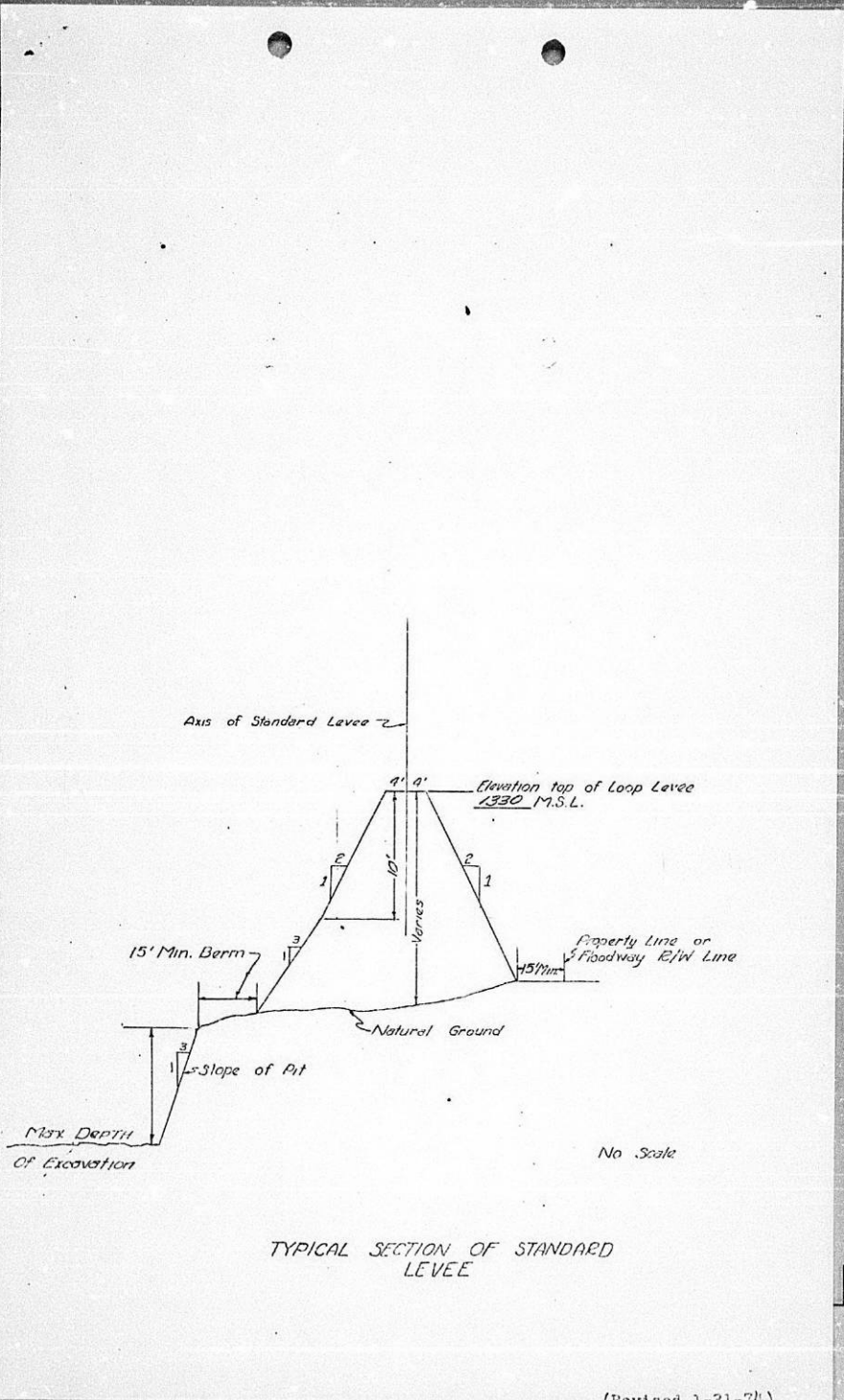
### SECTION I - GENERAL

In general maintenance should provide for those things which will insure the serviceability of the levee in time of high water. Measures should be taken to promote the growth of sod, exterminate burrowing animals, provide for routine mowing, removal of wild growth and repair the damage caused by erosion. Another important maintenance responsibility is to insure the integrity of the loop levee at all times.

### SECTION II - INSPECTION

Periodic inspections should be made to insure that the above measures are being effectively carried out and to be certain that:

- a. No unusual settlement, sloughing, or material loss of grade or levee cross section has taken place.
- b. No caving has occurred on either the land side or the water side of the levee which might affect the stability of the levee section.
- c. No seepage, saturated areas or sand boils are occurring.
- d. No action is being taken, such as burning grass and weeds during inappropriate seasons, which will retard or destroy the growth of sod.
- e. Access roads to and on the levee are being properly maintained.
- f. Cattle guards and gates are in good condition.
- g. Crown of levee is shaped so as to drain readily, and roadway thereon, if any, is well shaped and maintained.
- h. There is no damaging grazing or vehicular traffic on the levees.
- i. Encroachments are not being made on the levee right-of-way which might endanger the structure or hinder its proper and efficient functioning during times of emergency.



TYPICAL SECTION OF STANDARD  
LEVEE

(Revised 1-31-74)

RESTRICTIVE COVENANT

KNOW ALL MEN BY THESE PRESENTS: That

The undersigned, James O. and Ruby Smith, do hereby impose upon the following described real property, to-wit:

That part of Government Lots 5 and 6 and the west half of the northwest quarter (W $\frac{1}{2}$  NW $\frac{1}{4}$ ) of Section 36, Township 26 South, Range 1 West of the 6th P.M., lying west of the Arkansas River Levee, except: The south 120 feet of the west 360 feet; and except: The south 415 feet  $\pm$  of the west 360 feet of the north 1,285 feet  $\pm$ , all in Sedgwick County, Kansas. Generally located at the southeast corner of 37th St. North and West Street.

a covenant to run with the land as follows:

1. No foreign matter, including but without limitation to, rubbish, trees, car bodies or other trash shall be deposited on the above described real property or within any sand pit excavated thereon.

The covenant herein contained shall be binding upon the undersigned, his successors in interest and assigns. The said covenant may be enforced in any appropriate action in any Court having jurisdiction thereof by the City of Wichita, the County of Sedgwick or any member of the public in whose favor and for whose benefit this covenant is made.

IN WITNESS WHEREOF, we have hereunto set our hand this 2 day of December, 1976

James O. Smith  
James O. Smith

Ruby Smith  
Ruby Smith

STATE OF KANSAS }  
SEDGWICK COUNTY } SS

BE IT REMEMBERED, that on this 2 day of December, 1976, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came

James O. Smith and Ruby Smith

personally known to me to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 2 day and year last above written.



