

CU-203- DUNNIE E. COOK requests
a Conditional Use permit to es-
tablish a raw materials extrac-
tion operation on the south side
of 63rd St. S. as extended from
the east and west of Clifton as
extended from the north.

4-19-78

Approved
Closed

Book 4
 Map No. N-7-D
 Sec. 35
 Twp. 28
 Range 1E

DATA SHEET
 (ZONING & CONDITIONAL USE)

Z-
 SCZ-
 CU- 203
 Filed

APPLICATION DATA: From _____ to _____
 1. Applicant: Donnie E. Cook
 Address R.R. 2, Box 67, Derby, Kansas 67037 Phone 88-1604
 2. Agent: Thomas D. Borniger
 Address Suite 230, 1st Nat'l Bk. Bldg., 67202 Phone 755-2205
 3. General Location: South side of 63rd St., South as extended from
the east in an area east of the Arkansas Address
 4. Proposed Use: To establish a raw materials extraction operation.

AREA DATA:
 1. Acres: 33.3 (1100 ft. by 1320 ft.)
 2. Adjoining Zoning: E "R" S "R" W "R" N "R-1"
 3. Land Use: East SINGLE FAMIL South Single family
 West UNDEVELOPED North UNDEVELOPED
 4. Sketch Plan Land Use is for:
 5. Present Land Use is for: 4 MOBILE HOMES - single family
 6. Area (is) (is not) platted.

PROCEDURE DATA:
 1. Zoning Committee _____ by _____
 2. MAPC Meeting:

Date	Action
<u>3-9-78</u>	<u>Perk Approval subject to conditions (Waiver fees)</u>
<u>3-23-78</u>	<u>Haydel</u>
<u>3-30-78</u>	<u>MAPC</u>

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

Date	Action	Resolution
<u>4-19-78</u>	<u>Approved as recommended</u>	<u>5-3-78</u>

NOTES:

SHREVEPORT, LA. 70508
 MAPS, PLANS, RECORDS, ETC.
 No. 2153C
 Shreveport
 LOUISIANA CITY, MISSISSIPPI 39101 U. S. A.

EXCERPT FROM PLANNING COMMISSION MINUTES OF MARC' 30, 1978:

18. Case No. CU-203 - Donnie E. Cook requests a Conditional Use on Government Lot 2 in the Northwest quarter of the Northwest quarter of Section 35, Township 28 South, Range 1 East. Generally located on the south side of 63rd Street South as extended from the east in an area east of the Arkansas River.

MEEK showed slides of the area and reviewed the following staff report:

Comments:

1. The applicant is requesting a Conditional Use Permit to establish a raw material extraction operation on approximately 33 acres of land zoned "R" Rural Residential and located on the south side of 63rd Street South as extended from the east in an area east of the Arkansas River. *extra*
2. The applicant has submitted an operational plan indicating the limits of the area to be excavated and which has been excavated to the water table in violation of the County Zoning Resolution. The applicant states that is desired to continue excavation to a minimum depth of six feet below the water table and that due to intermittent use of the sand extracted it will take approximately three to five years to extract and remove the remaining sand.
3. In reviewing the operational plan, it was noted that a number of things have not been indicated and should be shown such as the established bank line of the Arkansas River, perimeter dimensions and how access to the property is proposed from a public street. It is the understanding of the Planning Department that an application has been made to the State for a contractor's demolition dump on a portion of subject property which should also be indicated if such is proposed.
4. Should the Planning Commission determine this to be a logical and proper use for subject property and 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 rehabilitation plans including the additions as per staff comment #3.
 - B. 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.
 - C. 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. 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.

- D. 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.
- E. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no more steep than four horizontal to one vertical.
- F. The sand plant operator shall be responsible for maintaining all operational roads in a graveled condition.
- G. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to 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.
- H. 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 Director of Public Works and shall be according to the specifications of these authorities.
- I. Once the sand extraction operation has ceased, all foreign matter, such as rubbish, construction debris, and equipment shall be removed from the property within six months.
- J. 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.
- K. All slopes shall have vegetative covering consisting of a perennial drought resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
- L. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand excavation operation.
- M. The applicant shall comply with Conditions A and G prior to the publication of the resolution effectuating the conditional use.
- N. Any violation of conditions attached shall declare the conditional use permit null and void.
- O. This conditional use permit shall expire at the end of five years from the date of approval by the Board of County Commissioners.

MEEK reviewed some history of the application. He stated that at the Derby and Haysville Planning Commission meeting there were people in opposition. Their primary concern was blowing sand, truck traffic on Clifton, which is a dirt road and unimproved, danger to the children of the exposed lake and noise resulting from the activity going on. He said it was the action of both Derby and Haysville to approve the application with some changes recommended. Haysville suggested that condition "O" which suggested a period of five years to complete excavation be reduced to a period of three years and that the applicant complete his work within the three year period. They also suggested that the requirement for the fencing be amended.

to not require the standard 58-foot high fence. They said that there was an existing 5-strand barbed wire fence on the north property line. The other three property lines have 4-strand barbed wire. He pointed out that the river was not fenced itself. They felt that the remoteness of this location and the fact that people live on the site now, would be there to watch to see who goes in there, that the existing fencing was sufficient.

MEEK stated that the Derby Planning Commission also suggested changing the fencing requirement to reflect the fencing that is there, 5 strands on the north and 4 strands on each side; and a condition added that the applicant meet with the Flood Control office to establish a high bank line. MEEK noted that the high bank as noted in red on the aerial was approved by the Flood Control Division.

BARRIER asked about the fact that the applicant has already excavated in violation of the County Zoning Resolution. MEEK stated that the applicant has stated that he did not know he was in violation. BARRIER asked if the applicant intended to continue to excavate. MEEK said that that was the purpose of this application, to make it legal so that they can continue to excavate and establish the lake on the site.

MAY stated that unless the Commission ask that a letter from Flood Control accompany this or be one of the conditions, there is a possibility that the build-up of the riverbank may never come to this Commission.

MEEK stated that it was the applicant's intent to file a Conditional Use application in the future to allow contractor's dumping at the site to restore the bank line.

TOM BORNIKER, attorney, representing the applicant, stated that there were some slight changes that changed the conotation of Mr. Meek's statements. One was they had excavated the site in violation of the County Zoning Ordinance. He said it was true, they were not aware that they had to have a Conditional Use permit to extract the sand to build a private lake. There were several reasons for that. There was a prior Conditional Use permit on the land prior to the time the applicant owned it. At that time the application was to extract sand from the river. When his client bought the site there was still piles of sand and what he did was to find a contractor who could use the sand and gave it to him. The applicant intends to utilize the land and does utilize it for his home. He made a deal with the contractor that if he gave him the sand, the contractor would build the lake for him. Soon after (after a complaint from a neighbor) the County notified the applicant that because there was a contractor who was obtaining something of value in turn for constructing the lake, that they would have to get a Conditional Use permit. He pointed out that after the Derby Planning Commission meeting, M. S. Mitchell along with the County Engineer and Mr. Aiken of the Health Department walked this site. Originally their application went all the way to the river, but after the meeting, the operational plan was redrawn in accordance to Mr. Mitchell's agreement. In talking about the waiver of the fencing requirement, the gentleman in opposition, has a stream running through his land that is not fenced. There is also an old sandpit that was created immediately behind his property that is not fenced. The most secure area in this entire area is the applicant's property because of the barbed wire fence to keep the cattle in and other people out.

TOM DAVIDSON, adjacent property owner to the east, speaking in opposition, commented that he felt there were several things to be considered. He has lived in the area since 1972 and knows the country very well. He stated that the applicant has cleared the trees out and it causes the sand to blow more. The noise from the trucks running up and down the road from 55th Street on Clifton down through 63rd Street is a dirt graded road by the Township, and in the past when they have been hauling sand out of there and when it rained, the ruts were so deep he could hardly get through with a pickup truck. He mentioned a small bridge south of 55th that had to be built up in order to accommodate the large sand trucks and has caused some water to back up in the road. He felt a sandpit was a sandpit whether it was commercial or not and should come under the fencing regulation the same as any other operation.

BAYOUTH stated that the problem that is there now cannot be left as it is. When the project is completed it will be beautiful.

SAVINA was excused from the meeting.

MEEK read Derby' amended condition that M. . Mitchell agreed to the establishment of the high bank line, which the applicant has done.

DONALD COOK, applicant, explained to the Commission what he has tried to accomplish and the precautions taken to protect the adjacent properties.

MOTION: That the Planning Commission recommend to the County Commission that this Conditional Use be approved subject to:

- A. The applicant submitting revised copies of the operational and rehabilitation plans including the additions as per staff comment #3.
- B. 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.
- C. The applicant shall be responsible for maintaining the existing four strands of barbed wire fence along the east and west property lines; and the existing five strand barbed wire fence and gate along the north property line and the gate shall be kept locked except when in use.
- D. 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.
- E. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no more steep than four horizontal to one vertical.
- F. The sand plant operator shall be responsible for maintaining all operational roads in a graveled condition.
- G. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to 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.
- H. 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 Director of Public Works and shall be according to the specifications of these authorities.
- I. Once the sand extraction operation has ceased, all foreign matter, such as rubbish, construction debris, and equipment shall be removed from the property within six months.
- J. 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.
- K. All slopes shall have vegetative covering consisting of a perennial drought resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
- L. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand excavation operation.

- M. The applica shall comply with Conditions A and G prior to the publication of the resolution effectuating the conditional use.
- N. Any violation of conditions attached shall declare the conditional use permit null and void.
- O. This conditional use permit shall expire at the end of five years from the date of approval by the Board of County Commissioners.

Bayouth moved, Hennessy seconded and it carried unanimously. Bell, Jones and Savina were absent.

The Commission discussed several options regarding Haysville's recommendation that the period of operation be limited to three years, however, the motion to approve included the five year time frame as suggested by staff and the Derby Planning Commission.