Ronda Hoover  
Notary Public

My Commission Expires:

May 6, 1978

DEDICATION

D-0746  
See (CV-192) ✓

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned,

James O. Smith and Ruby J. Smith

being the owner<sup>s</sup> of the following described real estate in Sedgwick County, Kansas, to wit:

The west 50 feet of that part of Government Lots 5 and 6 and the west half of the northwest quarter (W 1/2 NW 1/4) of Section 36, Township 26 South, Range 1 West of the 6th P.M., lying west of the Arkansas River Levee, except: The south 120 feet of the west 360 feet; and except: The south 415 feet of the west 360 feet of the north 1,285 feet, all in Sedgwick County, Kansas.

do hereby dedicate the above described real estate to the public for \_\_\_\_\_ street \_\_\_\_\_ purposes.

Executed this 2nd day of December 1976.

\_\_\_\_\_  
James O. Smith  
\_\_\_\_\_  
Ruby J. Smith

STATE OF KANSAS )  
SEDGWICK COUNTY ) ss

BE IT REMEMBERED, that on this 2nd day of December came James O. Smith and Ruby J. Smith

to me personally known to be the same person<sup>s</sup> who executed the foregoing instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

Submitted to the Wichita-Sedgwick County Metropolitan Area Planning Commission and the Board of Commissioners of the City of Wichita, Kansas, and approved by said Board of Commissioners of the City of Wichita, Kansas,

this \_\_\_\_\_,  
\_\_\_\_\_  
City Clerk

Ronda Hoover  
Notary Public

My Commission Expires: May 6, 1978



RESOLUTION

CASE NO. CU-192

A RESOLUTION PERMITTING A RAW MATERIALS EXTRACTION OPERATION ON PROPERTY ZONED "R-1" SUBURBAN RESIDENTIAL DISTRICT AND "LC" LIGHT COMMERCIAL DISTRICT ON CERTAIN LANDS LOCATED WITHIN UNINCORPORATED TERRITORY LYING WITHIN THREE MILES OF EITHER THE CITY OF WICHITA, THE CITY OF HAYSVILLE, THE CITY OF DERBY, THE CITY OF MULVANE, THE CITY OF VALLEY CENTER, THE CITY OF GODDARD, AND THAT PORTION OF THE AREA WITHIN THREE MILES OF THE CITY OF CHENEY AS ESTABLISHED BY THE BOARD OF COUNTY COMMISSIONERS ON OCTOBER 3, 1973, ALL IN SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY SECTION 4.A.10.f. AND SECTION 11.E OF THE ZONING RESOLUTION ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS, ON MARCH 3, 1958, AND SUBSEQUENT AMENDMENTS THERETO.

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

SECTION I. That after receiving a recommendation from 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 4.A.10.f. and Section 11.E. of the Zoning Resolution, as amended, a Conditional Use Permit to allow a raw materials extraction operation on property zoned "R-1" Suburban Residential District and "LC" Light Commercial District, is hereby approved on the lands legally described as follows:

That part of Government Lots 5 and 6 and the west half of the northwest quarter (W 1/2 NW 1/4) of Section 36, Township 26 South, Range 1 West of the 6th P.M., lying west of the Arkansas River Levee, except: The south 120 feet of the west 360 feet; and except: The south 415 feet of the west 360 feet of the north 1,285 feet, all in Sedgwick County, Kansas. Generally located at the southeast corner of 37th Street North and West Street.

SUBJECT TO THE FOLLOWING:

- A. The applicant submitting revised copies of the operational and redevelopment plan indicating a loop levee completely surrounding subject property.
- B. The applicant dedicating by separate instrument 50 feet of half-street right-of-way for the east half of West Street as indicated on the operational plan.
- C. The applicant shall submit a restrictive covenant to the Planning Department, approved as to content by the Flood Control Division and as to form by County Counselor, providing for the construction and/or maintenance of a loop levee around the entire sandpit at a minimum elevation of 1330 MSL, and shall be constructed in accordance with construction specifications, Sections 1 through 4, inclusive, and maintenance specifications, Sections 1 and 2, of Construction and Maintenance Specifications as prepared by the Maintenance Division of the Department of Public Works of the City of Wichita, Kansas; said covenant shall run with the land and be binding on all owners, successors, or assigns.
- D. The applicant shall proceed in accordance with the operational sketch plan approved by the Metropolitan Area Planning Commission, and shall excavate the lake and form the banks as indicated on the approved plan.

A minimum 58-inch high fence shall be constructed prior to the beginning of the excavation operation and shall be maintained along the perimeter of the excavation area and sandpit operation area on no less than 7-foot steel posts, with posts set not more than 16 feet apart. The fence may provide for reasonable access gates installed at the same height and of the same construction as the fence, which gates shall be kept locked except when in use. Such fence and gates shall be a minimum height of 58 inches and shall be of the following types of construction:

A 48" or higher chainlink fence with three or more strands of barbed wire; or

A 48" or higher solid metal or solid masonry fence with three or more strands of barbed wire; or

A 48" or higher wood fence which 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.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence, and gates at an angle not to exceed 160 degrees facing away from the excavation.

The earth shall be extracted to at least a minimum depth of six feet below the normal water table as determined by the City-County Health Department.

To provide for bank stabilization and safety of future excavations, the side slope of the excavation shall be no more than five horizontal to one vertical.

The area of the area outside of the sandpit lake shall be graded so as to drain into the lake.

The sand plant operator shall be responsible for:

1. Insuring that the loop levee elevation be maintained.
2. That the grading of the area around the perimeter of the sandpit lake be maintained so as to direct drainage toward the lake.
3. Construction of any structure, such as culverts, ditches, ditch checks, riprap, etc., necessary to carry out this plan.
4. Maintaining all operational roads in a graveled condition.
5. Insuring that drainage from area north of subject location be directed into sand pit when deemed appropriate by the Superintendent of Public Works Maintenance, and preserving existing drainageway through the site until that time.

6. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County legal counsel, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the excavation after approval of the conditional use by the Board of County Commissioners.

7. The natural drainage flow shall be protected throughout the area. Any improvements made in the natural drainage or any obstruction or diversions shall meet with the approval of the Wichita-Sedgwick County Flood Control Office and the County Engineer, and shall be according to the specifications and standards of these authorities.

- L. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the County Zoning Resolution and amendments thereto.
- M. All slopes shall have vegetative covering consisting of a perennial drouth resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
- N. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand excavation operation.
- O. The applicant shall comply with Conditions A, B, C, and J, prior to the publication of the resolution effectuating the conditional Use.
- P. The removal of overburden shall begin within four years from the date of approval and the extraction of sand shall begin within 10 years from the date of approval, however, the owner may request an extension of time.
- Q. Any violation of conditions attached shall declare the conditional use permit null and void.

SECTION II. That upon the taking effect of this Resolution, the notation of such Conditional use approval shall be entered in the Official Zoning atlas on file in the Office of the County Zoning Administrator and in the Office of the Wichita-Sedgwick County Metropolitan Area Planning Department.

SECTION III. That this Resolution shall take effect and be in force from and after its adoption and publication in the Official County paper.

PASSED AND ADOPTED at Sedgwick County, Kansas, this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_, Chairman  
John Hale

\_\_\_\_\_, Commissioner  
Earl Rush

\_\_\_\_\_, Commissioner  
Tom Scott

ATTEST:

\_\_\_\_\_  
George Pierce, County Clerk  
(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
Theodore H. Hill  
County Counselor

DEDICATION

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned, \_\_\_\_\_

being the owner of the following described real estate in Sedgwick County, Kansas, to wit:

The west 50 feet of that part of Government Lots 5 and 6 and the west half of the northwest quarter (W 1/2 NW 1/4) of Section 36, Township 26 South, Range 1 West of the 6th P.M., lying west of the Arkansas River Levee, except: The south 120 feet of the west 360 feet; and except: The south 415 feet of the west 360 feet of the north 1,285 feet, all in Sedgwick County, Kansas.

do \_\_\_\_\_ hereby dedicate the above described real estate to the public for \_\_\_\_\_ street \_\_\_\_\_ purposes.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

STATE OF KANSAS )  
SEDGWICK COUNTY )<sup>SS</sup>

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, came \_\_\_\_\_

to me personally known to be the same person who executed the foregoing instrument and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

Submitted to the Wichita-Sedgwick County Metropolitan Area Planning Commission and the Board of Commissioners of the City of Wichita, Kansas, and approved by said Board of Commissioners of the City of Wichita, Kansas,

this \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

December 20, 1976

Board of County Commissioners  
Jack H. Galbraith, Chief Planner

CU-192 - Conditional Use Request to Extract  
Raw Materials - Southeast corner of 37th  
Street North and West Street

Inasmuch as the above-captioned case is scheduled for consideration at your meeting this Wednesday, attached are copies of two letters received withdrawing the protest from the one person speaking in opposition at the Planning Commission meeting.

Jack H. Galbraith  
Chief Planner

JHG:ber  
Attachment

cc: Theodore H. Hill  
County Counselor

MR. ROBERT LAKIN, DIRECTOR  
455 N. MAIN  
WICHITA, KANSAS 67202

*File*  
DECEMBER 7, 1976

RE: CU-192 CONDITIONAL USE  
REQUEST TO EXTRACT RAW  
MATERIALS - SOUTHEAST CORNER  
OF 37TH STREET NORTH AND WEST  
STREET

DEAR MR. LAKIN:

AT THE REGULAR MEETING OF THE M.A.P.C. ON NOVEMBER 24, 1976  
WE OPPOSED THE SUBJECT CONDITIONAL USE REQUEST. CU-192.

WE WISH TO WITHDRAW OUR OPPOSITION TO SUBJECT REQUEST AND  
HAVE INSTRUCTED OUR ATTORNEY OF OUR INTENT. ALSO WE WILL  
NOT APPEAR, PROTEST OR TAKE ANY OTHER ACTION AGAINST THE  
APPROVAL OF SUBJECT REQUEST CU192.



*James E. Williams*

*Mary M. Williams*

3400 N. WEST ST.  
WICHITA, KANSAS 67204  
PHONE 9437578

CC: RITCHIE PAVING CO.  
ATT. DAVE RITCHIE  
1900 AMIDON  
P.O. BOX 4048 67204



December 7, 1976

Mr. Bob Lakin  
Metropolitan Area Planning Dept.  
City Hall - 10th Floor  
455 N. Main Street  
Wichita, Kansas 67202

Dear Bob:

A couple of weeks ago (November 24th) the planning commission heard and passed our companys request for a conditional use permit for sand extraction at 37th North and West Street.

At that hearing, Mr. James Williams, who lives in a house adjacent to the above mentioned land, protested that approval of the request would damage the future resale value of his house.

I am glad to report that since that meeting I have met with Mr. Williams, and we have finalized a written agreement whereby our company has agreed to pay \$40,000 for his property anytime in the next three years at his option. Mr. Williams is satisfied with the agreement and we are too. I thought you would like to hear the happy outcome of this matter.

Sincerely,

RITCHIE PAVING, INC.

Dave Ritchie

DR:jd  
cc/ Members of the Metropolitan  
Area Planning Commission



1900 AMIDON/P.O. BOX 4048/WICHITA, KANSAS 67204/(316) 838-9301

December 13, 1976

M. S. Mitchell, Assistant Superintendent, Public Works,  
Maintenance  
Mike Meek, Senior Planner

Raw Materials Extraction Operation Proposal - CU-192

Attached is a copy of a revised operation and redevelopment plan for a raw materials extraction operation proposed at the southeast corner of 37th Street North and West Street. This application was considered and recommended for approval by the Planning Commission on November 24, 1976 and is scheduled before the Board of County Commissioners on December 22, 1976. Please advise us as soon as possible if you have any problems with the revised plan.

Mike Meek  
Senior Planner

MM:el

Attachment

Form T9-221A

RECOMMENDATION FROM METROPOLITAN AREA PLANNING COMMISSION TO  
BOARD OF COUNTY COMMISSIONERS

CASE NO. CU-192 CONSIDERED BY MAPC: 11-24-76

REQUEST FOR: Approval of Conditional Use

REASON FOR REQUEST (AS PROVIDED BY APPLICANT):

"To establish an operation for the extraction of raw materials."

GENERAL LOCATION: Southeast corner of 37th Street  
North and West Street

LEGAL DESCRIPTION:

*11 acres* See attached excerpt from Planning Commission  
minutes of November 24, 1976.

APPLICANT: James O. Smith, 200 West Douglas 67202, and  
Ritchie Paving, Inc., 1900 Amidon, P.O.Box 4048 67204

COUNSEL FOR APPLICANT: Dave Ritchie, Agent

PROTESTORS (LIST COUNSEL) IF ANY: Richard L. Hilton, attorney for James E.  
Williams, spoke in opposition, as did Mr. Williams.

SURROUNDING ZONING: Subject property is zoned "R-1" and "LC"; north and  
west is also "R-1" and "LC"; east and south is "R-1"

LAND USE: Subject property is undeveloped; north, south, and west is  
single-family and undeveloped; east is Flood Control Ditch

PLANNING COMMISSION RECOMMENDATION:

That this request be approved subject to the following conditions,  
and that the loop levee be constructed at least 150 feet from Mr.  
Williams' property line: (See attached excerpt from Planning Com-  
mission minutes of November 24, 1976 for conditions.)

Hennessy moved, Gragg seconded and it carried unanimously.

ACTION: 1. Approve the application as recommended by the Metropolitan  
Area Planning Commission subject to the recommended conditions of approval,  
adopt a resolution effectuating the Conditional Use; or  
2. Deny the application.