*File in
CU 203*

March 21, 1983

Donnie Cook
Rural Route 2 - Box 67
Derby, KS 67037

RE CU 203

Dear Mr. Cook:

I asked the County Counselor whether or not the County Commission had the power to make the change to extend the time limit on your Conditional Use permit. Enclosed is a copy of the legal opinion issued by the County Legal Department. It is as I suspected, and as I talked to you earlier, the State law sets the terms of how conditions are set and essentially before you can make any changes in the conditions, you have to go through the same procedures.

If you or your contractor still wish to continue excavation operations after the April date, it will be necessary for you to file a new application with us. A copy of an application form is enclosed for your use. It will require an ownership list, and a filing fee. If all other conditions are as originally approved, and there needs to be no other adjustment, your only additional need will be to request permission to continue the same approval for a period of time not to exceed a date which you request.

Although we probably will not be able to have the case heard and completed prior to April 19, as long as the case is on file in our office before that time I can see no problem with the enforcement of the existing CU by the County Zoning Administrator, pending the completing of a new case. If you have any questions please call either myself or Jack Galbraith.

Sincerely,

Robert A. Lakin
Director of Planning

RAL:vn
cc: Tom Scott, County Commissioner
Richard Euson, Sedgwick County Law Department
Ron Worley, County Zoning Officer
Enclosures: 2



SEDGWICK COUNTY, KANSAS
LEGAL DEPARTMENT

Richard A. Euson
Assistant County Counselor

COUNTY COURTHOUSE • SUITE 315 • WICHITA, KANSAS 67203-3790 • TELEPHONE (316) 268-7111

TO: Robert A. Lakin, Director of Planning
FROM: Richard A. Euson, Assistant County Counselor *RAE*
DATE: March 15, 1983
RE: CU-203

This is in response to your memo dated March 3, 1983, concerning CU-203. One of the conditions of the permit is that it shall expire five years from the date it was approved by the Board of County Commissioners (April 19, 1978) and the question is whether the applicant must apply for a new conditional use permit or whether the applicant may ask the Board of County Commissioners to extend the expiration date. The answer to this question is provided in the county's zoning resolution and in the statutes providing therefor.

The authority for the county's zoning resolution is provided in article 29 of chapter 19 of K.S.A. Provisions relating to changes and amendments in zoning are found in K.S.A. 19-2920(a), the applicable portion of which is as follows:

"A proposal for an amendment or change in zoning may be initiated by the board of the county commissioners, the planning board or upon application of the owner of property affected. The board of county commissioners may establish a scale of reasonable fees to be paid in advance to the secretary of the planning board by the owner of any property at the time of making application for a change in zoning of the same. All proposed changes shall first be submitted to the planning board for recommendation and report, and no amendment or change shall be made without a hearing before the planning board, public notice of which shall be given and the procedure for the consideration and adoption of which shall be in like manner as that required for the consideration and adoption of the original zoning resolution. If such amendment shall affect the

boundaries of any zoning district and the county had made provision for the fixing of the same upon an official map which has been incorporated by reference, the amending resolution shall define the change or boundary as amended, shall order the official map to be changed to reflect such amendment and shall amend the section of the resolution incorporating the same and shall reincorporate such map as amended. If, however, a protest against such amendment, supplement or change be filed in the office of the county clerk within 14 days after the date of the conclusion of the hearing duly signed and acknowledged by the owners of 20% or more of any property proposed to be rezoned, or by the owners of 20% of the total area, excepting public streets and ways which is located within 1,000 feet of the boundaries of the property proposed to be rezoned, such amendment shall not be passed except by unanimous vote of the board of county commissioners." (Emphasis added)

Part "C" of section 14 of the county's zoning resolution provides for changes and amendments based upon the foregoing statutory provisions, and it follows and further defines the procedure set forth in such statute.

Although we find no Kansas cases dealing with this exact subject or with the enabling legislation as it relates to this subject, the question of the proper function of a city planning commission was discussed in Armourdale State Bank v. Kansas City, 131 Kan. 417. In that case, the city commission changed the bank's zoning classification without first submitting the question to the planning commission as required by statute. In holding void the city's action the court stated that:

"A preliminary consideration of a proposed change in a zoning ordinance by a competent body of disinterested persons is not a mere formality but an essential and important prerequisite to official action affecting the value and use of the private property. The power to ordain city zoning ordinances, and to amend, supplement or change them, is not a mere perquisite attaching to the offices of the mayor and councilmen or city commissioners, to be granted or withheld at their grace or caprice. The legislature devised what it considered an effective barrier against such a possibility when it provided that zoning matters should first be considered by an impartial body of resident taxpayers chosen for that purpose, created regularly by ordinance pursuant to the pertinent statute, or by reference of proposed zoning changes to a special committee or commission." (Emphasis added). Pp.421-22.

We believe that the reasoning in the foregoing case would apply as well to the procedure established in K.S.A. 19-2920(a) and in county the zoning resolution. In our factual situation, proper application was made and was heard by the planning commission March 30, 1978. Persons opposed to the application appeared and were heard. The planning commission recommended to the county commission that the conditional use be approved subject to fifteen conditions, one of which was that the permit expire at the end of five years from its approval by the Board of County Commissioners. Based upon these recommendations, the Board of County Commissioners on April 19, 1978, approved the permit subject to such conditions.

The permit's conditions are an integral part of the zone change procedure and a proposal to change any such conditions must in our opinion be first submitted to the planning commission for their recommendation and report, all as required by statute and by the county's zoning resolution.

mp

cc: Tom Scott
William D. Rustin
Ron Worley

March 3, 1983 *JK*

Richard Euson, Assistant County Counselor

Robert A. Lakin, Director of Planning

CU-203

I have been contacted by Donnie E. Cook, R.R. 2, Box 67, Derby, Kansas. Mr. Cook was the applicant on a 33-acre piece of land south of 63rd Street and east of the Big Arkansas River in a 1978 proceedings. This was to allow for the removal of raw materials as an extraction process. The Planning Commission heard, after recommendations from the Derby and Haysville Planning Commissions, this case on March 30, 1978. The Board of County Commissioners approved the case as recommended by the Planning Commission on April 19, 1978, and a resolution was officially published May 3, 1978. A copy of the resolution of the Board of County Commissioners is attached for your information. Also a copy of the minutes of the MAPC hearing are attached for your use and review.

Please note condition "c" of the resolution in Section 1. It is as follows:

"This conditional use permit shall expire at the end of five years from the date of approval by the Board of County Commissioners."

The question is asked as to whether in order to extend the time to allow raw materials extraction operation on the property, does the applicant have to file a new conditional use application, including an updated ownership list and a filing fee, or may the Board of County Commissioners change the five year time at an official meeting of the Board without proceedings going through the Planning Commission, etc.? The Planning Commission proceedings would require a new filing fee, and as I indicated, an updated ownership list. The applicant is concerned about the additional cost. I have checked with Ron Worley on the matter and it is his judgment that there is still an extraction process going on for this property as opposed to simply changing the land contours for site development.

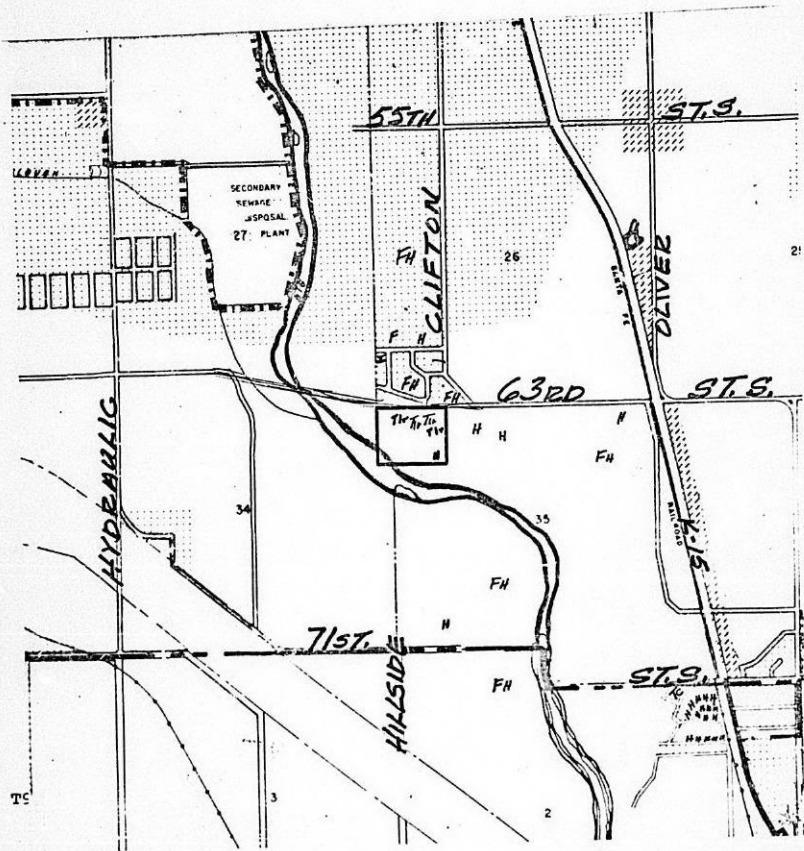
Would you please let me know at your earliest convenience as to whether or not the applicant can have his conditional use extended, or whether it needs to be reheard under a new and revised proceedings.

RAL:zme
Attachment

Robert A. Lakin
Director of Planning

Richard Euson, Assistant County Counselor
March 3, 1983
Page 2

cc: Tom Scott, County Commissioner
Ron Worley, Code Enforcement Officer





SEDGWICK COUNTY COURTHOUSE

COUNTY OF SEDGWICK
DEPARTMENT OF PUBLIC WORKS

1018 STILLWELL
WICHITA, KANSAS 67213

PHONE 268-7001

G. C. MCLURE, JR., P. E.
COUNTY ENGINEER/DIRECTOR OF PUBLIC WORKS

May 26, 1978

Mr. Thomas D. Borniger, Esquire
Curfman-Brainerd-Harris-Bell-Weigand & Depew
First National Bank
Suite 830
Wichita, Kansas 67202

RE: 62nd Street South and Vassar Avenue
Woodvale Addition

Dear Mr. Borniger:

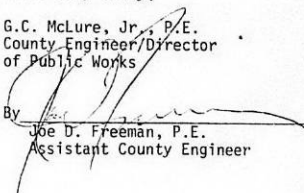
We have received your letter of May 23rd, 1978 whereby your client, Mr. Donnie E. Cook agrees to improve and maintain those public dedicated streets-62nd Street South and Vassar Avenue in Woodvale Addition.