EXCERPT FROM PLANNING COMMISSION MINUTES OF NOVEMBER 24, 1976:

10. Case No. CU-192 - James O. Smith and Ritchie Paving, Inc., request approval of a conditional use to establish a raw material extraction operation on property zoned "R-1" Suburban Residential and "LC" Light Commercial, and legally described as follows:

That part of Government Lots 5 and 6 and the west half of the north-west quarter of Section 36, Township 26 South, Range 1 West of the 6th P.M., lying west of the Arkansas River Levee, except: The south 120 feet of the west 360 feet; and except: the south 415 feet of the west 360 feet of the north 1,285 feet. Generally located at the southeast corner of 37th Street North and West Street.

GALBRAITH showed slides of subject site and the surrounding area and reviewed the following staff report:

Comments:

1. The applicant is requesting a Conditional Use permit to establish a raw materials extraction operation on approximately 111 acres of land zoned "R-1" Suburban Residential and "LC" Light Commercial, in an area south of 37th Street North as extended from the west and between West Street and the Wichita-Valley Center Flood Control Ditch.
2. The applicant has submitted an operational plan indicating the limits of the area to be excavated as well as a redevelopment plan which proposes residential development around the perimeter of the lake area, as well as a small amount of commercial in the northwest corner of the property that will remain after the extraction operation ceases.
3. The Flood Control Office advises that a loop levee should be required completely surrounding subject project. They also advise that the loop levee should be guaranteed by the standard "Covenant Running with the Land" and that the elevation of the loop levee should be 1330 MSL minimum.
4. Inasmuch as sewers are not extended into this area and development is not projected, the sand and gravel operation would appear to be a logical use and should the Planning Commission recommend approval of this application, the following conditions of approval should be included in the recommendation:
  - A. The applicant submitting revised copies of the operational and redevelopment plan indicating a loop levee completely surrounding subject property.
  - B. The applicant dedicating by separate instrument 50 feet of half-street right-of-way for the east half of West Street as indicated on the operational plan.
  - C. The applicant shall submit a restrictive covenant to the Planning Department, approved as to content by the Flood Control Division and as to form by County Counselor, providing for the construction and/or maintenance of a loop levee around the entire sandpit at a minimum elevation of 1330 MSL, and shall be constructed in accordance with construction specifications, Sections 1 through 4 inclusive, and maintenance specifications, Sections 1 and 2, of Construction and Maintenance Specifications as prepared by the Maintenance Division of the Department of Public Works of the City of Wichita, Kansas; said covenant shall run with the land and be binding on all owners, successors, or assigns.
  - D. The applicant shall proceed in accordance with the operational sketch plan approved by the Metropolitan Area Planning Commission, and shall excavate the lake and form the banks as indicated on the approved plan.

E. A minimum 58-inch high fence shall be constructed prior to the beginning of the excavation operation and shall be maintained along the perimeter of the excavation area and plant operation area on no less than 7-foot steel posts, with posts set not more than 16 feet apart. The fence may provide for reasonable access gates installed at the same height and of the same construction as the fence, which gates shall be kept locked except when in use. Such fence and gates shall be a minimum height of 58 inches and shall be of the following types of construction:

1. A 48" or higher chainlink fence with three or more strands of barbed wire; or
2. A 48" or higher solid metal or solid masonry fence with three or more strands of barbed wire; or
3. A 48" or higher wood fence which 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.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gates at an angle not to exceed 160 degrees facing away from the excavation.

- F. The earth shall be excavated to at least a minimum depth of six feet below the normal water table as determined by the City-County Health Department.
- G. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no more steep than five horizontal to one vertical.
- H. All of the area outside of the sandpit lake shall be graded so as to drain into the lake.
- I. The sand plant operator shall be responsible for:
1. Insuring that the loop levee elevation be maintained.
  2. That the grading of the area around the perimeter of the sandpit lake be maintained so as to direct drainage toward the lake.
  3. Construction of any structure, such as culverts, ditches, ditch checks, riprap, etc., necessary to carry out this plan.
  4. Maintaining all operational roads in a graveled condition.
  5. Insuring that drainage from area north of subject location be directed into sandpit when deemed appropriate by the Superintendent of Public Works Maintenance, and preserving existing drainageway through the site until that time.
- J. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County legal counsel, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the excavation after approval of the conditional use by the Board of County Commissioners.
- K. The natural drainage flow shall be protected throughout the area. Any improvements made in the natural drainage or any obstruction or diversions shall meet with the approval of the Wichita-Sedgwick County Flood Control Of-

fice and the County Engineer and shall be according to the specifications and standards of these authorities.

- L. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the County Zoning resolution and amendments thereto.
- M. All slopes shall have vegetative covering consisting of a perennial growth resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
- N. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand excavation operation.
- O. The applicant shall comply with Conditions A, B, C, and J, prior to the publication of the resolution effectuating the conditional use.
- P. Any violation of conditions attached shall declare the conditional use permit null and void.

GALBRAITH said it was his understanding that the applicant is agreeable to the loop levee requirement suggested in the Staff report, and that the Staff would recommend approval, subject to the suggested conditions.

GARY WILEY, Oblinger-Smith Corporation, and on behalf of the applicant, said they have gone over the suggested conditions and the applicant is agreeable to all of them.

RICHARD HILTON, attorney representing Mr. and Mrs. James Williams, owners of a home adjacent to subject property, spoke in opposition. He recalled that his client purchased the site from James Smith (one of the applicants), who is now selling the rest of the large tract to Ritchie Paving, Inc., except for his own home on a 4-acre tract on West Street, which is considerably larger than Mr. Williams' homesite. HILTON said his clients have a very nice brick, 2,500 square foot home, valued at between \$60 and \$80 thousand dollars; they are now in their 60's and their home is about the total of their possessions at this time. He brought out that originally it was thought the area would develop residentially, but during the years since the purchase by Mr. Williams, Ritchie Paving and other companies now own all adjacent lands, where sandpit operations are expected.

HILTON stressed the fact that his clients have no buffer for their homestead. It was his understanding that what is proposed is really strip mining which, under the Kansas State law, is unlawful. He brought out also that when Mr. Williams was first shown the plan, it was to be 300 feet from his home, but that seems to have changed.

HILTON commented that the Commission will have to decide whether what is proposed is a good use and overpowers the individual right of his clients to have their property protected, taking into consideration that the home is about their only estate and that what is proposed will completely destroy the value and usability of the home.

When asked if he was opposed to the entire plan or just wanted a buffer for the home, HILTON said they were opposed to the entire plan, and that there would be no objection to Ritchie's use of their other property across the street.