One note of clarification you should be made aware of: 62nd Street South and Vassar Avenue will not be accepted for maintenance by the Township or the County until such time as road plans are submitted to and approved by the County Engineer and said roads are constructed in accordance with the plans.

If you should have any further questions, or need any other information regarding this matter, please feel free to contact this office.

Yours very truly,

G.C. McLure, Jr., P.E.
County Engineer/Director
of Public Works

By 
Joe D. Freeman, P.E.
Assistant County Engineer



cc: Jack Galbraith, MAPD
Syd Werbin, Division of Building, Planning & Inspection
Sedgwick County

R#66-1978

Published in The Wichita Beacon on 5-3-78, 1978

112 PD
LB

R E S O L U T I O N

CASE NO. CU-203

A RESOLUTION PERMITTING A RAW MATERIALS EXTRACTION OPERATION ON PROPERTY ZONED "R" RURAL RESIDENTIAL 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 3.A.8.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 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 3.A.8.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" Rural Residential District, is hereby approved on the lands legally described as follows:

Government Lot 2 in the Northwest quarter of the Northwest quarter of Section 35, Township 28 South, Range 1 East. Generally located on the south side of 63rd Street South as extended from the east in an area east of the Arkansas River.

SUBJECT TO THE FOLLOWING:

- A. The applicant submitting revised copies of the operational and rehabilitation plans including the additions as per staff comment #3.
- B. 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.
- C. The applicant shall be responsible for maintaining the existing four strands of barbed wire fence along the east and west property lines; and the existing five strand barbed wire fence and gate along the north property line and the gate shall be kept locked except when in use.
- D. 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.
- E. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no more steep than four horizontal to one vertical.
- F. The sand plant operator shall be responsible for maintaining all operational roads in a graveled condition.
- G. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to 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.


- H. 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 Director of Public Works and shall be according to the specifications of these authorities.
- I. Once the sand extraction operation has ceased, all foreign matter, such as rubbish, construction debris, and equipment shall be removed from the property within six months.
- J. 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.
- K. 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.
- L. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand excavation operation.
- M. The applicant shall comply with Conditions A and G prior to the publication of the resolution effectuating the conditional use.
- N. Any violation of conditions attached shall declare the conditional use permit null and void.
- O. This conditional use permit shall expire at the end of five years from the date of approval by the Board of County Commissioners.

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.

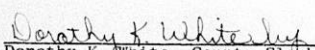
PASSED AND ADOPTED by the Board of County Commissioners at Wichita, Kansas, this 14th day of April, 1978.


Everett Patrick, Chairman

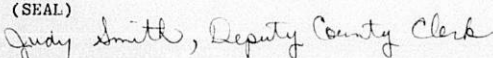

John Hale, Commissioner


Tom Scott, Commissioner

ATTEST:


Dorothy K. White, County Clerk

(SEAL)


Judy Smith, Deputy County Clerk

Approved as to form:

James W. Peterson, Assistant
for Theodore H. Hill, County Counselor

Form T9-221A

RECOMMENDATION FROM METROPOLITAN AREA PLANNING COMMISSION TO
BOARD OF COUNTY COMMISSIONERS

REQUEST FOR CONDITIONAL USE PERMIT

CASE NO. CU-203

CONSIDERED BY MAPC: 3-30-78

CONSIDERED BY DCPC: 3- 9-78

REQUEST FOR: Conditional Use
Permit

CONSIDERED BY HCPC: 3-23-78

REASON FOR REQUEST (AS PROVIDED BY APPLICANT):

"Raw material extraction."

GENERAL LOCATION: South side of 63rd Street South as extended from
the east in an area east of the Arkansas River.

LEGAL DESCRIPTION:

Government Lot 2 in the Northwest quarter of the Northwest quarter of
Section 33, Township 28 South, Range 1 East.

APPLICANT: Donnie E. Cook, R. R. 2 Box 67, Derby, Kansas.

COUNSEL FOR APPLICANT: Thomas D. Borniger, attorney, Suite 830,
1st National Bank Building, 67202

PROTESTORS (LIST COUNSEL) IF ANY: Tom Davidson, RFD #2, Derby, Kansas.

SURROUNDING ZONING: North and East, "R-1"; South and West, "R".

LAND USE: Existing, four mobile homes and single family; North and East,
undeveloped; South and West, undeveloped and river.

PLANNING COMMISSION RECOMMENDATION:

That this Conditional Use Permit be approved subject to the recommended
conditions as shown in the attached excerpt from minutes of the Planning
Commission 3-30-78. Bayouth moved, Hennessy seconded and it carried
unanimously. Bell, Jones and Savina were absent.

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 MARCH 30, 1978:

18. Case No. CU-203 - Donnie E. Cook requests a Conditional Use on Government Lot 2 in the Northwest quarter of the Northwest quarter of Section 35, Township 28 South, Range 1 East. Generally located on the south side of 63rd Street South as extended from the east in an area east of the Arkansas River.

MEEK showed slides of the area and reviewed the following staff report:

Comments:

1. The applicant is requesting a Conditional Use Permit to establish a raw material extraction operation on approximately 33 acres of land zoned "R" Rural Residential and located on the south side of 63rd Street South as extended from the east in an area east of the Arkansas River.
2. The applicant has submitted an operational plan indicating the limits of the area to be excavated and which has been excavated to the water table in violation of the County Zoning Resolution. The applicant states that is desired to continue excavation to a minimum depth of six feet below the water table and that due to intermittent use of the sand extracted it will take approximately three to five years to extract and remove the remaining sand.
3. In reviewing the operational plan, it was noted that a number of things have not been indicated and should be shown such as the established bank line of the Arkansas River, perimeter dimensions and how access to the property is proposed from a public street. It is the understanding of the Planning Department that an application has been made to the State for a contractor's demolition dump on a portion of subject property which should also be indicated if such is proposed.
4. Should the Planning Commission determine this to be a logical and proper use for subject property and 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 rehabilitation plans including the additions as per staff comment #3.
 - B. 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.
 - C. 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. 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 180 degrees facing away from the excavation.

- D. 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.
- E. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no more steep than four horizontal to one vertical.
- F. The sand plant operator shall be responsible for maintaining all operational roads in a graveled condition.
- G. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to 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.
- H. 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 Director of Public Works and shall be according to the specifications of these authorities.
- I. Once the sand extraction operation has ceased, all foreign matter, such as rubbish, construction debris, and equipment shall be removed from the property within six months.
- J. 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.
- K. All slopes shall have vegetative covering consisting of a perennial drought resistant grass or combination of grasses which will permit the establishment of a good sod cover to help prevent erosion.
- L. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand excavation operation.
- M. The applicant shall comply with Conditions A and G prior to the publication of the resolution effectuating the conditional use.
- N. Any violation of conditions attached shall declare the conditional use permit null and void.
- O. This conditional use permit shall expire at the end of five years from the date of approval by the Board of County Commissioners.

MEEK reviewed some history of the application. He stated that at the Derby and Haysville Planning Commission meeting there were people in opposition. Their primary concern was blowing sand, truck traffic on Clifton, which is a dirt road and unimproved, danger to the children of the exposed lake and noise resulting from the activity going on. He said it was the action of both Derby and Haysville to approve the application with some changes recommended. Haysville suggested that condition "O" which suggested a period of five years to complete excavation be reduced to a period of three years and that the applicant complete his work within the three year period. They also suggested that the requirement for the fencing be amended,

to not require the standard 58-foot high fence. They said that there was an existing 5-strand barbed wire fence on the north property line. The other three property lines have 4-strand barbed wire. He pointed out that the river was not fenced itself. They felt that the remoteness of this location and the fact that people live on the site now, would be there to watch to see who goes in there, that the existing fencing was sufficient.

MEEK stated that the Derby Planning Commission also suggested changing the fencing requirement to reflect the fencing that is there, 5 strands on the north and 4 strands on each side; and a condition added that the applicant meet with the Flood Control office to establish a high bank line. MEEK noted that the high bank as noted in red on the aerial was approved by the Flood Control Division.

BARRIER asked about the fact that the applicant has already excavated in violation of the County Zoning Resolution. MEEK stated that the applicant has stated that he did not know he was in violation. BARRIER asked if the applicant intended to continue to excavate. MEEK said that that was the purpose of this application, to make it legal so that they can continue to excavate and establish the lake on the site.

MAY stated that unless the Commission ask that a letter from Flood Control accompany this or be one of the conditions, there is a possibility that the build-up of the riverbank may never come to this Commission.

MEEK stated that it was the applicant's intent to file a Conditional Use application in the future to allow contractor's dumping at the site to restore the bank line.

TOM BORNIGER, attorney, representing the applicant, stated that there were some slight changes that changed the conotation of Mr. Meek's statements. One was they had excavated the site in violation of the County Zoning Ordinance. He said it was true, they were not aware that they had to have a Conditional Use permit to extract the sand to build a private lake. There were several reasons for that. There was a prior Conditional Use permit on the land prior to the time the applicant owned it. At that time the application was to extract sand from the river. When his client bought the site there was still piles of sand and what he did was to find a contractor who could use the sand and gave it to him. The applicant intends to utilize the land and does utilize it for his home. He made a deal with the contractor that if he gave him the sand, the contractor would build the lake for him. Soon after (after a complaint from a neighbor) the County notified the applicant that because there was a contractor who was obtaining something of value in turn for constructing the lake, that they would have to get a Conditional Use permit. He pointed out that after the Derby Planning Commission meeting, M. S. Mitchell along with the County Engineer and Mr. Aiken of the Health Department walked this site. Originally their application went all the way to the river, but after the meeting, the operational plan was redrawn in accordance to Mr. Mitchell's agreement. In talking about the waiver of the fencing requirement, the gentleman in opposition, has a stream running through his land that is not fenced. There is also an old sandpit that was created immediately behind his property that is not fenced. The most secure area in this entire area is the applicant's property because of the barbed wire fence to keep the cattle in and other people out.

TOM DAVIDSON, adjacent property owner to the east, speaking in opposition, commented that he felt there were several things to be considered. He has lived in the area since 1972 and knows the country very well. He stated that the applicant has cleared the trees out and it causes the sand to blow more. The noise from the trucks running up and down the road from 55th Street on Clifton down through 63rd Street is a dirt graded road by the Township, and in the past when they have been hauling sand out of there and when it rained, the ruts were so deep he could hardly get through with a pickup truck. He mentioned a small bridge south of 55th that had to be built up in order to accommodate the large sand trucks and has caused some water to back up in the road. He felt a sandpit was a regulation whether it was commercial or not and should come under the fencing regulation the same as any other operation.

BAYOUTH stated that the problem that is there now cannot be left as it is. When the project is completed it will be beautiful.

SAVINA was excused from the meeting.

MEEK read Derby's amended condition that M. Mitchell agreed to the establishment of the high bank line, which the applicant has done.

DONALD COOK, applicant, explained to the Commission what he has tried to accomplish and the precautions taken to protect the adjacent properties.

MOTION: That the Planning Commission recommend to the County Commission that this Conditional Use be approved subject to:

- A. The applicant submitting revised copies of the operational and rehabilitation plans including the additions as per staff comment #3.
- B. 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.
- C. The applicant shall be responsible for maintaining the existing four strands of barbed wire fence along the east and west property lines; and the existing five strand barbed wire fence and gate along the north property line and the gate shall be kept locked except when in use.
- D. 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.
- E. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no more steep than four horizontal to one vertical.
- F. The sand plant operator shall be responsible for maintaining all operational roads in a graveled condition.
- G. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to 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.
- H. 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 Director of Public Works and shall be according to the specifications of these authorities.
- I. Once the sand extraction operation has ceased, all foreign matter, such as rubbish, construction debris, and equipment shall be removed from the property within six months.
- J. 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.
- K. 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.
- L. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand excavation operation.

- M. The applicant shall comply with Conditions A and G prior to the publication of the resolution effectuating the conditional use.
- N. Any violation of conditions attached shall declare the conditional use permit null and void.
- O. This conditional use permit shall expire at the end of five years from the date of approval by the Board of County Commissioners.

Bayouth moved, Hennessy seconded and it carried unanimously. Bell, Jones and Savina were absent.

The Commission discussed several options regarding Haysville's recommendation that the period of operation be limited to three years, however, the motion to approve included the five year time frame as suggested by staff and the Derby Planning Commission.

April 3, 1978

Mr. Tom Borniger
Curfman, Brainerd, Harris, Bell,
Weigand and Depew
830 First National Bank Building
Wichita, Kansas 67202

Re: CU 203 - Donnie E. Cook requests
a conditional use permit to
establish a raw materials ex-
traction operation on the south
side of 63rd Street South as
extended from the east and west of
Clifton as extended from the north

Dear Mr. Borniger:

Pursuant to your request that this case be forwarded to the Board of County Commissioners as soon as possible, we have rescheduled consideration for the April 19, 1978 meeting of the Board of County Commissioners, said meeting to begin at 9:00 a.m., in Room 320, Sedgwick County Courthouse, 325 North Main.

Please call if you have any questions.

Sincerely,

Mike Heek
Senior Planner
Current Plans Division

MH:bbc
cc: Donnie E. Cook, RFD #2,
Box 67, Derby, Ks. 67037
Tom Davidson, RFD #2, Derby, Ks. 67037
L. A. Kniebler, Box 454, Augusta, Ks. 67010

file

March 31, 1978

Mr. Tom Boringer, Attorney
Curfman, Brainerd, Harris, Bell, Weigand
and Depew
830 First National Bank Bldg.
Wichita, Kansas 67202

Re: CU-203 - Donnie E. Cook requests a
Conditional Use Permit to
establish a raw materials
extraction operation on the
south side of 63rd Street
north as extended from the
east and west of Clifton as
extended from the north.

Dear Mr. Boringer:

At the regular meeting of the Metropolitan Area Planning Commission on March 30, 1978, the above-captioned request for a conditional use permit to establish a borrow area was considered. The action of the Commission was to recommend the approval of the request subject to the following conditions:

- A. The applicant submitting revised copies of the operational and rehabilitation plans including the additions as per staff comment #3.
- B. 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.
- C. The applicant shall be responsible for maintaining the existing four strands of barbed wire fence along the east and west property lines; and the existing five strand barbed wire fence and gate along the north property line and the gate shall be kept locked except when in use.
- D. 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.

Mr. Thom Bornaiger
3-31-78
Page 2

- E. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no more steep than four horizontal to one vertical.
- F. The sand plant operator shall be responsible for maintaining all operational roads in a graveled condition.
- G. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to 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.
- H. 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 Director of Public Works and shall be according to the specifications of these authorities.
- I. Once the sand extraction operation has ceased, all foreign matter, such as rubbish, construction debris, and equipment shall be removed from the property within six months.
- J. 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.
- K. 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.
- L. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand excavation operation.
- M. The applicant shall comply with Conditions A and G prior to the publication of the resolution effectuating the conditional use.
- N. Any violation of conditions attached shall declare the conditional use permit null and void.
- O. This conditional use permit shall expire at the end of five years from the date of approval by the Board of County Commissioners.

Mr. Tom Borniger
3-31-78
Page 3

You might note that the Derby Planning Commission (on March 9, 1978) and the Haysville Planning Commission (on March 23, 1978) also recommended the approval of this case subject to conditions with the exception that Haysville recommended that condition "O" be reduced from five to three years.

This case will be considered by the Board of County Commissioners on April 26, 1978; said meeting to begin at 9:00 a.m., in Room 320 Sedgwick County Courthouse, 525 North Main.

Please call if you have any questions.

Sincerely yours,

Michael Meek
Senior Planner

MM:bh

cc: Donnie E. Cook, R.#2, Box 67, Derby, Kansas 67037
L. A. Knebler, Box 454, Augusta, Kansas 67010
Tom Davidson, RFD #2, Derby, Kansas 67037
Syd Werbin, Division Head, County Bldg., Plan., & Insp.

March 31, 1978

Mr. Tom Davidson
R.F.D. #2
Derby, Kansas 67037

Re: CU-203 - Raw Materials
extraction, south side
of 63rd Street South as
extended from the east and
west of Clifton as extended
from the north.

Dear Mr. Davidson:

At the regular meeting of the Metropolitan Area Planning Commission on March 30, 1978, the above-captioned requested for a conditional use permit to establish sand extraction was considered. The action of the Commission was to recommend the approval of the request subject to the conditions as shown in the enclosed copy of our letter to Mr. Borniger.

If you wish to submit a protest petition, it should be filed in the office of the County Clerk not later than 5:00 p.m., on Monday, April 10, 1978. A protest petition form is enclosed for your use, and if you know of others within the legal protest area who are opposed, additional copies of the protest form may be obtained from our office.

Please call if you have questions.

Sincerely,

Michael Meek
Senior Planner

MM:bh

REFERRAL FROM WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION
TO HAYSVILLE CITY PLANNING COMMISSION.

CASE No. CU-203 To BE HEARD BY THE M. A. P. C. ON 3-30-78
Request for Conditional Use.

REASON FOR REQUEST (AS PROVIDED BY PETITIONER): To establish an operation for the extraction of raw materials.

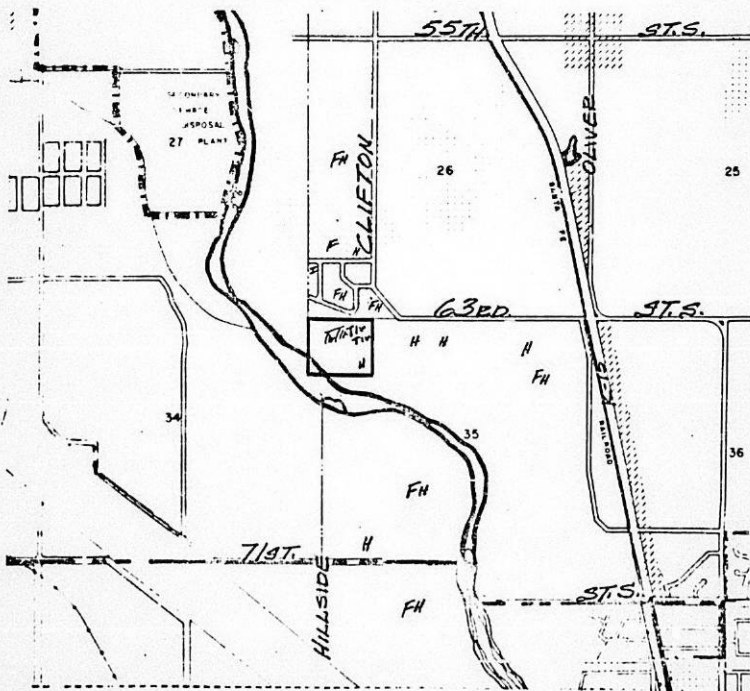
LOCATION OF PROPERTY: On the south side of 63rd Street South as extended from the east in an area east of the Arkansas River.

LEGAL DESCRIPTION OF PROPERTY: Government Lot 2 in the northwest quarter of the northwest quarter of Section 35, Township 28 South, Range 1 East, Sedgwick County, Kansas.

PETITIONER: Donnie E. Cook
ADDRESS: R. R. #2, Box 67, Derby, Kansas 67037

COUNCIL FOR PETITIONER: Thomas D. Borniger, Suite 830, 1st Nat'l. Bldg. 67202

SURROUNDING LAND USE:
E - "R" Undeveloped
S - "R" Undeveloped and River
W - "R" Undeveloped and River
N - "R-1" Undeveloped



RECOMMENDATION OR COMMENTS BY H. C. P. C. :

Mr. Barnier.