JAMES WILLIAMS, 3400 North West Street, spoke in opposition, and pointed out on the map the areas owned by Ritchie in all directions from his home. He said they have already started stripping dirt on one of their tracts and dirt is piled 10 feet high, but the only activity on subject area has been core drilling. He con-

tinued that he will have sandpits on four sides of his home, and it was his understanding that excavation could come to within 300 feet of his property line. He related that when he had excavated for a storm cellar under a small 14x20-foot building on his property, the sides had caved in and he felt that the same thing would occur when sand is extracted.

WILLIAMS was also opposed to the possibility of access roads being located on all sides of his property. He stated also that at one site associated with the extraction by Ritchie, they did not install a culvert, but graded the ditch up to provide a crossing, which now causes surface water to back up in front of his property. Also, he stated that a row of trees planted by Ritchie has now been taken over by weeds. WILLIAMS felt that what is proposed at this time would "close the gate" to where he would have no value whatsoever in his property. WILLIAMS felt he had had enough with sandpits on three sides and he was much opposed to the applicants being allowed to strip this land and leave it that way. He stated, he was not satisfied to be an island with sandpits in all directions, and he did not think the applicants should be permitted to strip off topsoil. WILLIAMS considered what is proposed no different than strip mining of coal, which is not permitted any more.

SAVINA pointed out that sand is a valuable resource and that it would not be strip mining, but extraction. WILLIAMS said they would be taking off topsoil and that the water table in this area is very high, based on his experience in digging post holes.

BAYOUTH considered it unfortunate for Williams that he is in the middle of where sand is located, which is no longer plentiful close in. WILLIAMS referred to the numerous sandpits in the general area (on 21st Street, Big River Sand, Miles), and felt that he has been caught in the middle of a monopoly on sand and topsoil removal and is an innocent victim.

DAVE RITCHIE, speaking for Ritchie Paving, Inc., pointed out that sand is where you find it and this is a sand area, and when the sand is gone, one must move to another location, and that is the reason they are interested in subject site, because the sand will be depleted at their other sites in about 3 years. This same thing is true of other sand companies.

RITCHIE stated that while this has been called strip mining, the Twin Lakes Shopping Center and lake started in the same way, so it is possible to ultimately have a desirable development around a lake. He pointed out that so far as stripping off the topsoil, such is not used in a sand operation and has to be moved, but will be utilized in the eventual development of the lake. RITCHIE suggested the Commission consider the fencing which they have provided on their operation at 21st and Ridge Road, which he considered desirable. The row of trees, he stated, was not required of them, but was an effort on their part to grow some walnut trees, which apparently has been a failure. He was not aware that water was backing up onto the Williams property and said that they would install a culvert to eliminate this problem.

RITCHIE pointed out on the plan that Mr. Williams' house is 400 feet from the lake, which is nearly a block, and that they cannot go any closer. He said they do not particularly like the idea of a loop levee, but it will be planted to grass and serve to screen any unsightly operations. The levy was required by the Flood Control Division. RITCHIE indicated on the map the sites owned by his company, and stated that he felt sure the proper notices were sent to adjacent owners when their activities were approved in the past. In conclusion, he stated that this is where the sand is, and that all sand is not of the proper aggregation needed, and if this site cannot be used, then they will have to go a much longer distance to acquire land, and in the end it will increase the cost of construction and thus the cost of homes. Regarding the loop levee, it was brought out that it would be at an elevation of 1330 MSL and only 8 feet wide, which would eliminate any possibility of it being used for a roadway.

HILTON said he realized the importance of sand, but that his client also has a right to be protected, since he has built his

home and lived in the area since 1955 prior to any other development. He suggested that if this company (Ritchie), needs the sand, then proper financial arrangements should be made to assure remuneration to Mr. Williams.

BAYOUTH said the Commission could not do anything about the financial aspects of the matter, and asked Ritchie if he would object to moving the loop levee away from the property line a little more. RITCHIE agreed that he would.

MOTION: That the Planning Commission recommend to the County Commission that this request be approved subject to the following conditions, and that the loop levee be constructed at least 150 feet from Mr. Williams' property line:

- A. The applicant submitting revised copies of the operational and redevelopment plan indicating a loop levee completely surrounding subject property.
- B. The applicant dedicating by separate instrument 50 feet of half-street right-of-way for the east half of West Street as indicated on the operational plan.
- C. The applicant shall submit a restrictive covenant to the Planning Department, approved as to content by the Flood Control Division and as to form by County Counselor, providing for the construction and/or maintenance of a loop levee around the entire sandpit at a minimum elevation of 1330 MSL, and shall be constructed in accordance with construction specifications, Sections 1 through 4, inclusive, and maintenance specifications, Sections 1 and 2, of Construction and Maintenance Specifications as prepared by the Maintenance Division of the Department of Public Works of the City of Wichita, Kansas; said covenant shall run with the land and be binding on all owners, successors, or assigns.
- D. The applicant shall proceed in accordance with the operational sketch plan approved by the Metropolitan Area Planning Commission, and shall excavate the lake and form the banks as indicated on the approved plan.
- E. A minimum 58-inch high fence shall be constructed prior to the beginning of the excavation operation and shall be maintained along the perimeter of the excavation area and plant operation area on no less than 7-foot steel posts, with posts set not more than 16 feet apart. The fence may provide for reasonable access gates installed at the same height and of the same construction as the fence, which gates shall be kept locked except when in use. Such fence and gates shall be a minimum height of 58 inches and shall be of the following types of construction:
  1. A 48" or higher chainlink fence with three or more strands of barbed wire; or
  2. A 48" or higher solid metal or solid masonry fence with three or more strands of barbed wire; or
  3. A 48" or higher wood fence which 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.The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence, and gates at an angle not to exceed 160 degrees facing away from the excavation.
- F. The earth shall be extracted to at least a minimum depth of six feet below the normal water table as determined by the City-County Health Department.

- G. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no more steep than five horizontal to one vertical.
- H. All of the area outside of the sandpit lake shall be graded so as to drain into the lake.
- I. The sand plant operator shall be responsible for:
  - 1. Insuring that the loop levee elevation be maintained.
  - 2. That the grading of the area around the perimeter of the sandpit lake be maintained so as to direct drainage toward the lake.
  - 3. Construction of any structure, such as culverts, ditches, ditch checks, riprap, etc., necessary to carry out this plan.
  - 4. Maintaining all operational roads in a graveled condition.
  - 5. Insuring that drainage from area north of subject location be directed into sand pit when deemed appropriate by the Superintendent of Public Works Maintenance, and preserving existing drainageway through the site until that time.
- J. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County legal counsel, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the excavation after approval of the conditional use by the Board of County Commissioners.
- K. The natural drainage flow shall be protected throughout the area. Any improvements made in the natural drainage or any obstruction or diversions shall meet with the approval of the Wichita-Sedgwick County Flood Control Office and the County Engineer, and shall be according to the specifications and standards of these authorities.
- L. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the County Zoning Resolution and amendments thereto.
- M. All slopes shall have vegetative covering consisting of a perennial drowth resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
- N. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand excavation operation.
- O. The applicant shall comply with Conditions A, B, C, and J, prior to the publication of the resolution effectuating the conditional use.
- P. Any violation of conditions attached shall declare the conditional use permit null and void.