CONDITIONAL USE DESCRIPTION:

All that part of GOVERNMENT LOT 2 IN ~~THE~~
~~SECTION~~ SECTION 35 T-39-S 2-1-E of the 6th P.M.,
Sedwick County, Kansas lying North of a line that is
1250' South of the NE corner of said lot 2, and running
northwesterly to a point that is 700' South of the
northwest corner of said lot 2.

Use this legal for
Resolution JHJ

LAW OFFICES OF
CURFMAN, BRAINERD, HARRIS, BELL, WEIGAND & DEPEW

SUITE 830 FIRST NATIONAL BANK BUILDING
WICHITA, KANSAS 67202
(316) 263-9111

LAWRENCE WEIGAND
COUNSEL

LAWRENCE E. CURFMAN
BYRON BRAINERD
CHARLES W. HARRIS
DONALD A. BELL
J. L. WEIGAND, JR.
SPENCER L. DEPEW
PAUL M. BUCHANAN
JOHN R. STALLINGS
BRIAN G. GRACE
WINDELL G. SNOW
WINTON M. HINKLE
JACK SCOTT HINTEER
DENNIS L. GILLEN
VAN R. DELHOTAL
JOHN E. CATON
THOMAS D. BORNIGER
STEPHEN J. BEDNAR
R. MICHAEL ROGERS
JCE L. NORTON
RONALD B. ROSE

March 22, 1978

Mr. Jack Galbraith
Metropolitan Area Planning Commission
10th Floor, City Hall
455 North Main
Wichita, Kansas 67202

Re: Cook - Conditional Use Permit

Dear Jack:

Enclosed please find two copies of the revised operational plans and rehabilitation plans for the proposed conditional use permit on Mr. Cook's lake. The plans have been revised as per Mr. Mitchell's request to exclude a portion of the property adjacent to the Arkansas River.

If you need any additional information or if there are any additional forms which we need to fill out to amend our request for a conditional use permit to limit it to the area now outlined on the plans. Please advise.

Yours truly,

Thomas D. Borniger
Thomas D. Borniger
CURFMAN BRAINERD HARRIS BELL
WEIGAND & DEPEW

TDB/uf

Enclosures



DENVER CITY PLANNING COMMISSION

March 9, 1978

7:30 p.m.

8 MEMBERS PRESENT:

Bill Burress, Tate Butler, Ron Fangmann, Lillian Gardner, L.O. Payne, Larry Sims, Bill Smith, Harold Whitaker.

2 MEMBERS ABSENT:

Dolan Felley, Elton Weeks.

HEARING, MAPD CASE NO. CU-203

Conditional Use Permit Application for
Raw Materials Extraction Operation
South Side of 63rd. St. So., Extended from
the East in an Area East of the Arkansas River
Thomas Borniger, Representing Donnie Cook, Applicant



Mr. Jack Galbraith, MAPD, explained that Mr. Cook made arrangements with a contractor to remove sand which had been stockpiled by a previous contractor as well as sand which would provide a lake for his own recreational use. Mr. Cook is not selling the sand, but rather giving it to the contractor in exchange for his time and equipment used for the removal of the sand. Subsequently Mr. Cook learned that a Conditional Use Permit is required and therefore has ceased the sand removal until such permit can be granted. Mr. Cook is asking that the standard fencing requirement be waived since this will not be a commercial sand removal operation and because a limited time will be required to complete the removal (three to five years). Mr. Cook also asked that he be allowed to continue some concrete work on the side of the river to stop present erosion into his land. Mr. Mitchell, Sedgwick County Flood Control, plans to inspect the river to make a judgment whether this shoring up should continue.

Mr. Borniger explained that the total lake area will be 4.5 acres and that there is presently barbed wire fencing around the area. Tenents on the property are all adults except for two teenagers.

- Commissioner Fangmann: Will mobile homes remain on the site?
Mr. Cook: Yes, but no more will be added.
- Tom Davidson, lives directly east of property: Objects because of increased truck traffic, noise of traffic and sand pump, increased need for maintenance of bridge and Clifton Street, danger of truck traffic in nearby school zone. Asks that, if approved, fencing be required according to regulations because children live within 1/4 mile of area.
- Karen Hartman, lives east of property: Expressed concern that flood hazard will be increased and expressed wish for chain link fence.
- Donnie Cook, applicant: Clarified his wish to stop erosion by the river and expressed his intent to make and keep the area attractive. He maintained that drowning dangers are already present with the nearby river and an old sand pit. Stated that trucks will not be on site on Sundays or evenings and that operation will not continue when the roads are soft due to bad weather. No junk such as old car bodies will be allowed.
- Marion Wood, 2267 S. Hydraulic: Doesn't law require fences around sand pits? Mr. Galbraith: Generally it is required for large extractions which last as long as 20 to 25 years. This one will be small and for a limited time.
- Dan McCoy, Rt. 2: Believes standard fencing is not necessary.
- Mr. Galbraith: Mitchell will not okay any procedure which will increase risk of flooding.

DERBY CITY PLANNING COMMISSION, MARCH 9, 1978, PAGE 2

- Commissioner Burress: Would not requiring the fencing appear to be discriminatory? Mr. Galbraith: All conditions do not apply in every case.
- Commissioner Sims: If it should become a commercial operation, would new application have to be made. Mr. Galbraith: yes. Permission would also have to be granted if it were to become a mobile home park or recreation lake/park for public use.
- Tom Davidson: What prevents applicant from having lake larger than planned? Mr. Galbraith: It is assumed that MAPC will approve it subject to applicant following operational plan which limits size to 4.5 acres.
- Dan McCoy: Is size of lake measured at top or at floor of lake? Mr. Galbraith: At the top.

There being no one further wishing to be heard, the hearing ended (8:55)
Regular meeting called to order by Chairman Sims at 8:55 p.m.

CONSIDERATION OF MAPD CASE NO. CU-203:

Smith moved:

"THAT WE RECOMMEND APPROVAL OF CASE NO. CU-203, SUBJECT TO MR. MITCHELL'S APPROVAL, AND SUBJECT TO CONDITIONS SET FORTH WITH THE EXCEPTION THAT PARAGRAPH C SECTION 4 BE WAIVED AND IN ITS PLACE MAINTENANCE OF EXISTING FENCE BE SUBSTITUTED."

Seconded by Fangmann. 8 yea, 0 no. Motion carried.

Meeting recessed (9:15 p.m.)

Meeting reconvened (9:25 p.m.)

MINUTES, FEBRUARY 23, 1978:

Approved as mailed.

TANGLEWOOD ADDITION, REPLAT OF LOT 1, BLOCK 8, PRELIMINARY PLAT:

Fangmann moved:

"THAT THE PRELIMINARY PLAT OF REPLAT OF LOT 1, BLOCK 8, TANGLEWOOD ADDITION BE APPROVED."

Seconded by Whitaker. 8 yea, 0 no. Motion carried.

TANGLEWOOD ADDITION, REPLAT OF LOT 1, BLOCK 8, FINAL PLAT:

Submitted for consideration.

EXEMPTION FROM PLATTING, DISCUSSION:

Jack Galbraith, MAPD Chief Planner, reviewed the Sedgwick County exemption from platting history. Presently 20 acres are required for exemption in growth area around Wichita. Bulk of county in Wichita jurisdictional area can be exempt from platting with five acre tracts under certain conditions. From October 1976 to October 1977, there were 49 exemptions from platting. County has not reported anything negative in respect to the 5 acre rule.

Bickley Foster, Derby Chief Planner, expressed his belief that lowering the requirement to 5 acres may be using up good farm land at a greater rate, that it contributes to the increase in mobile homes, that building and maintenance of private roads becomes a problem, and that drainage and terracing can be damaged. Mr. Foster stated that perhaps Derby should require 20 acres for its jurisdictional area.

HOMESTEAD LIVING THREE, REQUEST FOR EXEMPTION FROM PLATTING:

Location: 63rd. & Woodlawn. Gary Bussart, Dean Bussart Realtors, appeared on behalf of Steve Neal, Developer.

The Sub-Division Committee reported that there is a street planned through the center of the tract, so exemption cannot be granted.

Mr. Bussart was advised that waiting for a change in regulations which would lower acreage requirements would be a lengthy proposition and that even then, the decision might be to incorporate no changes or even to increase the minimum acreage requirement. The Committee voiced its reservations regarding exempting under any conditions because it is reached by the long-range sewerage plans and because of the planned legume system being so near to Spring Creek which runs through the property.

FIRST COMMUNITY FEDERAL SAVINGS & LOAN, REQUEST FOR ADDITIONAL ACCESS TO BUCKNER STREET AND ELIMINATION OF BERM:

Bob Castle, City Engineer, advised that another access could not be allowed simply by amending the developer's agreement; however, the berm requirement could be waived by this action. The Sub-Division Committee recommended that the berm be eliminated; however, it was their recommendation and that of the City Engineer that another access not be allowed.

Applicant will return to Commission when he has devised a plan which does not require a second access.

BAYLESS INDUSTRIAL PARK, FINAL PLAT:

Mr. Castle advised that all is now in order for approval.

Fangmann moved:

"THAT THE FINAL PLAT OF BAYLESS INDUSTRIAL PARK BE APPROVED."

Seconded by Butler. 8 yea 0 no. Motion carried.

MID-STATES OF DERBY, FINAL PLAT:

It was noted that there is still no compliance with the triple barrel drainage as requested by Sedgwick County Engineer.

Fangmann moved:

"THAT THE FINAL PLAT OF MID-STATE OF DERBY ADDITION BE APPROVED SUBJECT TO APPROVAL OF DRAINAGE WAY BY COUNTY ENGINEER AS REFERENCED IN THE LETTER FROM MR. MCCLURE DATED FEB. 2, 1977."

Seconded by Payne. 8 yea, 0 no. Motion carried.

OAKFOREST REZONE AS REQUESTED BY DAVE MIZE:

Mr. Castle advised that rezone was not approved by Council. Mr. Castle was unable to give his approval to private road because of resulting traffic patterns for residents and emergency vehicles and because unless well-planned, undesirable water channeling could occur. It may be necessary for Mr. Mize to give up one building site in order to correct the problem.