Hennessey moved and Cragg seconded.

KAMEN commented that Mr. Williams needs some protection, and GRAGG sympathized also with his plight, but noted that when a person buys in a suburban area of unplatted land, there are some hazards involved so far as later development.

VOTE ON MOTION: Carried unanimously.

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November 29, 1976

Mr. Gary Wiley  
Oblinger-Smith Corporation  
625 First National Bank Building  
Wichita, Kansas 67202

Re: CU-192 - Conditional Use  
Request to extract raw  
materials - Southeast cor-  
ner of 37th Street North  
and West Street

Dear Mr. Wiley:

At the regular meeting of the Metropolitan Area Planning Commission on November 24, 1976, the above-captioned application was considered. The action of the Commission was to recommend the approval of the request subject to Conditions A. through P. as recommended in the Planning Department report, and in addition, the Commission requested that the loop levee be constructed at least 150 feet from Mr. Williams' property line. Attached with this letter is a copy of the conditions of approval as outlined in the staff report.

Regarding Condition A, it is necessary that we receive revised copies of the operational and redevelopment plan indicating the loop levee and its required location.

Regarding Condition B, attached is the necessary dedication that should be executed and returned to our office.

Regarding Conditions C, and J, attached are sample restrictive covenants that should be retyped, executed and returned to our office.

If these conditions are satisfied by December 15, subject case will be scheduled for consideration by the Board of County Commissioners on Wednesday, December 22, 1976, the meeting to be held in Room 320 Sedgwick County Courthouse, starting at 9:00 a.m.

Page 2 - Mr. Gary Wiley  
November 29, 1976

Please call if you have any questions.

Sincerely,

Jack H. Galbraith  
Chief Planner

JHG:ber  
Attachment

cc: James O. Smith, 200 West Douglas 67202  
Ritchie Paving, Inc., 1900 Amidon, P. O. Box 4048 67204  
Richard L. Hilton, 924 North Main 67203  
James E. Williams, 3400 North West Street 67204  
Dave Ritchie, Ritchie Paving, Inc., 1900 Amidon,  
P. O. Box 4048 67204  
Syd Werbin, County Zoning Office, 1015 Stillwell 67213

November 29, 1976

Mr. Richard Hilton, Attorney  
924 North Main  
Wichita, Kansas 67203

Re: CU-192 - Conditional Use  
Request to extract raw  
materials - Southeast cor-  
ner of 37th Street North  
and West Street

Dear Mr. Hilton:

At the regular meeting of the Metropolitan Area Planning Commission on November 24, 1976, the above-captioned application was considered. The action of the Commission was to recommend approval subject to conditions as shown in the enclosed copy of our letter to the applicant's representative.

If you wish to submit a protest petition on behalf of your client, it should be filed in the Office of the County Clerk not later than Monday, December 6, 1976. A protest petition form is enclosed for your use. If additional copies are needed for others in the legal protest area, please contact our office.

Please call if you have any questions.

Sincerely,

Jack H. Galbraith  
Chief Planner

JHG:ber

Attachment

cc: James Williams, 3400 North West St. 67204

CU-192 - 8 "Notice to Adjoining Property Owners" mailed 11/11/76 for the  
MAPC meeting for 11/24/76

WICHITA-SEDGWICK COUNTY  
METROPOLITAN AREA PLANNING COMMISSION  
CITY HALL, TENTH FLOOR, 455 North Main Street  
Wichita, Kansas 67202

November 11, 1976

NOTICE TO ADJOINING PROPERTY OWNERS

The Wichita-Sedgwick County Metropolitan Area Planning Commission will consider the following item in the City Commission Meeting Room, City Hall, First Floor, 455 North Main Street, Wichita, Kansas, at its meeting beginning at 1:00 p.m. on Wednesday, November 24, 1976, at which time you may appear either in person or by agent or attorney, if you so desire.

CASE NO. CU-192

Conditional Use Request to Establish  
a Raw Materials Extraction Operation  
on Property Zoned "R-1" Suburban Residential District  
and "LC" Light Commercial District

That part of Government Lots 5 and 6 and the west half of the northwest quarter (W $\frac{1}{2}$  NW $\frac{1}{4}$ ) of Section 36, Township 26 South, Range 1 West of the 6th P.M., lying west of the Arkansas River Levee, except: The south 120 feet of the west 360 feet; and except: The south 415 feet  $\frac{1}{4}$  of the west 360 feet of the north 1,285 feet  $\frac{1}{4}$ , all in Sedgwick County, Kansas. Generally located at the southeast corner of 37th St. North and West Street.

NOTE: It is the policy of the Planning Commission that any request for a deferral of the hearing of this case shall be submitted to the Secretary, Robert A. Lakin, City Hall, Tenth Floor, 455 North Main Street, 7 days prior to the meeting. The Chairman or the Secretary may grant such a request for deferral. Persons requesting deferrals will be charged with the cost of preparing and mailing new notices.

Robert A. Lakin  
Secretary

November 2, 1976

M.S.Mitchell, Ass't. Superintendent, Public Works, Maintenance  
Jack H. Galbraith, Chief Planner

Raw Materials Extraction Operation Proposal - CU-192

Attached is a copy of a proposed operation and redevelopment plan for a raw materials extraction operation proposed at the southeast corner of 37th Street North and West Street. This plan is associated with a conditional use application (CU-192) which is scheduled for consideration by the Metropolitan Area Planning Commission on November 24, 1976.

We would appreciate any comments relative to this proposal by November 10, 1976.

Jack H. Galbraith  
Chief Planner

JHG:GLS:el

Attachment

5251

36  
265  
1w

CU-192

APPLICATION FOR APPROVAL OF CONDITIONAL USE PERMIT  
FOR PROPERTY LOCATED WITHIN THE JURISDICTION  
OF THE BOARD OF COUNTY COMMISSIONERS OF  
SEDGWICK COUNTY, KANSAS

THIS IS AN APPLICATION FOR A CONDITIONAL USE PERMIT. THE FORM MUST BE COMPLETED AND FILED AT THE PLANNING DEPARTMENT, ROOM 402, CITY BUILDING ANNEX, 104 SOUTH MAIN, WICHITA, KANSAS, IN ACCORDANCE WITH DIRECTIONS ON THE ACCOMPANYING INSTRUCTION SHEET. AN INCOMPLETE APPLICATION CANNOT BE ACCEPTED.

I. NAME OF APPLICANT OR APPLICANTS AND/OR THEIR AGENT OR AGENTS. ALL OWNERS OF ALL PROPERTY REQUESTED TO BE CONSIDERED IN THIS APPLICATION MUST BE LISTED IN THIS ITEM.

A. APPLICANT James O. Smith

ADDRESS 200 W. Douglas 67202 PHONE 263-7209

AGENT \_\_\_\_\_

ADDRESS \_\_\_\_\_ PHONE \_\_\_\_\_

B. APPLICANT Ritchie Paving, Inc. (Contract Purchaser)

ADDRESS 1900 Amidon P.O. Box 4048 67204 PHONE 838-9301

AGENT Oblinger-Smith Corporation (Gary Wiley)

ADDRESS 625 First National Bank Building 67202 PHONE 262-0451

C. APPLICANT \_\_\_\_\_

ADDRESS \_\_\_\_\_ PHONE \_\_\_\_\_

AGENT \_\_\_\_\_

ADDRESS \_\_\_\_\_ PHONE \_\_\_\_\_

(USE SEPARATE SHEET IF NECESSARY FOR NAMES OF ADDITIONAL APPLICANTS).

II. THE APPLICANT PROPOSES TO ESTABLISH A operation for the  
extraction of raw materials (USE)

ON PROPERTY LEGALLY DESCRIBED AS LOT(S) \_\_\_\_\_

\_\_\_\_\_, Block(s) \_\_\_\_\_ OF THE

\_\_\_\_\_ ADDITION.

(IF APPROPRIATE, METES AND BOUNDS DESCRIPTION MAY BE PROVIDED IN THE SPACE BELOW OR ON AN ATTACHED SHEET).

OK for legal

That part of Government Lots 5 and 6 and the west half of the northwest quarter (NW $\frac{1}{4}$ ) of Section 36, Township 26 South, Range 1 west of the 6th P.M., lying west of the Arkansas River Levee, except:

The south 120 feet of the west 360 feet;  
and except:

The south 415 feet of the west 360 feet of the north 1,285 feet $\pm$ ,

All in Sedgwick County, Kansas.

N. R-1  
S. R-1  
E. R-1  
W. R-1

III. THIS PROPERTY IS LOCATED AT (ADDRESS) 3700 N. West Street

THE GENERAL LOCATION IS (USE APPROPRIATE SECTION)

A. AT THE Southeast CORNER OF 37th Street North AND  
West Street, OR

B. ON THE \_\_\_\_\_ SIDE OF \_\_\_\_\_ (AVENUE)  
STREET BETWEEN \_\_\_\_\_ (AVENUE) STREET AND  
\_\_\_\_\_ (AVENUE) STREET.

IV. THE PROPERTY INCLUDED IN THIS APPLICATION IS ZONED R-1 & IC  
(ZONING DISTRICT CLASSIFICATION).

V. I REQUEST THIS CONDITIONAL USE PERMIT FOR THE FOLLOWING REASONS:  
To expand present sand extraction operations.

VI. I (WE), THE APPLICANT(S), ACKNOWLEDGE RECEIPT OF THE INSTRUCTION SHEET EXPLAINING THE METHOD OF SUBMITTING THIS APPLICATION. I (WE) REALIZE THAT THIS APPLICATION CANNOT BE PROCESSED UNLESS IT IS COMPLETELY FILLED IN; IS ACCOMPANIED BY A CURRENT ABSTRACTOR'S CERTIFICATE AS REQUIRED IN THE INSTRUCTION SHEET; AND IS ACCOMPANIED BY THE APPROPRIATE FEE. I (WE) FURTHER CERTIFY THAT THE ABOVE AND FOREGOING INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY (OUR) KNOWLEDGE. I (WE) ACKNOWLEDGE THAT THE BOARD OF COUNTY COMMISSIONERS SHALL HAVE AUTHORITY TO IMPOSE SUCH CONDITIONS AS IT DEEMS NECESSARY IN ORDER TO SERVE THE PUBLIC INTEREST AND WELFARE.

NOTE: AT LEAST ONE OWNER MUST SIGN THIS APPLICATION. OTHER OWNERS MAY BE REPRESENTED BY AN AGENT OR AGENTS.

Jameel D. Smith  
By \_\_\_\_\_  
AUTHORIZED AGENT (IF ANY)

Ritchie Paving, Inc.  
By [Signature]  
AUTHORIZED AGENT (IF ANY)

By \_\_\_\_\_  
AUTHORIZED AGENT (IF ANY)

By \_\_\_\_\_  
AUTHORIZED AGENT (IF ANY)

By \_\_\_\_\_  
AUTHORIZED AGENT (IF ANY)

By \_\_\_\_\_  
AUTHORIZED AGENT (IF ANY)

OWNERSHIP LIST

Tract	Property Owner
Lots 7 and 8 and the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 36-26-1W except that portion taken for flood control in Case A-33666 and except the West 50 feet for road	D Ritchie Paving Inc. 1900 Amidon 67203
Beginning at the Southwest corner of the Northwest Quarter of Section 36-26-1W, North 120 feet East 360 feet, South 120 feet, West 360 feet to beginning	✓ James E. Williams and Mary M. 3400 N. West Street 67204
The West Half of the SW $\frac{1}{4}$ and Govt. Lots 7 and 8 in Section 25-26-1W except that portion deeded for highway	✓ James M. Miller and Lillian Marie 3814 N. West Street 67204
The Northeast Quarter of Section 35-26-1W	✓ Dolese Bros. Company 826 East Central 67202
The Southeast Quarter of Section 35-26-1W	D Ritchie Construction Company, Inc. 1900 Amidon 67203
The Southeast Quarter of Section 26-26-1W except that portion deeded for highway in Deed Book 1396 Page 175 and except all that portion of said SE $\frac{1}{4}$ lying North and West of K-96 Highway	✓ Orill M. Parkinson & Melvin D. Parkinson 6513 S. Washington Whittier, California 90601
The West Half of the NW $\frac{1}{4}$ and Govt. Lots 5 and 6 in Section 36-26-1W except the South 120 feet of the West 360 feet	✓ James O. Smith and Ruby Smith 3624 North West Street 67204

The Security Abstract and Title Company, Inc., hereby certifies the foregoing to be a true and correct list of property owners of:

A 1000 foot radius of: That part of Govt. Lots 5 and 6 and the West Half of the Northwest Quarter of Section 36, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas lying West of the Arkansas River Levee except: The South 120 feet of the West 360 feet and except the South 415 feet more or less of the West 360 feet of the North 1,285 feet

as shown by the records on file in the Office of the Register of Deeds of Sedgwick County, Kansas, on the 26th day of October, 1976 at 7:00 o'clock A.M.

THE SECURITY ABSTRACT & TITLE COMPANY, INC.