AMENDMENTS TO SUB-DIVISION REGULATIONS:

Fangmann moved:

"THAT WE SEND A LETTER, ASKING FOR A RESPONSE WITHIN THIRTY DAYS, TO ALL AGENCIES WHO ARE ON THE MAILING LIST FOR PRELIMINARY PLATS AND TO DERBY DEVELOPERS, INCLUDING BUSSART, LUSK, AND WHEELER-

DERBY CITY PLANNING COMMISSION, MARCH 9, 1978, PAGE 4

KELLY-HAGNEY, ASKING FOR INPUT TO POSSIBLE ZONING AND SUB-DIVISION REGULATION CHANGES, REFERENCING OCTOBER 15, 1974 PUBLICATION DATE."

Seconded by Smith. 8 yea, 0 no. Motion carried.

ORDINANCE, SINGLE FAMILY ATTACHED UNITS:

Ordinance as written was discussed and input was given to Mr. Foster so that he can draw up final ordinance.

REQUEST FOR EXEMPTION FROM PLATTING, JAMES BROWN:

Mr. Brown appeared to make request for 15 acre tract east off Hillside approximately 1/2 way between 79th. and 83rd. Steets.

Payne moved:

"THAT WE GRANT AN EXEMPTION FROM PLATTING."

Seconded by Smith. 8 yea, 0 no. Motion carried.

ADJOURNMENT:

Payne moved:

"THAT WE ADJOURN."

Seconded by Smith. 8 yea, 0 no.

Meeting adjourned. (11:35 p.m.)

Respectfully submitted,

Erlene Farr

Erlene Farr, Secretary

3-9-78

CU 203

The Derby Planning Commission at its meeting on 3-9-78 considered the above sand pit case and heard from the applicant and a number of adjacent residents.

Their action was to recommend unanimously that the request be approved subject to the conditions of approval as recommended in the staff report except they recommended that the fencing condition be deleted as there is a stock fence surrounding the property now and there are four families living on the site. Their action was also conditioned upon M.S. Smithhill agreeing to the bank stabilization that is to go on.

JHS

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

DCPC HEARING DATE: 3-9-78
HCPC HEARING DATE: 3-23-78
HAPC HEARING DATE: 3-30-78

Case No. CU-203

Request: Conditional Use to permit
raw material extraction.

Location: South side of 63rd St., South as extended from the
east in an area east of the Arkansas River.

Reason: "raw material extraction."

Acres: 33.3

Size 1100' x 1320'

	<u>Land Use</u>	<u>Zoning</u>
Existing	Four mobile homes and single family	"R"
North	Undeveloped	"R-1"
East	Undeveloped	"R-1"
South	Undeveloped and river	"R"
West	Undeveloped and river	"R"

Comments:

1. The applicant is requesting a Conditional Use Permit to establish a raw material extraction operation on approximately 33 acres of land zoned "R" Rural Residential and located on the south side of 63rd Street South as extended from the east in an area east of the Arkansas River.
2. The applicant has submitted an operational plan indicating the limits of the area to be excavated and which has been excavated to the water table in violation of the County Zoning Resolution. The applicant states that is desired to continue excavation to a minimum depth of six feet below the water table and that due to intermittent use of the sand extracted it will take approximately three to five years to extract and remove the remaining sand.
3. In reviewing the operational plan, it was noted that a number of things have not been indicated and should be shown such as the established bank line of the Arkansas River, perimeter dimensions and how access to the property is proposed from a public street. It is the understanding of the Planning Department that an application has been made to the State for a contractor's demolition dump on a portion of subject property which should also be indicated if such is proposed.

Case No. CU 203

Page 2 - DCPC Hearing Date 3-9-78
HCPC Hearing date: 3-23-78
MAPC Hearing date: 3-30-78

4. Should the Planning Commission determine this to be a logical and proper use for subject property and 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 rehabilitation plans including the additions as per staff comment #3.
 - B. 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.
 - C. 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. 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.
- D. 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.
 - E. To provide for bank stabilization and safety of future uses, the side slope of the excavation shall be no more steep than four horizontal to one vertical.
 - F. The sand plant operator shall be responsible for maintaining all operational roads in a graveled condition.

Case No. CU-203

Page 3 DCPC Hearing date: 3-9-78

HCPC Hearing date: 3-23-78

MPC Hearing date: 3-30-78

- G. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to 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.
 - H. 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 Director of Public Works and shall be according to the specifications of these authorities.
 - I. Once the sand extraction operation has ceased, all foreign matter, such as rubbish, construction debris, and equipment shall be removed from the property within six months.
 - J. 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.
 - K. 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.
 - L. The property shall be platted prior to the issuance of any zoning or building permits, except those necessary for the sand excavation operation.
 - M. The applicant shall comply with Conditions A and G prior to the publication of the resolution effectuating the conditional use.
 - N. Any violation of conditions attached shall declare the conditional use permit null and void.
 - O. This conditional use permit shall expire at the end of five years from the date of approval by the Board of County Commissioners.
-

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

NOTICE TO ADJOINING PROPERTY OWNERS:

MAR 2 1978

NOTICE IS HEREBY GIVEN that on Thursday, March 9, 1978, at 7:30 p.m., the DERBY CITY PLANNING COMMISSION, City Hall, Derby, Kansas, will consider the following item for purposes of making a recommendation to the Metropolitan Area Planning Commission and Board of County Commissioners:

CASE NO. CU-203

Conditional Use Request to Establish a Raw Materials
Extraction Operation in the "R" Rural Residential
Zoning District

Government Lot 2 in the Northwest quarter of the Northwest quarter of Section 35, Township 28 South, Range 1 East. Generally located on the south side of 63rd Street South as extended from the east in an area east of the Arkansas River.

This matter will also appear on the agenda for the regular meeting of the Haysville City Planning Commission at 8:00 p.m., Thursday, March 23, 1978, Haysville City Hall, Haysville, Kansas, for purposes of making a recommendation to the Metropolitan Area Planning Commission and Board of County Commissioners.

If this matter is not deferred for further hearing before either the Derby City Planning Commission or the Haysville City Planning Commission, then as provided in the County Zoning Resolution, Section 14 - Administration subparagraph C, this item will be discussed and considered by the WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION at their regular meeting beginning at 1:30 p.m., Thursday, March 30, 1978, in the City Commission Meeting Room, City Hall, First Floor, 455 North Main Street, Wichita, Kansas. All persons interested in said matter will be heard at this time concerning their views and wishes in the premises, and any protest against any of the provisions of the proposed Zoning Resolution will be considered as by law provided.

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

LAW OFFICES OF
CURFMAN, BRAINERD, HARRIS, BELL, WEIGAND & DEPEW

SUITE 830 FIRST NATIONAL BANK BUILDING
WICHITA, KANSAS 67202
(316) 263-9111

LAWRENCE WEIGAND
COUNSEL

LAWRENCE E. CURFMAN
BYRON BRAINERD
CHARLES W. HARRIS
DONALD A. BELL
J. L. WEIGAND, JR.
SPENCER L. DEPEW
PAUL M. BUCHANAN
JOHN R. STALLINGS
BRIAN G. SPACE
WINDELL G. SNOW
WINTON H. HINKLE
JACK SCOTT MINTER
DENNIS L. GILLEN
VAN R. DELHOTEL
JOHN E. CATON
THOMAS D. BORINGER
STEPHEN J. BEDNAR
R. MICHAEL ROGERS
JOE L. NORTON

February 22, 1978



Mr. Jack Galbraith
Metropolitan Area
Planning Commission
10th Floor, City Hall
455 North Main
Wichita, Kansas 67202

Re: Conditional Use Permit
Donnie E. Cook Property

Dear Mr. Galbraith:

Enclosed with this explanatory letter please find the application for the conditional use permit, abstractors ownership list of adjoining property owners within 1,000 feet of the Donnie E. Cook property on which the conditional use permit is sought, two copies each of the operational and rehabilitation plans, and firm check in the amount of \$70.00 for filing fee.

The purpose of this letter is to provide you with a little additional information to flesh out the bare bones of the application.

As you are aware there was a previous conditional use permit issued on this piece of property in 1967 (CU-95) which related to the removal of sand from a sandbar in the river adjacent to the subject property. The present owner purchased the property in 1970. At that time a portion of the property contained large mounds of sand left over from the previous sand extraction process. As a result the property was constantly subject to a blowing sand condition and the owner then entered into an arrangement with the L. A. Knebler Construction Company, Inc. to give the Knebler Construction Company the sand in return for the construction company hauling the sand away. After this was accomplished the owner made an arrangement with the contractor for the contractor to build owner a small lake on the property in return for the sand which would be extracted to form the lake. Neither the owner nor the contractor was aware that a conditional use permit was required in order to construct the lake and as a consequence began construction of the lake in the shape as outlined on the operational plan. The outline of the lake on the operational plan is the exact surveyed boundary of the lake. Prior to being informed that a conditional use permit was required the contractor had backhoed out sand in the outline of the lake down to

Mr. Jack Galbraith
February 22, 1978
Page 2

the water table. The contractor had brought in a pump house to try to extract the remainder of the sand below the water table at the time the owner and the contractor were notified that a conditional use permit was required. Since that time they have terminated the extraction of sand and are now filing the enclosed conditional use permit to allow them to extract the remainder of sand necessary to create the 4.5 acre lake shown on the operational plan.