By

*Mary Doble*

Vice President

Order No. 243654  
wh

COVENANT RUNNING WITH THE LAND

WHEREAS, the undersigned as owner of the property hereinafter described has made application to the Metropolitan Planning Commission of the City of Wichita and County of Sedgwick for permission to use said property as a sand pit together with such other uses as may be necessary to carry on a sand pit operation on said land; and

WHEREAS, the lands adjacent to the above described tract are and will be developed for urban purposes and the operation of a sand pit at such location may endanger the health, welfare and property of residents who may live in such areas unless certain protective measures are taken and

WHEREAS, the undersigned desires to obligate itself and its successors in title to protect the public welfare by constructing and maintaining a loop levee upon said property and to subject and burden the fee title thereto so that such obligation is a covenant running with the land; if such levee becomes necessary as hereinafter provided;

NOW THEREFORE, in consideration of the premises and the zoning by the Metropolitan Planning Commission of my land hereinafter described so as to permit the use thereof for sand pit operations, the undersigned hereby covenants to and with the Metropolitan Planning Commission, the Board of County Commissioners of Sedgwick County and City of Wichita, Kansas, on behalf of himself and his successors in title of said land, that if and when it becomes necessary to construct a loop levee to elevation 1327.0 then, in that event, it covenants to construct or cause to be constructed and maintained without cost or expense to the County of Sedgwick or the City of Wichita, a loop levee on, around and enclosing any borrow or sand pit located on the following described land to-wit:

(description)

That part of Lots One (1) and Two (2) of the Southwest Quarter (SW 1/4), also known as the Southwest Quarter (SW 1/4) of Section 19, Township 26 South, Range One (1) East and beginning at the Northwest (NW) corner of the Northeast Quarter (NE 1/4) of Section 30, Township 26, South Range One (1) East, thence South 74 Rods, thence East 80 Rods, thence North 74 Rods, thence West 80 Rods, <sup>SEE</sup> TO THE place of beginning, except that part condemned under the Chisom Creek diversion ditch and dyke in Sedgwick County District Court, Case no. A-39338, and except the South four hundred (400) feet thereof.

To secure and guarantee the above obligation, the undersigned hereby subjects and encumbers said property with the covenant and obligation to construct and maintain said loop levee as above described as a covenant running with and burdening the land and, in event of the failure by the undersigned or any of his successors in title within sixty (60) days after receipt of written notice from the County or City to fulfill the obligation above set forth, then and in such event the Board of Commissioners of Sedgwick County or the Governing Body of the City of Wichita may order such work done and thereafter maintain and charge the

entire cost of such construction and maintenance as a first lien against said land to be collected and foreclosed in the same manner as a mortgage is foreclosed.

The undersigned warrants that it is the owner of the fee title to said tract of land and that the obligation and covenant above set forth constitutes a first and prior lien against and encumbering said land.

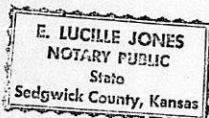
This instrument shall be recorded in the Office of the Register of Deeds, Sedgwick County, Kansas, so as to appear in the chain of title of said land.

Executed in triplicate this 13<sup>th</sup> day of FEBRUARY 1974.

*Michael C. Rowe*

*MIKES SAND CO. INC.*

*V. Harley Miles*  
(Owner)



\_\_\_\_\_  
(Owner's Wife)

**A C K N O W L E D G M E N T**

STATE OF KANSAS }  
SEDGWICK COUNTY } SS.

Be it remembered, that on this 12<sup>th</sup> day of February 1974, before me, the undersigned, a notary public, in and for the County and State aforesaid, came V. Harley Miles and Michael C. Rowe

who are personally known to me to be the same persons who executed the within instrument of writing, and such persons duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

*E. Lucille Jones*  
Notary Public

My Commission Expires:  
January 13, 1975

E. Lucille Jones

a. The applicant dedicating by separate instrument the necessary 50 feet of half-street right-of-way for Meridian for the south 400 feet of the application area.

*This should be  
Dept of  
Engineering*

b. The applicant shall contact Paul Johnston of the Flood Control Office and shall obtain a letter stating that satisfactory arrangements have been made to resolve the drainage problems and construct the loop levee, a copy of which shall be submitted to the Planning Department.

*Suggest new loop  
levee covenant w/  
language similar to  
CU-192*

The applicant shall submit a restrictive covenant to the Planning Department, approved as to content by the Flood Control Office and to form by County Counselor, providing for the construction and/or maintenance of a loop levee around the sandpit as may be required by Paul Johnston, and shall be constructed in accordance with construction specifications, Sections 1 through 4 inclusive, and maintenance specifications Sections 1 and 2, of Construction and Maintenance Specifications as prepared by the Operations and Maintenance Division of the City of Wichita, Kansas; said covenant shall run with the land and be binding on all owners, successors or assigns.

*mjm  
10-20-81*

c. No part of the sand plant operation, including the stockpiling of sand or storage of equipment, shall occur in the north 180 feet or the west 100 feet except ingress and egress to Meridian.

d. The applicant shall proceed in accordance with the development and operational sketch plan approved by the Metropolitan Area Planning Commission, and shall excavate the lake and form the banks to the approximate, 72 acre size as indicated on the approved plan.

e. A minimum 72-inch high chainlink fence shall be constructed prior to the beginning of the excavation operation and shall be maintained along the perimeter of the site, with posts set not more than 16 feet apart. The fence may provide for reasonable access gates installed at the same height and of the same construction as the fence, which gates shall be kept locked except when in use.

f. The earth shall be extracted to at least a minimum depth of six feet below water table as determined by the City-County Health Department.

g. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no more steep than five horizontal to one vertical.

h. All of the area outside of the sandpit lake shall be graded so as to drain into the lake.

i. The sand plant operator shall be responsible for:

1. Insuring that the loop levee elevation be maintained.  
2. Seeing that all operational roads are maintained in a graveled condition.

*Not appropriate  
mjm  
10-20-81*

3. Seeing that the three drainageways are constructed and maintained as part of the operational plan.

*Not appropriate  
mjm*

4. The construction of any structure such as culverts, ditches, ditch checks, riprap, etc., necessary to carry out this plan.

*10-20-81*

5. Seeing that the grading of the area around the perimeter of the sandpit lake is maintained so as to direct drainage toward the lake.

*These are  
some*

Form 223-501

**PAYMENT NOTICE**

City of Wichita

**PAY AT TREASURER'S OFFICE - SECOND FLOOR**

Bldg & Elev.	Elec.	Elev. Insp.	Exam. Fees
Hse. Mvr.	Hse. Moving	Licse.	Mech.
Oil Well	Pav. Cuts	Plan.	Plbg. Cert.
Sanitation	Sewer	Signs	Sidewalk
Street	Trailer		

DESCRIPTION	AMOUNT

Name \_\_\_\_\_

Address \_\_\_\_\_

Type _____	Due Date _____
------------	----------------

Comments: \_\_\_\_\_

Date _____	By _____
------------	----------

\*

This CU File

Has a Large Drawing

On 35mm Microfilm.

Roll # 1

\*