In regard to the various conditions which are normally a part of any conditional use permit the following information may be helpful to your staff in formulating those conditions:

- A. The roads shown on the operational plan are private roads totally on the property of Donnie E. Cook.
- B. Since the outline of the lake has already been excavated there is no problem with agreeing that any change in elevation by the removal of topsoil shall only occur in that area designated as within the limits of excavation on the operational plan. As shown on the plan it is anticipated that the removal of the sand below the water table shall be a minimum of six feet below the water table so as to be of sufficient depth to retard algae growth in the lake. (contractors' tests indicate there are only six to ten feet of sand remaining for excavation in the lake bed area). As shown on the operational plan the area outside of the excavation area is heavily treed and is used solely as pasture for some cattle. It is presently anticipated that such property is to remain in such use.
- C. No part of the sand extraction operation, including the stockpiling of sand or storage of equipment shall occur within 50 feet of any property line or within 100 feet of any public right-of-way as shown in the operational plan.
- D. As shown on the plan the sand shall be extracted to at least a minimum depth of six feet below the water table.
- E. As shown in the operational plan it is proposed that for bank stabilization and safety of future uses the side slopes of the excavation shall be no steeper than four horizontal to one vertical.
- F. Since the lake occupies a relatively high spot on the property it is anticipated that the area outside the sandpit lake shall remain as is and shall drain away from the lake.
- G. Once the sand extraction operation has ceased all foreign matter such as rubbish, construction debris

and equipment shall be removed from the property within six months.

- H. Applicant agrees to submit a restrictive covenant to the planning department in a form satisfactory to the county counselor providing that no foreign matter such as rubbish, car bodies, etc. shall be deposited within the excavation after approval of the conditional use by the board of county commissioners.
- I. Applicant agrees to be responsible for maintaining all operational roads on his private property in a gravel or otherwise usable condition.
- J. Applicant is aware of the normal fencing requirement and respectfully requests a waiver of the normal requirements for the following reasons: (1) Applicant's land is fenced with four strand barbwire fence on the sides and on the only accessible portion (the north) by a five strand barbwire fence sixty inches high. (2) Applicant's property in addition to being fenced has a gate at the sole entrance and this gate is always closed and locked. Each of the tenants has a key and all tenants are aware that the gate must always be closed since there are cattle on the property. Also, due to the location of the tenants it is highly improbable anyone could enter the property to get to the excavation site without passing in view of one of the tenants homes. (3) Applicant's property is relatively isolated and is not on a highly traveled road. The excavation site is naturally screened from the closest roadway and it is highly probable that most people will not even be aware that such excavation exists. (4) In regard to attracting small children the only children on the property are the two teenage daughters of one tenant; which girls are 14 and 15 years-of-age. (5) As shown the area to be excavated is a relatively small lake. As a consequence the cost of constructing an additional fence to the standards normally required would be extremely onerous and would be an unreasonable burden upon the applicant and due to the above reasons would not provide any appreciably greater safety than is already provided. Applicant therefore respectfully requests the minimum fencing requirement be waived and the fencing as shown on the operational plan be approved as satisfactory.
- K. Applicant agrees that there shall be no concrete or asphalt mixing plants or commercial recreational activities permitted in the area unless duly authorized

Mr. Jack Galbraith
February 22, 1978
Page 4

under provisions of the county zoning resolution and amendments thereto.

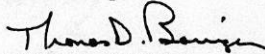
- L. As noted on the rehabilitation plan after completion of the extraction of the sand applicant will insert new trees as necessary to protect the bank line and to provide screening for the lake.

In regard to the entire creation of the lake, at the present time the owner plans to utilize the property for his own use, ultimately building himself a new home on the property.

In addition, you should be aware that the contractor does not anticipate selling the sand to any and all comers but anticipates that it will use it in its own operations as and when needed. As a consequence it is presently anticipated that the extraction of sand will be done on an intermittent basis according to the need of the contractor and that it will take approximately three to five years to extract and remove the remaining sand in the lake area due to such intermittent use.

Thank you again for spending the time with us to discuss preliminary this application. If there is any additional information which you require and which we can obtain, please feel free to call upon us.

Yours truly,



Thomas D. Borniger
CURFMAN BRAINERD HARRIS BELL
WEIGAND & DEPEW

TDB/tf

Enclosures

I I I. THIS PROPERTY IS LOCATED AT (ADDRESS) 6303 South Clifton

THE GENERAL LOCATION IS (USE APPROPRIATE CLASSIFICATION)

A. AT THE _____ CORNER OF _____ AND _____, OR

B. ON THE South SIDE OF 63rd St. South (AVENUE) STREET BETWEEN 63rd St. South (AVENUE) STREET AND Arkansas River (AVENUE) STREET. (One mile west of Oliver)

I V. THE PROPERTY INCLUDED IN THIS APPLICATION IS ZONED R (ZONING DISTRICT CLASSIFICATION).

V. I REQUEST THIS CONDITIONAL USE PERMIT FOR THE FOLLOWING REASONS:

Owner has been in the process of clearing a five-acre portion of his land to create a five-acre private lake for his benefit. Trees, topsoil and sand have already been removed in the outline of the lake to the top of the water table. Owner seeks a conditional use permit to allow the extraction and removal of the remainder of the sand necessary to create such lake.

V I. 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.

Donnie E. Cook
Donnie E. Cook

BY _____ BY _____
AUTHORIZED AGENT (IF ANY) AUTHORIZED AGENT (IF ANY)

BY _____ BY _____
AUTHORIZED AGENT (IF ANY) AUTHORIZED AGENT (IF ANY)

BY _____ BY _____
AUTHORIZED AGENT (IF ANY) AUTHORIZED AGENT (IF ANY)

V I I. OFFICE USE ONLY

This application was received at the Planning Department at 9:30 (AM, PM) on February 23, 1978 (day, month, year). It has been checked and found to be complete and accompanied by required documents and the appropriate fee of \$ 70.00.

G. Lynn Shirley Name
J. Planner Title

Book 4
N-7-D

35-28-1E

Application For Approval of Conditional Use Permit
WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION

"R" all undeveloped North "R" + "R-1"
INSTRUCTIONS single family undeveloped

1. All applicants requesting approval of a Conditional Use Permit should consult the Planning Department prior to submitting a formal application. The purpose of the consultation is to advise the applicant of his rights and responsibilities and the necessity of a detailed plan(s) to be submitted with the application for certain uses such as mobile home parks, sand extraction operations, multiple family development, etc.
2. An application for approval of a Conditional Use Permit must be signed by at least one of the owners of the property included within the application.
3. In order for any application to be considered by the Commission, the following items must be submitted to the Planning Department:
 - A. Application form (PR-3). All blanks must be completely filled in with either the information requested or the notation - N/A - (Not Applicable). INCOMPLETE APPLICATION FORMS WILL NOT BE ACCEPTED for processing.
 - B. Detailed plot plan(s) as may be required.
 - C. A current abstractor's certificate listing the names, mailing addresses and zip codes of the owners of all adjacent property and including the property for which the conditional use is requested, in all directions from subject property for a distance of twice the frontage of the subject property but for a distance of not more than 1,000 ft. or less than 200 ft.
 - D. The appropriate fee as established by the Zoning Regulation of Sedgwick County. The fee shall be the same as that for the district in which located. Those fees are as follows:

"R", "R-1", and "AA" Classifications.....	\$70.00
"BB" Classification.....	\$140.00
"LC", "C", "E", and "F" Classifications..... (6 acres and under)	\$200.00
"LC", "C", "E", and "F" Classifications..... (over 6 acres)	\$400.00

4. The Wichita-Sedgwick County Metropolitan Area Planning Commission will meet to consider Conditional Use requests on every other Thursday of the month at 1:30 p.m., in the City Commission Meeting Room, First Floor, City Hall, 455 North Main, Wichita, Kansas. An application for a Conditional Use, accompanied by appropriate documents and fees as listed above, must be filed with the Planning Department before 5 p.m., on the closing date established by the Metropolitan Area Planning Commission.
5. 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, 455 North Main, at least 7 days prior to the meeting. If, in the discretion of the Chairman and Secretary, such deferral is to be granted, notices of such deferral and date of next hearing will be mailed to those who received original notice of the hearing. Persons requesting deferrals will be charged with the cost of preparing and mailing new notices.

Derby - March 9, 1978
Haydenville - March 23, 1978
MAPC - March 30, 1978

CU-203

OWNERSHIP LIST

Tract	Property Owner
Govt. Lot 2 in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 35-28-1E	Donnie E. Cook and Norma J. Cook ✓ 6303 S. Clifton, Rd. 2 Derby, Kansas 67037
That part of Govt. Lot 1, in the NW $\frac{1}{4}$ of Section 35-28-1E, lying West of the following described line: Commencing at the NE corner of said NW $\frac{1}{4}$; thence West along the North line of said NW $\frac{1}{4}$, 610 feet for a place of beginning; thence with an angle to the left of 91°35' a distance of 771 feet; thence with an angle to the right of 91°53' a distance of 332.3 feet; thence with an angle to the left of 91°53' to the north line of the Arkansas River	✓ Thomas Earl Davidson, Jr. and Sharon Kay Davidson R.F.D. 2, Derby, Kansas 67037
A tract in Govt. Lot 1, in Section 35-28-1E, described as beginning at a point 45 feet West of the NE corner of said Govt. Lot 1; thence West along the North line of said Govt. Lot 1, 565 feet; thence an angle to the left of 91°53' a distance of 771 feet; thence east parallel with the north line of said Govt. Lot 1, 565 feet; thence North 771 feet to place of beginning	✓ Rudolph H. Schroeder and Nancy E. Schroeder 3929 East 63rd St. South 67216
Beginning 1029 feet East of the SW corner of the SW $\frac{1}{4}$ of Section 35-28-1E, thence East to Arkansas River, thence NE and NW along meanderings of said river to a point 1029 feet East of the West line of lot 6, thence South to beginning	✓ Harry D. Elgin & Dora I. 3520 East 71st St. South 67236
That part of the West Half of the SW $\frac{1}{4}$ of Section 35-28-1E, described as: Beginning at the SW corner of said quarter-section, thence East 1029 feet, thence North parallel with the West line of said quarter-section to the Right bank of the Arkansas River, thence NWly along the right bank of said river to the West line of said Quarter section, thence South to the place of beginning	✓ A. W. Poundstone and Eloise B. Poundstone 3410 East 71st St. South 67236
The South half of the NE fractional quarter, and the North half of the SE $\frac{1}{4}$ of Section 34-28-1E	✓ Lafe Forrey & Daisy Forrey c/o Ruth C. Crowl 848 Gilman 67203
Govt. Lot 1 in the NE $\frac{1}{4}$ OF Section 34-28-1E	✓ Marion W. Wood and Olive Louise Wood 2267 South Hydraulic 67211
Govt. Lot 4 in the SE $\frac{1}{4}$ Section 27-28-1E	Same

Tract

Property Owner

A tract in the SW $\frac{1}{4}$ of Section 26-28-1E, desc. as beginning at the SE corner of said SW $\frac{1}{4}$; thence west along the south line of said SW $\frac{1}{4}$ 455 feet; thence with an angle to the right of 91°00' a distance of 415 feet; thence with an angle to the right of 39°30' a distance of 340 feet; thence with an angle to the left of 120° 30' a distance of 170 feet; thence with an angle to the right of 54°00' a distance of 105 feet; thence with an angle to the right of 60°00' a distance of 80 feet; thence with an angle to the right of 51°00' a distance of 115 feet; thence with an angle to the left of 90°00' a distance of 60 feet; thence with an angle to the right of 31°30' a distance of 275 feet; thence with an angle to the right of 63°30' a distance of 171.5 feet more or less to the east line of said SW $\frac{1}{4}$; thence South 1179.6 feet more or less to beg., except the south 208.71 feet of the east 208.71 feet

Robert G. Hartman and
Karen L. Hartman
3930 East 63rd St. South
Derby, Kansas 67037

Beginning at the SW corner of the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 26-28-1E; thence North along the West line of the SE $\frac{1}{4}$ of said SW $\frac{1}{4}$, 644.2 feet; thence Southeastwardly 845.1 feet more or less to a point on the South line of SE $\frac{1}{4}$ SW $\frac{1}{4}$ 550.74 feet East of the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of said SW $\frac{1}{4}$; thence West 550.74 feet to beginning, subject to road easement on the NEly 60 feet thereof

Richard W. Lewis
6359 South Clifton
Derby, Kansas 67037

The East Half of the SW $\frac{1}{4}$ of Section 26-28-1E except above two described tracts

Millard F. Swaney and
Doris L. Swaney
304 East Edgewood
Morton, Illinois 61550

lot 1, Blk B Woodvale Addition

Charles W. Hawthorne and
Vinita M. Hawthorne
Rt. 2, Derby, Ks. 67037

lots 2,3,4,5
Block B Same

Marion W. Wood and
Olive Louise Wood
2267 South Hydraulic 67211

lot 1, Blk C Same

Charles W. Hawthorne and
Vinita M. Hawthorne
Rt. 2, Derby, Ks. 67037

lots 2 thru 19
Block c Same

Marion W. Wood and
Olive Louise Wood
2267 South Hydraulic 67211

lots 1 thru 9
Block D Same

Same

lot 10, Blk D Same

Arvell Milton Dinwiddie and
Lianne Dinwiddie
Box 440, Chugiak, Alaska
99567

lots 1 thru 11
Block E Same

Marion W. Wood & Olive Louise
2267 S. Hydraulic 67211

We hereby certify the foregoing to be a true and correct list of the property owners of:

A 1000 foot radius of: Govt. Lot 2 in
the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 35-28-1E

as shown by the last deed of record on file in the Office of the Register of Deeds of Sedgwick County, Kansas, on the 2nd day of February, 1978 at 7:00 o'clock A.M.

THE SECURITY ABSTRACT & TITLE COMPANY, INC.

By

Mary Kable

Vice President

Order No. 260782
wh

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

NOTICE TO ADJOINING PROPERTY OWNERS:

MAR 2 1978

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Extraction Operation in the "R" Rural Residential
Zoning District

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If this matter is not deferred for further hearing before either the Derby City Planning Commission or the Haysville City Planning Commission, then as provided in the County Zoning Resolution, Section 14 - Administration subparagraph C, this item will be discussed and considered by the WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION at their regular meeting beginning at 1:30 p.m., Thursday, March 30, 1978, in the City Commission Meeting Room, City Hall, First Floor, 455 North Main Street, Wichita, Kansas. All persons interested in said matter will be heard at this time concerning their views and wishes in the premises, and any protest against any of the provisions of the proposed Zoning Resolution will be considered as by law provided.

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Robert A. Lakin
Secretary

WICHITA - SEDGWICK COUNTY



METROPOLITAN AREA PLANNING
DEPARTMENT
CITY HALL - TENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202

L. A. Knebler
Box 454
Augusta, Kansas 67037

RETURNED FOR POSTAGE
AFFIX POSTAGE OVER THIS
NOTICE WHEN REMAILING

Important! Notice of Meeting Enclosed

FORM 223-021

PAYMENT NOTICE
City of Wichita

Bldg.	Use of Str.	Code Eka	Copies
Elec	Elev. Insp.	Hse Moving	Lic.
Mech	Boiler Insp.	Pav. Cuts	Cert.
Plbg	Exam Fees	Sewer	Elev.
Signs	Plan Rev.	Cement	M.S.P.

DESCRIPTION	AMOUNT
Conditional Use	70 ⁰⁰

NAME *Thomas Borriger*
 ADDRESS *830 First Natl Bank Bldg*
 FUND *755-40071-* DUE DATE *003-000-000*
 COMMENTS
 DATE *2/24/78* BY *BSS*

FORM 223-021

PAYMENT NOTICE
City of Wichita

Bldg.	Use of Str.	Code Eka	Copies
Elec	Elev. Insp.	Hse Moving	Lic.
Mech	Boiler Insp.	Pav. Cuts	Cert.
Plbg	Exam Fees	Sewer	Elev.
Signs	Plan Rev.	Cement	M.S.P.

DESCRIPTION	AMOUNT

NAME
 ADDRESS
 FUND *755-4-71-* DUE DATE
 COMMENTS
 DATE *2/24/78* BY *BSS*



COUNTY ESTATE
BANK LINES



COUNTY ESTABLISHED BANK

SCALE: 1" = 400'

DATE: FEB. 1977

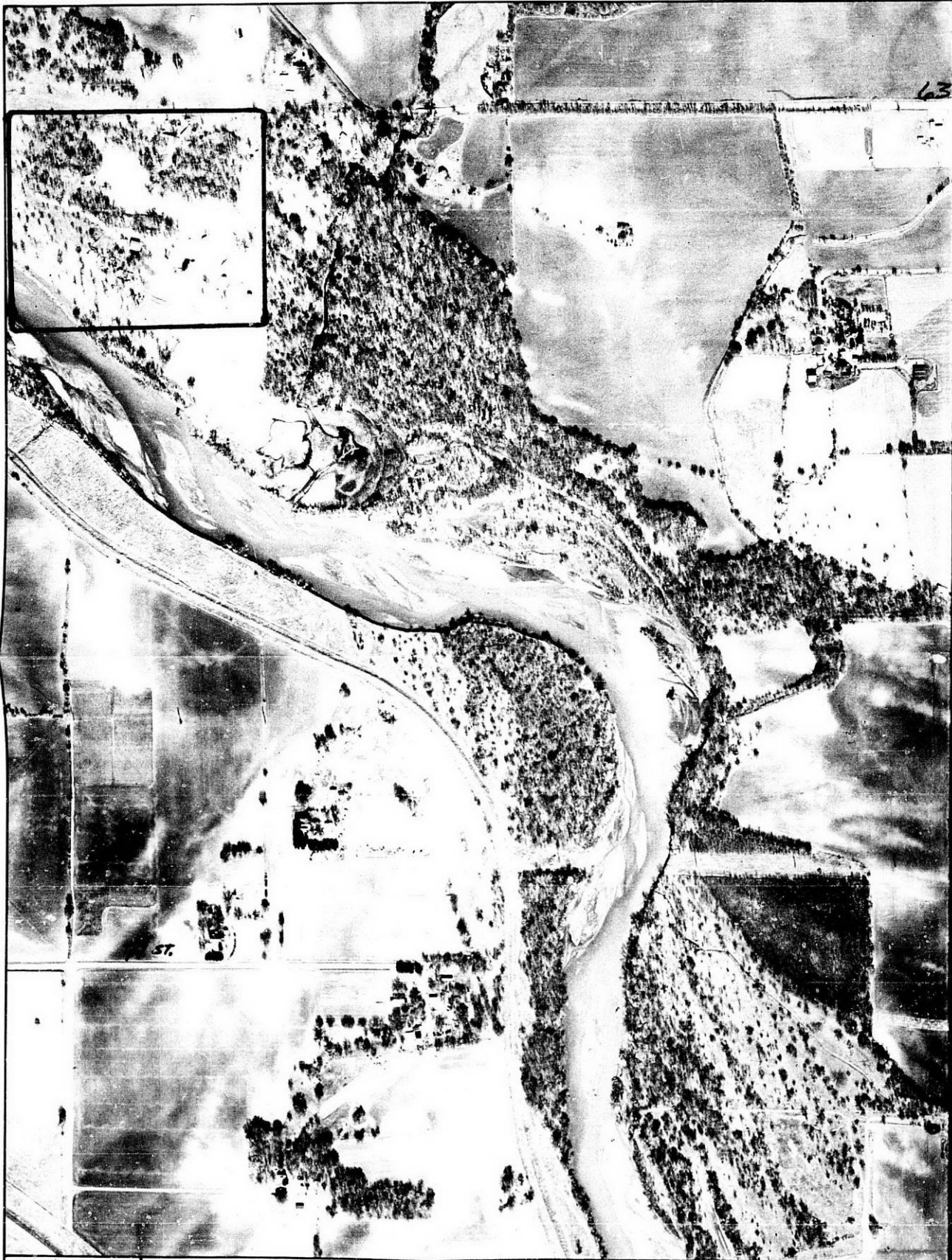
PREPARED BY

VERNON GRAPHICS

KANSAS GAS AND ELECTRIC COMPANY

SEC 35 - T 28 S - R 1 E

5739



SCALE
1" = 400'

PREPARED BY

DATE
FEB. 1977

VERNON GRAPHICS

KANSAS GAS AND ELECTRIC COMPANY



KANSAS GAS AND ELECTRIC COMPANY

SEC 35 - T 28 S - R 1 E

5739

*

This CU File

Has a Large Drawing

On 35mm Microfilm.

Roll # 1

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